

Rules Committee
~~Statement of Jerrold Nadler~~
Ranking Member
Subcommittee on the Constitution, House Judiciary Committee

**In Support of an Amendment to
the "FISA Amendments Act Reauthorization Act of 2012"
September 10, 2012**

Thank you, Mr. Chairman for this opportunity to present an amendment for Floor consideration of the FISA Amendments Act of 2012.

This amendment requires the Attorney General to make publicly available a summary of each decision of the FISA court and the FISA court of review that includes a significant construction or interpretation of section 702 with appropriate security redactions and editing if necessary.

Our oversight responsibilities are incomplete without a public discussion of the court opinions that shape the government's use of this authority. We do not need to know every classified detail to better understand the legal principles at play when the court considers targeting minimization procedures. Public scrutiny of these opinions might be of significant benefit to the administration, any administration. A sign that the court performs meaningful oversight of the executive branch would only increase public confidence in these programs.

It also would help develop and help the public understand the development of the common law and of the court interpretations. One of the hallmarks of the American system is that we pass statutes, the courts interpret them, and we see how the courts interpret them and what they do and maybe we decide we ought to amend the statute, maybe we don't, but we know what is going on. Here the court decisions are in secret. But my amendment says where possible, where you don't have to keep something secret, we should release the opinions publicly so that Congress and the public can know what is going on, can see what the courts are doing, can see the development of legal doctrine.

At the end of the Crime Subcommittee markup in response to a question about making more information about the FAA available to the public, Chairman Sensenbrenner stated, "My guess is that rather than playing the numbers game either with the actual targets or the people who are incidentally surveilled, perhaps decisions of the FISA court, particularly the review of the FISA court appropriately redacted, would be able to give us the answer to that question. I have always been one that disfavored disclosure."

Mr. Sensenbrenner was right. If the FISA court is just a rubber stamp of the executive branch, the public should know. And if the court really does provide meaningful oversight and meaningful supervision and meaningful limitations on the executive branch, the public should know that too. This amendment is an easy fix. Limited disclosure would allow the public to better understand the full scope of the law as the FISA court understands it and the full scope of the government's use of section 702. Limited disclosure would also allow the Congress to understand how the law is being used. And as long as the appropriate redactions and security procedures -- security redactions are made before the decisions are made public, there is no downside to this whatsoever, and it more fully comports the practice to the normal American practice of court decisions being public, of the development of a common law, of the public and the Congress being able to see how the law is being interpreted and used so that we can change it if we wish.

This comports with our normal practice. There is no downside to it because of the security provisions provided in the amendment.

Thank you, Mr. Chairman. I urge the Committee to support this amendment.