

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

\*

v.

\*

Criminal No. 1:10-cr-0181-RDB

THOMAS ANDREWS DRAKE

\*

**NOTICE OF FILING OF EXHIBITS TO DEFENDANT'S RESPONSE TO  
GOVERNMENT'S MOTION *IN LIMINE* TO EXCLUDE ANY EVIDENCE OR  
DEFENSE ATTACKING THE LEGALITY OF THE REGULATORY SCHEME  
RELATING TO THE DISCLOSURE OF CLASSIFIED INFORMATION**

The defendant, Thomas Drake, through his attorneys, hereby submits Exhibits A and B to his Response in Opposition to the Government's Motion *in Limine* to Exclude Any Evidence or Defense Attacking the Legality of the Regulatory Scheme Relating to the Disclosure of Classified Information. These exhibits should have been filed with the defendant's response [Docket No. 71], but they were inadvertently omitted.

Respectfully submitted,

/S/

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U.S. Department of Justice  
Criminal Division

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Washington, D.C. 20530

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November 29, 2010

James Wyda, Esq.  
Deborah Boardman, Esq.  
Office of the Federal Public Defender  
100 South Charles Street  
BankAmerica Tower II, Ninth Floor  
Baltimore, MD 21201

Re: United States v. Thomas Andrews Drake  
Case No. 10 CR 001811-RDB

Rule 16(a)(1)(G) Expert Summary Disclosure

Dear Counsel:

(U) Pursuant to your request for expert disclosures, the written discovery agreement, and our obligation under Rule 16(a)(1)(G), this letter is a written summary of the testimony of Catherine A. Murray, an Original Classification Authority (hereinafter "OCA") for the National Security Agency (hereinafter "NSA"). This letter does not set forth each and every fact about which Ms. Murray will testify, but rather sets forth her qualifications and a written summary of her testimony, including the bases and reasons for her opinions.

(U) We hereby request production of any and all discovery relating to your experts pursuant to Rule 16(b).

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## Qualifications

(U) Ms. Murray has been employed at NSA for approximately 28 years in a variety of positions primarily within the signals intelligence mission. While assigned as the Chief S02 (SID Policy), she was also a designated Agency OCA. Ms. Murray's OCA-specific duties and responsibilities include mandatory annual training in the basis of classification in accordance with Executive Order 13526; reviewing and determining the proper level of classification for NSA documents and information; reviewing the work of other NSA classification advisory officers; and serving as an expert in federal court.

## Summary of Testimony

(U) Ms. Murray will testify that the authority of an OCA generally derives from Executive Order 13526 and its predecessors. The purposes of the Executive Order are to prescribe a uniform system for classifying, safeguarding and declassifying national security information, and to protect information critical to national security while also balancing an interest in an open government. Ms. Murray will define some of the terms and phrases important in understanding original classification, including, but not limited to, "national security information," "information," and other terms and phrases necessary and helpful to the jury's understanding of the process of original classification. Ms. Murray also will testify that the original classification authority is non-delegable, and that the uniform system of classification would fail if others could make their own independent determination of the proper classification of information.

(U) Ms. Murray also will testify regarding what conditions must be met in order for information to be classified. By way of example only, these conditions include that: the information must be classified by an OCA, the information must be owned by, produced by or for, or under the control of the U.S. Government, the information must relate to intelligence activities, and the unauthorized disclosure of information reasonably could be expected to cause damage, and the OCA can identify or describe that damage.

(U) Ms. Murray will testify about the different levels of classification. She will define and discuss what is "Confidential," "Secret," and "Top Secret" information, as well as "Sensitive Compartmented Information ("SCI") information. "Confidential" information is information that, if subject to unauthorized disclosure, can reasonably be expected to cause damage to the national security of the United States. "Secret" information is information that, if subject to unauthorized disclosure, can reasonably be expected to cause grave damage to the national security of the United States. "Top Secret" information is information that, if subject to unauthorized disclosure, can reasonably be expected to cause exceptionally grave damage to the national security of the United States.

Ms. Murray will describe some of the factors that go into a classification decision. These factors can include, but are not limited to, foreign government information, intelligence activities to include sources, methods, and means, resource commitment or investment, compromise, safety, equity considerations of partners, and foreign relations. Ms. Murray will explain how

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documents containing classified information are marked, including header and footer markings, portion markings, and the methods required to disseminate classified information.

(U) In addition, she will define and discuss markings and acronyms that may appear on certain documents, such as "COMINT," "FOUO," and other similar types of markings. Ms. Murray also will testify about other aspects of the Executive Order, such as what to do if there is significant doubt about the need to classify information (i.e. not classify) or the appropriate level of classification (i.e. adopt the lower level of classification), or inappropriate reasons for classification (e.g. concealment of violations of law, prevention of agency embarrassment, etc.). In addition, Ms. Murray will testify about the procedures to review classification decisions to determine if classifications need to be modified.

