

LISA MONACO MOVES ON WITHOUT FULFILLING PROMISE TO REVEAL FISA COURT OPINIONS

In response to Chuck Grassley's question whether the government has struck the right balance between national security and civil liberties leading up to her confirmation as Assistant Attorney General for National Security, Lisa Monaco claimed the right balance had indeed been found.

Do you believe that an appropriate balance has been struck between national security concerns and civil liberties?

Agents, analysts and prosecutors who work every day to protect us from national security threats do so pursuant to the authorities Congress has given them under the Constitution. I believe these authorities reflect an effort to strike a balance between the imperative of protecting national security interests of the United States on the one hand and the importance of doing so consistent with the fundamental rights guaranteed under the Constitution. Through carefully crafted authorities, compliance efforts within the Executive Branch and robust Congressional oversight of those compliance efforts, I believe we have been able to strike the right balance over time. As the threat continues to evolve, and technology develops that better enables us to detect and disrupt threats while at the same time providing new tactics and capabilities to those who would do us harm, we must be constantly vigilant in our efforts to maintain that balance.

In her other answers, she emphasized the importance of having “relevance” standard access to call data and other records so as to provide the probable cause to investigate people.

As noted above, NSLs (some of which are issued under ECPA) form the building blocks of national security investigations under a relevance standard. This is vital to the ability of national security investigators to obtain information that forms the basis for probable cause and to further national security investigations.

In utterly related news, Jeff Merkley recalled last month that during her confirmation process in 2011, Monaco supported the idea of releasing FISA Court opinions that—it appears—would reveal how these “relevant to” laws have been used to substantiate probable cause.

Congress never intended the intelligence community to have a huge database to sift through without first getting a regular probable cause warrant, but because we do not have the details of exactly how this proceeds and we cannot debate in a public forum those details, then we are stuck with wrestling with the fact that we need to have the sorts of protections and efforts to close loopholes that Senator Wyden has put forward.

What we do know is that this past summer, the Director of National Intelligence said in a public forum that on at least one occasion the FISA Court has ruled that a data collection carried out by the government did violate the fourth amendment. We also know that the FISA Court has ruled that the Federal Government has circumvented the spirit of the law as well as the letter of the law. But too much else of what we should know about this law remains secret. In

fact, we have extremely few details about how the courts have interpreted the statutes that have been declassified and released to the public.

[snip]

In 2010, due to concerns that were raised by a number of Senators about the problem of classified FISA Court opinions, the Department of Justice and the Office of the Director of National Intelligence said they would establish a process to declassify opinions of the FISA Court that contained important rulings of law. In 2011, prior to her confirmation hearing, Lisa Monaco, who is our Assistant Attorney General for National Security, expressed support for declassifying FISA opinions that include “significant instructions or interpretations of FISA.”

Yet here we are, two years later, and Lisa Monaco is moving on to replace John Brennan at the White House. Yet we still haven’t seen the memos that describe how the government uses massive databases of information collected using this “relevance” standard to then access the private communications of Americans (which are probably the same databases).

Mind you, Monaco is not the person most responsible for refusing to declassify documents that describe the shreds of the Fourth Amendment in this country—she’s not the Original Classification Authority.

Nevertheless, we’ve got another fan of massive data mining moving into an oversight free position in the White House without having fulfilled her commitment to tell the American people what they’re doing with that data mining.