

Secrecy Urged for Baez Case List

NSA Contests Wiretap Ruling

By Allan Frank
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The director of the National Security Agency has challenged Chief U.S. District Court Judge William B. Bryant to reverse his recent order that the agency release records about Joan Baez the agency contends would imperil its ability to intercept communications from other countries.

While releasing some of the material Bryant ordered disclosed Nov. 2, the NSA challenged the judge's jurisdiction in a Freedom of Information case to order declassification of material it believes might enable spies from other countries to foil its bugging and message intercept methods.

Using what the NSA in yesterday's court filing categorized as "erroneous assumptions," Bryant ruled earlier that the NSA's arguments were "unconvincing" because the U.S. public and foreign governments already know that the agency is capable of and does monitor overseas communications. Bryant also said that it was common knowledge that the NSA monitored activities of anti-Vietnam War activists such as Baez.

In an affidavit filed yesterday in U.S. District Court, Bobby R. Inman, the vice admiral who is NSA director, said the disclosure ordered by Bryant would do "exceptionally grave damage to the national security."

THE AGENCY labeled as erroneous the judge's assumptions about what is known about NSA capabilities, saying "virtually no authoritative information has ever been released to the public" about the "manner" and "nature" of NSA's operations or its "reliability and success in performing these tasks."

The agency nevertheless released some portions of a previously secret statement filed by Roy R. Banner, chief of the NSA's policy staff, that Bryant had ordered made public.

In that document, attached to the one-page main filing yesterday, Banner said that although it is generally known NSA has the authority and capability to intercept foreign governments' messages sent by common carriers such as Western Union, by government radio stations and by other means such as satellite communications, no country is certain which routes the NSA actually monitors.

The 21-page document prepared by NSA and Justice department officials claims that NSA has never confirmed that it intercepted any messages to or from Baez, only communications in which her name was mentioned.

Without specific knowledge about whether the messages were sent directly to Baez, foreign governments would be unable to decipher exact NSA interception methods, the agency said.

"ODD AS IT MAY SEEM to the non-expert," the agency said, "foreign targets do not generally act on the assumption that their communications are being, or are capable of being, intercepted, even when being transmitted in unencrypted form over international communications carriers. Apparently this is because they are aware of the disproportion between the total volume of communications and NSA's limited ability to deal with them."

"Damaging as release of the documents themselves would be," the agency said, disclosure of the now-secret index to the Baez documents would be "even more damaging . . . because the inferences a foreign observer might draw from the documents are made explicit. . . . A foreign intelligence expert would not only be spared the burden of conducting his or her own analysis of the documents but would also have the benefit of the NSA's own imprimatur on the correctness of the analysis."