

REDACTED / CLEARED FOR PUBLIC RELEASE

FILE NO. 12-0100
Information Security Officer
CISO [Signature]
Date 9/12/2012

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)
)
 v.) Criminal No. 1:12-cr-00127-LMB
)
 JOHN KIRIAKOU,) Filed In Camera and Under Seal
) with the Classified Information
 Defendant.) Security Officer

(U) CIPA SECTION 5 NOTICE

(U) Pursuant to Section 5 of the Classified Information Procedures Act ("CIPA") and this Court's August 8, 2012 CIPA Scheduling Order (Dkt. 61), Defendant John Kiriakou, through counsel, respectfully submits this notice of the classified information that the defense intends to disclose during the course of Mr. Kiriakou's trial.

(U) APPLICABLE LAW

(U) Section 5(a) of CIPA requires a defendant "to notify the court and the prosecutor about any classified information he reasonably expects to disclose at trial." *United States v. Fernandez*, 913 F.2d 148, 151 (4th Cir. 1990); see 18 U.S.C. App. III § 5(a) (requiring notice when "a defendant reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant").

(U) Notice under Section 5 of CIPA "shall include a brief description of the classified information." 18 U.S.C. App. III § 5(a). The Section 5 notice is sufficient where the government is able to identify what documents to which the defendant is referring and what

REDACTED / CLEARED FOR PUBLIC RELEASE



REDACTED / CLEARED FOR PUBLIC RELEASE

information is contained in them. See *United States v. Miller*, 874 F.2d 1255, 1276 (9th Cir. 1989) (citing *United States v. Zettl*, 835 F.2d 1059, 1064-65 (4th Cir. 1987)).

(U) Further, the defendant need not establish the relevance of the specified information in order to satisfy the requirements of Section 5.

We have interpreted this requirement to be satisfied where the description informs "[t]he government ... exactly to which documents [the defendant] was referring, and [to] what information was contained in them." *Miller*, 874 F.2d at 1276. Accordingly, CIPA section five does not require a defendant to provide detailed argument in support of the relevance of particular noticed documents in the notice itself. Thus, the district court was mistaken in its initial assessment that the CIPA section five notice was the primary vehicle for addressing the relevance of the documents.

United States v. Rewald, 889 F.2d 836, 855 (9th Cir. 1989).

(U) Based upon these principles, Mr. Kiriakou sets forth below the classified information that he expects to be disclosed at trial.

(U) INTENDED DISCLOSURES OF CLASSIFIED INFORMATION

(U) For the convenience of the parties and the Court, the intended disclosures have been categorized and assigned a reference number. Mr. Kiriakou reserves the right to use the classified information outlined below for reasons beyond the specific category to which it is associated below.

(U) In addition, while the defense has provided bates numbers in order to assist the government in locating the particular classified information the defense intends to disclose, these numbers are meant simply as a guide and in no way limit the defendant's right to call witnesses who will testify to information to which the government is on notice by virtue of this filing, even if no bates number is provided. Further, the defendant does not waive his right to introduce documents which contain substantially the same information as that contained in a listed

REDACTED / CLEARED FOR PUBLIC RELEASE

document. The defendant also reserves the right to file additional CIPA notices if the government provides more discovery, if the defendant's own investigation reveals more information, or if other circumstances arise which necessitate a change in strategy.

(U) **I. Publication Review Board ("PRB")**

Reference Number	Description	Exemplar by Bates Number
1	All versions, drafts, manuscripts and edits of John Kiriakou's book "Citizen Spy" (later titled "The Reluctant Spy") and all classification reviews of any version, draft or manuscript of "Citizen Spy."	
2	John Kiriakou's first submission of "Citizen Spy" manuscript and accompanying cover letter.	See, e.g., CIA00011-00058
3	First set of communications with PRB regarding redactions to "Citizen Spy," including manuscripts.	See, e.g., CIA00061-00166
4	Letter from PRB telling John Kiriakou that he cannot show his book manuscript to his own lawyers.	See, e.g., CIA00236
5	Communications with PRB in Summer of 2008 regarding John Kiriakou's changes to manuscript.	See, e.g., CIA00237-00278

