

THE WARRANTLESS WIRETAP PROGRAM WAS ILLEGAL

When Jim Comey testified before the Senate Judiciary Committee, he refused to say the warrantless wiretap program was illegal.

SPECTER: Well, you don't have to.

If the certification by the Department of Justice as to legality is required as a matter of law, and that is not done, and the program goes forward, it's illegal. How can you – how can you contest that, Mr. Comey?

COMEY: The reason I hesitate is I don't know that the Department of Justice's certification was required by statute – in fact, it was not, as far as I know – or by regulation, but that it was the practice in this particular program, when it was renewed, that the attorney general sign off as to its legality.

There was a signature line for that. And that was the signature line on which was adopted for me, as the acting attorney general, and that I would not sign.

So it wasn't going forward in violation of any – so far as I know – statutory requirement that I sign off. But it was going forward even though I had communicated, "I cannot approve this as to its legality."

Jack Goldsmith doesn't say so directly, either. But in this excerpt from his book, he makes it very clear that Alberto Gonzales should have no authority to investigate leaks about FISA—and particularly shouldn't subpoena Goldsmith—since Gonzales had had to be get bailed out of an illegal program in the first place.