

ROSEMARY COLLYER RESPONDS TO THE DOJ IG REPORT IN FAIRLY BLASÉ FASHION

Judge Rosemary Collyer just released a four page order responding to the DOJ IG Report showing problems with Carter Page's FISA applications.

Before I explain the letter further, let me just explain for those who haven't followed my FISA work. Collyer is the presiding judge of the court. Traditionally, it falls to the presiding judge to scold DOJ when things go haywire, and so it was to be expected that Collyer would write this. Collyer is nowhere near the most aggressive presiding judge in the court's history (that honor might go to Reggie Walton, though Royce Lamberth was presiding when the Woods Procedures that weren't followed here were introduced after he bitched about systematic problems). As an example, she wrote what I consider to be among the worst programmatic FISA opinions not written by a Dick Cheney flunkie, and she was reluctant to implement the new amicus mandated by Congress in the USA Freedom Act.

Predictably, while this is a sharp opinion, it's not that onerous. She starts by spending a page explaining why candor is so important for the FISC, language that is probably for the benefit of those unfamiliar with the court. She cites three prior opinions complaining about lack of candor, just one of which I consider among the greatest hits.

She then reviews the problems laid out in the IG Report she considers most important, citing:

- The failure to explain Carter Page's past relationship with the CIA
- Exaggerations about the

degree to which Christopher Steele's reporting had been corroborated

- Contradictions of Steele's claims made by his sub-source
- Page's denials he had worked closely with Paul Manafort
- Page's denials he knew the two Russians described in the Steele dossier
- Details suggesting claims attributed to Sergei Millian in the dossier were unreliable

In addition, Collyer dedicates a paragraph to describing Kevin Clinesmith's alteration of an email to hide Page's prior CIA relationship, alluding to a prior order in which she seems to have ordered a review of everything he had touched.

In addition, while the fourth electronic surveillance application for Mr. Page was being prepared, an attorney in the FBI's Office of General Counsel (OGC) engaged in conduct that apparently was intended to mislead the FBI agent who ultimately swore to the facts in that application about whether Mr. Page had been a source of another government agency. See *id.* at 252-56. The information about the OGC attorney's conduct in the OIG report is consistent with classified submissions made to the FISC by the government on October 25, 2019, and November 27, 2019. Because the conduct of the OGC attorney gave rise to serious concerns about the accuracy and completeness of the information provided to the FISC in any matter in which the OGC attorney was involved, the Court

ordered the government on December 5, 2019, to, among other things, provide certain information addressing those concerns.

In addition to ordering the declassification of that December 5 order, Collyer also ordered the FBI to explain, by January 10, what they're going to do to fix the more general problem.

THEREFORE, the Court ORDERS that the government shall, no later than January 10, 2020, inform the Court in a sworn written submission of what it has done, and plans to do, to ensure that the statement of facts in each FBI application accurately and completely reflects information possessed by the FBI that is material to any issue presented by the application. In the event that the FBI at the time of that submission is not yet able to perform any of the planned steps described in the submission, it shall also include (a) a proposed timetable for implementing such measures and (b) an explanation of why, in the government's view, the information in FBI applications submitted in the interim should be regarded as reliable.

So she's not calling for the FISC itself to do anything different. FBI will likely provide a plan implementing the FISC-based recommendations made by Michael Horowitz, as well as additional updates to the Woods Procedures.

This is, in the grand scheme of things, an order deferring to the government to fix the problem, not an order designed to impose new requirements (of the kind Lamberth himself ordered years ago) from the court until FBI proves it has cleaned up its act.

Which leaves it up to Congress to impose any more substantive fixes.