REDACTED / CLEARED FOR PUBLIC RELEASE

6	Communications with PRB in Fall of 2008 regarding John Kiriakou's changes to manuscript.	<i>See, e.g.</i> , CIA00280-00290
7	November 20, 2008 manuscript with changes from PRB.	<i>See, e.g.</i> , CIA00523-00599
8	John Kiriakou's March 8, 2009 edited manuscript.	<i>See, e.g.</i> , CIA00601-00771
9	PRB acceptance of manuscript on March 24, 2009 with suggested changes.	<i>See, e.g.</i> , CIA00772-00789
10	Submission of proposed pictures for inclusion in book by John Kiriakou for PRB review.	<i>See, e.g.</i> , CIA00791-00817
11	John Kiriakou's July 28, 2008 letter to PRB regarding changes to manuscript with supporting documentation.	<i>See, e.g.</i> , CIA00818-01270; CIA00293-00521
12	Accepted manuscript of John Kiriakou's book.	<i>See, e.g.</i> , CIA01272-01442
13	Kiriakou's author's galleys and CIA communications regarding those submissions.	<i>See, e.g.</i> , CIA01448-01668; CIA05394-05426
14	Email traffic recommending the denial of John Kiriakou's entire original manuscript.	<i>See, e.g.</i> , CIA00010
15	Internal PRB emails reviewing John Kiriakou's manuscript.	<i>See, e.g.</i> , CIA05742

REDACTED / CLEARED FOR PUBLIC RELEASE

16	Discussions within the CIA regarding classification status of [redacted] participation in the Rendition Detention and Interrogation ("RDI") program.	<i>See, e.g.,</i> CIA09634-09637
17	Content of correspondence between John Kiriakou and the PRB and correspondence within the PRB, both in electronic and letter form, regarding clearance for proposed speech on Abu Zubaydah by John Kiriakou, including the text of the speech.	<i>See, e.g.,</i> CIA06404-06411; CIA06413; CIA06419-06426; CIA06440-06446; CIA06455-06459; CIA06465-06567; CIA06480-06588; CIA06490-06491; CIA06488-06453
18	Content of email correspondence between John Kiriakou and the PRB regarding requested clearance for publication of an editorial concerning waterboarding, including the text of the editorial.	<i>See, e.g.,</i> CIA06745-06747; CIA06754
19	Content of email correspondence between John Kiriakou and the PRB regarding requested clearance for publication of an article concerning John Kiriakou's service during the Bush administration, including the text of the article.	<i>See, e.g.,</i> CIA07196-07197; CIA07198

REDACTED / CLEARED FOR PUBLIC RELEASE

20	Content of email correspondence between John Kiriakou and the PRB regarding requested clearance to publish a draft manuscript entitled "Questions and Answers on Terrorism for Ethnos."	<i>See, e.g.</i> , CIA05492-05493; CIA05484-05486
21	Content of email correspondence between John Kiriakou and the PRB regarding clearance to publish manuscript entitled "Yemen Is the Next Big Battleground," including the draft manuscript.	<i>See, e.g.</i> , CIA05521-05523; CIA05517
22	Content of email correspondence between John Kiriakou and the PRB regarding clearance to publish manuscript entitled "Now is When the Hard Work Starts in Libya," including the draft manuscript.	<i>See, e.g.</i> , CIA05530-05532; CIA05529
23	Content of email correspondence between John Kiriakou and the PRB regarding clearance to publish manuscript entitled "Looking for One Syrian General," including the draft manuscript.	<i>See, e.g.</i> , CIA05544-05546; CIA05539

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

24	Content of email correspondence between John Kiriakou and the PRB regarding clearance to publish manuscript entitled "Bahrain Op-ed," including the draft manuscript.	<i>See, e.g.</i> , CIA05554-05556; CIA05552
25	Content of email correspondence between John Kiriakou and the PRB regarding clearance to publish manuscript entitled "It's Time for Turkish Leadership on Syria," including the draft manuscript.	<i>See, e.g.</i> , CIA05563-05565; CIA05561
26	Content of email correspondence regarding clearance to publish manuscript by John Kiriakou entitled "Washington Post blog submission," including draft manuscript.	<i>See, e.g.</i> , CIA05439-05441; CIA05434-05435; CIA05432
27	Content of email correspondence between John Kiriakou and the PRB regarding clearance for draft manuscript entitled "Answer on al-Qaeda Propaganda Practices."	<i>See, e.g.</i> , CIA05261

