

DAN COATS JUST CONFIRMED HE SIGNED THE SECTION 702 CERTIFICATE WITHOUT EVEN READING THE ACCOMPANYING MEMO

Today, the Senate Intelligence Committee had a hearing on Section 702 of FISA. It basically went something like this:

It's okay that we have a massive dragnet because the men running it are very honorable and diligent.

The men running the dragnet refuse to answer a series of straight questions, and when they do, they're either wrong or deeply dishonest.

I'll lay that out in more detail later.

But the most important example is an exchange between Ron Wyden and Dan Coats that will reverberate like Clapper's now famous answer to Wyden that they don't "wittingly" collect on millions of Americans. It went like this:

Wyden: Can the government use FISA 702 to collect communications it knows are entirely domestic?

Coats: Not to my knowledge. It would be against the law.

Coats' knowledge should necessarily extend at least as far as Rosemary Collyer's opinion reauthorizing the dragnet that Coats oversees, which was, after all, the topic of the hearing. And that opinion makes it quite clear that *even under the new more limited regime*, the NSA can collect entirely domestic communications.

It will still be possible, however, for NSA to acquire an MCT that contains a domestic communication. For example, [REDACTED]
[REDACTED]
[REDACTED] If NSA determines that the sender and all intended recipients of a discrete communication within an MCT were located in the United States at the time of that discrete communication, then the entire MCT must be promptly destroyed, see NSA Minimization Procedures § 5, unless the Director makes the required waiver determination for each and every domestic communication contained in the MCT. March 30, 2017 Memorandum at 9 n.9.³¹

Indeed, the passage makes clear that that example was presented in the memo tied to the certification about Section 702 that Coats signed (but did not release publicly). Effectively, Dan Coats signed a certificate on March 30 stating that this collection was alright.

I'm not sure what this example refers to. Collyer claims it has to do with MCTs, though like Dan Coats, she didn't seem to understand the program she approved. There are multiple ways I know of where entirely domestic communications may be collected under 702, which I'll write about in the near future.

In any case, if Dan Coats was being truthful in response to Wyden's question, then he, at the same time, admitted that he certified a program without even reading the accompanying memorandum, and certainly without understanding the privacy problems with the program as constituted.

He either lied to Wyden. Or admitted that the current 702 certification was signed by someone who didn't understand what he was attesting to.

Update: I did a version of this (including comment on Mike Rogers' testimony) for Motherboard. It includes this explanation for Coats' comment.

Section 702(b)(4) plainly states we 'may not intentionally acquire any communication as to which the sender and all intended recipients are known at the

time of acquisition to be located in the United States.' The DNI interpreted Senator Wyden's question to ask about this provision and answered accordingly.