



### Request for Production:

Any and All Documents in the Past 46 Years Supporting the Overthrow of a Communist Government

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Sometimes there is a case that is just too unique to pass up. This is one of those cases.

The Defendants in a criminal case were charged with a conspiracy to ship weapons to Laos to overthrow the Communist Government. *United States v. Jack*, 2009 U.S. Dist. LEXIS 43120, 2-3 (E.D. Cal. May 9, 2009). The charges included:

- 1) Conspiracy to violate the Neutrality Act.
- 2) Receive and possess firearms and destructive devices; and
- 3) Export listed defense items without a State Department license;
- 4) Conspiracy to kill, kidnap, maim and injure people in a foreign country;
- 5) Conspiracy to possess missile systems. *Jack*, 2-3.



The Defendants sought discovery from 1961 to 2007 documenting communications between different government agencies and the Defendants regarding U.S. “policy, planning or conduct towards the government of Laos.” *Jack*, 6.

The Defendants argued this discovery spanning Presidents Kennedy, Johnson, Nixon, Ford, Carter, Reagan, Bush 1, Clinton, and Bush 2, was “material to the defendants’ state of mind with regard to the alleged conspiracies as well as to their possible defenses of outrageous government conduct, entrapment and defense of others.” *Jack*, 6.

The Defendants claimed they this evidence would show they would not have taken action against Laos without the approval of the United States. *Jack*, 6.

The Defendants further argued that this evidence would show the United States was not “at peace” within the meaning of the Neutrality Act. *Jack*, 6.

## The Possible Electronically Stored Information: Wiretaps & Email



The Defendants sought production of “all recordings or documents resulting from the interception of their telephone, email or other communications by presidentially approved warrantless interception, by the NSA and/or by a NARUS computer.” *Jack*, 11.

The Defendants cited various news articles and court decisions to highlight the post-September 11, 2001 terrorist attacks intelligence gathering practices to show NSA and government eavesdropping might have intercepted phone and email messages from the Defendants. *Jack*, 11.

### The Government’s Take on the Defendants’ Requests

Somewhere, some Assistant United States Attorney had many late nights briefing a discovery opposition. The Defendants sought documents regarding assassination attempts and 46 years worth of documents.

The Prosecution claimed that the government produced all discovery pertaining to call history, court-ordered wiretaps, and emails seized according to search warrants. The Prosecution stated that there was no NSA or other government agencies with intercepted communications. *Jack*, 18-19.

### Enter the Court

I am sure the Judge had a few choice private moments sitting in front of his computer considering the underlining facts of conspiracy to overthrow of a government and posses a missile system.

Things generally get bumpy when a Court states it had a “difficult time ‘getting its arms around’ this motion.” *Jack*, 21. On one side were Defendants who wanted 46 years worth of documents and on the other U.S. Attorneys who thought the trial was a mere formality for Defendants who were guilty as charged. *Jack*, 21.

Pursuant to Federal Rule of Criminal Procedure 16(a)(1)(E), the prosecution must produce discovery ““which are within the possession, custody or control of the government, and which are material to the preparation of the defendant’s defense.” *Jack*, 22.

If you like history, politics and enjoy cases involving Iran Contra, the Court had very detailed analysis of how the United States being in an undeclared war is not being “at peace” with that country. *Jack*, 35-37. However, that is beyond the scope of this blog.

The Court ordered the Government to produce any and all documents or communications from January 1, 2005 to June 3, 2007 that evidenced any covert or overt military ops with respect to Laos. *Jack*, 37-38.

One can imagine how the government would conduct a diligent search: constructing key words and possible redactions in the name of national security for any production.

THE EVIDENCE [REDACTED] Lee Harvey Oswald [REDACTED]  
Kennedy [REDACTED]  
[REDACTED]  
President. [REDACTED]  
[REDACTED]

As for the Defendants' request for any "recordings or documents obtained by the government constituting or describing cell telephone calls, emails or other communications," the Court denied the request. *Jack*, 41-42.

The Court reasoned that since the Government had produced all communications they had pursuant to court-ordered wiretaps and search warrants, there was no reason to compel discovery that did not exist. *Jack*, 41-42.

### **Bow Tie Thoughts**

"*Jack*" is a wild case. The fact the Government had to produce material from January 2005 to June 2007 regarding military operations or plans in Laos is an impressive win for the Defendants. While it is unknown how the government maintains such information, the search would be very interesting to observe.