

MICHAEL MOSMAN'S INTERESTING 10 DAYS

On November 24, 2014, Oregon District Court Judge Michael Mosman issued a somewhat curious order explaining his decision, issued 3 days earlier, not to grant Razez Qadir Khan notice of all the surveillance authorities used to investigate him.

While Mosman loves efficiency, he explained, the time was not yet ripe for the issues raised in Khan's effort to learn how he had been linked to an associate who had conducted a suicide bombing in Pakistan in 2009. But – Mosman promised –

The day will come when the standing, collection, and other issues foreshadowed in this motion will be litigated in this case. Due to the constraints of CIPA, properly applied in this case, that day will come in the next round of motions, without the narrowing of issues that detailed disclosure would allow.

Ten days after signing that order, Mosman signed another one: the latest authorization for the dragnet. In doing so, not only did he authorize the collection of Khan and Khan lawyer Amy Baggio's call records (as well as those of ACLU lawyers Jameel Jaffer and Pat Toomey; they joined this case in mid-December) – remember that Khan's conversations with several lawyers were spied on by FBI over the course of their investigation with him.

But by signing the order, Mosman also signed something that has long been in the dragnet orders but – as far as I can tell – utterly ignored: that it envisions the use of the dragnet for exculpatory information.

Early in this case, Khan challenged Mosman's ability to serve both as trial judge and as FISC judge, a challenge Mosman dismissed.

It will be interesting to see how he handles
both roles going forward.