

**00062**

**1986/05/30**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MARYLAND

FILED

MAY 18 1987

US COURT OF APPEALS  
Fourth Circuit

3 United States of America

4 vs.

Criminal No. HM-85-0621

5 Ronald William Pelton

~~85-0621~~

6 Baltimore, Maryland

7 May 30, 1986

FILED

OCT 18 1989

MORNING SESSION

U.S. Court of Appeals  
Fourth Circuit

8 BEFORE: His Honor, Herbert F. Murray, at 10:00 o'clock a.m.

9 APPEARANCES

89-6779

89-6855

No. U.S. Court of Appeals  
FOR THE FOURTH CIRCUIT

10 For the U.S.A.:

11 John G. Douglass

12 and

13 Robert McDonald

14 For the Defendant:

15 Fred Warren Bennett

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LODGED \_\_\_\_\_ RECEIVED \_\_\_\_\_

17 DEC 21 1986

18 AT BALTIMORE  
CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

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BY

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19 106

20 VOL. 7

1 Valois and myself.

2 Q By the two of you and he served approximately one year,  
3 more or less?

4 A That is a guess, yes. I am not sure of the time.

5 MR. BENNETT: That's all I have.

6 MR. MCDONALD: No further questions.

7 THE COURT: Thank you. You can step down. After you  
8 leave don't discuss your testimony with any other witness.

9 MR. DOUGLASS: Your Honor, the government calls Mr.  
10 William Crowell.

11 WILLIAM CROWELL, Government's witness, sworn.

12 THE CLERK: Take the witness stand. Please state  
13 your full name and spell your full name for the record.

14 THE WITNESS: William Perry Crowell.

15 MR. DOUGLASS: Your Honor, before we begin I will  
16 have marked for identification Government's Number 27, 29, 25,  
17 and 28.

18 THE CLERK: Government's Exhibit Number 25, 27, 28  
19 and 29, marked for identification.

20 DIRECT EXAMINATION

21 BY MR. DOUGLASS:

22 Q Mr. Crowell, how are you employed?

23 A Employed at the National Security Agency.

24 Q How long have you been at NSA?

25 A In July, 24 years.

1 Q 24 years?

2 A Yes.

3 Q So you began in 1962?

4 A That is correct.

5 Q During your tenure at NSA have you held a security  
6 clearance?

7 A Yes, I have held a top secret clearance along with access  
8 to special compartmented information.

9 Q What is your current position?

10 A I am chief of the operations analysis group at NSA and  
11 charged with the collection analysis and reporting of  
12 information derived from Soviet signals.

13 Q That is the Soviet Union?

14 A That is correct.

15 Q Roughly, how many employees do you supervise or are you  
16 responsible for in that position?

17 A In the operations at NSA and the world-wide collections  
18 operation several thousand.

19 Q And would you give the jury a rough idea of the amount of  
20 money that is involved in the budget for that?

21 A Several hundred million-dollar per year.

22 Q Now could you explain to the jury generally what are the  
23 missions of NSA? And I understand for demonstrative purposes  
24 you have a graphic that assists that demonstration?

25 A May I?

1 Q Yes. We have a graph I believe that has been marked for  
2 identification as government's 29 for demonstrative purposes  
3 only.

4 MR. BENNETT: I don't have I any problem if he wants  
5 to move their admission now. Either way.

6 MR. DOUGLASS: I don't intend to offer them at all.  
7 Just for demonstrative purposes. I believe there is a pointer  
8 that you might want to use there.

9 A National Security Agency has three major missions:

10 One of those is to provide for techniques and  
11 equipment for securing computer systems against illegal and  
12 unauthorized access, both systems and the information within  
13 the computers.

14 The second mission is the computer -- I am sorry  
15 the communications security mission. Again, to provide the  
16 techniques and the equipment to protect U.S. communications  
17 and the information in those communications from unauthorized  
18 countries and intercept of our communications.

19 The third missions is the signals intelligence  
20 mission which is to intercept and exploit foreign  
21 electromagnetic radio radar and other transmissions, and it is  
22 in this mission that we attempt to produce the intelligence  
23 from those signals for use by the leaders of the military, the  
24 leaders of the country, and other intelligence agencies.

25 Q Is there an abbreviation usually used to describe the

1 signals?

2 A Yes, SIGINT. And you will probably hear me refer to it a  
3 few times.

4 Q SIGINT?

5 A Yes.

6 MR. DOUGLASS: Thank you, Mr. Crowell. Your Honor, I  
7 noticed from that end of the jury box it is difficult to read.  
8 With Your Honor's permission I may move this further in this  
9 direction.

10 THE COURT: Yes.

11 Q Mr. Crowell, can you see the whole jury from there?

12 A Not quite.

13 MR. DOUGLASS: Your Honor, I will go back to where I  
14 started from, with apologize to the jury on the far end.

15 Q Now, Mr. Crowell, the particular group at NSA that you are  
16 responsible for is involved in the SIGINT mission, is that  
17 correct, the Signals Intelligence Mission?

18 A That is correct.

19 Q And that would be targeted at the Soviet Union?

20 A Correct.

21 Q Is a principal focus of that Signals Intelligence  
22 Operation the military activities of the Soviet Union?

23 A It is one of the principal focusses.

24 Q Now is NSA a division of the Department of Defense?

25 A Yes.

1 Q And it is headquartered at the old Ft. Meade?

2 A Yes.

3 Q And who is the director of NSA?

4 A The director is Lt. General William Odom.

5 Q That is an army general?

6 A Yes, three stars.

7 Q Is a security clearance required for employment at NSA?

8 A Absolutely. All of our personnel must possess a top  
9 secret clearance, and in addition they all must of access to  
10 the special compartmented information in communications  
11 intelligence.

12 Q Are there security indoctrination programs that accompany  
13 the obtaining of those security clearances that are to be  
14 employed at NSA?

15 A Yes.

16 Q Would you explain to the jury what the indoctrination  
17 programs entail?

18 MR. BENNETT: Object to this, Your Honor. The  
19 security oaths of Mr. Pelton are in evidence already.

20 THE COURT: Overruled.

21 A The security indoctrination includes both verbal  
22 instruction on signals intelligence, operations, and its  
23 vulnerabilities and fragility. It includes written oaths that  
24 are taken to protect that information and to prevent  
25 disclosures that would damage the effectiveness of Signals

1 Intelligence Operation.

2 Q Are there certain physical security measures that are  
3 taken in the area of Ft. Meade as well?

4 A Our buildings in Ft. Meade are surrounded by fences, they  
5 are protected by Federal Protective Service guards, we have a  
6 computer controlled badge entry points in addition to the  
7 guards, and there are within the facility special areas in  
8 which only selected people may enter.

9 Q Now, Mr. Crowell, turning to your own background, would  
10 you tell us do you have a college degree?

11 A Yes, I have a bachelors degree from Louisiana State  
12 University.

13 Q When did you obtain that degree?

14 A In 1952.

15 Q And in what field is that?

16 A Political science.

17 Q Did you also about that time engage in work yourself as an  
18 electronics technician?

19 A Prior to entering the National Security Agency I had  
20 experience as an electronics technician in several other  
21 engineering systems.

22 Q You entered NSA, I believe, you indicated previously in  
23 1952, is that correct?

24 A That is correct.

25 Q Would you describe to the jury some of the positions that



1 you have held at NSA since that time that relate to signals  
2 intelligence?

3 A Yes. From 1969 until 1973 I was a special assistant in  
4 the office of the director of NSA, in 1973 and until 75 I was  
5 a staff officer in the organization at the, in the  
6 organization that I now head, that is, the organization  
7 concerned with Soviet signals. In that position I ran several  
8 collection analysis and reporting projects, special projects.  
9 From 1975 until 1977 I was the deputy chief, but for much of  
10 that time acting chief because of the illness of the chief, of  
11 an organization concerned with signals intelligence operations  
12 in the intelligence counter-intelligence arena.

13 Q What is counter-intelligence?

14 A That is the area of intelligence work in which you attempt  
15 to find out about the operations of foreign agents.

16 Q Please continue. Were there other positions that you have  
17 held relating to signals intelligence?

18 A From 1977 until 1980 I was the chief of the operations  
19 staff for the organization charged with the exploitation and  
20 reporting of signals, of information from signals intelligence  
21 on the Soviet military. From 1980 to 1982 I was deputy chief,  
22 and again acting chief because there was no chief at the time,  
23 of a research and development organization charged with the  
24 development of tactical signals intelligence systems.

25 Q What is tactical mean?

1 A In this context it means primarily mobile systems,  
2 aircraft, ground mobile systems, and ships, that could be used  
3 to collect signals.

4 Q And following that position any other positions relating  
5 to signals intelligence?

6 A From 1983 until 1985 I was chief of another operations  
7 analysis group concerned with electronic intelligence, that  
8 is, intelligence derived from radar signals, telemetry  
9 intelligence, and signals analysis of new signals.

10 Q And following that you assumed your current position?

11 A In 1985, approximately mid-1985, July 1985.

12 Q Is it accurate to say, Mr. Crowell, that in your present  
13 position you are the chief of the United States Signals  
14 Intelligence effort targeted at the Soviet Union?

15 A I believe that is correct, yes.

16 Q Have you had occasion in your present position and in your  
17 previous positions to teach or brief classes in the area of  
18 United States Signals Intelligence?

19 A I have regularly briefed some of our senior cryptologic  
20 courses, these are courses that train our senior and middle  
21 level technical directors and executives, including people  
22 from other intelligence agencies in signals intelligence, and  
23 I have also briefed other groups in other parts of the  
24 government, State Department and CIA and other agencies.

25 Q I take it it was a classified briefing?

1 A That is correct.

2 Q They are not available and open to the public?

3 A They are not open to the public.

4 Q In your present position have you had occasion to brief  
5 high ranking officials in the United States Government  
6 regarding the Signals Intelligence activities of the United  
7 States targeted at the Soviet Union?

8 A Yes. I regularly brief many different officials within  
9 the government. Within the Department of Defense I briefed  
10 Secretary Wineberger and other officials below him. Within  
11 the CIA I briefed Mr. Casey and many of his deputies, and many  
12 other officials below them. And I have briefed many military  
13 senior officers who are commanders in chief of operating  
14 forces or other high level military positions.

15 MR. DOUGLASS: At this time, Your Honor, I would  
16 proffer Mr. Crowell as an expert in the United States Signals  
17 Intelligence directed at the Soviet Union.

18 MR. BENNETT: No objection.

19 THE COURT: Do you have any questions on voir dire?

20 MR. BENNETT: No.

21 THE COURT: Let me just explain very briefly, members  
22 of the jury, the witness has just been qualified as an expert.  
23 The only difference between an expert and a lay witness is  
24 that the expert is permitted to express opinions and the  
25 reasons for the opinions he may have. Go ahead.

1 MR. DOUGLASS: Thank you, Your Honor.

2 Your Honor, I am going to ask Mr. Crowell to come  
3 toward of the jury here for a moment, and since he will be out  
4 of the witness stand for a few minutes I think it may make  
5 since to do what I was proposing before, which is to move  
6 this.

7 Now, Mr. Crowell, I think I will ask you to bring the  
8 point to and come up in this direction.

9 Q I would like for you, if you could, Mr. Crowell, to  
10 explain to the jury to aid the understanding of the Signals  
11 Intelligence process, and I will ask first if that is high  
12 enough?

13 MR. DOUGLASS: And, Your Honor, since you are  
14 blocked, this is Government's Exhibit Number 27, for  
15 identification and demonstrative purposes.

16 THE COURT: Thank you.

17 Q Mr. Crowell, I would like you to explain to begin with to  
18 the jury some of the basic terminology and basic facts about  
19 how military organizations communicate with one another?

20 A Well, I will divide this into three distinct parts. The  
21 first part is the type of communications that people may want  
22 to use. Most of you are familiar with telephones. Now more  
23 people are familiar with Teletype. There are additional other  
24 types of communication such as facsimile, which send pictures,  
25 and other types.

1           In addition there are the means of communications.  
2           There are many different ways in which you can communicate.  
3           They are: Radio, the radio can be relayed through something  
4           else such as through a communications satellite, or even as  
5           you were shown on Tuesday during the playing of the tapes,  
6           they can be relayed on a beam of light as was done in the  
7           courtroom here on Tuesday.

8           The final category within the system of communicating  
9           in military circles is to determine the kinds or method of  
10          securing of the communications. There are many choices there.  
11          You can choose not to secure the communications, talk in open  
12          voice, you can use offline equipment, that is, equipment in  
13          which you write your message, and then you do something to it  
14          with pen and paper, or with other means, to transform it into  
15          an unintelligible system, or you can use a machine, and  
16          electronic machine in these days, that will on line, that is,  
17          as the transmission occurs incrypt those communications, turn  
18          them into meaningless streams of data, or as many of you have  
19          heard scramble the data.

20          Q    Are there many difference kinds of systems that would do  
21          that?

22          A    Yes, there are quite a large number of means and methods  
23          of incrypting data.

24          Q    And would the different types of systems produce different  
25          types of signals?

1 A Yes.

2 Q Are there also means and methods that are employed in  
3 military organizations to make it difficult to collect the  
4 signals actually collected?

5 A Yes. For example, the frequency that you choose for the  
6 method of transmission can have a very very, can make the job  
7 of intercepting the signals very difficult. Now I will give  
8 you an example, most of you have heard a HF radio, a high  
9 frequency radio as in short wave. Those signals because they  
10 bounce back and forth from the ionosphere back to the earth  
11 can travel very long distances, can travel around the world  
12 depending on the frequency and the time of day.

13 Similar in the VHF, very high frequency, or the UHF  
14 ultra high frequency range do not travel very long distances  
15 on earth because they travel in straight lines and they  
16 penetrate the ionosphere. So, for example, if you were to try  
17 to listen to a TV broadcast from Chicago when you are in  
18 Washington, D.C. it won't work. And that's why Channel 2 in  
19 one place can be reused as Channel 2 or Channel 4 or whatever  
20 in another place and not be interfered.

21 In addition, you can narrow the beam width using  
22 different kinds of antennas, you can make the signal hard to  
23 find simply because it was not easily identified or it is very  
24 short or what have you.

25 So there are many different ways of making this job

1 of intercepting of the signal extremely difficult, and many of  
2 these ways are totally exclusive as to whether or not the  
3 signal is incryptive or not.

4 Q What do you mean by the term communications link as you  
5 have discussed in communicating?

6 A In the simplest terms it is one person or terminal  
7 communicating with another terminal. In actual fact it can be  
8 more complicated than that. There can be many intermediate  
9 terminals, there can be many conversations between two points  
10 with some of those conversations being sent to intermediate  
11 places along the path, but essentially it is two points  
12 talking to each other.

13 Q And, Mr. Crowell, you began to describe earlier the  
14 intelligence process that involves the interception of such  
15 signals and attempts to abstract data from them, is that  
16 correct?

17 A That is correct. Essentially, the intelligence job is to  
18 put yourself in a position to be able to intercept, to  
19 collect, the energy between the two terminal points,  
20 regardless of the means of transmission, whether it is light,  
21 radio waves, or any of the other means that I talked about.  
22 Proximity or, in other words, getting to where you can collect  
23 the signals is a very important part of the process.