REDACTED / CLEARED FOR PUBLIC RELEASE

28	Content of email correspondence between John Kiriakou and the PRB regarding clearance for draft manuscripts entitled "For Sale: the US Government" and "Is Pakistani Democracy Good for American Security," including attaching draft manuscripts.	<i>See, e.g.</i> , CIA05268-05272; CIA05281-05283
29	Content of email correspondence between John Kiriakou and the PRB regarding clearance to publish manuscript entitled "The Enemy Next Door: Beware Iran in Latin America," including the draft manuscript.	<i>See, e.g.</i> , CIA05289-05291; CIA05295
30	Content of email correspondence between John Kiriakou and the PRB regarding clearance to publish manuscript entitled "Why Panetta Should be Confirmed," including the draft manuscript.	<i>See, e.g.</i> , CIA05315-05317; CIA05318
31	Content of email correspondence between John Kiriakou and the PRB in March of 2009 regarding publication of edited manuscript, including attached pages of manuscript.	<i>See, e.g.</i> , CIA05349-05391

REDACTED / CLEARED FOR PUBLIC RELEASE

32	Content of email correspondence between John Kiriakou and the PRB regarding a Washington Post blog post in March of 2010, including accompanying text.	See e.g., CIA05432-05442
----	--	--------------------------

II. Covert Officer A

Reference Number	Description	Exemplar by Bates Number
33	The defense hereby notifies the government it intends to interview and/or call [redacted] in true name as a witness regarding the allegations in this case and his interactions with John Kiriakou.	
34	Description of the [redacted] including procedures and practices of declaring agents in their true capacity to foreign entities and agencies.	
35	[redacted]	See, e.g., CIA02166-02168
36	Any public records or documents, including open source database searches, [redacted]	

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

37		<i>See, e.g.,</i> FBI_001-000224 to 225; FBI_001-000336
38		
39		<i>See, e.g.,</i> FBI_001-000226
40		<i>See, e.g.,</i> FBI_001-000334
41	The existence or suspicion of any Red Notice by Interpol relating to <input type="text"/>	<i>See, e.g.,</i> FBI_001-000336
42		<i>See, e.g.,</i> FBI_001-000337
43	Number of individuals with knowledge of <input type="text"/>	<i>See, e.g.,</i> FBI_001-000337

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

44		See, e.g., CIA04091-04094; CIA09908
45		
46		
47		See, e.g., CIA04658; CIA04668; CIA04674

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

48		<p><i>See, e.g.</i>, CIA04106-04109; CIA04140-04143; CIA04148- 04149; CIA04154-04160, CIA04182; CIA04188-04196; CIA04199-04201; CIA04208- 04210; CIA04226-04230; CIA04311; CIA04326; CIA04333; CIA04335; CIA04344; CIA04346</p>
----	--	---

III. Abu Zubaydah

Reference Number	Description	Exemplar by Bates Number
49	<p>Description of the structure of, the technology within, and type of information obtained from</p>	<p><i>See, e.g.</i>, CIA09012; CIA09083; CIA09096</p>

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

50	<p>A detailed description of the raid to capture Abu Zubaydah based on CIA cable traffic. This is to include, but is not limited to, John Kiriakou's participation in preparation for the raid</p>	<p><i>See .e.g.</i>, CIA07940-07944; CIA07498-07503; CIA07505-07507; CIA07509-07513; CIA07515; CIA07518-07521; CIA07524-07525; CIA07527-07533; CIA07536-07538; CIA07550-07555; CIA07558-07560; CIA07569-07570; CIA07573-07576; CIA07578-07582; CIA0758-07585; CIA07589-07594; CIA07596-07597; CIA07599-07601; CIA07603-07604</p>
51	<p>The defense plans to interview and/or call as witnesses individuals identified in CIA cable traffic as participants in the raid to capture Abu Zubaydah. To the extent the names in these cables have been redacted, the defense hereby notifies the government that it will be requesting the names of these individuals, and may interview them regarding the information contained in these conversations.</p>	<p><i>See, e.g.</i>, CIA09012</p>

