

II. Unclassified Discovery

Since the last Status Hearing, the United States has made two separate productions of unclassified material to the defense pursuant to its disclosure obligations and the defense's requests for discovery. Specifically, the United States has produced 31 pages of documents collected during the investigation, including chain-of-custody forms, Department of State (DoS) floor plans and visitor logs, DoS security video, and records related to Mr. Kim's DoS blackberry. Further, in response to a specific defense request, the United States has also produced a CD containing voluminous DoS badge records for media personnel for the period March 1, 2009, through September 30, 2009.

III. Classified Discovery

Since the last Status Hearing, the United States has made three separate productions of classified material to the defense. Specifically, the United States has produced 164 pages of classified documents, including FBI investigatory memoranda, broadcast videos, and FBI 302s and underlying agents' notes of interviews conducted during the investigation. The United States has produced these classified materials to the defense notwithstanding the fact that the government believes that such production exceeds its discovery obligations at this time.

The United States anticipates making additional productions of classified discovery to the defense in the following categories on a rolling basis:

Classified FBI 302s/Agents' Notes: The United States expects to produce additional FBI 302s and underlying agents' notes of individuals interviewed during the investigation as those interviews are concluded and authorization to produce those materials in classified discovery is received.

Classified Audit Material: The United States is presently preparing to produce in classified discovery audit material from multiple classified computer systems used by the United States to identify individuals who accessed the classified national defense information at issue prior to the unauthorized disclosure charged in the Indictment. Since the last Status Conference, the voluminous audit material has been reviewed for discoverability on multiple occasions by the prosecution team. That process is now complete. The audit material is presently undergoing classification review by the Intelligence Community. It will be produced to the defense when that review is complete and the material is processed for production.

Classified Electronic Media Material: As described more fully in a prior Joint Status Report, the Parties reached a written agreement concerning the review for discoverability and classification of voluminous electronic media collected in this case (e.g., copies of the defendant's SECRET and TOP SECRET hard drives and email). Pursuant to that agreement, the defense submitted search terms to an Intelligence Community filter team to run against the classified electronic media. The filter team completed its review of all of the classified electronic media and made the results of that review available to the prosecution team on March 31, 2011.

The defense search terms generated hits in over 6,000 electronic items. Most of the over 6,000 electronic items are clearly-marked classified. Many are SECRET and TOP SECRET intelligence reports. The prosecution team is now in the process of reviewing all of these search results for discoverability. It is a time-consuming process. Many of the 6,000 electronic items are multi-page documents. Some are system files from Mr. Kim's computer (e.g., Microsoft Windows operating system log, registry, and event files, etc.). Each such system file contains a very large volume of data, only a small portion of which may have generated the search term hit.

The review of this material is difficult because, by agreement of the Parties, the prosecution team does not know what search terms were used by the defense to generate the search results. Based on its progress to date, the prosecution team estimates that it will take another 45 days to complete its initial review of the over 6,000 electronic items for discoverability.

Before any discoverable material from these defense-generated search results can be produced to the defense, however, any classified material will have to be submitted to the pertinent equity-holders in the Intelligence Community to obtain their authorization to produce it in classified discovery. It is very difficult to predict at this stage how long the Intelligence Community's review of the materials will take as it will depend on the volume of materials and number of equity-holders implicated. The prosecution team will be in a better position to estimate the probable length of the Intelligence Community's review after it has completed its initial discoverability review of the over 6,000 electronic items. Accordingly, the Parties request that this Court set the next status in this matter in 60 days.

The Parties believe that the scheduling of discovery motions, CIPA proceedings, and expert designations, should follow the completion of the prosecution team's review of the classified electronic media and the production of any discoverable material therefrom to the defense.

IV. Witness Issues

a. Fact Witnesses

As has been reported in prior Joint Status Reports, defense counsel has sought to interview former government colleagues of Mr. Kim and was asked by the Department of State (DoS) to provide DoS with a Touhey regulation request to have that done. Defense counsel has

done so. The understanding of the prosecution team is that the Touhey issues have been resolved.

b. Expert Witnesses

Neither Party has indicated a decision to use any expert witnesses nor has identified any such witnesses. Defense counsel will seek a procedure where potential expert witnesses may have access to the classified materials in the case. Accordingly, the Parties believe that expert designations should follow completion of classified discovery, including the completion of the prosecution team's review of the classified electronic media and the production of any discoverable material therefrom to the defense.

V. Motions

a. Dispositive Motions

The defense filed four pretrial motions on January 31, 2011. The United States filed its consolidated response to the defense's motions on March 2, 2011. The defense's replies were filed on March 16, 2011. The Court has not scheduled a hearing on these motions.

b. Discovery Motions

The Parties believe that discovery motions should follow completion of classified discovery, including the completion of the prosecution team's review of the classified electronic media and the production of any discoverable material therefrom to the defense.

VI. CIPA

The Parties believe it is premature to schedule CIPA proceedings in this matter. Once the United States has completed classified discovery, including the aforesaid electronic media discovery, the Parties can address with the Court the various CIPA procedures and schedule for addressing classified material.

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Respectfully submitted,

/s/

G. Michael Harvey
Jonathan M. Malis
Assistant United States Attorneys
National Security Section
United States Attorney's Office
555 4th Street, N.W., 11th Floor
Washington, D.C. 20530
(202) 252-7810 (Telephone) (Harvey)
(202) 252-7806 (Telephone) (Malis)
(202) 252-7792 (Facsimile)
michael.harvey2@usdoj.gov
jonathan.m.malis@usdoj.gov

Patrick Murphy
Trial Attorney
Counterespionage Section
U.S. Department of Justice
600 E Street, N.W.
Washington, D.C. 20005
(202) 233-2093 (Telephone)
patrick.murphy@usdoj.gov

Counsel for the Government

/s/

Abbe D. Lowell (D.C. Bar No. 358651)
Chadbourne & Parke LLP
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 974-5605 (Telephone)
(202) 974-6705 (Facsimile)
ADLowell@Chadbourne.com

Counsel for defendant Stephen Kim

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2011, I caused a true and correct copy of the foregoing
be served via the Court's ECF filing system to all counsel of record in this matter.

/s/

G. Michael Harvey
Assistant United States Attorney