

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**THOMAS ANDREWS DRAKE,**

**Defendant.**

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**Criminal No. 10 CR 00181 RDB**

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**GOVERNMENT’S NOTICE UNDER SECTION 6(b)  
OF THE CLASSIFIED INFORMATION PROCEDURES ACT**

The United States of America, by and through William M. Welch II, Senior Litigation Counsel, and John P. Pearson, Trial Attorney, Public Integrity Section, Criminal Division, United States Department of Justice, respectfully moves this Court, pursuant to Section 6(b) of the Classified Information Procedures Act (CIPA), 18 U.S.C. App. 3, and submits the following Notice under CIPA. The Court has scheduled a hearing for March 31, 2011, at 9:30 a.m., pursuant to Section 6 of the Classified Information Procedures Act (CIPA), 18 U.S.C. App. 3, § 6(a), “to make all determinations concerning the use, relevance, or admissibility of classified information that would otherwise be made during the trial.” The purpose of this notice, as provided in CIPA section 6(b), is to “provide the defendant with notice of the classified information that is at issue.” *Id.* § 6(b).

The United States intends to introduce the classified evidence previously provided to the defendant on December 15, 2010 in the Murray binder. Accordingly, the defendant already has copies of the United States’ classified exhibits that it intends to introduce at trial.

In addition, there are several other exhibits, including several classified statements that

will be admitted under the “silent witness” rule, that the United States intends to introduce at trial. The defendant’s counsel received oral notice of those statements on February 9, 2001 when defendant’s counsel met with the NSA’s Official Classification Authority. The United States had been waiting for the defendant’s Section 5 notice, which ordinarily precedes the United States’ Section 6 filings, before finalizing those classified statements. However, in the interests of expediency and adhering to the Court’s schedule, the United States will produce copies of those statements later next week.

As stated, the United States has not received the defendant’s Section 5 notice, and the defendant has not stated what his theory(ies) of defense is/are. Therefore, depending upon the defendant’s Section 5 filing, and further information gleaned about the defendant’s proposed theories of defense, the United States reserves the right to amend its Section 6 notice. For the Court’s convenience, the United States has requested that the Court Security Officer deliver a binder containing the United States’ classified documents to the Court’s SCIF later next week.

The United States also believes that it may have to provide background information on intelligence agency witnesses, whose employment status may be classified by the agency in question. This means, for example, that some witnesses may have to testify using their first name and last initial or some other pseudonym. The United States will provide appropriate notice to the Court in the event that this will be required.

Respectfully submitted this 25th day of February 2011.

For the United States:

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**CERTIFICATE OF SERVICE**

I hereby certify that I have caused an electronic copy of the *Government's Motion Under Section 6(b)* to be served via ECF upon James Wyda and Deborah Boardman, counsel for defendant Drake.

/s/ William M. Welch II  
Senior Litigation Counsel  
United States Department of Justice