IT'S HARD TO SUMMARIZE OPINIONS PERTAINING TO TWO PURPORTEDLY UNRELATED LAWS

Steven Aftergood relays the explanation of a senior intelligence official as to why the intelligence community can't release even a teensy little bit of the FISA Court's classified opinions.

> "We tried," a senior intelligence agency official said, but the rulings were hard to declassify. After redacting classified operational information and other sensitive details, no intelligible text of any consequence remained, according to this official.
>
> The Department of Justice made a similar assertion years ago in response to a lawsuit brought by the ACLU, stating that "Any legal discussion that may be contained in these materials would be inextricably intertwined with the operational details of the authorized surveillance."

Aftergood's source goes on to explain that they can't just summarize the Court's decisions, because … well, I don't really understand this objection, but I suspect it has to do with some disagreement between the FISC and DOJ about the opinions that currently exist.

> But the intelligence agency official said that unclassified summaries of surveillance court decisions were probably not a satisfactory alternative. A summary written by the Department of Justice would not be a statement of the court's opinion at all,

> the official said. At best, it would represent the Administration's own understanding of what the court had ruled, paraphrased for public release.

Aftergood holds out hope that a letter from Dianne Feinstein will provide sufficient independent direction to convince the Court to write their own summary.

Now, I'm interested in this for two reasons. First, consider what it means that the Administration and their complacent-overseer DiFi refused to let Jeff Merkley's amendment—which would have called for summaries in some cases—pass. For starters, it would have shortened the time frame (two years have already passed since Lisa Monaco assured Senators she'd declassify opinions if only they confirmed her) it'd take to ask the Courts for a summary and get it. Additionally, it would have required the government admit if they could not, would not, declassify any teensy bit of the opinions on this secret law. That is, they'd have to finally admit there is secret law, which they're denying right now.

I'm officially predicting that all this will be wrapped up a few short months after after the PATRIOT Act gets extended in 2015, forestalling the moment yet again when we confirm that the government is conducting massive surveillance on innocent Americans.

But then there's the claim that they cannot summarize this themselves (suggesting, as I said, that there was no way DOJ could write a summary that the FISC would buy off on).

Frankly, I don't buy that. Even John Yoo's November 2, 2001 opinion authorizing the illegal wiretap program—a 21 page document redacted down to 183 words—communicates the main gist of the opinion:

> FISA only provides a safe harbor for electronic surveillance and cannot restrict the President's ability to

> engage in warrantless searches that protect the national security.
>
> [snip]
>
> FISA purports to be the exclusive statutory means for conducting electronic surveillance for foreign intelligence.
>
> [snip]
>
> Such a reading of FISA would be an unconstitutional infringement on the President's Article II authorities.
>
> [snip\
>
> Thus, unless Congress made a clear statement in FISA that it sought to restrict presidential authority to conduct warrantless searches in the national security area—which it has not—then the statute must be construed to avoid such a reading.
>
> [snip]
>
> …we do not believe that Congress may restrict the President's inherent constitutional powers, which allow him to gather intelligence to defend the nation from direct attacks.
>
> [snip]
>
> …intelligence gathering in direct support of military operations does not trigger constitutional rights against illegal searches and seizures.
>
> [snip]
>
> A warrantless search can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."
>
> [snip]

> …no governmental interest is more compelling than the security of the Nation.” Haig v. Agee. 453 US 280. 307 (1981)

Of course, in this case, the government is hiding the current interpretation of law. So rather than displaying the ugly shreds of our Constitution as it existed when Dick Cheney roamed the halls (though some of these opinions were written under the Bush Administration), the government is faced with revealing the ugly shreds of our Constitution as it exists. And 183 words, even in an opinion written by FISC, is probably sufficient to get some complacent people rather worried.

Then there’s the matter I noted the other day. In Merkley’s speech supporting his amendment, he focused on how Section 215 plays—apparently in conjunction with FAA (that’s why the government doesn’t want FAA debated at the same time as Section 215; because we might get “confused”)—particularly the passage that allows the government to get business records relevant to an investigation.

> **Let me show an example of a passage. Here is a passage about what information can be collected: “ ….. reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation** (other than a threat assessment) conducted in accordance with subsection (a)(2),” and so on.
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> Let me stress these words: “relevant to an authorized investigation.”
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> There are ongoing investigations, multitude investigations about the conduct of individuals and groups around this planet, and one could make the argument that any information in the world helps frame an understanding of what these foreign groups are doing. So

> certainly there has been some FISA Court decision about what "relevant to an authorized investigation" means or what "tangible things" means. **Is this a gateway that is thrown wide open to any level of spying on Americans or is it not? Is it tightly constrained in understanding what this balance of the fourth amendment is? We do not know the answer to that. We should be able to know.**

As I noted, Merkley professes not to know whether the "relevant to" provision of Section 215 has been used to gut probable cause in a way far more thorough than even John Yoo accomplished. But most of the co-sponsors of his Amendment do know.

And while I still think you'd be able to summarize even that, if the thing they're trying to hide is that Section 215 has been grafted onto FAA so as to permit the government to access any tangible thing from anyone for whatever shoddy reason the government invents, I do get why it'd be hard to summarize that and still hide the fact that that's what is now going on.

I guess they think it'd be confusing for us if their claims that there isn't a massive program of government surveillance were proven to be utterly false.