

Congress of the United States

Washington, DC 20515

January 9, 2006

H. Marshall Jarrett, Counsel
Office of Professional Responsibility
950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530

Dear Mr. Jarrett:

The New York Times' disclosed last month that President Bush secretly authorized the National Security Agency (NSA) to conduct domestic surveillance operations without warrants and beyond the authority of the Foreign Intelligence Surveillance Act (FISA). This action by the president raises very serious questions about the constitutionality of such a directive. Subsequent news reports have made it clear that top officials at the U.S. Department of Justice (DOJ) had knowledge of the program and also raised serious concerns about its legality. As such, we respectfully request that you conduct an internal investigation to determine what role DOJ played and continues to play in this domestic surveillance program and whether such an initiative is permissible under law.

We all want the United States to be as effective as possible in tracking potential terrorists and bringing them to justice. Congress is wholly committed to protecting the United States and its people. However, this protection can and should be accomplished in a manner that upholds and respects the Constitution. Circumventing the legal framework of the Constitution is not a justifiable way to accomplish this goal.

The president's decision to unilaterally order warrantless surveillance creates a dangerous precedent. First, the president's decision sidesteps the established procedure of receiving court permission to conduct surveillance. Currently, specific surveillance requests described in FISA require approval from the Foreign Intelligence Surveillance Court (FISC). Each year, the Administration pursuant to FISA, has to disclose to the Administrative Office of the United States Courts how many applications were made to FISC for electronic surveillance and physical searches. Since 1978, only a handful of requests for surveillance have been denied. Second, if the president believed that the current system of getting authorization of surveillance was an ineffective and burdensome way to track alleged terrorists he should have worked with Congress to present his case and find a legislative solution.

To help determine the scope of the domestic surveillance initiative and DOJ's role in the matter, we request that you investigate the following questions:

- When did DOJ first authorize the president's request for the NSA to conduct domestic surveillance without warrants? What was the process that led to that authorization?
- Did the Administration enact the surveillance initiative prior to DOJ's approval? If so, when and how was the program originally implemented?

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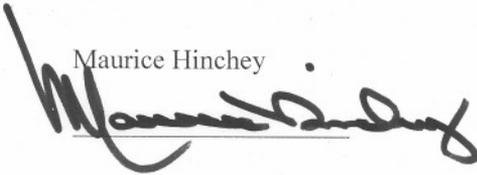
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- What is the process for reauthorizing the program and how often does reauthorization occur? Has DOJ reauthorized the program every time?
- Why did then-Acting Attorney General James Comey object in 2004 to the reauthorization of the surveillance program?
- Following Comey's refusal to sign off on the reauthorization of the surveillance program, White House Chief of Staff Andrew Card and then-White House Counsel Alberto Gonzales visited then-Attorney General John Ashcroft -- for whom Comey was filling in -- in the hospital as he recovered from gallbladder surgery to obtain his reauthorization of the surveillance program. According to The New York Times, Ashcroft raised objections to the program, but it is unclear whether he eventually gave his permission. Did Ashcroft reauthorize the program while in the hospital or did the White House move forward with the initiative without his approval?
- What percentage of the surveillance conducted under this presidential authorization involved communications in which both parties were located within the United States?
- What were DOJ's criticisms and justifications of the monitoring both prior to and after DOJ's audit of the program in 2004?

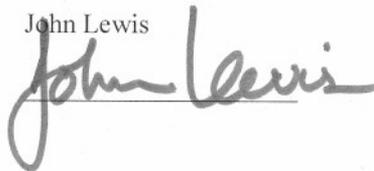
We look forward to receiving your response to these questions as well as any other related information you may discover during the course of such an investigation. Your timely effort in this regard will be much appreciated and will help assure the American people that its government is committed to working within the law and holding its leaders accountable for their actions.

Sincerely,

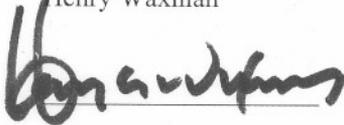
Maurice Hinchey



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Lynn Woolsey

