

# THE GOVERNMENT'S THOMAS DRAKE CASE CRUMBLES

As I noted the other day (and Josh Gerstein first reported), the government has chosen to withdraw two exhibits and redact discussion of a certain technology from another in the Thomas Drake case.

Ellen Nakashima appears to reveal that those three documents were three of the five charged documents.

According to people following the case, the government may have to drop two Espionage Act counts that relate to information that Drake submitted to the Defense Department inspector general between 2002 and 2004 to buttress colleagues' complaints about waste, fraud and abuse of a bungled NSA data-sifting program, Trailblazer. He and his former NSA colleagues thought the complaints were confidential.

The evidence for those two counts is contained in Exhibits 42 and 43, according to the sources. Prosecutor William M. Welch II, in a letter Sunday to Bennett, a U.S. District Court judge in Baltimore, said those exhibits will be withdrawn. The letter was first reported by Politico.

Another exhibit, numbered 41, also consisting of information Drake submitted to the inspector general, is intended to support a third Espionage Act count that may also be dropped, the sources said. That exhibit will be redacted, the prosecution has said.

So two, maybe three charges out the door there. And, as Nakashima reminds, the other two charged

documents are the ones NSA declassified not long after they were found on Drake's computer.

Apparently, the government plans to get up before a jury with three documents in a trash can, two others that appear to be a classic case of overclassification. Another charge alleges that Drake lied about passing classified information to Siobhan Gorman; the government will have to prove that with either now-declassified information or information they can't enter into evidence. Then there's the charge that alleges that Drake lied about bringing classified documents home; if I understand Nakashima's story right, then the government is in the process of throwing out the three purportedly classified documents they found at his home.

There are a few more charges: for example, after complaining to the jury that Drake left classified documents lying around at his home, they're going to ask the jury to convict him for destroying classified information so it wouldn't just be lying around his home.

Mind you, they might dink and dunk a charge here or there. But in the process they're going to look like loony-bins, sniffing around in a guy's basement for not-really classified information.