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White House Secrecy On Wiretaps Described

By [Dan Eggen](#)
Washington Post Staff Writer
Wednesday, October 3, 2007; Page A05

No more than four [Justice Department](#) officials had access to details of the Bush administration's warrantless surveillance program when the department deemed portions of it illegal, following a pattern of poor consultation that helped create a "legal mess," a former Justice official told Congress yesterday.

Jack L. Goldsmith, former head of the Justice Department's Office of Legal Counsel, told the [Senate Judiciary Committee](#) that the [White House](#) so tightly restricted access to the [National Security Agency's](#) program that even the attorney general and the NSA's general counsel were partly in the dark.

When the Justice Department began a formal review of the program's legal underpinnings in late 2003, the White House initially resisted allowing then-[Deputy Attorney General James B. Comey](#) to be briefed on it, Goldsmith said.

Goldsmith's testimony provided further details about the fierce legal debate and intense secrecy surrounding the NSA surveillance program within the Bush administration in early 2004. The fight culminated in a threat by Goldsmith, Comey and others to resign en masse if the program were allowed to continue without changes.

The handling of the surveillance program has become a major flashpoint between the administration and Senate Democrats, who allege that the government relied on dubious legal advice to run an illegal spying program that targeted innocent U.S. residents.

The full contours of the program have not been officially disclosed. In part, it allowed the NSA to monitor communications between the United States and overseas without court oversight if one of the parties was believed to be linked to [al-Qaeda](#) or a related group. That activity is now authorized under legislation passed by Congress earlier this year.

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Goldsmith, who led an internal Justice Department review of the surveillance effort completed more than two years after the surveillance began, said he "could not find a legal basis for some aspects of the program."

"It was the biggest legal mess I had ever encountered," Goldsmith said.

His legal opinion declaring the program illegal in early 2004 was supported by Comey and [then-Attorney General John D. Ashcroft](#) but drew strong resistance at the White House, which wanted to continue the

program without change. Then-White House counsel [Alberto R. Gonzales](#) and then-White House chief of staff [Andrew H. Card Jr.](#) tried to bypass Comey and gain Ashcroft's approval while Ashcroft was in a hospital intensive care unit, recovering from gallbladder surgery.

Goldsmith, who rushed to Ashcroft's hospital room along with Comey the night of the Gonzales-Card visit, said it "seemed inappropriate and baffling." Goldsmith said Ashcroft told the two White House officials that "he didn't appreciate being visited in the hospital under these circumstances" and that Comey was acting in his stead.

"The attorney general looked terrible," Goldsmith said, recalling his assessment as he entered the hospital room that night. "He looked very weak, very tired and ashen."

Goldsmith testified that he believed Gonzales and Card had been sent by [President Bush](#), but he was not certain.

Goldsmith's testimony follows the release of his book, "The Terror Presidency," which provides an unusual glimpse of the administration's internal debates about the detention and interrogation of terrorism suspects. Now a professor at [Harvard Law School](#), Goldsmith served as the head of the OLC from 2003 to 2004 and concluded that crucial Justice Department legal opinions on the NSA program, torture and other issues -- mostly written by an OLC attorney named John Yoo, who now teaches law at the [University of California at Berkeley](#) -- were fundamentally flawed.

Goldsmith also appeared to challenge previous testimony from Gonzales, who repeatedly told lawmakers that there had been no serious disagreement within the administration over the Terrorist Surveillance Program, the public name for the NSA's warrantless surveillance efforts. Gonzales left office last month.

"There were enormous disagreements" about the program, Goldsmith said. But he added that Gonzales's explanations could be seen as technically accurate given the varying terminology used for the program.

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