REDACTED / CLEARED FOR PUBLIC RELEASE

IV. John Kiriakou's Service to the United States

Reference Number	Description	Exemplar by Bates Number
52	John Kiriakou's complete and unredacted CIA personnel file.	<i>See, e.g.,</i> CIA07200-07454
53	All exceptional performance awards and meritorious unit citations, including accompanying narratives and/or underlying reports supporting the award, that John Kiriakou received.	
54	Counter Terrorist Center analysis of John Kiriakou's role in the Abu Zubaydah capture.	<i>See, e.g.,</i> CIA03898-03899
55	<p data-bbox="637 1365 1285 1662">Content of email correspondence between</p> <div data-bbox="637 1422 1285 1662" style="border: 1px solid black; height: 85px; width: 100%;"></div> <p data-bbox="637 1691 1285 2132">The defense hereby notifies the government that it will be requesting the full names of these individuals, and may interview them or call them as witnesses regarding the information contained in these conversations.</p>	<i>See, e.g.,</i> CIA09655

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

56	Internal CIA memorandum stating that John Kiriakou played an integral role in the capture of Abu Zubaydah.	See, e.g., CIA08827-08830
57	John Kiriakou's involvement in operations and programs during his service in the CIA, including all operational material relating to Kiriakou.	See e.g., CIA07257-07259; CIA07260-7263; CIA07624-07266; CIA07268-07271; CIA07282-07287

(U) V. Government Bias

Reference Number	Description	Exemplar by Bates Number
58		See, e.g., CIA08117; CIA09549
59		See, e.g., CIA05353-05355
60	The CIA's attempts to stop the publication of the June 22, 2008 article by Scott Shane "Inside the Interrogation a 9/11 Mastermind."	See, e.g., CIA03968-03977

REDACTED / CLEARED FOR PUBLIC RELEASE

VI. Alternative Sources for Alleged Leaks

Reference Number	Description	Exemplar by Bates Number
61	<p>Instant messaging ("IM") conversations suggesting [redacted] is a leaker, and otherwise being critical of [redacted].</p> <p>The names of the parties having the conversation have been redacted in the discovery provided. The defense hereby notifies the government that it will be requesting the names of these individuals, and may interview them or call them as witnesses regarding the information contained in these conversations.</p>	<p>See, e.g., CIA09798-09813; CIA09837</p>
62	<p>IM conversations suggesting possible sources regarding the Magic Box. The names of the parties involved in the conversation have been redacted in the discovery provided. The defense hereby notifies the government that it will be requesting the names of these individuals, and may interview them or call them as witnesses regarding the information contained in these conversations.</p>	<p>See, e.g., CIA09009</p>

REDACTED / CLEARED FOR PUBLIC RELEASE

63		<i>See, e.g.,</i> CIA02978
64		<i>See, e.g.,</i> CIA09219-09298
65		<i>See, e.g.,</i> CIA02969
66	<p>Communications regarding individuals, other than John Kiriakou, who disseminated, or who were sources, of classified information for</p> <div data-bbox="663 1507 1110 1578" style="border: 1px solid black; height: 25px; width: 200px; margin: 5px 0;"></div>	<p><i>See, e.g.,</i> 1B1_10-26-10_jkiriakou_02-23-11_Mail_fullbodies_ABC #57; <i>Id.</i> at Media #136.</p>
67	<p>Communications tending to show that contractors were responsible for torturing, or using enhanced interrogation techniques, on high value detainees.</p>	<p><i>See, e.g.,</i> 1B1_10-26-10_jkiriakou_02-23-11_Mail_fullbodies_Book #273.</p>

REDACTED / CLEARED FOR PUBLIC RELEASE

68		<i>See, e.g.,</i> CIA02239-02242.
69	<p>The investigation into the classified D-95 filing including, but not limited to, all government conclusions regarding possible exposure of [REDACTED] [REDACTED] connection to the RDI program and and/or Abu Zubaydah. The defense also plans on interviewing witnesses regarding their statements about exposure in the classified D-95 filing.</p>	<i>See, e.g.,</i> CIA02377-02382; CIA02227-02229; CIA02240-02241; CIA01836-01845; CIA1850-1890.
70	<p>All public records or documents including open source database searches tying [REDACTED] [REDACTED] to the RDI program or the raid to capture Abu Zubaydah.</p>	

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

VII. Discussions with Witnesses

Reference Number	Description	Exemplar by Bates number
71	<p>The defense plans on speaking with various members of the media who are involved in this case, including, but not limited to, [REDACTED]</p> <p>[REDACTED] The defense also plans on speaking with other individuals, including but not limited to, [REDACTED] The substance of these conversations will include sources of classified information provided to these individuals. This classified information will include the operation to capture Abu Zubaydah, the RDI program and individuals involved in that program. Further, these discussions will also include [REDACTED] [REDACTED] and their connections to the RDI program, as well as the outside individuals' knowledge of these connections.</p> <p>The defense also plans to speak to reporters and other possible witnesses regarding sources [REDACTED]</p>	

