

The following text may be printed, copy/pasted, or downloaded and emailed.

US Law Chief Defends Domestic Wiretapping:

Attorney general clashes with Senate critics 'Early warning system' essential for war on terror

Suzanne Goldenberg
The Guardian
February 7, 2006

The US attorney general, Alberto Gonzales, yesterday strongly defended the Bush administration's domestic spying as an "early warning system" for the 21st century, and said the president did not break the law when he ordered surveillance of Americans without court oversight.

In hearings before a sceptical Senate judiciary committee, Mr Gonzales worked hard to advance the administration's argument that the inherent powers of the presidency carried greater weight than legislation whereby the monitoring of US phones and email can be conducted only under the review of a special court, albeit one which operates in secret.

Mr Gonzales's appearance before the committee offered senators their first chance to scrutinise the legality of a secret order by President George Bush in 2002 to monitor, without resort to court oversight, the email and telephone calls of Americans suspected of communicating with al-Qaida. Only eight senators were told of the order. Since the National Security Agency's domestic spying became public knowledge last December, after a story in the New York Times, the administration has vigorously defended the surveillance as a tool to fight terror.

However, Mr Gonzales faced strong challenges to that line of argument yesterday. The Republican chairman of the judiciary committee, Arlen Specter, led off the hearings by noting: "The president does not have a blank cheque."

There were even stronger words from the committee's ranking Democrat, Patrick Leahy, who told Mr Gonzales: "Congress has given the president authority to monitor al-Qaida messages legally, with checks to guard against abuses when Americans' conversations and emails are being monitored. But instead of doing what the president has the authority to do legally, he's decided to do it illegally, without safeguards."

Yesterday's encounter was a renewal of a debate which has defined the Bush administration. In a series of controversies over Guantanamo, torture, and now eavesdropping, the White House has consistently argued he had sweeping powers to act as commander-in-chief of a country at war. Mr Bush argues that September 11 attacks gave him far broader latitude because of the need to protect Americans from al-Qaida. However, the NSA spy programme created widespread unease in the security establishment, and among the judges at the courts charged with monitoring domestic surveillance.

Since the spying became public, Mr Bush and administration officials have led a vigorous campaign to win public support. Mr Gonzales attempted a similar strategy yesterday, cloaking the legal and constitutional issues at the heart of yesterday's hearings with the rhetoric deployed since the September 11 attacks. "Our enemy is listening," he told the committee. "And I can not help but wonder if they aren't shaking their heads in amazement at the thought that anyone would imperil such a sensitive programme."

Amid heated exchanges with senators, he refused to retreat, claiming the wiretaps were legal under the in-built powers of the presidency, and a vote in Congress in 2001 authorising use of force following the attack on the World Trade Centre. He also said the 1978 law setting up the

federal intelligence surveillance court, the body overseeing domestic wiretaps, did not bar the president from authorising the NSA to conduct warrantless taps.

'Our enemy is listening. I can't help but wonder if they aren't shaking their heads in amazement'
Alberto Gonzales