

WORKING THREAD ON FISA ORDER, OPINION

Here.

(2) Prohibition on cell site may be new with this primary order.

(2) The redaction in FN 3 suggests there was at least one change made in program.

(3) Note Court claims it didn't read White Paper. Which means it pretends it doesn't know that briefings for Congress not as advertised.

(4) inclusion of discovery rules may be new, as would oversight function be.

(5) FISC appears to have no understanding of what 3 hops gives the government. It's data mining.

(5) The incidents in FN 8 appear to be new (because the 2009 ones were about collection, not dissemination, save the ones in late 2009).

(8) The precedent on bulk collections was not mentioned in either 2006 or 2008 opinions.

(9) The grouping argument is similar to one the govt made in Moalin.

(10) Govt has not invoked presumption (though it wouldn't need to).

(16) I'm not so surprised that no telephone companies have challenged Section 215 orders. I'm surprised that no company (still!) has challenged a bulk order.

(20) Mention of metadata in first paragraph makes it really likely that the other decision was the Internet metadata.

(20) Note the inclusion of "affiliated persons" at end of page.

(21) Note the reference to the government's Memorandum of Law, submitted in the first phone dragnet docket. The actual order repeats none of

this analysis. Truly, it was one shitty opinion.

(22) Note how the opinion relies on both that original memorandum and a new exhibit from the government.

(22) What's wrong with this logic?

Because the subset of terrorist communications is ultimately contained within the whole of the metadata produced, but can only be found after the production is aggregated and then queried using identifiers determined to be associated with identified international terrorist organizations, the whole production is relevant to the ongoing investigation out of necessity.

This was written 4 months after the Boston Marathon attack, in which someone known to have tried to meet with Chechen terrorists bombed in America. But somehow the Tsarnaevs weren't discovered. And that is because ... ?

(25) Note the language in the footnote that is redacted in the letter to Congress.
"substantially all of the telephone calls handled by the companies."

My comments on the congressional notice are here.

(Order 3) Note the reference to cell site location. That is new since the April opinion.

(Order 6) The language in paragraph C on "queries ... to obtain contact chaining information" is slightly different from the April opinion.

(Order 10) The first two sentences in footnote 10 were redacted in the previous opinion. These other call detail records likely pertain to 12333 collected foreign data, but it's possible a reference (whether the court realizes it or not) to subscriber ID obtained via NSL.

(Order 11) The date of the automated query

approval – November 8, 2012 – was redacted in
the earlier order.