

FORMER NSA GENERAL COUNSEL ROBERT DEITZ, WHO RUBBER- STAMPED ILLEGAL WIRETAP PROGRAM, SAYS ALL FELONIES SHOULD BE PROSECUTED

I'm watching a CUNY conference on sources and secrets, which currently has a panel including Bob Woodward, Jane Mayer, and former NSA General Counsel Robert Deitz.

When asked whether he could think of a leak that had been damaging, Deitz said the exposure of the illegal (he called it "special") wiretap program had been damaging.

Then, in the context of prosecuting leaks, Deitz argued that all leaks should be prosecuted, because they involve a felony violation of an oath (that's not always true, but I'll just accept that Deitz believes all felonies should be prosecuted). He went on to say, "How is it you put a line around this felony and not prosecute it?"

According to the 2009 Draft NSA IG Report, Deitz, on September 20, 2001, suggested to Alberto Gonzales they should consider modifying FISA (which was then being modified as part of the PATRIOT Act); he appears to have gotten no answer. On October 5, 2001 – having asked but not been permitted to read the underlying OLC authorization for it (Addington read him a few lines over the phone), having not participated in the drafting of the Presidential Authorization for it, and having given it just one day of legal review – Deitz said a program violating the exclusivity provision of FISA was

legal. On October 8, Deitz briefed the analysts who would carry out this illegal program.

Deitz' subordinates provided the only oversight of the program at first. (Later in today's program he claimed the line between domestic and foreign intelligence was rigorously maintained.) To his credit, Deitz ultimately fought to have the Inspector General read into the program after it had operated for some months.

This is a man who provided the legal fig leaf for a patently illegal program (though the IG Report provides no details of Deitz' actions for the March to May 2004 timeframe, when the program was even more illegal). This is a man who showed awareness of the legally correct way to do this – include this expanded program in PATRIOT – but nevertheless accepted and participated in not doing so.

And he advocates prosecuting every felony.

Perhaps before he talks about prosecuting journalists and their sources, he should consider his own role in encouraging felonies?