24 Q Now there are a number of elements of the Signals  
25 Intelligence process, and I understand, Mr. Crowell, you have

1 a graph to assist in the explanation of that.

2 MR. DOUGLASS: And, Your Honor, for identification  
3 purposes that's government's 29, for identification.

4 THE COURT: Yes.

5 Q And using that, if you would, Mr. Crowell, I would like to  
6 ask you to explain to the jury the general elements that go  
7 into the Signals Intelligence process?

8 A What I will try to do is you can walk you through the  
9 process from the beginning to the end. But notice it is a  
10 never ending process. The first part of the process is the  
11 collection of requirements, that is, the finding out what  
12 information the U.S. Government, its military, its policy  
13 makers, and other intelligence agencies need. This is an  
14 important step, because at any given moment there are hundreds  
15 of thousands of transmissions on the air, and it is too  
16 expensive to collect all of them. So you need to know what  
17 you are going after.

18 The requirements are stated in terms of information.  
19 Between the requirements and collection then you must take the  
20 step of selection of which of these requirements you believe  
21 you can satisfy by collecting signals, radars communications  
22 signals and other kinds of signals. That is based on a number  
23 of factors: One is are the signals out there; another is if  
24 they are out there can you collect them; another is if you can  
25 collect them can you exploit them.



1           Collection is the act of actually bringing the  
2 signals in through an antenna and a receiver to a device that  
3 can detect those and can allow you to listen or to record  
4 them. In many many cases the signals are collected and  
5 recorded so that the following process can occur.

6   Q   I might interrupt you for just a moment, Mr. Crowell. For  
7 demonstrative purpose as well I believe we have a photograph,  
8 and, that is, Government's Exhibit Number 25, I show that to  
9 the Court.

10           Since we only have one easel I guess I will be the other  
11 easel. Will you explain to the jury what is depicted in the  
12 photograph, Government's Exhibit Number 25?

13   A   The photograph depicts intercept operations actually under  
14 way at a SIGINT site somewhere in the field. Military  
15 personnel there are operating radios and listening to signals  
16 and trying to identify those signals, and the ones that we are  
17 interested in we collect them or put them on tape, or as I  
18 will explain next to forward them on to other centers for the  
19 collection process.

20   Q   Mr. Crowell, also for identification Government's Exhibit  
21 Number 26.

22           THE CLERK: Government's Exhibit Number 26, marked  
23 for identification.

24   Q   To aid in your demonstration of what Signals Intelligence  
25 is all about have you prepared a tape?

1 A Yes, I have.

2 Q And that is Government's Exhibit Number 26?

3 A Yes.

4 Q And does that contain some samples of what signals would  
5 sound like as of the point at which they are intercepted?

6 A There are four samples on the tape of signals just as  
7 these people would hear as they were conducting the intercept  
8 operation.

9 MR. DOUGLASS: Your Honor, at this time I would  
10 propose to play that tape.

11 THE CLERK: Do you want to admit that in evidence,  
12 the tape?

13 MR. DOUGLASS: Again, for demonstrative purposes.

14 Mr. Crowell, as soon as we solve our technical  
15 problems we will play the tape.

16 (The tape was played.)

17 THE WITNESS: First signal is a manual Morse signal,  
18 and if you have used a short wave radio you have probably  
19 heard many of these.

20 (The tape was played.)

21 THE WITNESS: The second signal is a radio printer.  
22 We call it a Teletype, and that was a single channel Teletype,  
23 one signal one Teletype operation going on between two points.

24 You want me to explain it before of the next one  
25 comes up? I can do that. The next signal that will come up

1 is a multi-channel printer, that is, several printer streams  
2 all operating on the same signal, so that you can send many  
3 different pieces of information simultaneously on the same  
4 signal.

5 Q And, Mr. Crowell, just to aid the understanding of that,  
6 the signal that the jurors will be about to hear would be one  
7 that would be transmitted from some terminal where someone  
8 might be typing information in a written or computerized form  
9 that would come out the other end in a written or computerized  
10 display form?

11 A That is absolutely correct.

12 (The tape was played.)

13 A As you can see there is a distinctive difference and the  
14 operators are charged with going out after that kind of signal  
15 can learn to appreciate that difference.

16 The next one is a facsimile signal, that is, a signal  
17 which is used to transmit pictures from one place to another.  
18 In the old days we called it wireless photo. Now we call it  
19 facsimile.

20 (The tape was played.)

21 THE WITNESS: It is one of my favorite signals. It  
22 has a very distinctive character.

23 MR. DOUGLASS: It sounds a little like knocking on a  
24 wall.

25 THE WITNESS: Should I?

1 Q If you would, at this point, continue, I believe we were  
2 at the point where you were discussing the collection process?

3 A People that are depicted in this picture perform selection  
4 operations. There are many different kinds of collection  
5 operations but essentially the job is to capture those kinds  
6 of signals, either on tape or electronic form in which they  
7 can transmitted to another center for process.

8 There is a step, of course, that I just mentioned is  
9 forwarding the signals. Not all signals have to be forwarded  
10 somewhere else. In some cases at the point of collection they  
11 can do their own processing so there is no forwarding  
12 collection. A lot of the signals have to be processed at the  
13 processing center, such as the center at the NSA. At that  
14 point there is a step of turning the raw signal, which you  
15 have heard, into a form in which it can be analyzed. And if  
16 you take the Teletype as an example it turns that series of  
17 tones that you have heard into alphabetic characters so that  
18 it can be load at at analyzed.

19 The next part of the process is a very important  
20 part, that is, the analysis of the information derived from  
21 the signals to determine whether it has intelligence data.  
22 But I want you to be sure you understand is that that analysis  
23 process involves several steps and it involves several  
24 different kinds of analysis.

25 One of those we call traffic analysis, that is,

1 essentially to look at the external characteristics of a  
2 signal and determine a couple of factors: Where it was sent  
3 from, and that can be done through a number of different  
4 means, including things like direction finders, which you  
5 probably heard of; if possible who sent it, that is not always  
6 possible; and by looking at the signal for a long time  
7 determining what is happening with that signal.

8           The first thing you know is if you got the signal you  
9 know that that person is doing something, they are  
10 communicating. If they communicate for a long time they are  
11 doing a lot of something, and if they move around during the  
12 time they are communicating they are in military terms  
13 maneuvering, that is, they are moving from one point to  
14 another and that is essentially a movement of forces if you  
15 have a lot of those signals.

16           The second kind of analysis is cryptanalysis, that  
17 is, the process of attempting to in lay terms break the  
18 signal, that is, to take an incryptic signal and return it to  
19 an intelligible form. That is a very difficult process. It  
20 is not required that that process occur for you to get value  
21 from signals that are transmitted, but obviously if you are  
22 successful there is added value.

23           And the final part of the analysis process what we  
24 call intelligence research analysis, that is, taking the bits  
25 and pieces of information from all of the signals that were

1 collected in some given period of time and putting those  
2 pieces together so that they form a mosaic of an intelligence  
3 signal report. For example, several signals occurring at the  
4 same time may mean that there is a unit active. If there is a  
5 move it means that that unit is maneuvering, and fitting all  
6 that together is the analysis process.

7 The final act is reporting that data, that means  
8 turning the data into a form that the people can read and  
9 understand instead of this gibberish that I have just been  
10 going through, making it sound like data that was required  
11 instead of like a bunch of signals. And the very important  
12 ingredient in reporting is timeliness. It does no good to  
13 report a military unit move to a border, for example, five  
14 days ago. On other intelligence requirements though old data  
15 may be valuable. And, for example, the weapons that that unit  
16 uses maybe valuable for a long time, a year or two years later  
17 can be a factor.

18 Q Thank you. I think at this point you can return to the  
19 witness stand.

20 I will ask you, Mr. Crowell, are you aware of an  
21 unclassified example, something that is available to the  
22 general public, that would summarize or analogize the signals  
23 intelligence process?

24 A I think a very good analogy, one that a lot of private  
25 citizens are interested in today is the intercept or

1 collection, if you will, of satellite TV signals. Some time  
2 ago companies involved in forwarding television programs from  
3 the center where they were made to all of the TV stations  
4 around the country decided to use satellites to forward those,  
5 and there has grown up in the back yards of America literally  
6 thousands of dishes, these large circular things that  
7 essentially are being used by private citizens, if you will,  
8 to intercept or to collect signals that were not originally  
9 intended, certainly not being broadcast specifically for them.

10 To analogize the incryption process, recently many of  
11 those private citizens have been surprised to see their  
12 favorite movie appearing on the screen in a somewhat  
13 unintelligible and unrecognizable form. In other words,  
14 scrambled signals. And some enterprising private citizens  
15 have worked very diligently to attempt to make those pictures  
16 and the words with them intelligible. And that is the analogy  
17 to exploitation, if you will, one kind of exploitation.

18 I think that is a pretty fair example of the whole  
19 process that I was talking about.

20 Q Now how is it, Mr. Crowell, that this Signals Intelligence  
21 process that you have just described is of value to the  
22 national defense of the United States?

23 A The information that we collect is first of all directly  
24 from the people that we were trying to understand in terms of  
25 their military posture, the disposition of their forces, the

1 activities of those forces, the training of those forces, and  
2 the weapons that they use. The information is also in most  
3 cases very timely and, therefore, can be used for warning of  
4 U.S. military forces of changes in the targets state of  
5 readiness. It is also very useful for making a threat  
6 assessment of the future preparations of military forces for  
7 future use.

8 Q Could you provide us with some samples of the sort of  
9 value that the Signals Intelligence process can provide to the  
10 United States military forces.

11 MR. BENNETT: Objection, I think it should be related  
12 to the specific projects involved in his this case.

13 THE COURT: Overruled.

14 A I will give you two historical examples of the value of  
15 signals intelligence to U.S. military operations. In May of  
16 1942 as a result of U.S. ability to decipher the Japanese  
17 naval operations Code JN25, the U.S. SIGINT authorities at  
18 that time were able to provide to Admiral Nesbit a complete  
19 plan for Admiral Yamamoto's invasion of Ft. Morsby (phonetic)  
20 in New Guinea. General Nesbit was able to position his rather  
21 meek forces in the Floral (phonetic) Sea, and essentially  
22 thwart the invasion of the Japanese of Ft. Morsby.

23 The following month he was also able to use similar  
24 information about the plans of the Japanese to invade or to  
25 destroy the U.S. Fleet, rather, at Midway to plan again his



1 strategy and his naval operations, and it was at that point  
2 that he virtually destroyed with a much inferior force,  
3 virtually broke the back, if you will, of the Japanese fleet,  
4 and from that time on the Japanese were in a defensive posture  
5 for the remainder of World War II.

6 Q Now is the value of that kinds of Signals Intelligence to  
7 the military organization diminished when the nature of our  
8 Signals Intelligence Operations becomes known to the target  
9 nation?

10 A Absolutely. And it doesn't have to be complete details  
11 either. For example, just a very short time after the battle  
12 of Midway a correspondent, a work correspondent for the  
13 Chicago Tribune forwarded a dispatch which was printed --

14 MR. BENNETT: I object to this as hearsay.

15 THE WITNESS: It is documented.

16 MR. DOUGLASS: Mr. Crowell.

17 Q Mr. Crowell, the question would be: Can you provide us an  
18 example of that type of diminished value?

19 MR. BENNETT: And I still have the same objection.  
20 He is relating an out of Court incident without a foundation,  
21 without enabling me to test on cross-examination this  
22 declarant.

23 THE COURT: Overruled.

24 A To continue the example, the information that was  
25 published strongly hinted that the success of the U.S.

1 operations in the Battle of Midway were related to our ability  
2 to read the Japanese codes, specifically, the Japanese Naval  
3 Operations Code. Just a few days before this was revealed the  
4 Japanese had changed their code, as they normally did before a  
5 major operation, and they usually left those codes in  
6 operation for six months or more. At about this same time the  
7 U.S. began a major operation in the invasion of Guadal Canal.  
8 In August the Japanese changed the Code JM25 --

9 MR. BENNETT: Your Honor, just so I won't have to get  
10 up and down may I have a continuing objection to this specific  
11 example in this entire area right here?

12 THE COURT: Yes.

13 MR. BENNETT: Thank you.

14 A And by the end of September they had changed virtually all  
15 of the codes that were then in use by their military forces in  
16 the Pacific. Though, there is not a definite proof that the  
17 Japanese used the information, it certainly gave them an  
18 opportunity to know that they were vulnerable. And it was  
19 unprecedented that they would change all of their  
20 communications codes so rapidly after a regular change.

21 Q Now, Mr. Crowell, you were present in the courtroom for  
22 the testimony of Mr. Donald Bacon and Mr. Hubert Atwater  
23 earlier in this case, is that correct?

24 A That is correct.

25 Q And you are perfectly familiar by virtue of your

1 employment in NSA to the project which for purposes of this  
2 case we call Project A?

3 A Yes, I am.

4 Q Is that a Signals Intelligence Project of the United  
5 States targeted at the Soviet Union?

6 A Yes, it is.

7 Q Is that project classified?

8 A Yes, it is classified top secret. And compartment.

9 Q And would you define for the jury when it means a project  
10 is classified top secret?

11 A According to Executive Order 12-355 the transfer of this  
12 information or the unauthorized disclosure of which could  
13 cause extensive and grave damage to the national security.

14 Q Would you tell the jury generally the nature of that  
15 project?

16 A It was a set of equipment used to collect the  
17 transmissions of a particular communications link.

18 Q A particular link?

19 A That is correct.

20 Q And that would involve Soviet communications, is that  
21 correct?

22 A That is correct.

23 Q Was that project deployed as of January 15, 1950?

24 A Yes, it was.

25 Q As of that point in time did it provide valuable

1 information to the United States?

2 MR. BENNETT: Objection. Leading.

3 THE COURT: Sustained.

4 Q As of that time did it provide information?

5 A It provided information.

6 Q Generally, what value was that information?

7 A It was information that gave us an insight into military  
8 forces, the relative sizes, their plans for maneuvers, or  
9 training, and a considerable amount of information about their  
10 overall capabilities.

11 Q Now you were in the courtroom the other day when Mr. Bacon  
12 and Mr. Atwater testified about particular positions that Mr.  
13 Pelton had held at NSA, is that correct?

14 A That is correct.

15 Q And by virtue of your employment in NSA in the group  
16 targeted the Soviet Union are you also of your own experience  
17 familiar with the nature of the job of individuals who would  
18 hold similar positions?

19 A Yes, I am. I have held such positions in my own time in  
20 NSA and I am now supervisor to people in those positions.

21 Q Now, Mr. Crowell, in your opinion, would a reasonable  
22 person having occupied the positions that Mr. Pelton occupied,  
23 have reason to believe that the disclosure of the information  
24 relating to the location of the collection system of Project  
25 A, would such a person have reason to believe that the

1 disclosure of that location would be used to the advantage of  
2 the Soviet Union and to the harm of the United States?

3 MR. BENNETT: Objection both to form and substance  
4 and can we approach the Bench?

5 THE COURT: Yes.

6 (The following proceedings were had at the Bench out  
7 of the hearing of the jury with the defendant present:)

8 MR. BENNETT: First, just to make sure the record is  
9 crystal clear, could Mr. Douglass, can I have the question so  
10 that I can pierce it part by part?

