

DIANNE FEINSTEIN DIDN'T MEAN TO MISLEAD THE SENATE INTO EXTENDING FAA, PROMISE!

Charlie Savage has a story describing how, after Solicitor General Don Verrilli got caught lying to SCOTUS about whether defendants busted using FISA Amendments Act would have the opportunity to challenge it in court, DOJ has now decided to adopt a different standard for disclosure of such information.

National security lawyers and a policy advisory committee of senior United States attorneys focused on operational worries: Disclosure risked alerting foreign targets that their communications were being monitored, so intelligence agencies might become reluctant to share information with law enforcement officials that could become a problem in a later trial.

But Mr. Verrilli argued that withholding disclosure from defendants could not be justified legally, officials said. Lawyers with several agencies – including the Federal Bureau of Investigation, the N.S.A. and the office of the director of national intelligence – concurred, officials said, and the division changed the practice going forward.

I'll return to the import of this debate later.

As part of the story, Savage describes why Adel Daoud, who had been named by Dianne Feinstein last year during the FAA reauthorization debate, won't get access to any wiretapping information, at least not from her. He links to court

documents in which the Senate's lawyer, Morgan Frankel, claims they don't have to turn over anything under Speech and Debate, but that in any case, DiFi never meant to suggest FAA had identified the terrorists whose cases she invoked to scare the Senate into reauthorizing FAA.

Here's what she said (the underlined comments were cited by Frankel):

There is a view by some that this country no longer needs to fear attack. I don't share that view, and I have asked the intelligence committee staff to compile arrests that have been made in the last 4 years in America that have been made between 2009 and 2012. There are 100 arrests that have been made between 2009 and 2012. There have been 16 individuals arrested just this year alone. Let me quickly review some of these plots. Some of these may arrests [sic] come about as a result of this program. Again, if Members want to see the specific cases where FISA Amendments Act authorities were used, they can go and look at the classified background of these cases.

[lists 9 of the 16 arrests, including Daoud's]

So I believe the FISA Amendments Act is important and these cases show the program has worked. As the years go on, I believe good intelligence is the most important way to prevent future attacks.

Information gained through programs such as this one – and through other sources as well – is able to be used to prevent future attacks. So, in the past 4 years, there have been 100 arrests to prevent something from happening in the United States, some of these plots have been thwarted because of this program.

And here's how the Senate Legal Counsel Morgan Frankel dismissed these claims.

Notwithstanding that she was speaking in support of reauthorization of Title VII of the Foreign Intelligence Surveillance Act, Senator Feinstein did not state, and she did not mean to state, that FAA surveillance was used in any or all of the nine cases she enumerated,

[snip]

Thus, because Senator Feinstein was neither relying on, nor attempting to convey, any information about the use or non-use of FAA authorities in any of the nine cases, there are no "assessments, reports, and other information" in the Committee's possession to which Senator Feinstein referred in her comments, pertaining to FAA surveillance with respect to Mr. Daoud's case.

Frankel is correct in claiming that, on several occasions, DiFi clarified that the scary plots and stings and material support she described in exaggerated terms "may have" been discovered using FAA – implying, of course, that they may not have.

But he somehow neglects to deal with her claim that, "these cases show the program has worked," which could only be true if FAA had in fact been used to find the terrorists.

For Frankel's assertions about her intent to be true, she must have been lying in that statement, in an effort to extend FAA.

One more minor point. Frankel makes it clear DiFi was reading from an updated list of one she had earlier released, which I wrote about here. In his description of the list, he notes she left out one of the cases.

Indeed, the enumerated cases were simply the nine most recent cases on the overall list of 100 arrests (excepting

one case the Chairman skipped over).

We know which case that is, because the ones before and after it on the earlier list were among the nine she described. The case she left out was the Cleveland 4, a group of white Occupy activists caught in an FBI sting.

(3) Douglas L. Wright, (4) Brandon L. Baxter, (5) Anthony Hayne, (6) Connor C. Stevens, and (7) Joshua S. Stafford—Plot to Bomb Brecksville-Northfield High Level Bridge in Ohio—May 2012

These five men were arrested on May 1, 2012 after they attempted to detonate an explosive device set on the Brecksville-Northfield High Level Bridge in Ohio that was given to them by an undercover FBI agent. The accused men are self-proclaimed anarchists who considered carrying out a series of attacks, but ultimately decided to target the bridge in Ohio after an initial plot to use smoke grenades to distract law enforcement in order for co-conspirators to topple financial institution signs atop high rise buildings in downtown Cleveland failed to materialize. “The defendants conspired to obtain C-4 explosives contained in two improvised explosive devices to be placed and remotely detonated,” according to the complaint. [3]

Had DiFi simply been reading from a list, she would have included white non-Muslim “terrorists” with no claimed international ties as well, which would have either alarmed people (rightly or not) that NSA is spying on entirely domestic conversations, or would have made it more clear that these terrorists were often as not caught through FBI stings, not NSA’s spying.

But DiFi’s staffers made an edit to avoid that clarity or alarm.

I guess deceitful fearmongering only works if it is limited exclusively to Muslims?