

DRAGNET FOIA, HIDING THE DRAGNET NUMBERS AND PROVIDERS FROM CONGRESS

Unrelated, but Rosemary Collyer threw out the Awlaki wrongful death suit, meaning the government can kill its own citizens (including the innocent 16-year olds) with no due process with impunity. I'll write about this ruling later.

Last Saturday, I did a post on the three releases I Con the Record released as a Friday night document dump. It turns out ODNI also released an unintentionally revealing declaration that helps explain those and a number of other documents.

In this post I'll provide some general comments about what the declaration says. In a follow-up post, I'll describe that the declaration suggests about Verizon's foreign record problems and a correlation function that permits matching burner cells and so much more.

As far as last week's documents:

- The single solitary new thing unclassified in the March 2, 2009 order is to disclose the words "those providers" on the first page. DOJ, it seems, believed not only that there were multiple providers was secret, but was ignorant of the many details already declassified that make that clear.
- The only new things in the

June 22, 2009 order – besides combining the Internet and phone version that had been previously released – were the paltry number of reports issued from the Internet dragnet (117) on page 3 and the phrase “high volume” selector which I talk about incessantly. ODNI claims it was an administrative error to release the document in two versions previously; I suspect it was an even bigger screw-up, especially given that DOJ admits it is trying to hide the Internet dragnet dates from us for reasons that don’t stand up to scrutiny.

- The BR 10-82 financial order that makes up the bulk of the description apparently applied only to an FBI investigation of a specific counterterrorism target which is still on-going. The declaration describes the scope of this being super secret, so even though this is presumably not everyone’s credit card records, it may well be a lot of people’s. And the reason we got it is because the supplemental order was a significant

legal interpretation, one they can of course use over and over now. I will return to this one at a future date.

In addition to these details, this document reveals that the government is hiding the dragnet numbers and providers from Congress.

EFF and ACLU FOIAed DOJ, not NSA for these documents. As a result, a lot of the documents in their possession either probably had personal notes (those are reflected in the Vaughn Index, not this declaration) or were the redacted version provided to Congress under FAA.

Interestingly, those documents for Congress came pre-redacted (potentially meaning not even the National Security Division technically has the original information). And just two things get redacted: the numbers showing the scale of the dragnet, and the provider names.

Hiding the dragnet numbers from Congress is particularly interesting, because it would explain why some people (like Richard Blumenthal) claim to have just learned the "fact" that NSA only collects about 30% of the call data in the US. But it also means the NSA can hide the true scale of how the dragnet gets apportioned around different authorities.