11 MR. DOUGLASS: Sure. The question was: In his  
12 opinion, would an individual having occupied the position Mr.  
13 Pelton occupied have reason to believe that disclosure of the  
14 location of the collection system Project A would be used to  
15 the injury of the United States and to the benefit of the  
16 Soviet Union.

17 MR. BENNETT: I don't think it is the same question  
18 that he posed. It is not the same question that he posed.  
19 And I would like to I ask the reporter to read it back.

20 MR. DOUGLASS: I will ask it the way I just asked it  
21 then.

22 MR. BENNETT: The question you posed included  
23 reasonable person. So you are dropping that from it?

24 MR. DOUGLASS: Take your pick.

25 MR. BENNETT: That was part of it.

1 First, let me put on the record my objections as to  
2 the substance of the area, this is a matter that we discussed,  
3 as Your Honor will remember, in chambers late last Friday, as  
4 to one of the areas that I knew would be up coming. As Your  
5 Honor will remember we talked first about the 302 and then two  
6 other areas, one which I understand the government, Stucky,  
7 (phonetic) is not pursuing.

8 MR. DOUGLASS: No.

9 MR. BENNETT: That is sort of moot.

10 This was whether or not this expert would have been  
11 allowed to render an ultimate opinion in the area of  
12 potential damage. Based on my objection that, first of all,  
13 as Your Honor is aware the essential elements of this crime,  
14 that is, Counts 2, 3 and 4, of the indictment, being espionage  
15 charge, 794, do not deal with and do not have as an element  
16 potential damage. The question is state of mind of the  
17 defendant, whether or not he knew or had reason to believe, or  
18 intended, or had reason to believe that it would injure the  
19 United States, or aid a foreign nation.

20 So you are allowing the jury to hear expert testimony  
21 on a non-element of the crime which, we submit, would be  
22 extremely prejudicial under Rule 403, outweighs its probative  
23 value because there is a multitude of other evidence in this  
24 case from Bacon, from Atwater, from the defendant's alleged  
25 statements, from the amount of money that he allegedly

1 received, that any reasonable juror could conclude without the  
2 aid of expert testimony, which is is one of the bases that you  
3 have to reach under 700 hundred series of the Rules of  
4 Evidence, would it appreciably aid the jury. They don't need  
5 this to make a determination as to whether or not the  
6 defendant knew, or would have had reason to believe, that it  
7 would have injured the United States, or aided a foreign  
8 nation.

9           The first way I suggest Your Honor has to analyze it,  
10 and I am not, believe me, I am not trying to, don't mean to  
11 lecture you, but I think you have to analyze it first under  
12 700, whether or not it would be helpful to the jury, to a  
13 layman reaching a determination. In this case, in the light  
14 of all the other evidence that has gone on before this and  
15 too, assuming that it meets that test, and it would be the  
16 subject matter of expert testimony, which I agree on this  
17 evidence it would be permitted if allowed to render the  
18 opinion.

19           Then you have whether or not under Rule 403 the  
20 prejudice outweighs the probative value. And there I focus on  
21 my argument, in fact, that if it is not an essential element  
22 of the crime that it would be extremely prejudicial to the  
23 defendant, since the defense here is the defendant's state of  
24 mind and not whether or not it would potentially injure.

25           Now that is my specific objection to any opinions in

1 any of these in this area. And I have a separate objection to  
2 this question as phrased with the use of the word "would".  
3 Because the test, if any, assuming that you are going to allow  
4 it at all, is not would but could, and also the reasonable  
5 person. I think he framed it a little better on his, he  
6 framed it all right the first time, I think he framed it  
7 better the second time here at the Bench. I object to the use  
8 of the term reasonable person, and on would as opposed to  
9 could as to form.

10 And my main objection, I don't want to appear that I  
11 want to backslide and agree to a change or anything else, my  
12 main objection is to the substance of the area.

13 MR. DOUGLASS: Your Honor, I guess I am a little  
14 surprised at the objection to the phrasing of the question  
15 because I thought I took it out of Mr. Bennett's Proposed Jury  
16 Instructions on this element of the crime. The issue, as Mr.  
17 Bennett says, is whether the defendant, when he delivered such  
18 information, had reason to believe that it would be used to  
19 the harm of the United States, or to the benefit of the  
20 Soviets. That is the element of the crime that we must prove,  
21 and that are we are seeking to prove. And that is the  
22 language that I certainly thought I phrased the question in,  
23 and if I didn't I will rephrase it to reflect that language.  
24 It is directly relevant to that element of the crime which is  
25 an element that we have to prove.



1           And, as I indicated in chambers the other day, the  
2 testimony with respect to the nature of the information that's  
3 compromised, how and why one would have reason to believe that  
4 it would have been damaging is, (A) goes directly to an  
5 element of the crime, and as far as I can tell from my review  
6 of other transcripts in other espionage cases it is absolutely  
7 standard practice.

8           MR. BENNETT: Except, Your Honor, now he is  
9 formulating it on a basis of admissibility that this expert  
10 would be allowed to give his opinion as to the defendant's  
11 state of mind. That is literally the way he is phrasing it.

12           MR. DOUGLASS: Excuse me, Mr. Bennett, if I didn't  
13 address the reason first. The jury instruction that Mr.  
14 Bennett submitted indicates that the test is what a reasonable  
15 person in the defendant's position whether he would have  
16 reason to believe. And if I need to rephrase the question  
17 that way I will be glad to phrase it that way.

18           MR. BENNETT: Your Honor, in regards to that, you are  
19 still asking for an expert opinion, whether he uses the word  
20 reasonable person or whether he changes it to the way that he  
21 phrased it at the Bench later. He is calling for an ultimate  
22 opinion by this witness on the ultimate issue in this case,  
23 which is for the jury, and that is whether or not the  
24 defendant knew or had reason to believe, that is exactly what  
25 the rules, even on opinion, prohibit. It is in affect asking

1 them or telling them how to reach a verdict on an essential  
2 element of the crime.

3 THE COURT: I don't understand the Rules to preclude  
4 an expert giving testimony on the the ultimate issue.

5 MR. BENNETT: He is, I believe. And I need to get  
6 it.

7 MR. DOUGLASS: I can only state on that issue, Your  
8 Honor, I argued a case before the Fourth Circuit about a month  
9 ago. I was told in no uncertain terms by Judge Winter there  
10 was nothing wrong by an expert expressing an opinion on the  
11 ultimate issue.

12 THE COURT: We will take a recess at this point.

13 MR. BENNETT: I have a very critical Rule.

14 THE COURT: What number is it?

15 MR. BENNETT: Amended Rule 704 (b).

16 THE COURT: I will take a look at it. I am going to  
17 recess now.

18 (The following proceedings were had in open Court in  
19 the presence and hearing of the jury:)

20 THE COURT: Members of the jury, we will recess until  
21 2:00 o'clock for lunch. I will ask the witness to return at  
22 2:00 o'clock, and not to discuss the case with anyone between  
23 now and then.

24 (Luncheon recess taken.)

25 - - - - -

1  
2 I certify that the transcript fees charged and page  
3 format used comply with the requirements of this Court and the  
4 Judicial Conference of the United States.

5 I certify that the foregoing is a correct transcript  
6 from the record of proceedings in the above-entitled matter.  
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10 *Paul W. White* 12-31-86  
Official Court Reporter Date  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

1 UNITED STATES OF AMERICA :

2 PLAINTIFF :

3 VS :

4 RONALD WILLIAM PELTON :

5 DEFENDANT :

FILED  
MAR 10 1987  
CRIMINAL  
COURT OF APPEALS  
DOCKET  
HM-85-0621  
~~76 5182~~

6 BALTIMORE, MARYLAND

7 MAY 30TH, 1986

8  
9 THE ABOVE ENTITLED CASE WAS CONTINUED ON FOR  
10 TRIAL IN THE UNITED STATES DISTRICT COURT BEFORE THE  
11 HONORABLE HERBERT F. MURRAY, AND A JURY, BEGINNING AT 2:00  
12 O'CLOCK P.M.

13 APPEARANCES

14 FOR THE GOVERNMENT:

15 ROBERT MCDONALD, ESQUIRE  
16 JOHN G. DOUGLASS, ESQUIRE

17 FOR THE DEFENDANT:

18 FRED WARREN BENNETT, ESQUIRE

19 REPORTED BY:

20 E. EDWARD RICHARDSON  
21 OFFICIAL COURT REPORTER  
22 UNITED STATES DISTRICT COURT  
23 345 UNITED STATES COURTHOUSE  
24 101 WEST OMBARD STREET  
25 MARYLAND 21201

89-67796  
No. 89-6855  
U.S. Court of Appeals  
Fourth Circuit

FILED

OCT 18 1989

U.S. Court of Appeals  
Fourth Circuit

FILED ENTERED  
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JAN 13 1987

AT BALTIMORE  
CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

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VOL. 14

AFTERNOON SESSION

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THE COURT: GOOD AFTERNOON.

MR. BENNETT: GOOD AFTERNOON, YOUR HONOR.

MR. DOUGLASS: GOOD AFTERNOON.

THE COURT: WILL COUNSEL COME UP TO THE BENCH?

PROCEEDINGS AT THE BENCH

THE COURT: OVER THE LUNCH TIME I'VE TAKEN A LOOK AT RULE 704(A) AND (B) OF THE ADVISORY COMMITTEE NOTE AND IT SEEMS TO ME THAT 704(B) DOES NOT PRECLUDE THE TYPE OF EXPERT OPINION THAT THE GOVERNMENT WILL SEEK TO ELICIT.

MR. BENNETT: I MISSED THE LAST PART OF WHAT YOU SAID.

THE COURT: I SAID 704(B) WOULD NOT PRECLUDE THE TYPE OF OPINION THE GOVERNMENT SEEKS TO ELICIT. I THINK, IN A MATTER AS TECHNICAL AND COMPLEX, ANY HELP THE JURY CAN GET IS BENEFICIAL, AND I HAVE FORGOTTEN THE PRECISE WORDING.

MR. DOUGLASS: YOUR HONOR, I USED THE TERM WOULD A REASONABLE PERSON; THAT IS AN OBJECTIVE TEST, AND I WOULD INTEND TO USE IT IN THAT FASHION, WHICH I THINK WOULD COMPORT WITH THE RULE, WOULD A REASONABLE PERSON.

THE COURT: WELL, YOU HAD THAT IN YOUR INITIAL QUESTION AND THEN YOU DROPPED IT.

MR. DOUGLASS: I'LL TAKE IT EITHER WAY. I'LL GIVE MR. BENNETT HIS CHOICE, IF HE PREFERENCES. I WOULD

1 INTEND TO ASK THE QUESTION ALMOST PRECISELY AS MR. BENNETT  
2 WORDED HIS JURY INSTRUCTIONS, WOULD A REASONABLE PERSON,  
3 HAVING OCCUPIED THE POSITION AT NSA AS OTHER WITNESSES  
4 HAVE DESCRIBED AS MR. PELTON DID, WOULD SUCH A REASONABLE  
5 PERSON HAVE REASON TO BELIEVE THAT THIS SORT OF  
6 INFORMATION WOULD BE USED TO THE BENEFIT OF THE SOVIETS OR  
7 TO THE DETRIMENT OF THE UNITED STATES.

8 MR. BENNETT: WELL, YOUR HONOR, I UNDERSTAND WHAT  
9 YOU HAVE JUST INDICATED AND I UNDERSTAND HOW HE WOULD  
10 REPHRASE THE QUESTION. CONTINUAL REFERENCE TO MY JURY  
11 INSTRUCTIONS, OF COURSE, IS IN THE CONTEXT OF THE CRIME ON  
12 ESPIONAGE. MY JURY INSTRUCTIONS ARE THE ESSENTIAL  
13 ELEMENTS OF THE CRIME ON ESPIONAGE. ONE ELEMENT OF WHICH  
14 IS SPECIFIC INTENT, WHICH DEALS WITH THE QUESTION WHETHER  
15 OR NOT THE DEFENDANT INTENDED OR HAD REASON TO BELIEVE  
16 THAT THE PASSAGE OF CLASSIFIED INFORMATION RELATING TO THE  
17 NATIONAL DEFENSE WOULD INJURE THE UNITED STATES OR  
18 ADVANTAGE A FOREIGN NATION. THAT'S THE CONTEXT OF MY JURY  
19 INSTRUCTIONS.

20 NOW, AFTER HE REFORMULATED THE QUESTION, WHEN WE  
21 GOT TO THE BENCH, IT STRUCK ME, IN REGARDS TO 704(B), IT  
22 SEEMS TO ME THAT THE QUESTION SHOULD BE NOT THE  
23 DEFENDANT'S STATE OF MIND THROUGH THIS EXPERT, BECAUSE  
24 THIS EXPERT IS NOT AN EXPERT IN PSYCHIATRY OR PSYCHOLOGY  
25 OR ANALYZING OTHER PEOPLE, BUT THE PROPER QUESTION, IF

1 ANY, SHOULD BE DO YOU HAVE AN OPINION WHETHER OR NOT  
2 DISCLOSURE OF INFORMATION RELATING TO PROJECT A COULD  
3 POTENTIALLY INJURE THE UNITED STATES AND OR AID A FOREIGN  
4 NATION.

5 NOW, THE REASON WHY I COME BACK TO 704(B) IS IT  
6 SEEMS TO ME THAT THAT IS, EVEN THOUGH I UNDERSTAND YOUR  
7 HONOR THINKS OR MAY THINK THAT THAT APPLIES ONLY TO  
8 INSANITY OR DIMINISHED CAPACITY, OR THOSE AREAS, I WOULD  
9 RESPECTFULLY DISAGREE AND INDICATE THAT THE LITERAL  
10 LANGUAGE OF 704 COVERS THIS KIND OF TESTIMONY IN THIS  
11 PARTICULAR CASE AND THEREFORE WOULD BE AN USURPATION OF  
12 THE JURY FUNCTION.

13 THIS EXPERT IS NOT QUALIFIED ON THE MENTAL STATE  
14 OF THE DEFENDANT. HE MAY BE QUALIFIED AS AN EXPERT ON  
15 CIA. I THINK IT IS COVERED BY 704(B) AND ALSO RULE 403,  
16 AND I THINK, IF ANYTHING AT ALL, THE GOVERNMENT SHOULD  
17 ONLY BE ALLOWED TO ASK, AND I STILL HAVE MY SAME  
18 OBJECTIONS ON 403 AND 704, AND THAT IS HIS ULTIMATE  
19 OPINION, EVEN THE WAY I REWORDED IT, WHETHER OR NOT  
20 DISCLOSURE RELATING TO PROJECT A COULD INJURE THE UNITED  
21 STATES AND OR AID A FOREIGN NATION. BUT WITHOUT WAIVING  
22 ANY OBJECTION. IF THE GOVERNMENT IS ALLOWED TO DO  
23 ANYTHING. I THINK THAT'S THE GREATEST THAT THEY WOULD BE  
24 ALLOWED TO DO.

25 THE OTHER RULE THAT I REALLY RELY ON IS 704, AND

1 THAT IS OPINION ON ULTIMATE ISSUE. THIS IS OPINION ON THE  
2 ULTIMATE ISSUE OF THE QUESTION OF THE DEFENDANT'S STATE OF  
3 MIND, WHICH THIS EXPERT IS NOT QUALIFIED TO GIVE. HE IS  
4 QUALIFIED TO TALK ABOUT NSA.

