

UNITED STATES FOREIGN INTELLIGENCE SURVEILLANCE COURT

Honorable Colleen Kollar-Kotelly
Presiding Judge
Honorable William H. Stafford, Jr.
Honorable Stanley S. Brotman
Honorable Harold A. Baker
Honorable Michael J. Davis
Honorable Claude M. Hilton
Honorable Nathaniel M. Gorton
Honorable John E. Conway
Honorable James G. Carr
Honorable James Robertson

Karen Sutton
Clerk of the Court
Beverly Queen
Deputy Clerk

Dr. Allan Kornblum
Legal Advisor

August 20, 2002

Honorable Patrick J. Leahy
 Chairman, Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

Honorable Arlen Specter
 Committee on the Judiciary
 United States Senate
 152 Dirksen Senate Office Building
 Washington, D.C. 20510

Honorable Charles E. Grassley
 Committee on the Judiciary
 United States Senate
 152 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Mr. Chairman, Senator Specter, and Senator Grassley:

This letter is in response to your correspondence of July 31, 2002. You have requested a copy of an unclassified Memorandum Opinion and two Orders entered on May 17, 2002, and concurred in by all seven of the judges who were on the United States Foreign Intelligence Surveillance Court ("FISA Court") at the time. After conferring on August 15, 2002, with the ten judges now on the FISA Court, as well as the past presiding judge of the FISA Court, we have all agreed, not only to provide the unclassified opinion and orders to you and the respective Senate Committees that have oversight responsibilities, but also to publish them. Never before has the entire Court issued an unclassified opinion and order, although in the early 1980's Presiding Judge George Hart issued a brief unclassified memorandum opinion affirming that the FISA Court had no jurisdiction to issue warrants for physical searches. As you know, legislation now authorizes such searches. Should the FISA Court issue any unclassified opinions or orders in the future, it would be our intention, as a Court, to release them and publish them.

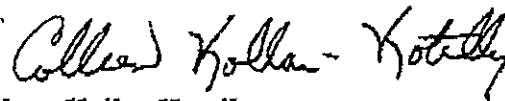
A brief description and explanation of the docket of the Court is in order. In general, the docket reflects all filings with the Court and is comprised almost exclusively of applications for electronic surveillance and/or searches, the orders authorizing the surveillance and the search warrants, and returns on the warrants. All of these docket entries are classified at secret and top secret level. Each application is ruled upon by an individual judge. It is very rare that the FISA Court sits en banc and renders a decision. As already noted, it is equally rare to have unclassified material on the docket. The May 17th order was such a case because the government made a request of the Court, raising an unclassified legal issue, that affected information that had been gathered pursuant to past surveillance orders and search warrants that had been authorized individually by all of the judges on the FISA Court. Therefore, it was appropriate for the Court to sit en banc and consider the request of the government.

You have also requested an explanation as to the genesis for Rule 10 of the FISA Court. Using the model of Title III returns, Rule 10 of the FISA Court was initiated *sua sponte* in 1995 by the judges on the Court to establish a means of notification as to how, in fact, search warrants previously authorized were carried out.

I have provided you with a copy of the Memorandum Opinion and Orders dated May 17th. One order is titled "as amended" because certain clerical errors and editorial changes were made once the whole FISA Court was able to review an earlier version. The May 17th version is the one that appears on the docket. I have also included four unclassified minimization procedures that are the subject of the opinion and orders. To the extent that you or the Committee are interested in the memorandum of law submitted by the government to the FISA Court when it made its request of the Court, the Court has no objection to the government providing it to you.

I have endeavored to respond to the concerns expressed in your letter to the extent that it is appropriate for a judge or court to comment on such matters.

Sincerely,



Colleen Kollar-Kotelly
Presiding Judge, United States
Foreign Intelligence Surveillance Court

Enclosures

Copies to:

Honorable Orrin G. Hatch
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Honorable Bob Graham
Chairman
Select Committee on Intelligence
United States Senate
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Honorable Richard C. Shelby
Vice Chairman
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