

LEAST SURPRISING APPEAL EVER: BACK DOOR SEARCH EDITION

In thoroughly unsurprising news, DOJ has informed the 7th Circuit it will appeal Judge Sharon Coleman's decision giving attorneys for Adel Daoud an opportunity to review the FISA materials used to identify him.

While we don't know what exotic mix of FISA claims the Executive used to identify Daoud and decide to sic a series of undercover operatives on him, we do know Dianne Feinstein raised his case during the FISA Amendments Act debate in 2012; the context suggests NSA may have found Daoud using a back door search.

While DOJ will say they're objecting to Coleman's decision because no defense attorney has ever reviewed a FISA warrant before so why start now, the other underlying message they send with this appeal is that they lack confidence that their counterterrorism tools would stand up to adversarial review.

The next time someone says this is all legal, you might remind them that DOJ refuses to test that claim in the traditional venue for doing so, an Article III setting.