5 THE COURT: WELL, 704(A) MAKES IT PERFECTLY CLEAR  
6 THAT WHETHER IT'S AN OPINION ON THE ULTIMATE ISSUE DOESN'T  
7 MAKE ANY DIFFERENCE. IT'S NOT OBJECTIONABLE.

8 MR. DOUGLASS: YOUR HONOR, PERHAPS I COULD  
9 SHORT-CIRCUIT THE MATTER. I HAVE NO OBJECTION TO ASKING  
10 THE QUESTION IN THE FORM THAT MR. BENNETT PREFERENCES. I  
11 WOULD BE GLAD TO ASK IT EITHER WAY. IT DOESN'T MATTER TO  
12 ME.

13 THE COURT: WELL, WHY DON'T WE TAKE MR.  
14 BENNETT'S --

15 MR. DOUGLASS: AS LONG AS MR. BENNETT WILL GIVE  
16 ME HIS NOTES, SO I CAN MAKE SURE I GET IT RIGHT.

17 MR. BENNETT: WELL, I WANT TO MAKE IT ABSOLUTELY  
18 CLEAR, AND I THINK IT IS, IF IT'S NOT ALREADY, THAT MY  
19 SUGGESTION ON THE REFORMULATION OF THE QUESTION IS NOT IN  
20 ANY WAY WAIVING AN OBJECTION ON ANY OF THE GROUNDS STATED  
21 EITHER BEFORE WE LEFT FOR LUNCH OR NOW, ON MY OBJECTION IN  
22 THIS AREA.

23 THE COURT: RIGHT.

24 MR. DOUGLASS: I WOULD JUST ASK MR. BENNETT TO  
25 GIVE ME THE QUESTION ONE MORE TIME.



1 MR. BENNETT: DO YOU HAVE AN OPINION, MR.  
2 CROWELL, --

3 MR. DOUGLASS: UH-HUH.

4 MR. BENNETT: -- WHETHER OR NOT DISCLOSURE OF  
5 INFORMATION RELATING TO PROJECT A COULD POTENTIALLY INJURE  
6 THE UNITED STATES OR AID A FOREIGN NATION.

7 MR. DOUGLASS: FINE.

8 MR. BENNETT: I STILL OBJECT TO THAT.

9 THE COURT: ALL RIGHT.

10 MR. DOUGLASS: I WILL GIVE THE QUESTION AS READ  
11 BY MR. BENNETT AND OBJECTED TO BY MR. BENNETT.

12 (THEREUPON, THE JURY RETURNED TO THE COURTROOM AT  
13 2:10 O'CLOCK P.M.)

14 THEREUPON, --

15 WILLIAM PERRY CROWELL, JR.,  
16 A WITNESS OF LAWFUL AGE, CALLED AS A WITNESS ON BEHALF OF  
17 THE GOVERNMENT, HAVING BEEN PREVIOUSLY DULY SWORN, RESUMED  
18 THE WITNESS STAND AND WAS EXAMINED AND TESTIFIED FURTHER  
19 AS FOLLOWS:

20 THE COURT: GOOD AFTERNOON.

21 MR. DOUGLASS: MAY I PROCEED, YOUR HONOR?

22 THE COURT: YES, MR. DOUGLASS.

23 MR. DOUGLASS: THANK YOU, SIR.

24 DIRECT EXAMINATION (CONTINUED)

25 BY MR. DOUGLASS:

1 Q. MR. CROWELL, WE WERE TALKING ABOUT PROJECT A, AT THE  
2 CONCLUSION BEFORE LUNCH, AND I WAS ABOUT TO ASK YOU FOR AN  
3 OPINION, AND THAT OPINION WOULD BE AS FOLLOWS, MR.  
4 CROWELL.

5 IN YOUR OPINION, WOULD THE DISCLOSURE TO THE  
6 SOVIET UNION OF INFORMATION RELATING TO THE LOCATION OF  
7 THE INTELLIGENCE COLLECTION SYSTEM WITH REGARD TO PROJECT  
8 A, WOULD THE DISCLOSURE OF SUCH INFORMATION BE OF  
9 POTENTIAL INJURY TO THE UNITED STATES OR POTENTIAL  
10 ADVANTAGE TO THE SOVIET UNION?

11 MR. BENNETT: OBJECTION, FOR THE REASONS STATED,  
12 AND ALSO FIRST I THINK IT SHOULD BE DO YOU HAVE AN  
13 OPINION, AND THEN HAVE HIM STATE IT.

14 THE COURT: YES.

15 MR. DOUGLASS: FINE, YOUR HONOR. I WILL REPHRASE  
16 IT.

17 BY MR. DOUGLASS:

18 Q. DO YOU HAVE AN OPINION WITH RESPECT TO THAT MATTER,  
19 MR. CROWELL?

20 A. YES, SIR.

21 Q. AND WHAT IS THAT OPINION?

22 A. IN MY OPINION, IT WOULD DO DAMAGE TO THE INTERESTS  
23 OF THE UNITED STATES.

24 MR. BENNETT: OBJECTION. THAT WAS NOT THE  
25 QUESTION.

1 THE QUESTION WAS WHETHER OR NOT IT COULD  
2 POTENTIALLY INJURE THE UNITED STATES OR AID A FOREIGN  
3 NATION. I WOULD ASK YOU TO DIRECT THE WITNESS TO PLEASE  
4 ANSWER THE QUESTION, YOUR HONOR.

5 I'M SORRY, HE DOESN'T HAVE TO BE DIRECTED. I  
6 THINK MY -- DO YOU UNDERSTAND MY OBJECTION, SIR?

7 THE WITNESS: YES, SIR.

8 MR. BENNETT: THANK YOU.

9 BY MR. DOUGLASS:

10 Q. AND, MR. CROWELL, ACCEPTING THE QUESTION AS  
11 REPHRASED, THAT IS WHETHER THE DISCLOSURE OF SUCH  
12 INFORMATION WOULD POTENTIALLY DAMAGE THE UNITED STATES OR  
13 POTENTIALLY BE OF ADVANTAGE TO THE SOVIET UNION, DO YOU  
14 HAVE AN OPINION WITH RESPECT TO THAT?

15 MR. BENNETT: OBJECTION, TO THE WORD WOULD. IT  
16 SHOULD BE COULD, YOUR HONOR.

17 THE COURT: OVERRULED.

18 BY MR. DOUGLASS:

19 Q. DO YOU HAVE AN OPINION WITH RESPECT TO THAT MATTER?

20 A. YES, I DO.

21 Q. WHAT IS THAT OPINION?

22 A. THAT IT WOULD.

23 Q. AND WHY DO YOU HAVE THAT OPINION, SIR?

24 A. THAT INFORMATION, TOGETHER WITH JUST THE FACT OF THE  
25 PROJECT, WOULD BE SUFFICIENT TO ALLOW THE SOVIETS, WITH

1 THEIR KNOWLEDGE OF THEIR OWN COMMUNICATION SYSTEMS, TO DO  
2 DAMAGE TO THE PROJECT.

3 Q. WOULD SUCH INFORMATION PERMIT THEM TO IDENTIFY THE  
4 COMMUNICATIONS --

5 MR. BENNETT: OBJECTION. LEADING.

6 THE COURT: SUSTAINED.

7 BY MR. DOUGLASS:

8 Q. WHAT, IF ANY, PARTICULAR USE COULD THEY MAKE OF THAT  
9 INFORMATION?

10 A. THEY COULD IDENTIFY THE PARTICULAR COMMUNICATIONS  
11 LINK. THEY COULD TAKE ACTION WITH REGARD TO THAT LINK TO  
12 CHANGE THE NATURE OF THE COMMUNICATIONS OR TO CHANGE THE  
13 VALUE OF THE COMMUNICATIONS ON THERE.

14 Q. AND IF THE SOVIETS WERE TO TAKE SUCH MEASURES, WHAT,  
15 IF ANY, VALUE WOULD THAT BE TO THEM OR WHAT, IF ANY,  
16 INJURY WOULD THAT CAUSE THE UNITED STATES?

17 MR. BENNETT: OBJECTION. IT CALLS FOR A  
18 HYPOTHETICAL. IF THEY WOULD. IT CALLS FOR SPECULATION.

19 THE COURT: WELL, THE WITNESS IS AN EXPERT IN THE  
20 FIELD AND I THINK HE CAN ANSWER IT. OVERRULED.

21 BY MR. DOUGLASS:

22 Q. YOU MAY ANSWER THE QUESTION.

23 A. WOULD YOU MIND RESTATING THE QUESTION?

24 Q. SURE. IF THE SOVIETS WERE TO TAKE SUCH  
25 COUNTERMEASURES -- WELL, LET'S BEGIN BY EXPLAINING TERMS.

1 WHAT WOULD YOU MEAN BY COUNTERMEASURES?

2 A. THERE ARE A LARGE NUMBER OF DIFFERENT ACTIONS THAT  
3 COULD BE TAKEN TO MAKE OUR SIGNALS INTELLIGENCE OPERATION  
4 IN THIS PROJECT LESS EFFECTIVE, OR INEFFECTIVE. THAT  
5 WOULD BE COUNTERMEASURES.

6 Q. I WILL HAVE TO ASK YOU TO SPEAK UP A LITTLE BIT.  
7 MAYBE YOU WOULD WANT TO PULL THE MIKE UP A LITTLE BIT.

8 IF SUCH COUNTERMEASURES WERE TAKEN, HOW WOULD  
9 THAT ADVANTAGE THE SOVIET UNION OR DISADVANTAGE THE UNITED  
10 STATES?

11 A. IT WOULD DISADVANTAGE THE UNITED STATES IN THAT IT  
12 WOULD DEPRIVE US OF THE INFORMATION ON MILITARY MATTERS  
13 THAT HAD PREVIOUSLY BEEN AVAILABLE.

14 Q. NOW, MR. CROWELL, I BELIEVE I PUT BEFORE YOU WHAT'S  
15 BEEN INTRODUCED INTO EVIDENCE AS GOVERNMENT'S EXHIBIT  
16 NUMBER TEN, WHICH IS A MAP WHICH CONTAINS A SMALL INKED-IN  
17 CIRCLE ON IT. DO YOU SEE THAT?

18 A. YES.

19 Q. ARE YOU FAMILIAR WITH THAT EXHIBIT?

20 A. YES, I AM.

21 Q. NOW, DOES THE INKED-IN CIRCLE ON THAT EXHIBIT  
22 PRECISELY IDENTIFY THE LOCATION OF THE INTELLIGENCE  
23 COLLECTION SYSTEM INVOLVED FOR PROJECT A?

24 A. NO, IT DOES NOT.

25 Q. DESPITE ANY ERROR IN IDENTIFYING THAT LOCATION, --

1 MR. BENNETT: OBJECTION. OBJECTION, THAT IT'S AN  
2 ERROR.

3 MR. DOUGLASS: I'LL REPHRASE --

4 MR. BENNETT: OBJECTION, THAT IT IS AN ERROR.

5 MR. DOUGLASS: I WILL REPHRASE THE QUESTION.

6 THE COURT: SUSTAINED.

7 MR. DOUGLASS: I WILL REPHRASE THE QUESTION.

8 BY MR. DOUGLASS:

9 Q. WOULD THE IDENTITY OF THE LOCATION, AS MARKED ON  
10 THAT MAP, ALSO BE OF ADVANTAGE TO THE SOVIETS OR TO THE  
11 DETRIMENT OF THE UNITED STATES?

12 A. THAT LOCATION, TOGETHER WITH JUST A VERY SMALL  
13 DESCRIPTION OF THE NATURE OF THE PROJECT, WOULD  
14 POTENTIALLY DAMAGE IT.

15 MR. BENNETT: OBJECTION TO THE LAST PART, WITH  
16 THE DESCRIPTION, YOUR HONOR. THAT LOCATION, PLUS A  
17 DESCRIPTION OF IT. THAT'S NOT PART OF WHAT HE HAS  
18 TESTIFIED TO.

19 THE COURT: SUSTAINED.

20 BY MR. DOUGLASS:

21 Q. MR. CROWELL, WOULD IT BE POSSIBLE TO INTELLIGENTLY  
22 DISCUSS THIS PROJECT WITHOUT DISCLOSING THE NATURE OF THE  
23 INFORMATION ABOUT THE IDENTITY OF THIS PROJECT THAT IN  
24 CONJUNCTION WITH THAT LOCATION WOULD LEAD TO ADVANTAGE TO  
25 A FOREIGN NATION OR DISADVANTAGE TO THE UNITED STATES?

1 MR. BENNETT: OBJECTION. VAGUENESS. I CAN'T  
2 UNDERSTAND THE QUESTION.

3 THE COURT: I DON'T UNDERSTAND IT EITHER.

4 MR. BENNETT: THANK YOU, YOUR HONOR.

5 THE COURT: SUSTAINED.

6 BY MR. DOUGLASS:

7 Q. WELL, IN ANSWERING THE PREVIOUS QUESTION, MR.  
8 CROWELL, YOU INDICATED THAT THAT LOCATION, AS PROVIDED,  
9 WITH EVEN A MINIMAL DESCRIPTION OF THE PROJECT, WOULD  
10 BE -- WOULD PROVIDE VALUABLE INFORMATION?

11 MR. BENNETT: OBJECTION, YOUR HONOR. YOU  
12 SUSTAINED MY OBJECTION TO THAT AND STRUCK THE ANSWER. HE  
13 IS NOW FORMULATING THE SAME QUESTION.

14 THE COURT: AGAIN, I WILL SUSTAIN THE OBJECTION.

15 MR. BENNETT: PARDON?

16 THE COURT: AND I AM AGAIN GOING TO SUSTAIN THE  
17 OBJECTION.

18 MR. BENNETT: THANK YOU.

19 BY MR. DOUGLASS:

20 Q. WOULD IT BE POSSIBLE, MR. CROWELL, TO HAVE ANY  
21 DISCUSSION OF SUBSTANCE ABOUT THE PROJECT WITHOUT -- WOULD  
22 IT BE POSSIBLE TO HAVE ANY DISCUSSION ABOUT THE PROJECT TO  
23 PROVIDE THE LOCATION AS MARKED ON THE MAP WITHOUT  
24 PROVIDING THE MINIMAL DETAIL THAT WOULD BE NECESSARY TO  
25 MAKE THAT LOCATION OF USE TO A FOREIGN COUNTRY?

1 A. I --

2 MR. BENNETT: OBJECTION. THAT CALLS FOR  
3 SPECULATION ON THIS WITNESS. WOULD IT BE POSSIBLE.

4 THE COURT: SUSTAINED.

5 BY MR. DOUGLASS:

6 Q. MR. CROWELL, IN YOUR VIEW, WOULD ANY DISCUSSION OF  
7 THE NATURE OF THIS PROJECT, BY NECESSITY, INCLUDE A  
8 DESCRIPTION OF THE COMMUNICATIONS LINK THAT IS INVOLVED  
9 HERE?

