IS NSA WIRETAPPING NOW RATHER THAN TIPPING?

One of the news bits a number of outlets took away from the phone dragnet order document dump 10 days ago is that the NSA averages(d) about 3 tips a day to the FBI.

That's actually not news. It's consistent with a series of accountings NSA gave to Reggie Walton in 2009, as when, in February 2009, they provided more exact numbers (though they'd get tweaked a bit during that summer) that were smaller, but still in the range of 2-3 tips a day.

> Demonstrating the value of the BR metadata to the U.S. Intelligence Community, the NSA has disseminated 275 reports and tipped over 2,500 telephone identifiers to the FBI and CIA for further investigative action since the inception of this collection in docket number BR 06-05.

That said, at least according to Geoffrey Stone, the scale of the referrals may have gone down dramatically.

> Under the FISA statute, the NSA queried 288 numbers in 2012 and had only 16 instances where matches were analyzed, confirmed, and then forwarded to the FBI. According to Stone, these queries only produced about 6,000 numbers that were "touched" by the analysis, of the millions of numbers whose meta-data the NSA stores for up to five years.

In general and specifically here, there are reasons I don't entirely trust Stone's comments on the dragnet. He has said a lot that is inconsistent with other public (and legally

sworn) claims, notably on the volume of phone records collected. And his silences about certain aspects of the dragnet make me wonder how complete an understanding he has.

Plus, the "16 instances" may — as was true in the earlier period — represent reports that include more than one number. If, as occurred until 2009, each report had roughly 10 numbers, then this might amount to 160 identifiers (which is still far below the pace of the 2006-2009 period, but then during that period they weren't enforcing RAS).

Then there's the complete lack of definition for "touch" with regards to his 6,000 number.

In addition, 2012 might be a new baseline (or perhaps outlier) year, as the rollout of the new automated system at the end of 2011 would likely have changed the treatment of phone identifiers entirely.

And as I've said, I expect the use of the phone dragnet for a "peace of mind" query after the Boston Marathon attack to result in a huge number of tips (though perhaps in just one or several reports), given how wired the Tsarnaevs were and had been for the five years leading up to the attack.

Moreover, in a development that may or may not be entirely unrelated, the number of telephone taskings under Section 702 have started to go up again starting in 2012, after having been down since 2009.

> As the chart demonstrates, the number of newly tasked telephone numbers decreased after 2009, but began to increase again in 2012. The average number of telephone numbers tasked each month for the first 11 months of 2012 [redacted].

There are admittedly a number of possible explanations (increasing collection of text messages, different kind of upstream collection, potentially even a fourth certificate in

addition to the terror, proliferation, and cyber ones we know about). But one possibility is that the new alert system has led NSA to move toward wiretapping interesting numbers, rather than sending them to FBI for investigation. Moreover, by wiretapping someone, NSA could share data with FBI and CIA in relatively unfettered fashion, as both are permitted to receive unminimized content under 702 in certain circumstances, and both have the authority to do backdoor searches on US person content on all but upstream collected 702 data.

The NSA can't give phone numbers to FBI without review, but according to section 702 minimization procedures, in some cases they can let CIA and FBI read wiretap content without such review.

That is, wiretapping someone could be a way to evade data dissemination restrictions in place on actual phone dragnet queries.