WHAT WAS THE PURPOSE OF THE EXIGENT LETTER PROGRAM?

I'm aiming to have some rough guesses about what kind of bulk collection the FBI might use National Security Letters for (spoiler alert: my wildarseguess is that they're getting subscriber lists from the same telecoms they're getting phone dragnet data from).

But first, I want to return to the exigent letter program and consider how it may have complemented the dragnet during the period the dragnet had no court sanction.

As a reminder, starting in 2002, the FBI started getting phone calling records on individual users directly from telecoms using "exigent letters" — basically letters saying they needed the records urgently and promising some kind of legal documentation in the future. In 2003, representatives of the telecoms started moving onsite, so FBI Agents could ask for this information while looking over the representatives' shoulders. As part of it, the FBI got "community of interest" data (basically, the 3-degrees information the phone dragnet provides) and "hot number" data (an alert when a number was used, which also became part of the phone dragnet). The program spun out of control because FBI often would never go back and provide that paperwork (and also they used it for improper purposes).

In 2006, at the same time the the phone dragnet from the illegal wiretap program was moving to Section 215 orders, FBI was trying to clean up the exigent letter problems with "blanket National Security Letters." FBI issued the first blanket NSL on May 12, 2006; FISC approved the first Section 215 order on May 24. And while it took until January 2008 for the last telecom

personnel to move out of FBI digs, FBI started phasing out the program by imposing new restrictions in 2006.

There's a lot we don't know yet about the exigent letters program — and the actions of those telecom personnel camping out at the FBI. That the 2010 IG Report on was produced in TS/SCI, classified, and unclassified versions (the other two NSL IG Reports (2007, 2008) came in classified and unclassified versions) suggests it had some tie to more sensitive counterterrorism programs, quite likely the illegal program.

And to some degree, the onsite telecom personnel were duplicating what we understand NSA to have been doing with phone call records in the illegal wiretap program: tracking activity and establishing 3-degree-of-separation maps around phone identifiers of interest. At least for those FBI Agents who knew of the illegal dragnet, they could get the same information from the NSA, though for FBI Agents it was likely more immediate to go directly to the telecom person and provide requests on post-it notes (as sometimes occurred). Moreover, the FBI could and did quickly check whether queries would be fruitful before they formally queried a number. That means they could use the telecom presence to run contact-chaining on people who were not yet formally identified as terrorist suspects (though that seems to have been possible with the NSA program at that point too).

But the duplicative nature of the program suggests the possibility (particularly given that it started in earnest in May 2003, after the illegal program had gotten started) that the telecom presence was used to launder results back through the telecoms to make them usable for both FISC and other Title III Courts.

One more thing of interest, given my spoiler alert. As far as I understand, the FBI would have access not just to a number's community of interest, but also to the name of a phone

subscriber (or, alternately, immediately be able to learn if a telecom served a particularly person or number). That is, the onsite telecom program provided the FBI with something that the current dragnet, as publicly understood, did not: easy access to contact-chaining, with identities attached.

As I have noted before, DOJ's Inspector General has said he may be limited in what he presents in his 1,297-day old study of the use of Section 215 through 2009, started under his predecessor (who authored all the other reports), Glenn Fine, unless DOJ will declassify the earlier NSL and Section 215 reports. So there's clearly a tie between what was done with Section 215 as it moved under FISC review and what had been done earlier with NSLs.

One thing I'm wondering about is whether FBI uses(d) NSLs to accomplish the parts of the previous programs that haven't been authorized under the use of Section 215.