

VAUGHN WALKER DISMISSES CHALLENGE TO RETROACTIVE IMMUNITY

Wired reports that Vaughn Walker has dismissed EFF's challenge to retroactive immunity. (h/t scribe) Plus, Wired will probably be reporting on how Anthony Coppolino recovered from his long week of dancing in the al-Haramain suit. So by the end of the day, we should have a better idea of whether we'll ever hold the government responsible for violating FISA.

I'll be reading Walker's order as I drink my pre-flight beer (I'm going home!! We'll see whether MI has survived a bruising week.) I'll update as I've got more to say.

Update: We're discussing in threads that Walker seems to set this decision against the Jewel case which sues Bush personally. I've been arguing that we might get a positive ruling from Walker in one or the other case, but not both, based on the legislative record. This is an example of what I mean:

The SSCI Report included among the committee's recommendations for legislation amending FISA that "narrowly circumscribed civil immunity should be afforded to companies that may have participated in the President's program based on written requests or directives that asserted the program was determined to be lawful."

Jello Jay also maintained that this left open suits against the government. Which means I think Walker sees them (and the legislative record) as the way to move forward on one.

Update: Walker also dismissed the state suits. Here's the order. And the conclusion.

The United States' motion for summary judgment in United States v Clayton, C 07-1242; United States v Reishus, C 07-1323; United States v Farber, C 07-1324; United States v Palermino, et al, C 07-1326; United States v Volz, et al, C 07-1396 is GRANTED. The state proceedings at issue in each of those cases are prohibited by section 803 (50 USC § 1885b) and are hereby enjoined pursuant to this court's authority under that statute. Clayton et al v AT&T Communications of the Southwest, Inc, et al, C 07-1187 is DISMISSED with prejudice.

The United States is directed to submit a proposed form of judgment in accordance with this order.

Update: To add to what JimWhite said in comments, this ruling is pretty much a warning shot across George W. Bush's bow.

The United States and the telecommunications company defendants counter that while suits against telecommunications companies are foreclosed, neither the statute nor the government's actions prevent plaintiffs from seeking redress for their constitutional claims against the government actors and entities. Doc #520 at 12. Lest any further reassurance be necessary, the SSCI report states: "The committee does not intend for [section 802] to apply to, or in any way affect, pending or future suits against the Government as to the legality of the President's program."

The court agrees with the United States and the telecommunications company defendants on this point: plaintiffs retain a means of redressing the harms alleged in their complaints by proceeding against governmental actors

and entities who are, after all, the primary actors in the alleged wiretapping activities. Indeed, the same plaintiffs who brought the Hepting v AT&T lawsuit (C 06-0672 VRW) are now actively prosecuting those claims in a separate suit filed in September 2008 against government defendants before the undersigned judge. Jewell v United States, C 08-4373 VRW, filed September 18, 2008. Jewell thus joins several other cases in this MDL which seek relief only against government defendants.

As I've been saying, Vaughn Walker has been saying, quite clearly, if Congressional intent matters in dismissing the telecom suits, it sure as hell matters in allowing Jewel to go forward.