

HPSCI'S BIG REFORM TO SECTION 702: FIGURE OUT WHAT "DERIVED FROM" MEANS, SIX MONTHS TOO LATE

During the precise period when news that Mike Flynn was pleading guilty to lying about conversations picked up on intercepts of Sergey Kislyak, the House Intelligence Committee was marking up their terrible Section 702 bill. The markup was a squabble fest, with a strict party line vote approving the measure, because the language on unmasking the HPSCI Republicans included in the last minute bill very specifically focuses on the transition period unmasking that got Flynn in trouble,

(6) If a covered request is made during a period beginning on the date of a general election for President and ending on the date on which such President is inaugurated—

(A) the documentation under paragraph (1) includes whether—

(i) the individual of a requesting element who is making the request knows or believes that any United States person identity sought by the request is of an individual who is a member of the transition team of the President-elect and Vice-President-elect; or

(ii) based on the intelligence community report to which the request pertains, the originating element knows or reasonably believes that any United States person identity sought by the request is of an individual who is a member of the transition team of the President-elect and Vice-President-elect;

But the far more interesting detail came as Devin Nunes described an amendment to the manager's amendment, I believe on behalf of Adam Schiff.

It would require the government to tell the relevant oversight committees what "derived from" means under FISA.

SEC. 210. BRIEFING ON NOTIFICATION REQUIREMENTS.

Not later than 180 days after the date of the enactment of this Act, the Attorney General, in consultation with the Director of National Intelligence, shall provide to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a briefing with respect to how the Department of Justice interprets the requirements under sections 106(c), 305(d), and 405(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(c), 1825(d), and 1845(c)) to notify an aggrieved person under such sections of the use of information obtained or derived from electronic surveillance, physical search, or the use of a pen register or trap and trace device. The briefing shall focus on how the Department interprets the phrase "obtained or derived from" in such sections.

Understand, knowing what derived from means is utterly fundamental to enacting the least bit of oversight over FISA. Particularly given the abundant evidence that DOJ is not giving the legally required notice (and given that, because this notice language is not part of the minimization procedures that FISC polices), HPSCI would need to know to know if, as seems apparent, DOJ is basically a scofflaw on

defendant notice.

But rather than holding hearings and demanding answers to this question (NSA Subcommittee Ranking Member Jim Himes revealed he has not been in any consultation on 702 reauthorization *at all* this year), HPSCI instead decided to pass a law requiring that they be told 6 months after they can do anything about it.