Bush Thwarted Probe Into NSA Wiretapping

Security Clearances for Justice Department Investigators Were Denied, Gonzales Says

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President Bush effectively blocked a Justice Department investigation of the National Security Agency's warrantless surveillance program, refusing to give security clearances to attorneys who were attempting to conduct the probe, Attorney General Alberto R. Gonzales said yesterday.

Bush's decision represents an unusually direct and unprecedented White House intervention into an investigation by the Office of Professional Responsibility, the internal affairs office at Justice, administration officials and legal experts said. It forced OPR to abandon its investigation of the role Justice officials played in authorizing and monitoring the controversial NSA eavesdropping effort, according to officials and government documents.

"Since its creation some 31 years ago, OPR has conducted many highly sensitive investigations involving Executive Branch programs and has obtained access to information classified at the highest levels," the office's chief lawyer, H. Marshall Jarrett, wrote in a memorandum released yesterday. "In all those years, OPR has never been prevented from initiating or pursuing an investigation."

In testimony yesterday to the Senate Judiciary Committee, Gonzales said that in matters involving access to classified programs, "the president of the United States makes the decision.""The president decided that protecting the secrecy and security of the program requires that a strict limit be...

"The president of the United States makes the decision" in matters involving access to classified programs, Attorney General Alberto R. Gonzales testified. (By Win McNamee -- Getty Images)
placed on the number of persons granted access to information about the program for non-operational reasons," Gonzales wrote in a related letter sent to the committee's chairman, Sen. Arlen Specter (R-Pa.). "Every additional security clearance that is granted for the [program] increases the risk that national security might be compromised."

The eavesdropping program, begun after the Sept. 11, 2001, attacks and revealed in news reports last December, allows the NSA to intercept telephone calls and e-mails between the United States and locations overseas without court approval if one of the parties is suspected of links to terrorist groups. It is the focus of several lawsuits and months of wrangling between the administration and Congress over its legality.

Last week, Specter and the administration agreed on proposed legislation that would allow Bush to submit the program to the government's secret terrorism and intelligence court for review of its legality. But other lawmakers have criticized that deal, saying it would provide insufficient oversight.

In addition to the abandoned OPR investigation, administration officials have said that the NSA inspector general has been monitoring the program since its inception. Officials also revealed yesterday that Glenn A. Fine, the Justice Department's inspector general, has opened a preliminary inquiry into how the FBI used information gleaned from the NSA surveillance program.

Jarrett told lawmakers in May that his office was unable to proceed with its inquiry because it was repeatedly denied the necessary security clearances. But until yesterday, Gonzales and other Justice officials had declined to provide details on who made that decision.

Some legal experts and members of Congress who have questioned the legality of the NSA program said Bush's move to quash the Justice probe represents a politically motivated interference in Justice Department affairs. Rep. Maurice D. Hinchey (D-N.Y.), one of the lawmakers who spearheaded calls for the Justice review, said the move is an example of "an administration that thinks it doesn't have to follow the law."

A few critics unfavorably compared Gonzales to Elliot Richardson, the Watergate-era attorney general who resigned in 1973 rather than obey President Richard M. Nixon's order to fire special prosecutor Archibald Cox.

"If he was like Elliot Richardson, he'd say, 'Mr. President, I quit,'" said Bruce Fein, a constitutional lawyer and Reagan-era Justice Department official who has been sharply critical of the administration's legal rationale for the surveillance program.

A Justice Department official called such comparisons ludicrous and said that the original request for an OPR investigation was
political in nature, initiated by more than three dozen Democrats and one House independent.

Officials declined to say whether Gonzales agreed with Bush's decision and whether he had a role in the debate over clearances.

White House spokesman Tony Snow said the eavesdropping program has been subject to legal review every 45 days by senior officials, including Gonzales. "The Office of Professional Responsibility was not the proper venue for conducting" a legal review, Snow said.

A series of memos released yesterday indicates that Jarrett was increasingly frustrated by the refusal to grant his staff the security clearances necessary to investigate the NSA program.

Jarrett noted that clearances were granted to lawyers and agents from Justice and the FBI who were assigned to investigate the original leak of the NSA program's existence to the media. He also noted that numerous other investigators and officials -- including members of Congress and the members of a federal civil liberties board -- had been granted access to or had been briefed on the program.

"In contrast, our repeated requests for access to classified information about the NSA program have not been granted," Jarrett wrote on March 21 to Gonzales's deputy. By late April, he wrote internally that the office intended to close its investigation.