

WHY SHOULD WE BELIEVE SOLICITORS GENERAL ABOUT WARRANTLESS WIRETAPPING

I'm working on a longer post about the arguments in *Amnesty v. Clapper* today.

But I wanted to point to this passage from the transcript, in which Solicitor General Don Verrilli responded to Justice Ginsburg's suggestion that the FISA Court didn't exercise very rigorous oversight, given that it had only ever rejected one application.

JUSTICE GINSBURG: Is there much of a speculation involved in how – I think it's only one time, and it was under the pre-amended statute, that the FISA court ever turned down an application

GENERAL VERRILLI: Yes, but that, Your Honor, is, I think, not a fair assessment of the process. It's really very much an iterative process in which there's a dialogue between the executive branch and the FISA court in which the court can demand more information, raise objections. Those get worked out, and then there's a final order.

So I don't think it's fair to infer from the fact that there's only one rejection that this – that it's a process that isn't rigorous.

But there was evidence in the court room today to show how false such assurances are.

You see, Ted Olson was in the room. He was there to argue a copyright case heard just after *Amnesty v. Clapper*. And as I have noted before, the government actually sent Olson back when he

was Solicitor General—to argue before the FISA Court of Review *without disclosing the warrantless wiretapping program to him*. He made a number of claims about how “lawful” the government’s activities were when, in fact, they weren’t.

Given that the government has lied to FISCR before, and given that Solicitors General apparently don’t get briefed on what the government does with warrantless wiretapping, is there any reason we should believe this Solicitor General about the FISA Court’s oversight?