MARY MCLAUGHLIN REPEATS CLAIRE EAGAN'S ERROR

FISC just released the opinion accompanying the most recent Section 215 phone dragnet order.

(Note: does it concern anyone besides me that FISC is now up to 158 dockets for Business Records production this year??)

In it, Judge Mary McLaughlin repeats the very same error Claire Eagan made.

> Although the definition of relevance set forth in Judge Egan's decision is broad, the Court is persuaded that that definition is supported by the statutory analysis set out in the August 29 Opinion. That analysis is reinforced by Congress' s re-enactment of Section 215 after receiving information about the government's and the FISA Court's interpretation of the statute.

As I've noted over and over and over, the public record shows that the notice on Section 215 did not actually meet the terms of Eagan's opinion.

> Eagan says,
>
> > The ratification presumption applies here where **each Member** was presented with an opportunity to learn about a highly-sensitive classified program important to national security in preparation for upcoming legislative action. [my emphasis]
>
> Not only did the vast majority of Members have to go out of their way to learn about this program, 19% in fact had no way of learning everything they

> needed to know about it. Therefore, the ratification presumption fails, and that legal basis crumbles.

Each member was not presented with such an opportunity — certainly not one identified as such.

Now, perhaps FISC's clerks are incompetent and haven't even scanned the Google alerts on the issues before them (McLaughlin did finally address US v. Jones, so maybe it's just a very slow Google alert?).

But this points to the problem with FISC's lack of an adversary. Because anyone coming before the court would presumably help out FISC's clerks by pointing them to the many many many reports of how inadequate this notice really was.

Instead, they keep repeating the same mistake over and over — and proving the claims about being a rubber stamp.