

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HARRIET ANN PHILLIPPI, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 75-1265  
 )  
CENTRAL INTELLIGENCE AGENCY, )  
et al., )  
 )  
Defendants. )

AFFIDAVIT PURSUANT TO RULE 56(F) OF THE  
FEDERAL RULES OF CIVIL PROCEDURE

HARRIET ANN PHILLIPPI, being duly sworn, deposes and states  
as follows:

1. I am a journalist employed by Rolling Stone magazine.
2. On March 20, 1975, I read articles in the New York Times  
and Washington Post which indicated that Director William E. Colby  
and other Central Intelligence Agency (CIA) personnel had engaged  
in attempts to persuade members of the news media not to make public  
the events relating to the Glomar Explorer. These articles have  
been filed with the Court as Plaintiff's Exhibits E and F.
3. In order to obtain official confirmation of these reported  
attempts by the CIA to influence editorial decisions and to be  
able to report accurately in as much detail as possible about such  
attempts, I requested on March 21, 1975 under the Freedom of  
Information Act all records relating to attempts by CIA personnel  
to persuade any members of the news media not to broadcast, write,  
publish, or in any way make public the events relating to the  
activities of the Glomar Explorer. I further specified that my  
request included, but was not limited to, files, documents, letters,  
memoranda, travel logs, telephone logs or records of telephone

calls made, records of personal visits, or of any other records of communications of the aforementioned type (Plaintiff's Exhibit A).


4. After the CIA had denied my request and I had exhausted my administrative remedies (Plaintiff's Exhibits B-D), I filed, through my attorneys, the above-captioned lawsuit.

5. In denying my request, defendants have refused to confirm or deny the existence of the records I seek (Plaintiff's Exhibits B and D).


6. I have read the affidavit filed by Mr. Lawrence S. Eagleburger in the above-captioned case in which he states that "the information relevant to the United States Government case has been classified pursuant to Executive Order 11652 . . . on the ground that public disclosure would damage the national security, including the foreign relations of the United States."

7. I am unable to defend against defendants' motion for summary judgment because: (a) I do not know verifiable facts as to the number, nature or contents of the records which fall within my request, although I have strong reason to believe that such records do exist; (b) I do not know verifiable facts as to whether the requested records are in fact properly classified pursuant to Executive Order 11652; (c) the facts as to the number, nature, and contents of the requested records and as to whether such records are properly classified pursuant to Executive Order 11652 are solely under the control of the defendants; and (d) without knowledge of the number, nature, and general contents of the requested records my attorneys cannot adequately contest defendants' assertions that the records which I seek are exempt, even though I believe that the records are not in fact properly classified under Executive Order 11652.

8. I am advised that if defendants would provide a detailed justification of their claims of exemption and an index and itemization of the requested records, as prescribed by the United States Court of Appeals for the District of Columbia Circuit in Vaughn v. Rosen, that my attorneys should be able to defend against the motion for summary judgment now pending.

  
\_\_\_\_\_  
Harriet Ann Phillippi

Subscribed and sworn to  
before me this 16 day  
of October, 1975)

  
\_\_\_\_\_  
Notary Public, District of Columbia

My Commission expires Oct 30 - 1976

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HARRIET ANN PHILLIPPI, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 75-1265  
 )  
CENTRAL INTELLIGENCE AGENCY, )  
et al., )  
 )  
Defendants. )

AFFIDAVIT OF LARRY P. ELLSWORTH

I, Larry P. Ellsworth, being duly sworn, do hereby depose  
and say:

1. I am an attorney admitted to practice in this Court,  
and I am co-counsel in the above-entitled case.
2. I served as co-counsel in Schaffer v. Kissinger, Civ. No.  
2520-72 (D.D.C.), in which Mr. Frederick P. Schaffer sought access  
pursuant to the Freedom of Information Act (FOIA) to certain  
reports on the conditions of prisoner of war camps in the Republic  
of Vietnam (South Vietnam) which were compiled by the International  
Committee of the Red Cross (ICRC). That case was originally  
dismissed on October 9, 1973 on the ground that the documents sought  
were classified "confidential" pursuant to Executive Order 11652.
3. Copies of the two affidavits submitted to the court by  
the Government in support of its motion for summary judgment are  
attached hereto as plaintiff's Exhibits H and I. Those affidavits,  
executed on February 23, 1973 and May 23, 1973, were both sworn  
to on behalf of the Government by Knute E. Malmborg, then the  
Assistant Legal Advisor for Management and Consular Affairs,  
Department of State. These affidavits state that the reports  
sought by Mr. Schaffer were furnished to the United States Government

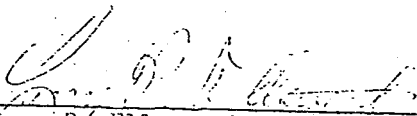
by the Government of South Vietnam, that they bear the security classification CONFIDENTIAL, having been classified in accordance with section 1(C) of Executive Order 11652, and that their release to an unauthorized person could reasonably be expected to cause damage to the national security.