10 MR. BENNETT: OBJECTION. SAME BASIS. HE IS JUST  
11 REPHRASING --

12 MR. DOUGLASS: YOUR HONOR, MAY WE APPROACH THE  
13 BENCH?

14 THE COURT: YES.

15 PROCEEDINGS AT THE BENCH

16 MR. DOUGLASS: YOUR HONOR, OBVIOUSLY WE'RE  
17 DEALING IN AN AREA WHERE THE WITNESS CANNOT DESCRIBE TO  
18 THE JURY THE NATURE OF THE PARTICULAR COMMUNICATIONS LINK  
19 WITH THIS QUESTION AND THIS IS A MATTER, OF COURSE, THAT  
20 MR. BENNETT AND I HAVE DISCUSSED AND IS COVERED BY THE  
21 STIPULATION.

22 IT SEEMS TO ME IT IS APPROPRIATE, IN LIGHT OF  
23 THOSE RESTRICTIONS, THAT THE WITNESS IS ENTITLED TO GIVE  
24 AN OPINION THAT ANY DESCRIPTION, EVEN THE MOST MINUTE  
25 DESCRIPTION OF THIS PROJECT, WOULD, BY NECESSITY, THE



1 MINUTE YOU OPENED YOUR MOUTH, IDENTIFY THE PARTICULAR TYPE  
2 OF LINK THAT IS IN QUESTION HERE, BEFORE ONE COULD EVEN  
3 TAKE THE NEXT STEP OF IDENTIFYING THE LOCATION.

4 IN ADDITION, YOUR HONOR, I THINK THERE IS  
5 TESTIMONY FROM SPECIAL AGENT FAULKNER THAT MR. PELTON,  
6 WHEN HE DESCRIBED THIS TO THE SOVIETS, HE SAID THAT HE  
7 CHOSE IT TO DESCRIBE TO THEM BECAUSE HE COULD DESCRIBE IT  
8 TO THEM WITHOUT PROVIDING OR WITHOUT A GREAT DEAL OF  
9 TECHNICAL DISCUSSION, WHICH OBVIOUSLY SUGGESTS THAT WHAT  
10 WAS DISCUSSED WAS NOT MERELY THE LOCATION BUT SOME  
11 DESCRIPTION THAT WOULD, AT LEAST ON A MINIMAL BASIS,  
12 IDENTIFY THE TYPE OF PROJECT THIS INVOLVED.

13 AND I AM ASKING THE WITNESS TO REACH AN OPINION  
14 IN THAT AREA, OBVIOUSLY, WITHOUT IDENTIFYING IT TO THE  
15 COURT AND JURY, THE NATURE OF THE PROJECT.

16 MR. BENNETT: MY MOST SIGNIFICANT RESPONSE IS  
17 THAT THE GOVERNMENT CAN'T HAVE IT BOTH WAYS AND THAT IS  
18 SHIELD FROM THE JURY AND DEFENSE COUNSEL, IN EFFECT, AND  
19 THE PRESS AND EVERYBODY ELSE, ON THE GROUNDS OF NATIONAL  
20 SECURITY, THE LOCATION, AND THEN ATTEMPT TO ASK QUESTIONS  
21 TYING IN THE LOCATION TO OTHER ALLEGED INFORMATION  
22 PROVIDED BY THE DEFENDANT, BECAUSE THEN THEY ARE, IN  
23 EFFECT, SAYING I CAN'T CROSS EXAMINE ON THAT BECAUSE OF  
24 THIS CIPA INFORMATION.

25 THEY WANT IT BOTH WAYS. THEY WANT THE CIPA

1 STIPULATION, WHICH HAS BEEN AGREED TO, BUT THEN, BECAUSE  
2 OF THAT, BECAUSE OF THE EXACT LOCATION CANNOT BE  
3 DISCLOSED, IN EFFECT, BE ABLE TO ASK THE QUESTION, WHICH I  
4 SUBMIT IS INAPPROPRIATE ANYWAY BUT THEN I COULDN'T  
5 POSSIBLY CROSS EXAMINE ON THAT IN THIS AREA WITHOUT  
6 VIOLATING THE CIPA STIPULATION. THEY WANT TO GET THE  
7 OPINION OUT, WITHOUT DISCLOSING THE LOCATION, BUT THEN TO  
8 CUT OFF ANY AVENUE OF EFFECTIVE CROSS EXAMINATION, AND,  
9 PLUS, THE QUESTION IS INAPPROPRIATE. IT'S JUST REPHRASING  
10 IT THE WAY IT WAS BEFORE.

11 MR. DOUGLASS: WELL, THE RESTRICTIONS BASED UPON  
12 THE CIPA STIPULATION ARE SPECIFIC RESTRICTIONS THAT WE  
13 HAVE DISCUSSED PREVIOUSLY AND AGREED TO. I AM NOT ASKING  
14 THIS WITNESS TO MAKE ANY STATEMENTS THAT WOULD AFFECT IN  
15 ANY WAY THAT INFORMATION OR THAT WOULD IN ANY WAY RESTRICT  
16 MR. BENNETT'S CROSS EXAMINATION. I DON'T THINK THE  
17 PARTICULAR FACTS THAT WE HAVE AGREED NOT TO DIVULGE WOULD  
18 CAUSE A PROBLEM WITH RESPECT TO CROSS EXAMINATION.

19 ALL I'M ASKING THE WITNESS TO SAY IS, AND HE  
20 CERTAINLY IS OF THE OPINION THAT ONE COULD BARELY OPEN  
21 ONE'S MOUTH ABOUT THIS PROJECT IN THE COURSE OF  
22 IDENTIFYING THAT LOCATION AND SAY ANYTHING ABOUT THE  
23 PROJECT WITHOUT PROVIDING A DEFINITION OF THE TYPE OF LINK  
24 THAT IS IN QUESTION, AND THAT'S THE ONLY MINIMAL PIECE OF  
25 INFORMATION YOU WOULD NEED IN CONJUNCTION WITH THAT

1 LOCATION TO FIND THE SYSTEM.

2 THE COURT: MAYBE I'M MISINFORMED BUT IT SEEMS TO  
3 ME A MUCH SIMPLER QUESTION COULD BE ASKED AND THAT WOULD  
4 BE WHAT KIND OF INFORMATION WOULD A FOREIGN POWER NEED TO  
5 HAVE IN ADDITION TO THE LOCATION TO CONSTITUTE A LIKELY  
6 HARM TO THE UNITED STATES.

7 MR. DOUGLASS: I'LL ASK THAT QUESTION.

8 MR. BENNETT: WELL, I THINK YOUR HONOR IS ON  
9 POINT, BECAUSE I THINK THAT THEN GETS AWAY FROM THE AREA.

10 THE COURT: EVERY ONCE IN A WHILE I AM.

11 MR. BENNETT: NO, I DIDN'T MEAN TO IMPLY THAT YOU  
12 WEREN'T OTHER TIMES. I HOPE YOU DIDN'T TAKE IT THAT WAY.

13 THE COURT: NO.

14 PROCEEDINGS IN OPEN COURT

15 THE COURT: GO AHEAD.

16 MR. DOUGLASS: THANK YOU, YOUR HONOR.

17 BY MR. DOUGLASS:

18 Q. MR. CROWELL, WITHOUT DESCRIBING THE NATURE OF THE  
19 COMMUNICATION SYSTEMS AT ISSUE HERE, WHAT, IF ANY,  
20 INFORMATION, IN ADDITION TO THE LOCATION AS MARKED ON THAT  
21 MAP, WOULD BE NECESSARY FOR A REPRESENTATIVE OF THE SOVIET  
22 UNION TO BE ABLE TO GLEAN USEFUL INFORMATION FROM THE  
23 LOCATION AS MARKED?

24 A. EITHER AN UNDERSTANDING OF THE KIND OF EQUIPMENT  
25 THAT WAS EMPLOYED OR KNOWLEDGE OF THE LINK USERS OR ANY

1 TERMINAL IN THE LINK.

2 Q. AND BASED UPON YOUR EXPERIENCE IN THE SIGNALS  
3 INTELLIGENCE BUSINESS PART OF THE SOVIET UNION, WOULD THE  
4 NATURE OF THESE LINKS BE INFORMATION THAT WOULD BE  
5 AVAILABLE TO THE SOVIETS?

6 A. THEY CERTAINLY UNDERSTAND THEIR OWN COMMUNICATIONS  
7 LINKS, YES.

8 Q. ARE YOU FAMILIAR WITH THE PROJECT WHICH, FOR  
9 PURPOSES OF THIS TRIAL, WE HAVE CALLED PROJECT B?

10 A. YES, I AM.

11 Q. AND WOULD YOU TELL THE JURY, IS THAT PROJECT  
12 CLASSIFIED?

13 A. YES, IT IS. IT'S CLASSIFIED.

14 Q. AND AT WHAT LEVEL IS IT CLASSIFIED?

15 A. IT IS A TOP SECRET PROJECT.

16 Q. WOULD YOU DESCRIBE, IN GENERAL TERMS, WHAT THAT  
17 PROJECT IS ABOUT?

18 A. IT IS A MAJOR UPGRADE OF EQUIPMENT USED BY THE  
19 NATIONAL SECURITY AGENCY FOR THE COLLECTION AND RAPID  
20 FORWARDING OF INFORMATION, OF SIGNALS.

21 Q. DOES THAT PROJECT HAVE ANYTHING TO DO WITH THE SPEED  
22 OF OR THE TIMELINESS THAT SIGNALS ARE MADE AVAILABLE TO  
23 THE ULTIMATE USERS?

24 MR. BENNETT: OBJECTION. LEADING.

25 THE COURT: SUSTAINED.

1 BY MR. DOUGLASS:

2 Q. WHAT, IF ANY, ADVANTAGE IS THE RESULT OF THAT  
3 PROJECT?

4 A. IT GREATLY INCREASES THE SPEED AT WHICH WE COULD  
5 HANDLE SIGNALS ON ALL OF THIS INFORMATION.

6 Q. NOW, MR. CROWELL, IN YOUR OPINION, WOULD THE  
7 DISCLOSURE OF INFORMATION RELATING TO THAT PROJECT BE OF  
8 POTENTIAL INJURY TO THE UNITED STATES OR POTENTIALLY  
9 ADVANTAGEOUS TO THE SOVIET UNION?

10 A. IN MY OPINION, YES.

11 Q. WHY IS THAT TRUE?

12 A. WELL, FIRST OF ALL, INFORMATION GIVEN TO THEM WHICH  
13 WOULD ALLOW THEM TO KNOW THE SPEED WITH WHICH WE CAN  
14 INTERCEPT AND PROCESS SIGNALS WOULD ALLOW THEM TO BETTER  
15 ASSESS OUR CAPABILITIES AGAINST THEIR COMMUNICATIONS.

16 IT WOULD ALLOW THEM TO MAKE DIFFERENT JUDGMENTS  
17 AS I POINTED OUT TO THE JURY EARLIER WITH REGARD TO THE  
18 VALUE OF CERTAIN KINDS OF COMMUNICATIONS INFORMATION, IN  
19 THAT SOME INFORMATION HAS MORE VALUE IF IT IS TIMELY.

20 Q. NOW, MR. CROWELL, ARE YOU FAMILIAR WITH THE PROJECTS  
21 WHICH FOR PURPOSES OF THIS TRIAL HAVE BEEN IDENTIFIED AS  
22 PROJECT C AND D?

23 A. YES, I AM.

24 Q. AND ARE THOSE CLASSIFIED?

25 A. YES.

1 Q. AND AT WHAT LEVEL ARE THOSE CLASSIFIED?

2 A. TOP SECRET AND COMPARTMENTED.

3 Q. WHAT IS COMPARTMENTED?

4 A. COMPARTMENTATION IS A WAY OF RESTRICTING THE ACCESS  
5 TO INFORMATION ABOUT SPECIFIC PROJECTS TO A VERY LIMITED  
6 NUMBER OF PEOPLE WHO MUST KNOW THAT INFORMATION IN ORDER  
7 TO BE ABLE TO DO THEIR JOB.

8 Q. AND I DON'T BELIEVE I ASKED YOU BUT, IN FACT, IS  
9 PROJECT A A COMPARTMENTED PROJECT AS WELL?

10 A. YES, IT WAS.

11 Q. NOW, GENERALLY, WHAT WERE PROJECTS C AND D?

12 A. PROJECT C AND D INVOLVED COLLECTION FROM UNDISCLOSED  
13 LOCATIONS.

14 Q. AND, IN YOUR OPINION, MR. CROWELL, WOULD INFORMATION  
15 RELATING TO THOSE UNDISCLOSED LOCATIONS BE OF POTENTIAL  
16 INJURY TO THE UNITED STATES OR POTENTIAL ADVANTAGE TO THE  
17 SOVIET UNION, IF DISCLOSED TO THE SOVIET UNION?

18 A. YES, IN MY OPINION, THEY WOULD BE.

19 Q. AND FOR WHAT REASON?

20 A. I --

21 MR. BENNETT: YOUR HONOR, JUST FOR THE RECORD, I  
22 ASSUME, BASED ON OUR BENCH CONFERENCE, YOU WOULD ALLOW ME  
23 A CONTINUING OBJECTION TO THESE OPINION QUESTIONS COVERING  
24 EACH PROJECT.

25 THE COURT: YES.

1 MR. BENNETT: THANK YOU.

2 BY MR. DOUGLASS:

3 Q. YOU MAY ANSWER THE QUESTION. WHY WOULD THAT BE OF  
4 ADVANTAGE?

5 A. WELL, IT WOULD ALLOW THEM TO UNDERSTAND THE CURRENT  
6 NATURE, CURRENT AT THE TIME THEY GATHERED THE INFORMATION,  
7 CURRENT NATURE OF THE CAPABILITY AT THOSE COLLECTION  
8 FACILITIES.

9 Q. NOW, LET ME ASK YOU ANOTHER QUESTION IN THIS REGARD.  
10 IF THERE WERE EVIDENCE IN THIS CASE INDICATING THAT SUCH  
11 INFORMATION HAD BEEN MADE AVAILABLE TO THE SOVIETS BUT  
12 THAT THEY DIDN'T APPEAR TO BE INTERESTED IN SUCH  
13 INFORMATION, AND IF ONE WERE TO CONCLUDE FROM THAT THAT  
14 PERHAPS THEY EVEN HAD SUCH INFORMATION PREVIOUSLY, WOULD  
15 THE PROVIDING OF SUCH INFORMATION TO THEM AT A SPECIFIC  
16 TIME AND PLACE NEVERTHELESS BE OF VALUE TO THE SOVIETS OR  
17 DETRIMENTAL TO THE UNITED STATES, NOTWITHSTANDING THE FACT  
18 THAT THERE MAY HAVE BEEN PRIOR KNOWLEDGE?

19 MR. BENNETT: OBJECTION, BECAUSE THE HYPOTHETICAL  
20 DOES ASSUME FACTS NOT IN EVIDENCE, AND THAT IS THAT THE  
21 SOVIET UNION KNEW ABOUT IT FROM OTHER SOURCES.

