

IN 2009, DOJ CLAIMED ITS LAWYERS COULD NOT READ DOCKET NUMBERS IN 2007

Some time ago, I noted that DOJ appears not to have provided the classified report on Section 215 for the Judiciary and Intelligence Committees mandated by the 2006 PATRIOT Act Reauthorization to Congress in 2009 to 2011. Instead of being sent to the Chairs of the Committees, the reports for those years were simply “filed.”

DOJ continued to provide Congress the unclassified FISA report, which included much of the same information about the numbers of Section 215 orders approved and modified.

But those reports would not have included two critical details: the fact that the sharply increasing number of modifications pertained to the FISC’s imposition of minimization procedures, suggesting collection in some bulk.

And the number of sensitive Section 215 orders issued under the following categories.

- (A) Library circulation records, library patron lists, book sales records, or book customer lists.
- (B) Firearms sales records.
- (C) Tax return records.
- (D) Educational records.
- (E) Medical records containing information that would identify a person.

So for the years 2008 to 2010, even two of four designated oversight committees did not learn these details (the Intelligence Committees are required to get details on every request,

but who knows if that requirement was met?).

In that post, I also noted a problem with 2007's numbers, as well, a problem DOJ readily admitted in the unclassified report issued in 2009 (supposedly covering 2008).

In its 2008 report, the Department reported to Congress that during Calendar year 2007, the Government made six applications to the FISC for access to certain business records (including the production of tangible things) for foreign intelligence purposes. Further review of the Government's records subsequently revealed that the Government had made seventeen applications to the FISC for access to certain business records. The FISC did not deny, in whole or in part, any such application filed by the Government during calendar year 2007.

"Further review revealed."

Bullshit.

I'm just now realizing how utterly unbelievable this is.

You see, the way the docket works, each new request has its own docket number, so to count the requests you need only count the dockets.

The last docket in the phone dragnet is BR 07-16, issued October 18, 2007 (meaning there was just one more business record docket that year). There is no conceivable way DOJ could not very simply have come up with the correct number for both reports to Congress by looking at the final docket number, which should have been 17. Which means Congress may never have gotten the proper classified detail on those additional 11 requests.

DOJ hid – purposely, necessarily, based on the way the dockets work – the details on sensitive requests to Congress in 2007. Then they appear to have hid the sensitive requests for the

following three years. Given that John Bates is copied on the first request thereafter, it appears he may have made them finally fulfill the letter of the law.

They clearly were hiding something about their other Section 215 requests, for four full years.