

1 CINDY COHN (145997)
cindy@eff.org
2 LEE TIEN (148216)
KURT OPSAHL (191303)
3 JAMES S. TYRE (083117)
ELECTRONIC FRONTIER FOUNDATION
4 454 Shotwell Street
San Francisco, CA 94110
5 Telephone: (415) 436-9333
Fax: (415) 436-9993

6 RICHARD R. WIEBE (121156)
wiebe@pacbell.net
7 LAW OFFICE OF RICHARD R. WIEBE
8 One California Street, Suite 900
San Francisco, CA 94111
9 Telephone: (415) 433-3200
Fax: (415) 433-6382

10 Attorneys for Plaintiffs

RACHAEL E. MENY (178514)
rmeny@kvn.com
PAULA L. BLIZZARD (207920)
MICHAEL S. KWUN (198945)
AUDREY WALTON-HADLOCK (250574)
KEKER & VAN NEST, LLP
710 Sansome Street
San Francisco, California 94111-1704
Telephone: (415) 391-5400
Fax: (415) 397-7188

THOMAS E. MOORE III (115107)
tmoore@moorelawteam.com
THE MOORE LAW GROUP
228 Hamilton Avenue, 3rd Floor
Palo Alto, CA 94301
Telephone: (650) 798-5352
Fax: (650) 798-5001

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13
14 CAROLYN JEWEL, TASH HEPTING,
GREGORY HICKS, ERIK KNUTZEN and
15 JOICE WALTON, on behalf of themselves and
all others similarly situated,

16 Plaintiffs,

17 v.

18 NATIONAL SECURITY AGENCY, *et al.*,

19 Defendants.

) CASE NO. CV-08-04373-JSW

)
)
) **DECLARATION OF THOMAS A.
20 DRAKE IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
21 JUDGMENT REJECTING THE
GOVERNMENT DEFENDANTS' STATE
22 SECRET DEFENSE**

) Date: September 28, 2012
) Time: 9:00 a.m.
) Courtroom 11, 19th Floor
) The Honorable Jeffrey S. White

23 I, Thomas A. Drake, declare:

24 1. I am a former employee of the National Security Agency ("NSA"), the signals
25 intelligence agency within the Department of Defense. Unless otherwise indicated, I have personal
26 knowledge of each and every fact set forth below and can competently testify thereto.

27 2. A true and correct copy of my NSA resume is attached hereto as Exhibit A.

28 3. Prior to September 11, 2001, the NSA managed the task of gathering foreign

1 intelligence while instilling a respect for the Foreign Intelligence Surveillance Act (“FISA”) among
2 its employees. It was a prime directive. Everything changed after the attacks on September 11.
3 The NSA’s new approach was that the President had the authority to override FISA and the Bill of
4 Rights, and the NSA worked under the authority of the President. The new mantra to intercepting
5 intelligence was “just get it” regardless of the law.

6 4. Shortly after the attacks, I was given funding to use a project called ThinThread in a
7 pilot program. Thin Thread was designed to identify networks of connections between individuals
8 from their electronic communications in an automated fashion in real time. Bill Binney had
9 directed the project and developed the algorithms that made it work. Over the course of an almost
10 40 year career, Mr. Binney came to be regarded as something of a legend within the NSA and
11 mentored the technical work of approximately 6,000 employees.

12 5. The purpose of the pilot program was to analyze the September 11 terrorist
13 connections so as to test the efficacy of the Thin Thread project. Under my direction, Thin Thread
14 was run on the NSA’s existing database of electronic communications. The pilot program revealed
15 the extent of the connections that the NSA had within its data prior to the attacks. The NSA found
16 the array of potential connections among the data that it already possessed to be potentially
17 embarrassing. To avoid that embarrassment, the NSA suppressed the results of the pilot program.
18 I had been told that the NSA had chosen not to pursue Thin Thread as one of its methods for
19 combatting terrorism. Instead, the NSA had previously chosen to delegate the development of a
20 new program, named “Trailblazer” to a group of outside contractors.