22 THE COURT: SUSTAINED.

23 BY MR. DOUGLASS:

24 Q. MR. CROWELL, ARE YOU AWARE OF THE USE OF THE WORD  
25 CONFIRMATION IN THE INTELLIGENCE COMMUNITY?

1 A. YES.

2 Q. AND WHAT IS THE MEANING OF THE TERM CONFIRMATION?

3 A. ESSENTIALLY, WHEN INTELLIGENCE SOURCES ARE NOT  
4 EITHER TOTALLY UNDERSTOOD IN TERMS OF THEIR RELIABILITY OR  
5 THERE IS SOME WEAKNESS IN THE INFORMATION IN TERMS OF  
6 DETAIL, CONFIRMATION IS A PROCESS OF BEING ABLE, FROM A  
7 DIFFERENT SOURCE, TO CONFIRM SPECIFIC FACTS AND BE CERTAIN  
8 OF THOSE FACTS FOR YOUR OWN INTELLIGENCE ASSESSMENT  
9 PURPOSES.

10 Q. SO IS IT ACCURATE TO SAY THEN THAT THERE IS A VALUE  
11 TO CONFIRMING INFORMATION RECEIVED AT A PARTICULAR POINT  
12 IN TIME, EVEN THOUGH IT MAY SIMPLY CONFIRM SOMETHING THAT  
13 WAS PREVIOUSLY KNOWN?

14 A. ABSOLUTELY.

15 MR. BENNETT: OBJECTION. EVEN THOUGH IT WOULD  
16 CONFIRM SOMETHING PREVIOUSLY KNOWN. THAT HAS NOT BEEN  
17 PROVEN.

18 THE COURT: I WILL SUSTAIN THE OBJECTION.

19 MR. BENNETT: COULD WE HAVE THE JURY DIRECTED TO  
20 STRIKE HIS ANSWER, AND HAVE THE JURY DIRECTED NOT TO  
21 CONSIDER IT?

22 THE COURT: YES, I WILL DIRECT THE JURY NOT TO  
23 CONSIDER THE ANSWER.

24 BY MR. DOUGLASS:

25 Q. MR. CROWELL, ARE YOU FAMILIAR WITH THE PROJECT



1 WHICH, FOR PURPOSES OF THIS CASE, HAS BEEN REFERRED TO AS  
2 PROJECT E?

3 A. YES, I AM.

4 Q. AND, GENERALLY, WOULD YOU TELL THE JURY THE NATURE  
5 OF PROJECT E?

6 A. YES, IT WAS A PROJECT WHICH CONCERNED A SPECIFIC  
7 SOVIET SIGNAL.

8 Q. AND WAS THAT PROJECT CLASSIFIED?

9 A. IT WAS CLASSIFIED TOP SECRET AND IN 1979 WAS -- OR,  
10 I'M SORRY, PRIOR TO 1979, HAD BEEN A COMPARTMENTED  
11 PROJECT.

12 Q. NOW, ARE YOU FAMILIAR WITH THE DOCUMENT CALLED THE  
13 SIGNAL PARAMETERS FILE?

14 A. YES, I AM.

15 Q. AND I HAVE PLACED BEFORE YOU GOVERNMENT'S EXHIBIT  
16 11. DO YOU RECOGNIZE THAT DOCUMENT?

17 A. YES.

18 Q. IS THAT A REDACTED FORM OF PARTS OF THE 1978 SIGNAL  
19 PARAMETERS FILE?

20 A. YES, IT IS.

21 Q. AND ARE YOU FAMILIAR WITH THE ORIGINAL VERSION, THE  
22 TOTAL DOCUMENT, 1978 SIGNAL PARAMETER FILE?

23 A. YES, I AM.

24 Q. IS PROJECT E, THE SIGNAL INVOLVED IN PROJECT E, ONE  
25 OF THE SIGNALS THAT IS INCORPORATED IN THAT TOTAL SIGNAL

1           PARAMETERS FILE?

2           A.     YES.

3           Q.     NOW, WITH RESPECT TO THE SIGNAL PARAMETERS FILE, IS  
4           THAT DOCUMENT CLASSIFIED?

5           A.     YES, IT IS.

6           Q.     AND AT WHAT LEVEL IS IT CLASSIFIED?

7           A.     TOP SECRET.

8           Q.     WHAT IS THE PURPOSE OF THE SIGNAL PARAMETERS FILE?  
9           WHAT'S THE DOCUMENT USED FOR?

10          A.     IT'S A COMPENDIUM OR A COLLECTION OF TECHNICAL  
11          INFORMATION ABOUT THE SIGNALS, ABOUT MANY OF THE SOVIET  
12          SIGNALS THAT THE U.S. COLLECTS.

13                 MR. DOUGLASS: NOW, MR. CROWELL, I WOULD ASK YOU  
14          IF YOU COULD AT THIS POINT TO APPROACH THE JURY WITH THAT  
15          DOCUMENT AND TURN TO THE THIRD PAGE OF IT AND DESCRIBE  
16          CERTAIN ELEMENTS CONTAINED THEREIN, WITH YOUR HONOR'S  
17          PERMISSION.

18                 THE COURT: YES.

19                 BY MR. DOUGLASS:

20          Q.     NOW, MR. CROWELL, THE THIRD PAGE OF THAT DOCUMENT  
21          HAS BEEN REDACTED FROM THE ORIGINAL, IS THAT CORRECT?

22          A.     THAT IS CORRECT.

23          Q.     AND WHAT IS ACTUALLY ON THE THIRD PAGE OF THAT  
24          DOCUMENT WOULD MERELY BE THE HEADINGS THAT WOULD BE  
25          CONTAINED ON THE ORIGINAL DOCUMENT, IS THAT CORRECT?

1 A. THAT IS CORRECT.

2 Q. THAT IS THE SUBSTANTIVE INFORMATION THAT WOULD  
3 FOLLOW THOSE HEADINGS IN THE ORIGINAL DOCUMENT HAS BEEN  
4 WIPED OFF, IS THAT CORRECT?

5 A. THAT IS CORRECT.

6 Q. NOW, I WOULD ASK YOU TO DESCRIBE TO THE JURY WHAT  
7 THOSE HEADINGS ARE, WHAT THEY MEAN?

8 A. THE FIRST HEADING IS COVER NAME AND THAT IS A NAME  
9 GIVEN TO A SIGNAL OR A KNICKNAME, IF YOU WILL, FOR OUR USE  
10 INTERNALLY.

11 THE SECOND IS THE CLASSIFICATION AND THAT IS A  
12 MORE DETAILED ARBITRARY DESIGNATER GIVEN TO THE SIGNAL SO  
13 THAT WE CAN KEEP TRACK OF IT IN OUR COLLECTING PROCESSES  
14 AND IN OUR COMPUTER SYSTEMS.

15 THE THIRD IS THE FREQUENCY RANGE. THAT IS  
16 USUALLY STATED IN TERMS THAT I'VE DISCUSSED EARLIER OF  
17 VHF, UHF, VERY HIGH FREQUENCY, ULTRA HIGH FREQUENCY, OR  
18 HF, HIGH FREQUENCY, OR OTHER FREQUENCY RANGES.

19 THE MODULATION REFERS TO THE MANNER IN WHICH THE  
20 INFORMATION IS APPLIED TO THE SIGNAL AND I THINK MOST OF  
21 YOU ARE FAMILIAR WITH THE TERM FM IN TERMS OF RADIO  
22 STATIONS. FM IS A FORM OF MODULATION. IT IS FREQUENCY  
23 MODULATION. THAT IS INFORMATION IS PROVIDED BY VARYING  
24 FREQUENCIES.

25 AM IS ANOTHER WAY IN WHICH INFORMATION CAN BE PUT

1 ON A SIGNAL, THAT IS AMPLITUDE MODULATION; THAT IS  
2 CHANGING THE INTENSITY OR AMPLITUDE OF THE SIGNAL.

3 THE SIGNAL TYPE IS A DESCRIPTION OF THE SIGNAL IN  
4 GENERAL TERMS, AS I'VE DESCRIBED TO YOU EARLIER, TELETYPE,  
5 VOICE, FACSIMILE, AND SO ON. THE USER IS WHO USES THE  
6 SIGNAL, ARMY, NAVY, OTHER KINDS OF USER DESIGNATIONS.

7 THE EXTERNAL PARAMETERS ARE A DESCRIPTION OF THE  
8 COMMON FEATURES OF THE SIGNAL THAT CAN BE USED TO  
9 DISCRIMINATE IT FROM SIGNALS OF THE SAME TYPE.

10 SO THAT -- AND WHEN YOU HEARD THE TAPE EARLIER,  
11 IT'S A WAY -- ANOTHER WAY OF VERBALLY DESCRIBING HOW THE  
12 SIGNAL APPEARS.

13 THE INTERNAL PARAMETERS ARE A DESCRIPTION OF THE  
14 INTERNAL STRUCTURE OF THE SIGNALS, INCLUDING A VERY  
15 GENERAL DESCRIPTION OF THE FORM OF ENCRYPTION, IF THERE IS  
16 ANY, ON THE SIGNAL.

17 Q. THANK YOU, MR. CROWELL. YOU MAY RETURN TO YOUR  
18 SEAT. NOW, THE SIGNALS THAT ARE LISTED IN THE COMPLETE  
19 DOCUMENT, THE 1978 SIGNAL PARAMETERS FILE, ARE SOVIET  
20 SIGNALS, IS THAT CORRECT?

21 A. THAT IS CORRECT.

22 Q. NOW, MR. CROWELL, IN YOUR OPINION, WOULD INFORMATION  
23 AS CONTAINED IN THAT DOCUMENT, IF DISCLOSED TO THE SOVIET  
24 UNION, BE POTENTIALLY INJURIOUS TO THE UNITED STATES OR  
25 POTENTIALLY ADVANTAGEOUS TO THE SOVIET UNION?

1 A. IN MY OPINION, YES.

2 Q. AND WHY IS THAT?

3 A. FIRST OF ALL, IT WOULD REVEAL THE VERY FACT THAT WE  
4 CAN COLLECT A PARTICULAR SIGNAL. SIMILARLY, IT REVEALS TO  
5 SOME EXTENT THAT THERE MAY BE SIGNALS THAT ARE DIFFICULT  
6 FOR US TO COLLECT IN THE DESCRIPTIVE DATA, AND THE  
7 ACCURACY OF THAT DATA.

8 IT REVEALS TO -- IT REVEALS THE DEGREE OF  
9 KNOWLEDGE WE HAVE OF THAT SIGNAL. AND IT ALSO CAN REVEAL  
10 THE PRIORITY THAT WE ATTACH TO THE SIGNALS.

11 Q. AND OF WHAT VALUE WOULD THAT SORT OF INFORMATION BE  
12 TO THE SOVIET UNION?

13 A. WELL, THE FACT THAT WE CAN COLLECT AND ALL OF THE  
14 OTHER FEATURES THAT I'VE DESCRIBED ALLOW THEM TO MAKE A  
15 VERY GOOD ASSESSMENT OF OUR SIGNALS INTELLIGENCE  
16 CAPABILITY AGAINST SPECIFIC SIGNALS, AND IT ALSO ALLOWS  
17 THEM TO IDENTIFY OUR WEAKNESSES.

18 IT WOULD ALLOW THEM TO CAPITALIZE ON OUR  
19 WEAKNESSES, IF THERE ARE PARTICULAR SIGNALS THAT THEY  
20 BELIEVE WOULD BE MORE EFFECTIVE AGAINST OUR COLLECTION  
21 CAPABILITY.

22 IT WOULD ALSO ALLOW THEM TO MAKE CHANGES IN THOSE  
23 SIGNALS IF THEY BELIEVED THAT THEY WERE SUBJECT TO SOME  
24 LEVEL OF EXPLOITATION.

25 Q. IN ADDITION TO IDENTIFYING THE FACT THAT PARTICULAR

1 SIGNALS WERE COLLECTED, OR THE PRIORITY THAT WOULD BE  
2 ATTACHED TO PARTICULAR SIGNALS, ARE THERE OTHER REASONS  
3 WHY THAT INFORMATION WOULD BE POTENTIALLY ADVANTAGEOUS --  
4 OF POTENTIAL ADVANTAGE TO THE SOVIETS, OR POTENTIALLY OF  
5 HARM TO THE UNITED STATES.

6 MR. BENNETT: OBJECTION. I THINK HE HAS ASKED  
7 AND ANSWERED THAT.

8 THE COURT: OVERRULED.

9 THE WITNESS: I BELIEVE THAT IF WE GO BACK TO  
10 SOMETHING THAT I SAID EARLIER ABOUT WE REALLY ARE NOT ABLE  
11 TO COLLECT ALL OF THE SIGNALS, KNOWING -- BECAUSE WE DON'T  
12 HAVE ENOUGH RESOURCES TO DO IT.

13 KNOWING ABOUT OUR CAPABILITIES, AND KNOWING WHERE  
14 OUR PRIORITIES ARE REALLY ALLOW THE SOVIETS TO BE VERY, IF  
15 YOU WILL, COST EFFECTIVE IN MAKING ADJUSTMENTS TO THEIR  
16 COMMUNICATIONS IN RESPONSE TO THE THREAT WE POSE TO THEM.

17 Q. ARE THERE ECONOMIC COSTS TO THE UNITED STATES --  
18 WELL, WOULD AN ECONOMIC COST TO THE UNITED STATES BE A  
19 POTENTIAL INJURY OR HARM THAT WOULD FLOW FROM THE  
20 DISCLOSURE OF THAT TYPE OF INFORMATION?

21 MR. BENNETT: OBJECTION. LEADING.

22 THE COURT: SUSTAINED.

23 BY MR. DOUGLASS:

24 Q. IN ADDITION TO THE MATTERS WHICH YOU PREVIOUSLY  
25 DISCUSSED, ARE THERE ANY OTHER AREAS OF POTENTIAL INJURY

1 OR POTENTIAL ADVANTAGE THAT WOULD FLOW FROM THE DISCLOSURE  
2 OF SUCH INFORMATION?

3 A. AS I -- WELL, THE ANSWER IS YES.

4 Q. WHAT ARE THEY?

5 A. THEY ARE THE FACT THAT MANY OF THE CAPABILITIES THAT  
6 WE HAVE INVESTED IN TO COLLECT SIGNALS LIKE THIS ARE  
7 EXTREMELY COSTLY, AND MANY OF THEM COULD BE RENDERED  
8 INEFFECTIVE.

9 MR. DOUGLASS: THANK YOU, MR. CROWELL. I HAVE NO  
10 FURTHER QUESTIONS OF THIS WITNESS.

11 THE COURT: MR. BENNETT.

12 CROSS EXAMINATION

13 BY MR. BENNETT:

14 Q. MR. CROWELL, WHO DETERMINES THE CLASSIFICATION  
15 STATUS OF INFORMATION, DOCUMENTS, OR PROJECTS AT NSA?

16 A. CLASSIFICATION AUTHORITIES WITHIN EACH ORGANIZATION.

17 Q. SO THEY HAVE A SEPARATE CLASSIFICATION AUTHORITY  
18 WITHIN NSA, CORRECT?

19 A. THERE ARE MANY CLASSIFICATION AUTHORITIES THAT ARE  
20 ASSIGNED TO EACH OF THE ORGANIZATIONS.

21 Q. AND YOU HAVE A WORKING KNOWLEDGE, DO YOU NOT, OF HOW  
22 THE SECURITY CLASSIFICATIONS ARE ASSIGNED TO VARIOUS  
23 CATEGORIES OF INFORMATION?

