

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES CO., *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

11 Civ. 6990 (WHP)

AMERICAN CIVIL LIBERTIES
UNION, *et al.*,

Plaintiffs,

v.

FEDERAL BUREAU OF
INVESTIGATION, *et al.*,

Defendants.

11 Civ. 7562 (WHP)

SUPPLEMENTAL DECLARATION OF MARK A. BRADLEY

I, Mark A. Bradley, do hereby state and declare as follows:

1. I am the Director of the Freedom of Information Act (“FOIA”) and Declassification Unit of the Office of Law and Policy in the National Security Division (“DOJ-NSD”) of the United States Department of Justice (“DOJ” or “Department”). DOJ-NSD is a component of the Department. DOJ-NSD formally began operations on October 2, 2006, by, *inter alia*, consolidating the resources of the Department’s Office of Intelligence Policy and

Review (“OIPR”)¹ and the Counterterrorism Section (“CTS”) and Counterespionage Section (“CES”) of the Department’s Criminal Division.

2. In addition, under a written delegation of authority pursuant to section 1.3.(c) of Executive Order 13526, I hold original classification authority at the TOP SECRET level. I am authorized, therefore, to conduct classification reviews and to make original classification and declassification decisions.

3. I make the statements herein in the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

4. I submit this supplemental declaration in support of DOJ’s Motion for Summary Judgment and for Partial Summary Judgment in the above-captioned cases. On February 27, 2012, I executed two declarations in support of DOJ’s for Summary Judgment and for Partial Summary Judgment, one of which was classified and provided to the Court on an *ex parte* and *in camera* basis.

5. I am submitting this supplemental declaration in order to address certain factual assertions contained in the brief of the plaintiffs in the above-captioned action.

6. In their legal briefs, the plaintiffs assert that the responsive document—a report to Congress from the Attorney General and the Director of National Intelligence relating to an intelligence collection operation—contains “abstract legal analysis” that can be segregated from classified information and released to the public.

7. In the unclassified declaration I executed on February 27, 2012, I addressed the issue of segregability in paragraph 11. In that paragraph, I stated: “The responsive document contains no reasonably segregable, non-exempt information. Any unclassified material in the

¹ OIPR is now known as the Office of Intelligence (“OI”).

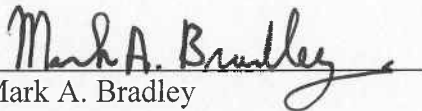
responsive document, to the extent it exists, is so inextricably intertwined with the classified material that the release of any non-exempt information would produce only incomplete, fragmented, unintelligible sentences and phrases that are devoid of any meaning. The unclassified information in the responsive document, to the extent that any exists, does not contain any meaningful information responsive to the New York Times and ACLU FOIA requests.”

8. While paragraph 11 of my prior unclassified declaration did not specifically address whether the responsive document contained segregable “legal analysis,” the judgment I expressed in paragraph 11 is fully applicable to the plaintiffs’ assertions regarding legal analysis.

9. The responsive document contains no legal analysis that is segregable from otherwise classified information contained in the responsive documents. The responsive document describes a classified intelligence collection operation. No part of the responsive document can be meaningfully separated from the classified information such that its release would not also reveal classified information. Furthermore, while the responsive document refers to the statute that authorizes and forms the basis of the classified intelligence operation, that aspect of the responsive record is inextricably intertwined with and is not segregable from the description of the intelligence collection operation. Release of any portion of the responsive record, including any portion that might be characterized as “legal analysis,” would disclose classified information about the intelligence collection operation.

I certify, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 23 day of April 2012


Mark A. Bradley