

JE

1997

6/6/78

Before getting to this I want to say that your supplementary affidavit in 0692 is excellent.

I think I've read the entire stack you sent me. I can't be sure because Lil is typing some notes and has it. No, maybe I didn't get to two CIA affidavits.

Anyway, I'm for an approach I think others have not taken. Subpoena Banner for the first hearing with the records, tell him you don't want to see them, but you want him to show them to the judge only, in open court, and then ask him if they are all governmental intercepts, if they have any nasty person^{al} stuff on King, if the state of the art is such that after ^{ten} years disclosure of reasonably segregable parts of the message can really hurt national defense or give any secrets away. This stuff is pretty raw and on the face can't be credited. They have to be expecting never to be asked a single question. This means they'll fight like hell not to appear and testify. Banner actually claimed that only because this case is so unique he can confirm that there are 22 documents involved. Now how in the hell can the number of documents relating to King over an unknown number of years have any intelligence value or disclose anything? Can't.

After I go over the other CIA ^{stuff} I'll make some recommendations. But we have them dead to rights on not complying with records that show up on name checks. Why? Because they were released in response to name checking requests under PA and FOIA.

These are the people who boasted of having the world's best information retrieval system, you may want to recall. When they were caught training local police this was their justification for it -filing.

My hunch is that the time spent on NSA is less worthwhile than that spent on CIA. I believe a single effort with NSA may be worth the time but probably more than one will not. Among the reasons is the we have a CIA case in which it was totally without any legal right to do what it did and we have its left-hand admission of this. We also have them withholding what they have already released and not only to me. This and other factors may be enough for a judge to feel he can by-pass the customary reluctance to face the national security issues they raise. I believe the CIA has not thought this through and is unthinkingly following its standing stonewalling approach. I would rather have compliance and go on to other matters than take the time to prevail in court, even though if I prevail it could have other values.

The CIA has not even searched the obvious files. You might want to consider, if we don't get compliance without a court fight, asking for affidavits from people like Marchetti. Maybe Snapp and Stockwell, too. Colby?

I doubt discussing any of this with JoAnn Portia would do any good but I'm not opposed to it if you want to. The Civil Division lawyers appear unable to learn but maybe if they handle hot irons often enough they may learn a little. There can be an advantage in laying enough out in advance, without providing proofs, and then having them face the proofs. This is what I have been doing in 1996 and when there is time I will be preparing more of it, more than can be redound against the lawyers as well as those who have not complied with the Act and the requests. I think that there may be little chance the lawyers will change but the time required to give them a chance is well spent because it is little time and if it succeeds it will save much time. In each case it lays these lawyers open to a judicial dressing down. Slight as the odds on this may be at some point some of these lawyers may get Axelraded or they may see the possibilities and not want to face them.

I'm proceeding with detailed notes on what was provided in 1997. Lil is retyping what I wrote out about the records provided and about the Motion for Summary Judgement. I've begun to dictate comment on the affidavits and their attachments.

I have no copy of 320. I have two copies of 319. Maybe you have no 319 and 2 320s.

Best,

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