ROYCE LAMBERTH: LET'S MAKE A DEAL

Royce Lamberth appears to be having a split the baby moment in the Richard Horn suit.

As you recall, back in the Clinton era, a DEA official sued the government for illegal spying on him. He alleged that State and CIA conspired to thwart his efforts to cooperate with the Burmese government on drug eradication by spying on him and using information collected to trump up reasons to get him ousted from his post. The suit had been drawing on for years, most recently through the improper invocation of state secrets. Judge Royce Lamberth went ballistic last year when he discovered the CIA and DOJ had been lying to sustain their invocation of state secrets. As predicted, in response DOJ decided to settle the suit, not least because any decision on this case was going to imperil their effort to hide behind state secret to get away with illegally wiretapping al-Haramain. Since last fall, Lamberth has been deliberating whether to let them settle the suit, and/or whether he should go on with investigations into the government's misconduct in the suit itself.

As Josh Gerstein reports, Lamberth has proposed an implicit deal with the government: if it will treat the case as it would have under Eric Holder's new state secrets policy, he will allow the government to settle. His proposed deal is this:

> - Al-Haramain will be permitted to submit their amicus curiae brief opposing the vacating of Lamberth's earlier opinion in the suit, but he will allow the settlement anyway (see this post for more background on

the issue)

- Horn will get his $3 million settlement and taxpayers will, as they did with the Hatfill settlement, pay to make up for the misconduct of government officials
- DOJ will refer the misconduct of the CIA and DOJ in this case to the Inspectors General of those agencies
- DOJ will also alert Congress to details of the case, in particular regarding "disturbing evidence" from a sealed motion "indicating that misconduct occurred in the Inspector General's Offices at both the State Department and the Central Intelligence Agency"

Aside from the injustice (which Lamberth is bugged about, but not bugged enough to refuse the settlement) that taxpayers have to pay because government officials engaged in misconduct, this proposition will pretty much guarantee that the government gets away with its scheme to avoid legal consequences by invoking state secrets.

Plus, there's a tremendous level of irony here. Some of the documents over which the government had invoked state secrets were IG Reports. Yet Lamberth's proposal to make this right is to do more IG Reports? And while the CIA Inspector Generals has turned over at least twice since the misconduct in question, Lamberth is literally proposing that having CIA's Inspector General investigate wrongdoing by CIA's

Inspector General will somehow make this right.

Update: I've been informed that there is a practice of having other IGs investigate when an agency's IG is accused of misconduct.