21 6. Trailblazer never worked. The NSA shelved the project in 2006 after spending at
22 least four billion dollars on it.

23 7. While I was not personally read into the PSP, various NSA employees who were
24 implementing various aspects of the PSP confided in me and told me that the PSP involved the
25 collection of domestic electronic communications traffic without any privacy protections or
26 judicial oversight.

27 8. To the best of my knowledge, the NSA does not have a means of analyzing all of its
28 Internet data for the purpose of identifying Entities or Communities of Interest in real time. The

1 NSA has the capability to do individualized searches, similar to Google, for particular electronic
2 communications in real time through such criteria as target addresses, locations, countries and
3 phone numbers, as well as watch-listed names, keywords, and phrases in email. The NSA has the
4 ability to do individualized or small scale searches for particular electronic communications in real
5 time. It also has, or is in the process of obtaining, the capability to seize and store most electronic
6 communications passing through its U.S. intercept centers. The wholesale collection of data allows
7 the NSA to identify and analyze Entities or Communities of Interest later in a static database.

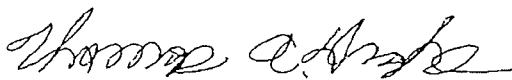
8 Based on my proximity to the PSP and my years of experience at the NSA, I can draw informed
9 conclusions from the available facts. Those facts indicate that the NSA is doing both.

10 9. I agree with the analysis and conclusions set forth in Mr. Binney's declaration,
11 particularly about the capabilities of the NARUS device. Like Mr. Binney, I have concluded that,
12 because the NSA did not have Thin Thread or, for that matter, a functional Trailblazer, the NSA
13 has chosen to seize and save all personal electronic communications.

14 10. Given a central database, the question becomes how the NSA and other federal
15 agencies (FBI, CIA, Homeland Security, etc.) use it. The data is searchable and available. There is
16 no effective technical oversight by Congress or the courts. It is seductively enticing to ignore the
17 law.

18 11. At some point prior to 2007, I became the target of a federal criminal investigation
19 into the leaks that lead to *The New York Times* article ("Bush Lets U.S. Spy on Callers Without
20 Courts") published on December 16, 2005. I was not the source for the article. As part of that
21 investigation, in November 2007, the FBI conducted an armed raid on my home. The raid was
22 apparently prompted by my involvement in reporting government waste to the Inspector General of
23 the Department of Defense. The waste involved in a project called "Trailblazer" which cost the
24 taxpayers over four billion dollars. I was eventually indicted for allegedly retaining allegedly
25 classified NSA documents. Those charges were dropped. Those events have nothing whatsoever to
26 do with the truth of the statements set forth above.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct. Executed on June 21, 2012 at Washington D.C.

3
4 

5 Thomas A. Drake
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

UNCLASSIFIED//FOR OFFICIAL USE ONLY

THOMAS A. DRAKE, Defense Intelligence Senior Executive Service (DISES)

CURRENT POSITION: Mr. Drake is an Assistant Professor of Behavioral Science and the designated NSA Chair at the Industrial College of the Armed Forces (ICAF), National Defense University (NDU) with a focus on strategic leadership in the areas of national security strategy, national security policy, decision making (including the critical role of intelligence), as well as performance leadership and development. He also serves as part of the NDU Intelligence Team.

EDUCATION: Mr. Drake graduated from the Community College of the Air Force in 1985 with an Applied Science degree in Interpreting and Translating. He also graduated from the University of Maryland, University College, European Division in 1986 with a BA degree majoring in Government and Politics. He also graduated from the University of Arizona in 1988 with an MA degree in International Relations with a focus on National Security Policy. He received an advanced certificate from the University of Maryland, Baltimore County in 1997 for American Public Policy with a focus on the Decision Sciences as part of a PhD program. In 2005, he received a graduate certificate in Software Engineering Administration from Central Michigan University as part of an MS in Administration program.

