

United States Senate

WASHINGTON, DC 20510

May 16, 2007

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Mr. Attorney General:

In very dramatic testimony to the Senate Judiciary Committee yesterday, former Deputy Attorney General James Comey testified that in March 2004, when you served as White House Counsel, you were involved in “an effort to take advantage of a very sick man,” referring to then-Attorney General John Ashcroft.

Specifically, Mr. Comey testified that you and former White House Chief of Staff Andrew Card went to Mr. Ashcroft’s bedside at George Washington Hospital, where he was in intensive care, in an effort to get him to agree to certify the legality of a classified program that he and Mr. Comey, who was serving as acting Attorney General at the time, had concluded should not be so certified. Mr. Comey stated that when the Administration decided to go forward with reauthorizing this classified program without that certification, he and several other Justice Department officials, including possibly Attorney General Ashcroft himself, were ready to tender their resignations.

You testified last year before both the Senate Judiciary Committee and the House Judiciary Committee about this incident. On February 6, 2006, at a Senate Judiciary Committee hearing, you were asked whether Mr. Comey and others at the Justice Department had raised concerns about the NSA wiretapping program. You stated in response that the disagreement that occurred was not related to the wiretapping program confirmed by the President in December 2005, which was the topic of the hearing. The following is a transcript excerpt from that hearing:

Senator Schumer. Let me ask you about some specific reports. It has been reported by multiple news outlets that the former number two man in the Justice Department, the premier terrorism prosecutor, Jim Comey, expressed grave reservations about the NSA program and at least once refused to give it his blessing. Is that true?

Attorney General Gonzales. Senator, here is a response that I feel that I can give with respect to recent speculation or stories about disagreements. There has not been any serious disagreement, including – and I think this is accurate – there has not been any serious disagreement about the program

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that the President has confirmed. There have been disagreements about other matters regarding operations, which I cannot get into. I will also say

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Senator Schumer. But there was some — I am sorry to cut you off, but there was some dissent within the administration, and Jim Comey did express at some point — that is all I asked you — some reservations.

Attorney General Gonzales. The point I want to make is that, to my knowledge, none of the reservations dealt with the program that we are talking about today. They dealt with operational capabilities that we are not talking about today.

Senator Schumer. I want to ask you again about them, just we have limited time.

Attorney General Gonzales. Yes, sir.

Senator Schumer. It has also been reported that the head of the Office of Legal Counsel, Jack Goldsmith, respected lawyer and professor at Harvard Law School, expressed reservations about the program. Is that true?

Attorney General Gonzales. Senator, rather than going individual by individual—

Senator Schumer. No, I think we are — this is—

Attorney General Gonzales. By individual, let me just say that I think the differing views that have been the subject of some of these stories does not — did not deal with the program that I am here testifying about today.

Senator Schumer. But you are telling us that none of these people expressed any reservations about the ultimate program. Is that right?

Attorney General Gonzales. Senator, I want to be very careful here. Because of course I am here only testifying about what the President has confirmed. And with respect to what the President has confirmed, I believe — I do not believe that these DOJ officials that you are identifying had concerns about this program.

In addition, on April 6, 2006, in answer to a question from then House Judiciary Committee Chairman James Sensenbrenner about the hospital visit, which had been reported in the press, you responded: “Mr. Chairman, what I can say — and I’m sure this

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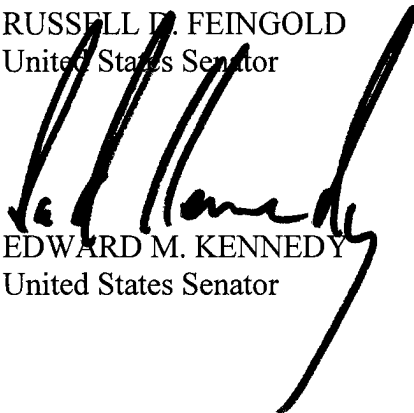
will not be acceptable, but let me say it anyway – is that I have testified before that the disagreement that existed does not relate to the program the President confirmed in December to the American people.”

We ask for your prompt response to the following question: In light of Mr. Comey’s testimony yesterday, do you stand by your 2006 Senate and House testimony, or do you wish to revise it?

Sincerely,



RUSSELL D. FEINGOLD
United States Senator



EDWARD M. KENNEDY
United States Senator



CHARLES E. SCHUMER
United States Senator



RICHARD J. DURBIN
United States Senator