

THE OTHER PROBLEM WITH THE OBAMA PROPOSAL: WHO DOES THE PIZZA JOINT REVIEW?

I'm sure I'll spend all day discussing the various proposals to "fix" the dragnet.

I've already shown why the House Intelligence bill is not an improvement and should not be discussed by credible people as one.

And on Twitter and briefly in that piece, I described two problems that aren't addressed at all in either of these proposals, including President Obama's plan laid out by Charlie Savage.

- The Reasonable Articulable Suspicion standard is still far too lenient, allowing the government to engage in a broad digital stop-and-frisk system
- Once supplied to NSA, it will presumably subject tens or hundreds of thousands of innocent people to the full array of NSA's tradecraft

Finally, though, there's one other problem, which directly affects how many people get subjected to such analytical tradecraft, a problem identified by no other person than ... Barack Obama.

Relying solely on the records of multiple providers, for example, could require companies to alter their procedures in ways that raise new

privacy concerns.

I suspect one of those privacy concerns, as I laid out in this post, is the necessity to make analytical judgments about what high volume numbers distort the chaining system.

Someone needs to go in and take out such high volume numbers – which include voice mail access numbers, telemarketers, and pizza joints – otherwise almost everyone is two degrees of separation from everyone else.

For two of these functions, I assume the telecoms can do the task as easily as the NSA. (The dirty secret is they conduct the same kind of 3-degrees analysis as the government does!) They know what their own (and reseller phone companies) voice mail access numbers are, after all, and surely they track the telemarketer spam that weighs down their system.

It's the pizza joints that have me – that always have me – worried.

Pizza joints absolutely distort the contact chaining system. Keith Alexander learned this when the contact chaining he was doing – and he used to claim he had mapped out all the evil people tied to Iraq – showed everyone to be guilty because they frequented the same pizza joints.

When he ran INSCOM and was horning in on the NSA's turf, Alexander was fond of building charts that showed how a suspected terrorist was connected to a much broader network of people via his communications or the contacts in his phone or email account.

"He had all these diagrams showing how this guy was connected to that guy and to that guy," says a former NSA official who heard Alexander give briefings on the floor of the Information Dominance Center. "Some of my colleagues and I were skeptical. Later, we had a chance

to review the information. It turns out that all [that] those guys were connected to were pizza shops.”

Nevertheless, sometimes a cigar is just a cigar, and sometimes a tie through a pizza joint can be a very important tie through a pizza joint, as I believe Gerry’s Italian Kitchen was in the case of the Tsarnaev brothers. If NSA purged the pizza joint in that case, they may have eliminated some of the most important evidence tying the brothers (or at least Tamerlan) to the Waltham murder in 2011.

So who, under this new system, will do the pizza joint analysis?

If the phone companies do it (which I doubt, because of cases like the Tsarnaevs), it will mean even more intensive data mining of customer data while it remains in their hands.

If the NSA does it, it means a lot more totally innocent people will have their data turned over to NSA to do as they wish.

Don’t get me wrong. The Obama proposal is an improvement off the status quo. But for these reasons, including the pizza joint problem, it still doesn’t comply with the Fourth or First Amendments.