PRIOR POSITIONS: Previously, Mr. Drake was the Distributed Workforce Advocate and the Process Portfolio Manager in the Directorate of Engineering and the earlier Unified Cryptologic Architecture Office (UCAO) at NSA. In these roles, he served and supported the needs of an enterprise-wide systems engineering workforce as an advocate in a dynamic, network-centric, peer-to-peer environment through a focus on people, performance and productivity via collaboration, communications, and connections via an enterprise-wide 'intellectual capital network' with its systems engineering partners and customers.

Mr. Drake also led an enterprise-level team responsible for implementing systems and software engineering and project management process, practice, and discipline. The fundamental objective was improving NSA/CSS's capability to deliver on time, cost effective, functionally fit, high performance products and services that met customer requirements and expectations in a high tempo, dynamically changing environment. He also had an assignment as the Technical Director for Software Engineering Implementation in the former NSA/CSS Cryptologic Systems and Professional Health Office (CSPHO) at NSA and was the NSA/CSS Signals Intelligence Directorate Senior Change Leader and Chief of their Change Leadership and Communications Office focused on communications and culture change plus leadership decision making, accountability and workforce advocacy.

PROFESSIONAL BACKGROUND: Prior to joining the NSA, Mr. Drake held senior positions in private industry as a principal, technology consultant/contractor and manager. Other career highlights include an assignment at the Central Intelligence Agency (Directorate of Intelligence) and active duty military service as an aircrew member (7 years) with the U.S. Air Force's Tactical Air Command and former Electronic Security Command. Mr. Drake was also a Naval Reserve Intelligence Officer assigned to the National Military Joint Intelligence Center (NMJIC).

PERSONAL: Mr. Drake resides in Glenwood, Maryland. He enjoys collecting classic computers, playing chess, running and gardening, hiking and camping, as well as driving his all-electric vehicle.

Data as of January 2007

UNCLASSIFIED//FOR OFFICIAL USE ONLY

UNCLASSIFIED//FOR OFFICIAL USE ONLY

(U//FOUO) THOMAS A. DRAKE, DISES

(U) MAJOR ASSIGNMENTS

2006-Present	(U) Professor and NSA Chair, Industrial College of the Armed Forces (ICAF), National Defense University (NDU), Ft. McNair
2006 - 2006	(U) Distributed Workforce Advocate, Associate Directorate of Engineering (DE), NSA/CSS
2003 - 2006	(U) Process Portfolio Manager, Directorate of Engineering (DE), Unified Cryptologic Architecture Office (UCAO), NSA
2002 - 2003	(U) Technical Director, Software Engineering Implementation, Cryptologic Systems and Professional Health Office (CSPHO), NSA
2001 - 2002	(U) Senior Change Leader/Chief, Change Leadership & Communications Office, Signals Intelligence Directorate (SID), NSA
2000 - 2001	(U) Principal, Industry Management Consultant/Quality Engineering Specialist, Integrated Computer Concepts, Inc. (ICCI)
1998 - 2000	(U) Management & Information Technology Consultant, Coastal Research and Technology, Inc. (CRTI)
1992 - 1997	(U) Naval Reserve Intelligence Officer, National Military Joint Intelligence Center, Defense Intelligence Agency, U.S. Navy
1991 - 1998	(U) Senior Associate/Management and Technology Consultant, Worldwide Technology Business, Booz Allen Hamilton
1989 - 1991	(U) Technical Staff, Government Systems Corporation, GTE
1989 - 1989	(U) Intelligence Research Specialist/Imagery Analyst, National Photographic Interpretation Center, Directorate of Intelligence, CIA
1985 - 1989	(U) Mission Crew Supervisor/Operator on EC-130H COMPASS CALL, 41 st Electronic Combat Squadron, Tactical Air Command, USAF, Davis-Monthan Air Force Base, Tucson, Arizona
1981 - 1985	(U) Cryptologic Linguist/Aircrew member on RC-135 RIVET JOINT, 6988 th Electronic Security Squadron, Electronic Security Command, USAF, RAF Mildenhall, England

Data as of January 2007

UNCLASSIFIED//FOR OFFICIAL USE ONLY