4. On October 10, 1974, the Court of Appeals for the District of Columbia Circuit reversed the district court's decision, and stated that Mr. Schaffer "should be allowed to undertake discovery for the purpose of uncovering facts which might prove his right of access to the documents which he seeks." 505 F.2d 389, 391 (D.C. Cir. 1974).

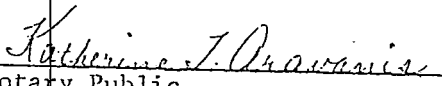
5. On April 2, 1975, I took the deposition of Mr. Knute E. Malmberg, the State Department employee who had earlier executed both of the Government's affidavits in that case. Copies of the relevant pages of the transcript of his deposition are attached hereto as plaintiff's Exhibit J. He testified in that deposition, inter alia: that he had no personal knowledge of whether the ICRC reports were furnished to the United States Government by the Government of South Vietnam (p. 32); that prior to the day of the deposition he had seen only one of the scores of reports sought (p. 31); that he did not know how many reports the State Department possessed (pp. 4-5); that because the reports were written in French, a language which he could not read, he did not know the contents of the reports (pp. 9-10); that the basis of his sworn statement that the documents had been received from the Government of South Vietnam had been a statement by some other person that this was true, but that he could not recall who that

other person was (p. 32); and that he did not know whether the person who told him the above had actually seen the reports (pp. 32-34).

6. Slightly over a month later, the State Department agreed to grant Mr. Schaffer access to all of the approximately five thousand pages of ICRC reports.

  
Larry P. Ellsworth

Subscribed and sworn to before me on  
this 16<sup>th</sup> day of October, 1975

  
Katherine J. Oravanis  
Notary Public

My Commission expires June 14, 1977

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HARRIET A. PHILLIPPI,

Plaintiff,

v.

Civil Action No. 75-1265

CENTRAL INTELLIGENCE  
AGENCY, et al.,

Defendants.

MOTION TO PERMIT PLAINTIFF'S COUNSEL TO  
PARTICIPATE IN IN CAMERA EXAMINATION

Plaintiff moves the Court for an order permitting plaintiff's counsel to inspect the two affidavits which the Court has ordered defendants to submit for in camera examination. The order may be subject to such protective orders as the Court may deem necessary, or to such agreements as the parties may enter into.

Dated: Washington, D.C.  
November 12, 1975

Respectfully submitted,

*Mark H. Lynch*  
Mark H. Lynch

*Larry P. Ellsworth*  
Larry P. Ellsworth

Counsel for Plaintiff

Suite 700  
2000 P Street, N.W.  
Washington, D.C. 20036  
(202) 785-3704

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HARRIET A. PHILLIPPI, )

Plaintiff, )

v. )

CENTRAL INTELLIGENCE AGENCY, )  
ET AL., )

Defendants. )

Civil Action  
No. 75-1265

AFFIDAVIT OF MORTON H. HALPERIN

Morton H. Halperin, being duly sworn, deposes  
and says:

1. I was on the staff of the National Security  
Council from January 20, 1969 to September 1969, and I served  
as a consultant on the NSC staff from September 1969 to  
May 1970.

2. On November 26, 1973, Henry A. Kissinger, then  
Assistant to the President for National Security Affairs,  
executed an affidavit, (hereinafter "Kissinger Affidavit"),  
which was marked "Confidential" and was submitted ex parte and  
in camera in Ellsberg v. Mitchell, Civil Action No. 1879-82  
(D.D.C.). That affidavit was submitted "for the purpose of  
providing the Court with a statement of the events pertinent  
to the electronic surveillance" by the FBI of my home telephone,  
which continued from May 9, 1969 until February 10, 1971 (¶2).



3. The Kissinger Affidavit was subsequently made public by the White House and published in the Statement of Information Submitted on Behalf of President Nixon, Book IV, White House Surveillance Activities, Committee on the Judiciary, House of Representatives, 93d Cong., 2d Sess. (Impeachment Inquiry).

4. There are a number of statements in the Kissinger Affidavit which, while on their face appearing plausible, prove to be incorrect or misleading in view of facts not volunteered in that affidavit.

5. The Kissinger Affidavit describes seven newspaper stories based on leaked information (¶¶ 4-6), and states that because I was suspected of being the source of these leaks, my home telephone was placed under electronic surveillance (¶9).