24 A. YES, I DO.

25 Q. AND YOU ARE AWARE, ARE YOU NOT, THAT THE UNITED

1 STATES GOVERNMENT HAS OFTEN BEEN CRITICIZED BY THE MEDIA  
2 FOR CLASSIFICATION OF -- FOR CLASSIFYING TOO MUCH MATERIAL  
3 IN THEIR EFFORT TO KEEP IT FROM THE PUBLIC.

4 MR. DOUGLASS: OBJECTION, YOUR HONOR.

5 THE COURT: OVERRULED.

6 BY MR. BENNETT:

7 Q. ARE YOU AWARE OF THAT, SIR?

8 A. I HAVE READ SUCH STORIES.

9 Q. AND HEARD ABOUT IT TOO, HAVE YOU NOT, IN ADDITION TO  
10 READING IT?

11 A. I HAVE READ IT IN THE MEDIA, YES.

12 Q. AND THAT WOULD INCLUDE OVERCLASSIFYING DOCUMENTS,  
13 CORRECT, AND OVERCLASSIFYING INFORMATION; CRITICISM FROM  
14 THE FOURTH ESTATE, SO TO SPEAK, THE MEDIA, THE PRESS?

15 A. YES.

16 Q. IN FACT, ISN'T THERE A TENDENCY WITHIN THE  
17 GOVERNMENT TO USE AN ESPECIALLY HIGH CLASSIFICATION SYSTEM  
18 TO RESTRICT THE NUMBER OF PEOPLE EXPOSED TO PROJECTS?

19 A. THE PURPOSE OF RESTRICTING THE NUMBER OF PEOPLE  
20 EXPOSED TO PROJECTS IS TO PROTECT THE INFORMATION ABOUT  
21 THOSE PROJECTS IN THE INTEREST OF NATIONAL SECURITY.

22 Q. BUT THERE IS, IS THERE NOT, -- I DON'T THINK THAT  
23 QUITE THE QUESTION I ASKED, SIR. LET ME TRY IT AGAIN.

24 IS THERE NOT A TENDENCY WITHIN THE GOVERNMENT,  
25 THE UNITED STATES GOVERNMENT, TO USE AN ESPECIALLY HIGH



1 CLASSIFICATION ON VARIOUS PROJECTS OR INFORMATION TO  
2 RESTRICT THE NUMBER OF PEOPLE EXPOSED TO A SENSITIVE  
3 PROJECT?

4 A. TENDENCY IS THE WORD THAT'S HANGING ME UP. I DO NOT  
5 BELIEVE THERE IS A TENDENCY. I BELIEVE THAT DOES OCCUR.

6 Q. DOES OCCUR. AND THERE IS A HIGH AMOUNT OF SECRECY  
7 AT NSA, CORRECT?

8 A. THAT IS CORRECT.

9 Q. IN FACT, EMPLOYEES THAT WORK THERE ARE TOLD TO  
10 INDICATE THAT THEY WORK FOR DOD AND NOT NSA, CORRECT?

11 A. YES.

12 Q. ON JOB APPLICATIONS OR LOAN APPLICATIONS AND  
13 ELSEWHERE?

14 A. NO, YOU ARE INCORRECT.

15 Q. PARDON?

16 A. YOU ARE INCORRECT.

17 Q. IN WHAT RESPECT ARE THEY TOLD TO INDICATE THEY WORK  
18 FOR DOD AND NOT NSA?

19 A. IN THEIR GENERAL DEALINGS IN THE COMMUNITY.

20 Q. GENERAL DEALINGS.

21 A. BUT NOT IN FINANCIAL MATTERS OR OTHER MATTERS THAT  
22 REQUIRE A MATTER OF RECORD.

23 Q. NOW, YOU HAVE INDICATED THAT THE CLASSIFICATION TOP  
24 SECRET APPLIES TO INFORMATION WHICH, IF DISCLOSED, COULD  
25 BE EXPECTED TO CAUSE EXCEPTIONALLY GRAVE DAMAGE TO THE

1 NATIONAL SECURITY, CORRECT?

2 A. YES.

3 Q. YOU WOULD AGREE, WOULD YOU NOT, THAT NOT EVERY  
4 DOCUMENT IN THIS GOVERNMENT OR PIECE OF INFORMATION OR  
5 PROJECT WHICH IS CLASSIFIED TOP SECRET WOULD, IF  
6 DISCLOSED, CAUSE EXCEPTIONALLY GRAVE DAMAGE TO THE UNITED  
7 STATES, CORRECT?

8 A. WELL, I WOULD AGREE THAT NOT -- I GUESS I WOULD HAVE  
9 TO AGREE WITH THAT, YES.

10 Q. SO IS THAT NOT SAYING, IN EFFECT, THAT THERE IS SOME  
11 INFORMATION CLASSIFIED TOP SECRET WHICH, IF DISCLOSED,  
12 WOULD NOT CAUSE EXCEPTIONALLY GRAVE DAMAGE TO THE UNITED  
13 STATES?

14 A. A VERY SMALL AMOUNT, YES.

15 Q. BUT AN AMOUNT, CORRECT?

16 A. SOME AMOUNT.

17 Q. IN SHORT THEN, SOME DOCUMENTS OR PROJECTS ARE  
18 OVERCLASSIFIED, CORRECT?

19 A. I BELIEVE THAT THAT IS NOT TRUE, IN TERMS OF THE  
20 DOCUMENTS THAT WE ATTEMPT TO PROTECT -- ATTEMPT TO  
21 CLASSIFY.

22 THE GENERAL GUIDELINES ARE TO MAKE SURE THAT DATA  
23 THAT COULD LEAD TO THE TRUE NATURE OF PROJECTS IS NOT  
24 REVEALED, AND SO MOST PROJECTS OR A PROJECT NAME AND OTHER  
25 DATA ABOUT THE PROJECTS WHERE THEY ARE COMPARTMENTED WOULD

1 INCLUDE FACTS THAT COULD LEAD BACK TO THE NATURE OF THE  
2 PROJECT.

3 AND SO THEY ARE, IN MY OPINION, CORRECTLY  
4 CLASSIFIED.

5 Q. IS NOT THE DEFINITION FOR TOP SECRET WOULD, IF  
6 DISCLOSED, CAUSE EXCEPTIONALLY, NOT POTENTIALLY CAUSE, BUT  
7 CAUSE EXCEPTIONALLY GRAVE DAMAGE?

8 A. I THINK IT SAYS REASONABLY CAUSE EXCEPTIONALLY GRAVE  
9 DAMAGE.

10 Q. IN THE CFR?

11 A. YES.

12 Q. ALL RIGHT. REASONABLY CAUSE EXCEPTIONALLY GRAVE  
13 DAMAGE?

14 A. YES. AND I BELIEVE THE DESCRIPTION I JUST GAVE YOU  
15 FITS THAT.

16 Q. BUT IT'S WOULD AND NOT COULD, CORRECT, IN THE CFR?

17 A. I BELIEVE IT SAYS COULD REASONABLY CAUSE  
18 EXCEPTIONALLY GRAVE DAMAGE.

19 Q. NOW, IS NOT THE MERE PHONE BOOK WITHIN NSA WHICH  
20 CONTAINS THE EMPLOYEES NAMES, UNCLASSIFIED SECTION  
21 DESIGNATOR AND PHONE NUMBERS A CLASSIFIED DOCUMENT?

22 A. THAT IS CORRECT.

23 Q. AND ISN'T IT A FACT THAT THE TAPE RECORDINGS IN THIS  
24 CASE, THE JANUARY 14TH, 1980 AND THE JANUARY 15TH, 1980  
25 TELEPHONE CONVERSATIONS, ALLEGEDLY BETWEEN MR. PELTON AND

1 SOVIET AGENTS, ARE CLASSIFIED?

2 A. I DON'T BELIEVE THAT IS A QUESTION THAT I CAN ANSWER  
3 BECAUSE IT IS NOT THE PROPERTY OF MY AGENCY. THE  
4 CLASSIFICATION IS ASSIGNED BY THE ORGANIZATION THAT DOES  
5 THE COLLECTION.

6 Q. I RECOGNIZE THAT. YOU HAVE KNOWLEDGE YOURSELF, DO  
7 YOU NOT, THAT THOSE 2 TAPE RECORDINGS, JANUARY 14TH AND  
8 JANUARY 15TH, ARE CLASSIFIED TAPES, SO TO SPEAK?

9 A. I WOULD REASONABLY BELIEVE THEY WERE, YES.

10 Q. AND THEY REMAIN CLASSIFIED AT THIS TIME EVEN THOUGH  
11 MAJOR U.S. NEWSPAPERS AND MEDIA HAVE REPORTED ON THAT,  
12 CORRECT?

13 MR. DOUGLASS: OBJECTION, YOUR HONOR. IT'S  
14 MISLEADING.

15 THE COURT: SUSTAINED.

16 MR. DOUGLASS: AND, YOUR HONOR, I THINK WE NEED  
17 TO APPROACH THE BENCH ON THAT.

18 THE COURT: VERY WELL.

19 PROCEEDINGS AT THE BENCH

20 MR. DOUGLASS: YOUR HONOR, I THINK IT'S EXTREMELY  
21 MISLEADING FOR MR. BENNETT TO SUGGEST TO THIS JURY THAT  
22 THOSE TAPES HAVE BEEN REPORTED IN THE PRESS WHEN, IN FACT,  
23 AS HE WELL KNOWS, THERE IS PARTICULAR INFORMATION WHICH IS  
24 THE ONLY INFORMATION ABOUT THOSE TAPES THAT'S CLASSIFIED  
25 WHICH IS NOT PROVIDED TO THE PRESS.

1 MR. BENNETT: I DON'T THINK IT'S MISLEADING  
2 BECAUSE THE QUESTION WAS PHRASED IN SUCH A WAY THAT IT  
3 INCLUDED THE VERY EXHIBITS IN THIS CASE AND, IN FACT,  
4 MAJOR NEWSPAPERS HAVE REPORTED ON THE TAPES, INCLUDING  
5 THOSE PORTIONS WHICH WERE AND REMAIN CLASSIFIED, INCLUDING  
6 THE BOSTON GLOBE AND THE CHICAGO TRIBUNE AND THE NEW YORK  
7 TIMES.

8 THE PURPOSE OF THE -- YOU HAVE ALREADY SUSTAINED  
9 THE OBJECTION, AND I WAS MOVING ON TO ANOTHER TOPIC. I'LL  
10 GO ON TO THE NEXT SUBJECT.

11 MR. DOUGLASS: I WOULD SUGGEST THAT IT WOULD BE  
12 APPROPRIATE TO INFORM THE JURY THAT THERE ARE PORTIONS OF  
13 THOSE TAPES THAT HAVE NOT BEEN RELEASED TO THE PRESS.

14 THE COURT: YES, I THINK THAT SHOULD HAVE BEEN  
15 INCLUDED IN THE QUESTION, THAT THE TAPES THAT HAVE BEEN  
16 PRINTED IN THE PAPERS HAVE BEEN REDACTED VERSIONS.

17 MR. BENNETT: I UNDERSTAND THAT. I WAS GOING TO  
18 GO ON TO MY NEXT QUESTION TO GET INTO THAT. THE POINT IS  
19 HE CUT ME OFF OR YOU CUT ME OFF OR HIS OBJECTION CUT ME  
20 OFF AT THE PASS, THAT I COULD NOT THEN FORMULATE MY NEXT  
21 QUESTION WHICH WAS THAT THE PORTION THAT HAS BEEN WITHHELD  
22 FROM THE PRESS AND THE PUBLIC DEALT WITH, QUOTE, TARGETED  
23 PREMISES, END QUOTE, AND THEN GO ON INTO THAT IN THAT  
24 AREA.

25 I WAS GOING TO MAKE IT CRYSTAL CLEAR AND HAVE HIM

1 ACKNOWLEDGE AND EXPLAIN TO THEM; AFTER IT GOT CUT OFF FROM  
2 THE OBJECTION, YOU'VE, IN EFFECT, GIVEN THE APPEARANCE TO  
3 THE JURY THAT THEY ATTEMPTED TO DO A MISLEADING AREA.  
4 THAT WAS EXACTLY MY NEXT QUESTION.

5 MR. DOUGLASS: WELL, YOUR HONOR, I DON'T THINK  
6 THERE IS ANY RELEVANCE AT ALL TO GOING INTO THIS WITNESS'  
7 TARGETED PREMISES OR NOT TARGETED PREMISES. HE HAS  
8 ALREADY STATED THOSE TAPES HAVE NOTHING TO DO WITH NSA,  
9 HIS ORGANIZATION.

10 ALL I AM SUGGESTING IS THAT IF MR. BENNETT WANTS  
11 TO GET -- I WOULD SUGGEST THAT THE COURT SIMPLY STATE, OR  
12 IF MR. BENNETT WOULD PREFER, FOR PURPOSES OF THE  
13 APPEARANCE BEFORE THE JURY, THAT HE COULD SIMPLY STATE, IN  
14 FAIRNESS, MR. CROWELL, WE'RE ALL AWARE THAT THERE ARE  
15 PORTIONS OF THOSE TAPES THAT WERE WITHHELD FROM THE PRESS.

16 MR. BENNETT: I'LL BE GLAD TO DO THAT. I THINK  
17 THEY ARE WELL AWARE OF IT FROM THE WAY IT WAS HANDLED IN  
18 COURT, BUT I'LL BE GLAD TO COVER THAT.

19 THE COURT: ALL RIGHT.

20 PROCEEDINGS IN OPEN COURT

21 BY MR. BENNETT:

22 Q. IN FAIRNESS TO YOU, MR. CROWELL, YOU WERE AWARE,  
23 WERE YOU NOT, THAT PORTIONS OF THE TAPE THAT WAS PLAYED  
24 FOR THE JURY HAS BEEN WITHHELD FROM THE PRESS AND THE  
25 MEDIA, CORRECT, THE JANUARY 14TH AND JANUARY 15TH?

1 A. I UNDERSTAND THAT FROM CONVERSATIONS THAT I HEARD  
2 HERE IN THE COURTROOM.

3 Q. ALL RIGHT. NOW, --

4 A. I WAS NOT OFFICIALLY AWARE OF IT.

5 Q. -- DIRECTING YOUR ATTENTION THEN TO SIGNAL  
6 COLLECTIONS EFFORT GENERALLY, IT IS TRUE, IS IT NOT, OR IS  
7 ACCURATE, IS IT NOT, THAT IF A PARTICULAR SIGNAL SOURCE IS  
8 PRODUCING GOOD INTELLIGENCE THAT ALL REASONABLE EFFORTS  
9 ARE USED TO PROTECT THAT SOURCE AND KEEP IT OPERATING AS  
10 EFFICIENTLY AND AS OFTEN AS POSSIBLE?

11 A. YES.

12 Q. AND YOU INDICATED, I BELIEVE, ON DIRECT, AND I WILL  
13 ASK YOU AGAIN, IT IS ACCURATE, IS IT NOT, THAT EVEN WITH  
14 NSA'S CONSIDERABLE RESOURCES THAT THEY CANNOT COLLECT  
15 EVERY SIGNAL EMANATING FROM THE SOVIET UNION, OR ANY OTHER  
16 COUNTRY FOR THAT MATTER?

