

By Murray Waas

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Alberto Gonzales, pilloried for allegedly misleading Congress about the Bush administration's warrantless eavesdropping program, has been exonerated — sort of. According to public records and interviews with federal law-enforcement officials, the Justice Department has concluded that there's insufficient evidence to bring criminal charges against the former attorney general. His critics might groan, but they have some solace: The Justice Department's inspector general, who conducted the investigation, concluded that his testimony before Congress about the eavesdropping program was "confusing," "incomplete," and had the "effect of misleading" both Congress and the public. Surely Jon Stewart can do something with that.

Gonzales also remains under investigation by the Justice Department for matters connected to the wiretaps and the firings, thought to be politically motivated, of nine U.S. attorneys — scandal aplenty. But it's been allegations about his eavesdropping testimony to the Senate Judiciary Committee that put him in the greatest legal jeopardy by far. A major reason he escaped criminal charges, according to people close to the investigation, was that he finally admitted what he never would have before, when he seemed the most loyal of George W. Bush's servants: that many of his most controversial decisions (first as White House counsel, and later, as attorney general) in authorizing, overseeing, and concealing the eavesdropping program were done at the specific direction of the former president. In other instances, Gonzales and his attorneys argued that his actions were done in furtherance of the Bush administration's policies — meaning, for what it's worth, that he did not act with personal intent to do wrong.

"He was willing to be a lightning rod in the past for the president," said one legal source close to the investigation. "He has done that during the entire course of his career. But it was pressed upon him that that was not going to work in this instance — and he did what he had to do."

Ironically, in finally talking to investigators about the president, Gonzales might actually have been *protecting* his old boss, as well as himself. A senior Bush-administration official familiar with the matter told me that Fred Fielding, the White House counsel in the closing days of the Bush presidency, feared that the Justice Department's probe of Gonzales's misleading testimony might morph into a special prosecutor's investigation not only of Gonzales, but also of

the conduct of others in the Bush White House — including perhaps Bush himself. (The Justice Department can refer an investigation to the attorney general for a criminal or special prosecutor to take over.) Fielding quietly counseled Gonzales's cooperation, and Gonzales's legal team, headed by George J. Terwilliger III, a deputy attorney general during the presidency of the first President Bush, made an early decision to fully cooperate with the inspector general.

Fielding declined to comment for this article. But a former Bush-administration official who worked closely with him said Fielding called the possibility of a special prosecutor investigating the eavesdropping program "the nightmare scenario." Gonzalez has pulled this feint before: One factor in his decision to resign in August 2007, senior Justice Department officials speculated at the time, was to avoid the appointment of a special prosecutor.

Bush's "nightmare scenario" apparently averted, Gonzales remains under investigation by the Justice Department he once led for two matters: the firings of those nine U. S. attorneys, and — this should sound familiar — whether Gonzales and other government attorneys acted properly in authorizing and overseeing the eavesdropping program. (The latter case is being brought by the Justice Department's Office of Professional Responsibility.) Little could be learned about those investigations, but it has long been widely believed that Gonzales's most serious legal charges were the ones he now seems to have dodged. Give the guy credit — he's a lawyer, after all.