

Affidavit of Roy R. Banner. He's the chief of the Policy Staff of the National Security Agency.

In Par. 3 he says that it was not until the CIA started to process my appeal that they found the 22 NSA documents. In Par. 4 he says the information was "acquired in the course of conducting lawful signals intelligence activities." He follows this with what is another direct quote, "A primary signals intelligence mission of NSA is to intercept radio communications sent to or from foreign governments in order to obtain foreign intelligence information necessary to the national defense, national security, or the conduct of foreign affairs." He merely implies, first, the King intercepts were such intercepts and second, that there was no interception of any communication except to or from a government. He does not say this and he does not say that the King intercepts were part of "a primary signals intelligence mission of NSA".

In Par. 5 he tries to explain away the certainty that there are more radio communications of various kinds that can be intercepted and transcribed. What he does not say is that the NSA can be selective, is selective, and can concentrate on those on which it wants to concentrate. He says, "What is not generally known and must be protected from disclosure is information about what is possible for NSA to accomplish and what, within that realm of possibility, are NSA's actual intelligence targets." Perhaps that is true in 1978 but it is not true a decade and a decade and a half earlier. That's the period of the intercepts. Even if it were true ten years ago, it has no intelligence value today. He fails to address this, which means that he knows it has no intelligence value today.

Par. 6 is again a generality restricted entirely to the communications of foreign governments. At no point has he said, even if this is true, that the communications intercepted relating to King were only those of foreign governments. I think this is the kind of thing on which we want to exercise discovery.

Par. 7 says that the 22 records "are classified in their entirety to protect intelligence sources and methods." What he has already said disqualifies this.

He says that the whole world knows what their intelligence sources and methods are of intercepting radio and other communications. Perhaps another exemption would apply but he has not at any point said that any of the intelligence sources or methods are secret.

In this same Par. 7 he says that he personally conducted the review of the 22 documents. Her therefore is in a position to state unequivocally they are governmental communications that were intercepted rather than private communications and he fails to state that.

In Par. 8 he actually says "The release of any record or portion thereof located in response to plaintiff's request and denied by the NSA and sought in this civil action would disclose information about the nature of NSA's communications intelligence activities and functions which is protected from disclosure by ...". I think that would be true of the phone book, too. This is conclusory, it's improbable if not impossible, and he has woven all of this big web of generalities hoping to catch a fly that would keep them from being embarrassed because obviously there is nothing of the content of reasonably segregable parts of an intercepted communication of ten or more years ago that has any of this potential. When he next talks about "The disclosure of these classified records or specific information about them would reveal information concerning communications intelligence activities of the United States Government and the manner in which communications intelligence is obtained" I guess the daily newspapers are classified and the Senate committees are classified because certainly all of this has come out. He even says that disclosure of "communications collection and analysis capabilities ... or any portion of them would compromise classified information pertaining to intelligence sources and methods protected from disclosure ..." That, too, is impossible. First of all, the capability is known. Second of all, this is ten years in the past. This, Jim, is the danger of accepting all of their conclusory statements. I think that this guy ought really be deposed.

Par. 9. Turn to the east and bow three times. There is a great concession here.

He apparently is risking his life and that of the nation to tell us "In view of the specific and unique circumstances relating to the documents in question, I can disclose that the number of documents involved is twenty-two." But he can't reveal any more like he can't reveal that they were spying on King's personal communications and he tries to imply to a court that a government communication is intercepted. This is a nice one. "It is not possible to describe the material in and reveal the dates of the documents held by NSA without enabling a knowledgeable person to determine the nature of the documents in the context of the Agency's mission, thus disclosing intelligence sources and methods." The whole world knows that they were intercepting communications ten years ago, so the nature of the content of the communication of a man dead ten years ago, even if just the date of it is released, is going to break up the whole intelligence system and method.

This guy makes the CIA look like a bunch of wild SDSers.