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

72	<p>Methods with which non-CIA individuals were able to discover the identities [REDACTED]</p> <p>[REDACTED]</p>	<p>See, e.g., Main_001_000440-000518.</p>
73	<p>The defense plans on interviewing and/or calling [REDACTED] as witness in this case to discuss his connection [REDACTED]</p> <p>[REDACTED]</p>	
74	<p>The defense intends to call a witness who will testify as to the protocols and procedures utilized by the CIA and other government agencies including, but not limited to, the FBI and the Department of State, to classify information and maintain classified information.</p>	<p>See, e.g., CIA01771-01772</p>

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

75	<p>The defense intends to call a witness who will testify as to the protocols and procedures used by the CIA and other government agencies including, but not limited to the FBI and Department of State, with regard to the transmission and access to cable communications, including access to particular channels included within the discovery provided in this case.</p>	
----	--	--

(U) CONCLUSION

(U) Having hereby served this Court and the Government with notice pursuant to Section 5 of CIPA, the defense will respond to any Government response as set forth in the CIPA Scheduling Order.

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

(U) Respectfully submitted,

/s/ Plato Cacheris

Plato Cacheris
(Va. Bar No. 04603)
pcacheris@troutcacheris.com
Attorney for John Kiriakou
TROUT CACHERIS, PLLC
1350 Connecticut Ave, N.W., Suite 300
Washington, D.C. 20036
Phone: (202) 464-3300
Fax: (202) 464-3319

/s/ John F. Hundley

John Francis Hundley
(Va. Bar No. 36166)
jhundley@troutcacheris.com
Attorney for John Kiriakou
TROUT CACHERIS, PLLC
1350 Connecticut Ave, N.W., Suite 300
Washington, D.C. 20036
Phone: (202) 464-3300
Fax: (202) 464-3319

/s/ Robert P. Trout

Robert P. Trout
(Va. Bar No. 13642)
rtrout@troutcacheris.com
Attorney for John Kiriakou
TROUT CACHERIS, PLLC
1350 Connecticut Ave, N.W., Suite 300
Washington, D.C. 20036
Phone: (202) 464-3300
Fax: (202) 464-3319

/s/ Jesse I. Winograd

Jesse I. Winograd
(Va. Bar No. 79778)
jwinograd@troutcacheris.com
Attorney for John Kiriakou
TROUT CACHERIS, PLLC
1350 Connecticut Ave, N.W., Suite 300
Washington, D.C. 20036
Phone: (202) 464-3300
Fax: (202) 464-3319

/s/ Mark J. MacDougall

Mark J. MacDougall
(Admitted *Pro Hac Vice*)
mmacdougall@akingump.com
Attorney for John Kiriakou
AKIN GUMP STRAUSS
HAUER & FELD, LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Phone: (202) 887-4510
Fax: (202) 887-4288

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

(U) Certificate of Service

(U) I hereby certify that on this 12th day of September, 2012, I filed the foregoing CIPA notice, by hand, with the Classified Information Security Officer. Pursuant to the Protective Order, the Classified Information Security Officer will deliver the foregoing to the Court and to counsel for the United States:

Lisa L. Owings
Lisa.owings@usdoj.gov
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

W. Neil Hammerstrom, Jr.
Neil.hammerstrom@usdoj.gov
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

Ryan P. Fayhee
ryan.fayhee@usdoj.gov
U.S. Department of Justice
Trial Attorney
Counterespionage Section
600 E Street, N.W.
Washington, D.C. 20004

Iris Lan
Iris.lan@usdoj.gov
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

Mark E. Schneider
Mark.schneider@usdoj.gov
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

REDACTED / CLEARED FOR PUBLIC RELEASE

REDACTED / CLEARED FOR PUBLIC RELEASE

/s/ Jesse I. Winograd

Jesse I. Winograd
(Va. Bar No. 79778)
jwinograd@troutcachris.com
Attorney for John Kiriakou
TROUT CACHERIS, PLLC
1350 Connecticut Ave, N.W., Suite 300
Washington, D.C. 20036
Phone: (202) 464-3300
Fax: (202) 464-3319

REDACTED / CLEARED FOR PUBLIC RELEASE