

GOP BROUGHT IN GUY WHO AUTHORIZED DRAGNET TO TALK DRAGNETS

I'm far more alarmed by this tidbit in the latest report on the fight over USA F-ReDux than many who are commenting on it.

McConnell's presser came following Senate lunches, during which former Attorney General Michael Mukasey, who served under George W. Bush, briefed Republicans on the importance of the surveillance authorities. While defending the NSA's phone-records dragnet, Mukasey did say a recent federal appeals court deeming the program illegal could complicate McConnell's efforts to renew the Patriot Act without changes, given the legal uncertainty that could result, according to two senators present.

"He did recommend some acknowledgment of the decision so that it is addressed in the legislation," Sen. John Hoeven, a North Dakota Republican, said.

The Republicans sat down to talk about dragnet surveillance and they brought in Michael Mukasey, who not only presided over the expansion of Stellar Wind in the form of FISA Amendments Act, but authorized SPCMA after some previous DOJ officials appear to have refused to.

SPCMA, you'll recall, is the authority to contact chain on US-person metadata collected under EO 12333 that current FBI General Counsel James Baker refused to authorize in an earlier position at DOJ in 2006 but which Mukasey signed in early 2008 (and DOJ then promptly hid from FISC as it was considering whether the contact

chaining that provided particularly under PRISM was constitutionally sound). The actual authorization for it languished for several months, half-signed, before Mukasey signed it in the early part of his tenure as Attorney General.

There is reason to believe SPCMA – that is, Internet data collected overseas, in addition to telephone metadata – is where a lot of the Internet chaining currently occurs, with almost none of the controls (or subject limitations) that existed under the PATRIOT-Authorized Internet dragnet. There is also reason to believe that USA F-ReDux envisions the government federating queries of metadata collected under its new Call Detail Record function with SPCMA data. Finally, I suspect that the Second Circuit decision on Section 215 may have repercussions for SPCMA as well.

In other words, I find it fairly alarming that GOP brought in Michael Mukasey and his advice was to make a nod to the Second Circuit even while talking about why the authorities – plural – were important.

Which is to say I don't think his acknowledgment that Courts are Courts is very comforting, given that he appears to recommend sustaining existing "surveillance authorities" in current bulk form.