

THE ACLU MOTION

Now that I've finally gotten around to the ACLU motion to unseal the FISC opinions on the warrantless wiretap programs, I'd like to recommend the original motion submitted by the ACLU. The motion catalogs a good deal of the Orwellian games the Administration is playing and collects, in one place, many of the Administrations evasive tactics regarding the warrantless wiretap program. [I've removed all citations from the excerpts below.]

Pushing the Envelope

For example, the motion captures the way the Administration seems to have played the FISC, and with FISC, the clock.

The President reauthorized the NSA Program repeatedly between 2001 and 2007. In January 2007, however, just days before the United States Court of Appeals for the Sixth Circuit was to hear the government's appeal from a ruling that had found the NSA Program violative of FISA and the Consitution, the Attorney General stated in a letter to the Chairman and Ranking Minority Member of the Senate Judiciary Committee that "any surveillance that was occurring as part of the [NSA Program would] now be conducted to subject to the approval of the Foreign Intelligence Surveillance Court." In the same letter, the Attorney General explained that the changed was made possible because of orders issued on January 10th by "a Judge of the Foreign Intelligence Surveillance Court." The Attorney General characterized the January 10th orders as "complex" and "innovative," and in subsequent testimony to Congress he stated that this Court issued them after the executive "pushed the envelope." He also stated that it had taken "some time for a judge to get

comfortable" with the government's proposal.

If the FISC wasn't already cranky about being used by the Administration, the ACLU reminds them that they pushed them to breaking point in January, overstepped that breaking point, then complained after FISC objected.