17 A. THAT IS ALSO CORRECT.

18 Q. AND THAT WOULD BE AT LEAST IN PART, WOULD IT NOT,  
19 BECAUSE OF BUDGETARY RESTRAINTS OR CONSTRAINTS?

20 A. BUDGETARY AND MANPOWER.

21 Q. AND MANPOWER?

22 A. YES.

23 Q. SO THEN PRIORITY DECISIONS MUST BE MADE WITHIN THE  
24 GOVERNMENT AND WITHIN NSA AS TO WHAT INFORMATION OR  
25 INTELLIGENCE WILL BE COLLECTED, CORRECT?

1 A. THAT IS CORRECT.

2 Q. AND ISN'T IT ACCURATE TO SAY THAT THESE PRIORITIES  
3 ARE BASED UPON COLLECTING THOSE SIGNALS WITH THE HIGHEST  
4 DEGREE OF INTELLIGENCE POTENTIAL IN ACCORDANCE WITH  
5 TASKING AND GUIDANCE FROM THE DIRECTOR OF CENTRAL  
6 INTELLIGENCE?

7 A. WHAT WE GET IS REQUIREMENTS FOR INFORMATION, BUT  
8 PRIORITIES FOR THE COLLECTION OF SIGNALS ARE DETERMINED BY  
9 MAKING AN ASSESSMENT OF WHICH SIGNALS WILL PROVIDE THAT  
10 INFORMATION. THAT IS DONE INTERNALLY.

11 Q. INTELLIGENCE, IS IT NOT, RATHER THAN SIGNALS?

12 A. WE PRODUCE SIGNALS INTELLIGENCE.

13 Q. SIGNALS INTELLIGENCE. ALL RIGHT. SO THEN TO MAKE  
14 INTELLIGENT DECISIONS ABOUT WHAT SHOULD OR SHOULD NOT BE  
15 COLLECTED, DOES NOT NSA AND OTHER SIGNALS COLLECTION  
16 AGENCIES ROUTINELY DEPLOY A SMALL PERCENTAGE OF THEIR  
17 RESOURCES TO SAMPLE THE TOTAL SIGNAL ENVIRONMENT?

18 A. THAT IS CORRECT.

19 Q. AND TO LOOK FOR NEW SIGNALS?

20 A. YES.

21 Q. OR MONITOR KNOWN SIGNALS WHICH ARE NORMALLY  
22 CONSIDERED TOO LOW IN PRIORITY TO WARRANT FULL TIME  
23 COLLECTION?

24 A. I THINK THE WORD IS SAMPLE.

25 Q. I WILL USE YOUR WORD. SAMPLE IS ALL RIGHT WITH ME.



1 A. YES.

2 Q. THE ANSWER WOULD BE YES, CORRECT?

3 A. YES.

4 Q. AND WOULD NOT THE PURPOSE OF MONITORING THESE KNOWN  
5 BUT NOT REGULARLY COLLECTED SIGNALS WOULD BE TO DETERMINE  
6 WHETHER THEIR INTELLIGENCE POTENTIAL HAS CHANGED?

7 A. YES.

8 Q. AND THIS TYPE OF MONITORING IS ROUTINELY DONE ON A  
9 PERIODIC BASIS, IS IT NOT, USUALLY NO LESS THAN EVERY FEW  
10 DAYS?

11 A. IT IS DONE ON A PERIODIC BASIS.

12 Q. BUT NOT DAILY?

13 A. IT IS DONE CONTINUOUSLY.

14 Q. CONTINUOUSLY. BUT IT IS NOT A -- ALL RIGHT. WELL,  
15 WOULD YOU DEFINE FOR THE JURY, IN THE CONTEXT OF MY  
16 QUESTION, WHAT YOU MEAN BY CONTINUOUS, SIR, SO I CAN  
17 PROCEED FROM THERE?

18 A. YES, 24 HOURS A DAY, SOME PROPORTION OF OUR  
19 RESOURCES ARE DEVOTED TO THE TASK OF REVIEWING SIGNALS ON  
20 THE AIR, THAT MAY NOT BE EITHER PREVIOUSLY KNOWN OR THAT  
21 MAY HAVE PREVIOUSLY BEEN OF LOW PRIORITY. A VERY -- A  
22 PERCENTAGE IS USED FOR THAT PROCESS.

23 Q. A PERCENTAGE ON THAT PROCESS, RIGHT?

24 A. (NODDING HEAD AFFIRMATIVELY).

25 Q. NOW, PROJECT A ITSELF WAS CLASSIFIED TOP SECRET,

1 COMPARTMENTALIZED, CORRECT?

2 A. THAT IS CORRECT.

3 Q. SO IT WAS DETERMINED WITHIN NSA TO BE AN IMPORTANT  
4 INTELLIGENCE -- TO HAVE AN IMPORTANT INTELLIGENCE  
5 CAPABILITY, CORRECT?

6 A. THAT IS CORRECT.

7 Q. NOW, IS IT NOT A FACT THAT PRIOR TO JANUARY 14TH,  
8 1980, THAT PROJECT A WAS OPERATED -- MAYBE WE HAD BETTER  
9 APPROACH THE BENCH ON THIS QUESTION FIRST.

10 MR. DOUGLASS: IF MR. BENNETT AND I COULD HAVE  
11 JUST A MOMENT, PERHAPS WE COULD SOLVE THE PROBLEM.

12 (COUNSEL CONFERRING AT THE TRIAL TABLE.)

13 MR. BENNETT: IF THE COURT WILL INDULGE US JUST  
14 ONE MOMENT.

15 (PAUSE )

16 THE COURT: WHILE THIS MEETING IS GOING ON, WHY  
17 DON'T WE TAKE A TEN MINUTE BREAK?

18 MR. DOUGLASS: THANK YOU.

19 THE CLERK: ALL RISE. THIS HONORABLE COURT NOW  
20 STANDS IN RECESS.

21 (THEREUPON, A BRIEF RECESS WAS TAKEN.)

22 AFTER RECESS - PROCEEDINGS

23 MR. DOUGLASS: YOUR HONOR, BEFORE THE JURY COMES  
24 IN, HAVING COMPLETED OUR DISCUSSIONS WITH MR. BENNETT,  
25 THERE IS ONE MATTER I BELIEVE WE NEED TO ADDRESS WITH YOUR

1 HONOR AT THE BENCH.

2 THE COURT: VERY WELL.

3 PROCEEDINGS AT THE BENCH

4 MR. DOUGLASS: YOUR HONOR, MR. BENNETT AND I HAVE  
5 DISCUSSED THE PROPOSED QUESTION THAT HE APPARENTLY INTENDS  
6 TO ASK THIS WITNESS AND PURSUANT TO THE STIPULATION WE HAD  
7 ENTERED INTO BEFORE THIS CASE THERE WERE MATTERS THAT  
8 RELATED TO THE CLASSIFIED INFORMATION THAT AROSE  
9 UNEXPECTEDLY IN THE COURSE OF CROSS EXAMINATION.

10 THE PARTIES, IF THEY WERE UNABLE TO AGREE ON SUCH  
11 MATTERS, WERE TO ADDRESS THE COURT IN THAT AREA, UNDER THE  
12 CLASSIFIED INFORMATION PROCEDURES ACT, AND SUBMIT THE  
13 MATTER TO THE COURT FOR A RULING PURSUANT TO THAT ACT.

14 THERE IS ONE QUESTION THAT MR. BENNETT PROPOSES  
15 TO ASK THAT WE WOULD OBJECT TO FOR THE REASONS THAT THE  
16 INFORMATION GIVEN IN RESPONSE TO THAT QUESTION WOULD BE  
17 DAMAGING TO NATIONAL SECURITY, AND THAT'S THE MATTER THAT  
18 WE ARE, I BELIEVE, PREPARED TO SUBMIT TO THE COURT.

19 THE QUESTION THAT MR. BENNETT WANTS TO RAISE IS  
20 ESSENTIALLY --

21 MR. BENNETT: DO YOU WANT ME TO PHRASE IT?

22 MR. DOUGLASS: WELL, AS WE HAVE WRITTEN IN THE  
23 MARGIN, I GUESS BEFORE I CONTINUE THIS DISCUSSION, JIMMIE,  
24 THIS PART OF THE RECORD WOULD BE NECESSARY --

25 MR. WALKER: HE DOESN'T HAVE THE SECURITY

1 CLEARANCE. I'D HAVE TO GET LEE SCHAP IN HERE.

2 MR. BENNETT: WHY NOT HAVE THIS DISCUSSION AT  
3 THIS POINT OFF THE RECORD, SO WE CAN SEE IF WE CAN RESOLVE  
4 IT AND NOT HAVE LEE SCHAP IN HERE.

5 MR. DOUGLASS: I HAVE NO OBJECTION.

6 (THEREUPON, THERE WAS A DISCUSSION OFF THE RECORD  
7 AT THE BENCH AND ALSO A PORTION OF THE PROCEEDINGS WERE  
8 REPORTED BY MS. LEE SCHAP.)

9 PROCEEDINGS IN OPEN COURT

10 (THEREUPON, THE JURY RETURNED TO THE COURTROOM AT  
11 3:50 O'CLOCK P.M.)

12 THE COURT: GO AHEAD, MR. BENNETT.

13 MR. BENNETT: THANK YOU, YOUR HONOR.

14 THEREUPON, --

15 WILLIAM PERRY CROWELL, JR.

16 A WITNESS OF LAWFUL AGE, CALLED AS A WITNESS ON BEHALF OF  
17 THE GOVERNMENT, HAVING BEEN PREVIOUSLY DULY SWORN, RESUMED  
18 THE WITNESS STAND AND WAS EXAMINED AND TESTIFIED FURTHER  
19 AS FOLLOWS:

20 CROSS EXAMINATION (CONTINUED)

21 BY MR. BENNETT:

22 Q. MR. CROWELL, ISN'T IT A FACT THAT PRIOR TO JULY OF  
23 1979, PROJECT A DID NOT OPERATE EVERY DAY OF THE YEAR?

24 A. THAT IS CORRECT.

25 Q. NOW, MR. CROWELL, YOU WERE SHOWN ON DIRECT, WERE YOU

1 NOT, GOVERNMENT'S EXHIBIT TEN, WHICH IS A MAP?

2 A. THAT IS CORRECT.

3 Q. AND IT WAS INDICATED TO YOU ON DIRECT THAT A  
4 LOCATION ON THAT MAP IS CIRCLED WITH A PEN, CORRECT, AND  
5 THERE ARE SOME INITIALS NEXT TO IT?

6 A. YES.

7 Q. AND LOOKING AGAIN AT GOVERNMENT EXHIBIT NUMBER TEN,  
8 AND FROM YOUR OWN KNOWLEDGE, YOUR OWN KNOWLEDGE OF PROJECT  
9 A, IN FACT, THE SPOT CIRCLED ON THE MAP IS NOT THE CORRECT  
10 LOCATION OF PROJECT A, CORRECT?

11 A. CORRECT.

12 Q. AND THE LOCATION CIRCLED ON THE MAP IS OFF THE  
13 CORRECT LOCATION OF PROJECT A BY SEVERAL HUNDRED MILES,  
14 ISN'T THAT CORRECT?

15 A. THAT IS CORRECT.

16 Q. AND YOU WERE HERE DURING THE TESTIMONY OF MR.  
17 ATWATER, WERE YOU NOT?

18 A. YES.

19 Q. AND YOU HEARD TESTIMONY FROM MR. ATWATER, DID YOU  
20 NOT, IN REGARDS TO MR. PELTON'S ACCESS AT NSA TO DOCUMENTS  
21 AND INFORMATION IN REGARDS TO PROJECT A?

22 A. YES,, I DID.

23 Q. AND YOU ALSO HEARD TESTIMONY, DID YOU NOT, FROM MR.  
24 ATWATER ON DIRECT EXAMINATION THAT MR. PELTON WOULD HAVE  
25 KNOWN THE EXACT LOCATION OF PROJECT A FROM HIS ACCESS AND

1 INFORMATION AT NASA, OR NSA, CORRECT?

2 A. YES.

3 Q. AND YOU HAVE TESTIFIED ON DIRECT EXAMINATION IN  
4 REGARDS TO THE WORD PRODUCT, THAT WORD ALSO MEANS, DOES IT  
5 NOT, OR IS EQUIVALENT TO INTELLIGENCE?

6 A. IT DEPENDS ON THE CONTEXT IN WHICH IT'S USED.

7 Q. HOW ABOUT THE WORD THEN, OR THE TWO WORDS, END  
8 PRODUCT?

9 A. END PRODUCT NORMALLY REFERS TO THE REPORTS THAT  
10 RESULT FROM THE PROCESS.

11 Q. RAW PRODUCT WOULD BE THE DATA NOT INTERPRETED,  
12 CORRECT?

13 A. RAW PRODUCT IS A CONTINUING ACROSS PART OF THAT  
14 SPECTRUM, GOING BACK FROM THE END PRODUCT TO THE VERY --

15 Q. BEGINNING?

16 A. -- BEGINNING.

17 MR. BENNETT: IF THE COURT WILL INDULGE ME.

18 THE WITNESS: IT COULD TAKE MANY FORMS.

19 BY MR. BENNETT:

20 Q. BUT THE TERM END PRODUCT COULD BE SYNONYMOUS WITH  
21 INTELLIGENCE?

22 A. GENERALLY.

23 Q. GENERALLY?

24 A. YES.

25 MR. BENNETT: THAT'S ALL I HAVE.

1 MR. DOUGLASS: ONLY ONE QUESTION, YOUR HONOR.

2 BY MR. DOUGLASS:

3 Q. MR. CROWELL, MR. BENNETT ASKED YOU ON  
4 CROSS-EXAMINATION ABOUT THE ISSUE OF OVERCLASSIFICATION.  
5 DO YOU RECALL HIS QUESTION?

6 A. YES, I DO.

7 Q. SPECIFICALLY IN THE CONTEXT OF THE MATTERS WHICH YOU  
8 DISCUSSED, THE PROJECTS WHICH YOU DISCUSSED IN YOUR DIRECT  
9 EXAMINATION, IN YOUR VIEW ARE THOSE PROJECTS  
10 OVERCLASSIFIED?

11 A. IN MY --

12 MR. BENNETT: OBJECTION. I DIDN'T COVER THE  
13 CLASSIFICATION OF THESE PROJECTS. I TALKED ABOUT IT IN  
14 TERMS OF THE SYSTEMS WITHIN THE GOVERNMENT. IT'S NOT  
15 RELATED TO MY CROSS.

16 THE COURT: SUSTAINED.

17 MR. MCDONALD: I HAVE NO FURTHER QUESTIONS.

18 THE COURT: THANK YOU. YOU CAN STEP DOWN. AFTER  
19 YOU LEAVE, PLEASE DON'T DISCUSS YOUR TESTIMONY WITH ANY  
20 OTHER WITNESS.

21 MEMBERS OF THE JURY, WE WILL SUSPEND THE TRIAL  
22 FOR THE DAY AND FOR THE WEEK AT THIS POINT. I HOPE YOU  
23 HAVE AS PLEASANT A WEEKEND AS POSSIBLE. AND, PLEASE,  
24 DON'T READ ANY NEWSPAPER ARTICLES OR LISTEN TO ANY RADIO  
25 NEWS BROADCAST OR VIEW ANY TELEVISION PROGRAM WHICH MIGHT