

CAESARS PALACE NOT HELD TO SAME STANDARD LAVABIT IS

I'm going to have a longer post about this opinion recommending a judge throw out the warrant, based on evidence FBI obtained by shutting down DSL and then pretending to be the cable guys that would fix it, used in bust Paul Phua (see this article for more).

But I want to point to the excuse FBI Agent Minh Pham used to explain away several other errors he made in the search warrant:

After Pham submitted and obtained the search warrant, he learned the affidavit contained errors. Specifically, it stated that Paul Phua wired \$4 million into a Caesars account to secure a credit line. Pham later discovered it was actually Seng Chen "Richard" Yong that requested the wire to secure both their lines of credit. However, at the time Pham submitted the search warrant affidavit, he believed it was correct that Paul Phua had initiated this transfer.

The affidavit also stated Paul Phua had transferred approximately \$900,000 from a casino in Fort Lauderdale, Florida, to the Caesars account. However, Pham later learned that Paul Phua had been only one of the individuals who signed the consent to have that money wire-transferred into Yong's account. At the time Pham submitted the affidavit, he believed the statement was true based on documents from Caesars concerning monetary transfers that he had received. Pham referred to the spreadsheet contained in government's Exhibit 2F as a document he relied upon to support his statement in the affidavit. *The font*

size was very small and difficult to read.

He also discovered another error in the affidavit days later. There were transfers for \$3 million between individuals in the villas. He looked at the spreadsheet, and it was off by one or two lines," which caused him to associate the wrong name with the transfer. [my emphasis]

The font on the spreadsheet Caesars Palace had given the FBI when it requested they open an investigation was "very small difficult to read."

You'll recall that when the FBI went after Lavabit to get its crypto key, Lavar Levison tried to comply by providing a printout of the key. But the government complained it was illegible, and got Levison held in contempt.

In an interesting work-around, Levison complied the next day by turning over the private SSL keys as an 11 page printout in 4-point type. The government, not unreasonably, called the printout "illegible."

"To make use of these keys, the FBI would have to manually input all 2,560 characters, and one incorrect keystroke in this laborious process would render the FBI collection system incapable of collecting decrypted data," prosecutors wrote.

The court ordered Levison to provide a more useful electronic copy. By August 5, Lavabit was still resisting the order, and the judge ordered that Levison would be fined \$5,000 a day beginning August 6 until he handed over electronic copies of the keys.

Apparently, huge casinos are held to a different

standard than small email providers.