

ADEL DAUD WINS REVIEW OF FISA APPLICATION

As
I've
written
before
, Adel
Daoud
is a
20-
year
old
American



an citizen from the Chicago suburbs busted in 2012 for attempting to bomb a nightclub. Since Dianne Feinstein mentioned Daoud's case during the 2012 FAA reauthorization fight, his lawyers have been trying to figure out how the government obtained all the evidence against him. There are hints they may have used a back door search to collect emails dating to 2011 (before the FBI allegedly started tracking him). There are reasons to think the government may have collected upstream collection on him. Either would be particularly interesting, as this surveillance dates to the same weeks when John Bates wrote an opinion addressing both practices.

In addition, the revelations that NSA collects YouTube comments is of particular interest, as Daoud's YouTube comments serve as part of the evidence against him. (Remember, they could also collect YouTube comments in bulk, and then conduct backdoor searches of that material.)

The judge in his case has just done what no judge has ever done before – grant his lawyers a review of the FISA application against him. As Charlie Savage first noted, Judge Sharon Coleman granted the defense the ability to review the FISA Application against Daoud.

While this Court is mindful of the fact that no court has ever allowed disclosure of FISA materials to the defense, in this case, the Court finds that the disclosure may be necessary. This finding is not made lightly, and follows a thorough and careful review of the FISA application and related materials. The Court finds however that an accurate determination of the legality of the surveillance is best made in this case as part of an adversarial proceeding. The adversarial process is the bedrock of effective assistance of counsel protected by the Sixth Amendment. *Anders v. California*, 386 U.S. 738, 743 (1967). Indeed, though this Court is capable of making such a determination, the adversarial process is integral to safeguarding the rights of all citizens, including those charged with a crime. “The right to the effective assistance of counsel is thus the right of the accused to require the prosecution’s case to survive the crucible of meaningful adversarial testing.” *United States v. Cronin*, 466 U.S. 648, 656 (1984).

In sum, this Court grants disclosure to cleared defense counsel of the FISA application materials and such disclosure will be made under an appropriate protective order.

Her mention of the necessity for adversarial review suggests the suspicions about the basis for FBI’s interest in Daoud may be well-grounded.

We’ll never learn what’s in that application, but we may get a better sense of whether one federal judge thinks it’s legal to use certain kinds of collection as a basis for a FISA warrant.

Update: Spencer Ackerman alerted me that I was

cited in the response motion that won this review (see page 3). Yeah me!