

# The Attorney General

Washington, D.C.

**August 1, 2007**

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy:

I write in response to your invitation to supplement the transcript of my Senate Judiciary Committee appearance of July 24, 2007. I am deeply concerned with suggestions that my testimony was misleading, and am determined to address any such impression.

I have attached for the record a copy of the July 31, 2007 letter from the Director of National Intelligence ("DNI"), which provides important context for any public discussion of the matters at issue here. First, shortly after 9/11, the President authorized the NSA to undertake a number of highly classified intelligence activities. Second, although the legal bases for these activities varied, all of them were authorized in one presidential order, which was reauthorized approximately every 45 days. Third, before December 2005, the term "Terrorist Surveillance Program" was not used to refer to these activities, collectively or otherwise. It was only in early 2006, as part of the public debate that followed the unauthorized disclosure and the President's acknowledgment of one aspect of the NSA activities, that the term Terrorist Surveillance Program was first used.

At my July 24<sup>th</sup> public hearing, the Judiciary Committee asked questions about sensitive intelligence matters. In my public testimony, including on July 24<sup>th</sup>, I have tried to provide frank answers without disclosing classified information. I was discussing only that particular aspect of the NSA activities that the President has publicly acknowledged, and that we have called the Terrorist Surveillance Program, as defined in the DNI's letter. I recognize that the use of the term "Terrorist Surveillance Program" and my shorthand reference to the "program" publicly "described by the President" may have created confusion, particularly for those who are knowledgeable about the NSA activities authorized in the presidential order described by the DNI, and who may be accustomed to thinking of them or referring to them together as a single NSA "program."

In March 2004, when the presidential order was set to expire, the Department of Justice, under Acting Attorney General James Comey, refused to give its approval to the reauthorization of the order because of concerns about the legal basis of certain of these NSA activities. As I testified, however, I recall that there was not a serious disagreement between the Department and the White House in March 2004 about whether there was a legal basis for the particular activity later called the Terrorist Surveillance Program. That is not to say that the legal issues raised by the Terrorist Surveillance Program were insubstantial; it was an extraordinary activity that

presented novel and difficult issues and was, as I understand, the subject of intense deliberations within the Department. In the spring of 2004, after a thorough reexamination of all these activities, Mr. Comey and the Office of Legal Counsel ultimately agreed that the President could direct the NSA to intercept international communications without a court order where the interceptions were targeted at al Qaeda or its affiliates. Other aspects of the NSA activities referenced in the DNI's letter did precipitate very serious disagreement. The nature of these disagreements has been the subject of oversight by the Intelligence Committees, including a closed hearing before the House Permanent Select Committee on Intelligence at which I recently testified.

I hope this explanation is helpful to the Committee's understanding of my testimony. Please understand, however, that I remain bound not to reveal classified information and therefore cannot discuss in this public letter all of the details that may be helpful to a full understanding of these matters. If you continue to have questions, the Department would be pleased to arrange a briefing for you at your convenience in the appropriate, classified, forum.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Gonzales', written in a cursive style.

Alberto R. Gonzales

cc: The Honorable Arlen Specter

DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC 20511

July 31, 2007

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Senator Specter:

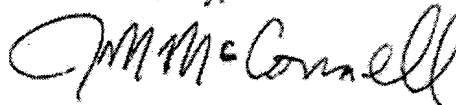
I write in response to your request at our meeting of yesterday.

Shortly after 9/11, the President authorized the National Security Agency to undertake various intelligence activities designed to protect the United States from further terrorist attack. A number of these intelligence activities were authorized in one order, which was reauthorized by the President approximately every 45 days, with certain modifications. The details of the activities changed in certain respects over time and I understand from the Department of Justice these activities rested on different legal bases.

One particular aspect of these activities, and nothing more, was publicly acknowledged by the President and described in December 2005, following an unauthorized disclosure. The particular aspect of these activities that the President publicly described was limited to the targeting for interception without a court order of international communications of al Qaeda and affiliated terrorist organizations coming into or going out of the United States. I understand that in early 2006, as part of the public debate that followed the President's acknowledgment, the Administration first used the term "Terrorist Surveillance Program" to refer specifically to that particular activity the President had publicly described in December 2005. This is the only aspect of the NSA activities that can be discussed publicly because it is the only aspect of those various activities whose existence has been officially acknowledged. (It remains the case that the operational details even of the activity acknowledged and described by the President have not been made public and cannot be disclosed without harming national security.) I understand that the phrase "Terrorist Surveillance Program" was not used prior to 2006 to refer to the activities authorized by the President.

I hope that this information is helpful to you.

Sincerely,

A handwritten signature in dark ink, appearing to read "J.M. McConnell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J.M. McConnell

cc: The Honorable Patrick J. Leahy