

# TRADING OUR CONSTITUTION AWAY BASED ON THE WORD OF ALBERTO GONZALES

Here's what Jim Comey had to say about the illegality of the warrantless wiretap program:

SPECTER: OK. So what the administration, executive branch of the president, did was not illegal.

COMEY: I'm not saying – again, that's why I kept avoiding using that term. I had not reached a conclusion that it was.

The only conclusion I reached is that I could not, after a whole lot of hard work, find an adequate legal basis for the program.

SPECTER: OK.

Well, now I understand why you didn't say it was illegal. What I don't understand is why you now won't say it was legal.

COMEY: Well, I suppose there's an argument – as I said, I'm not a presidential scholar – that because the head of the executive branch determined that it was appropriate to do, that that meant for purposes of those in the executive branch it was legal.

I disagreed with that conclusion. Our legal analysis was that we couldn't find an adequate legal basis for aspects of this matter. And for that reason, I couldn't certify it to its legality.

Comey's a pretty conservative lawyer. Even still, he obviously struggled seriously to

figure out whether, if the President said something that had no basis in law was legal, it was legal, or not.

You might think that's the kind of challenging legal assessment Attorney General Mukasey is doing, preparing (as he surely is) to deliver the immunity the FISA capitulation will give the telecoms within the next week.

But you'd be wrong. As a reminder, here's what the immunity language in the FISA capitulation says.

[A] civil action may not lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be properly dismissed, if the Attorney General certifies to the district court of the United States in which such action is pending that

[snip]

(4) the assistance alleged to have been provided by the electronic communication service provider was –

(A) in connection with intelligence activity involving communications that was (i) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007 and (ii) designed to prevent or detect a terrorist attack, or activities in preparation of a terrorist attack, against the United States" and

(B) the subject of a written request or directive, or a series of written requests or directives, from the Attorney General or the head of an element of the intelligence

community (or the deputy of such person) to the electronic communication service provider indicating that the activity was (i) authorized by the President; and (ii) determined to be lawful.

Look at the language carefully. It doesn't say, "Michael Mukasey, a conservative and complicit—but still a once-respectable—lawyer, must review the program and certify that the program was legal." Rather, it says that, for the telecoms to receive their immunity, the Attorney General (Mukasey) only has to certify that **at the time the Administration requested the telecoms' assistance**, they were told, in writing, that the program was "(i) authorized by the President, and (ii) determined to be lawful." There's no "determining to be lawful" going on now. There's simply the assertion, on a piece of paper, that someone—they don't even have to say **a lawyer** did the determining!!!—someone determined the program to be lawful. It could have been Jenna Bush, on a bender, "determining the program to be legal." So long as she could manage to put pen to paper to certify as such—that's the only standard the FISA capitulation requires!! Me, you, my dog McCaffrey—anyone of us could determine the program to be legal; had we done so, and told the telecoms as much, they go scot free.

And, in fact, it's almost that bad. We know, after all, that on one of the certifications, someone almost as incompetent as Jenna on a bender (though not quite as competent as my dog McCaffrey) "determined the program to be lawful."

The Committee can say, however, that beginning soon after September 11, 2001, the Executive branch provided written requests or directives to U.S. electronic communication service providers to obtain their assistance

with communications intelligence activities that had been authorized by the President.

The Committee has reviewed all of the relevant correspondence. The letters were provided to electronic communication service providers at regular intervals. All of the letters stated that the activities had been authorized by the President. **All of the letters also stated that the activities had been determined to be lawful by the Attorney General, except for one letter that covered a period of less than sixty days. That letter, which like all the others stated that the activities had been authorized by the President, stated that the activities had been determined to be lawful by the Counsel to the President.** [my emphasis]

For a period of time, **only the President's own lawyer**, Alberto Gonzales "determined the program to be lawful." The President said, "If the President says it's legal, it's legal." And then, the hack lawyer who had protected Bush from legal consequences going back to Texas days said "If the President says it's legal, it's legal." And voila! Based on the President and then his Fredo declaring the illegal wiretap program to be legal—after a bunch of competent lawyers had already said it was **not** legal—the telecoms get their immunity.

Now, just as a reminder, here's what a bunch of Republicans think of Alberto Gonzales.

Chuck Hagel: Gonzales can no longer meet the standard where his "honesty and capability are beyond question" and "has lost the moral authority to lead"

John McCain: "I am very disappointed in his performance"

Tom Coburn: There "has to be consequences" for Gonzales' leadership failure

Kit Bond: Having Alberto Gonzales at DOJ "is doing more harm than good"

Tom Tancredo: "Misplaced priorities, political miscalculation, and a failure to enforce the laws which he has sworn to uphold"

No moral authority ... questionable honesty and capability ... doing more harm than good ... failure to enforce the laws which he was sworn to uphold. Based on **this** man's word, Congress is preparing to violate the separation of powers and sweep a whole bunch of law-breaking under the rug.

The Republicans and Democrats in Congress are preparing to trade our legal rights away based on the word of someone even the most conservative politicians recognize failed to enforce the laws he swore to uphold.

That's how cheap our laws have become. When the word of a hack like Alberto Gonzales is enough for Congress to trade our legal rights away, our laws have become very cheap indeed.