6. Thus, the Affidavit states that "Dr. Halperin...was unquestionably one of several persons who had had access to such [leaked] information" (¶7), and that "[a]s a result of this position [as Chief of the National Security Council Planning Group], which [Dr. Halperin] held until September 20, 1969, and as a consultant to the National Security Council until May 13, 1970, Dr. Halperin received extensive exposure to classified information...."(¶8).

7. The fact is, however, that on May 9, 1969, Dr. Kissinger personally told me that for a period of time he would not allow me to have access to any of the more sensitive information regarding national security matters. From that date until I left the NSC staff in September, 1969, Dr.

Kissinger in fact did not permit me to have access to sensitive material. During my service as a consultant to the NSC, I had no access to any classified information in that capacity.

8. Three of the newspaper articles cited in the Kissinger Affidavit appeared after I had been cut off from access to sensitive information and were based on information of which I had no knowledge: the Washington Star article of June 3, 1969 (¶4); the New York Times article of June 4, 1969 (¶4), and the New York Times article of June 18, 1969 (¶5). Moreover, these articles appeared after my home telephone had been placed under electronic surveillance, and so they could not have lead to the decision to tap my phone.

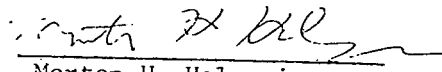
9. Three of the articles cited in the Kissinger affidavit were based on information which was known not only by me, but also by hundreds of people within the executive branch: the New York Times article of April 6, 1969 (¶4); the New York Times article of May 1, 1969 (¶5); the New York Times article of June 3, 1969 (¶6). Moreover, the latter article was fundamentally incorrect.

10. One of the articles cited in the Kissinger Affidavit concerned secret United States bombing raids in Cambodia. Although I knew of the fact of these raids, I did not have access to the detailed information which was summarized in the New York Times article of May 9, 1969 (¶4).

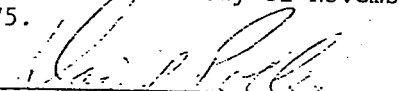
11. The Kissinger Affidavit states that in early May, 1969 the President was told by the then Director of the FBI, J. Edgar

Hoover, that the most effective method to deal with the problem of unauthorized disclosures of classified information was the conduct of electronic surveillance. The Affidavit further states that the President required Dr. Kissinger's office to submit the names of those officials who had had access to the information which had been leaked. (¶7).

12. Dr. Kissinger has subsequently testified before the Senate Foreign Relations Committee that the decision to tap my phone was based on the recommendation of Mr. Hoover at a meeting held in April of 1969, was not related to any specific leaks, and that my name was supplied not by Dr. Kissinger but by Mr. Hoover. Dr. Kissinger's Role in Wiretapping Hearings Before Senate Comm. on Foreign Relations, 93d Cong., 2d Sess. 183 (1974).

  
Morton H. Halperin

Subscribed and sworn to before me on this 12th day of November, 1975.

  
Notary Public

My commission expires 12-31-1976

RECEIVED

JAN 14 1974

CAPLIN & BRYSDAL

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, :  
et al. :

v. :

CIVIL ACTION NUMBER 1768-69

JOHN N. MITCHELL, :  
et al. :

FILED

JAN 19 1974

ORDER

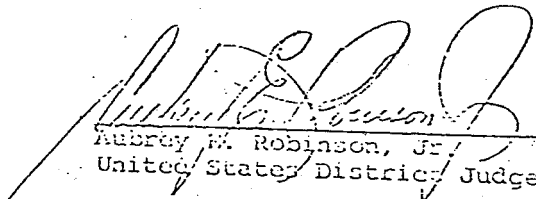
JAMES F. BENEY, CLERK

Upon consideration of Plaintiffs' Motion for an Order Compelling Defendants to Answer Plaintiffs' Interrogatories and to Respond to Requests for Admissions, and upon consideration of the Opposition thereto, oral argument of counsel, and the entire record herein, it appearing to the Court that Plaintiffs are entitled to the Discovery here sought under the liberal discovery policy of the Federal Rules of Civil Procedure absent a specific showing of legal privilege, not made here; and it further appearing that Defendant's attempt to assert legal defenses on the merits of this action is inappropriate on a discovery motion; and it further appearing that Defendants' proffered in camera submission of wiretap authorizations for ex parte determination by the Court of the merits of this action at this stage of the proceedings is highly irregular and is nowhere contemplated nor authorized by the Federal Rules of Civil Procedure, now therefore it is this 10<sup>th</sup> day of JANUARY, 1974,

ORDERED, that Plaintiffs' Motion be and hereby is GRANTED in all respects and it is

FURTHER ORDERED, that Defendants shall answer fully and responsively all outstanding interrogatories in this action within thirty (30) days of date, and it is

FURTHER ORDERED, that Defendants shall specifically respond to all outstanding Requests for Admissions within thirty (30) days of date.

  
Aubrey W. Robinson, Jr.  
United States District Judge.