(U) Ms. Murray will testify about the general restrictions on access to classified information, including the requirements of appropriate security clearances, non-disclosure agreements, and the "need to know." She will testify about how NSA is a closed system, and each NSA employee's responsibility to safeguard classified information, including the tools and guides available to each and every employee to assist them in making an initial classification when creating a document. She will testify that no NSA employee may remove classified information from NSA without proper authorization.

(U) Based upon her training and experience, as a twenty-eight year NSA employee and as an OCA, and consistent with the classification guide(s) relevant to the documents and information at issue in this case, Ms. Murray will testify as follows:

1. "Collections Sites" Document

(U//FOUO) This document is classified overall as "Top Secret," because the information contained therein reveals physical locations of collection activity, including undeclared and potentially single source collection activity; the forward deployment of employees; and classified technical details of NSA capabilities to a degree that adversaries could design or employ countermeasures. In addition, the classified information in this document appears in other "source" documents, and these documents are classified at a similar level.

2. "Trial and Testing" Document

(U//FOUO) This document is classified overall as "Top Secret," because the information contained therein reveals classified technical details of NSA capabilities to a degree that adversaries could design or employ countermeasures. In addition, the document contains "Secret" information, because the information contained therein reveals classified technical details of NSA capabilities, but not to a degree that adversaries could design or employ countermeasures. In addition, the classified information in this document appears in other "source" documents, and these documents are classified at a similar level.

3. "Volume is our Friend" Document

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(U//FOUO) This document is classified overall as “Top Secret,” because the information contained therein reveals classified technical details of NSA capabilities to a degree that adversaries could design or employ countermeasures. In addition, the document contains “Secret” information, because the information contained therein reveals classified technical details of NSA capabilities, but not to a degree that adversaries could design or employ countermeasures, and classified budget information that demonstrates a specific level of effort and commitment by NSA. In addition, the classified information in this document appears in other “source” documents, and these documents are classified at a similar level.

4. “What a Success” Document

(U//FOUO) This document is classified overall as “Secret,” because the information contained therein reveals classified technical details of NSA capabilities and a specific level of effort and commitment by NSA, but not to a degree that adversaries could design or employ countermeasures. In addition, the classified information in this document appears in other “source” documents, and these documents are classified at a similar level.

5. “Regular Meetings” Document

(U//FOUO) This document is classified overall as “Secret,” because the information contained therein reveals covered operations and sources and methods, but not to a degree that adversaries could design or employ countermeasures. In addition, the classified information in this document appears in other “source” documents, and these documents are classified at a similar level.

6. “Shoestring Budget” Document

(U//FOUO) This document is classified overall as “Top Secret,” because the information contained therein reveals classified technical details of NSA capabilities to a degree that adversaries could design or employ countermeasures. In addition, the classified information in this document appears in other “source” documents, and these documents are classified at a similar level.

7. “BAG” Document

(U//FOUO) This document is classified overall as “Confidential,” because the information contained therein reveals a connection between classified technical details of NSA and a specific program. In addition, the classified information in this document appears in other “source” documents, and these documents are classified at a similar level.

8. “Buy vs. Make” Document

(U//FOUO) This document is classified overall as “Top Secret,” because the information contained therein reveals classified technical details of NSA capabilities to a degree that adversaries could design or employ countermeasures. In addition, the document contains “Secret” information, because the information contained therein reveals classified technical

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details of NSA capabilities, but not to a degree that adversaries could design or employ countermeasures, and classified budget information that demonstrates a specific level of effort and commitment by NSA. Finally, the document contains "Confidential" information, because the information contained therein reveals personnel strength and a specific level of effort and commitment by NSA. In addition, the classified information in this document appears in other "source" documents, and these documents are classified at a similar level.

9. "9-11 Commission" Document

(U//FOUO) This document is classified overall as "Confidential," because the information contained therein reveals personnel strength and a specific level of effort and commitment by NSA. In addition, the classified information in this document appears in other "source" documents, and these documents are classified at a similar level.

10. "TT Notes" Document

(U//FOUO) This document is classified overall as "Secret," because the information contained therein reveals classified budget information that demonstrates a specific level of effort and commitment by NSA. Finally, the document contains "Confidential" information, because the information contained therein demonstrates personnel strength and a specific level of effort and commitment by NSA. In addition, the classified information in this document appears in other "source" documents, and these documents are classified at a similar level.

11. "Terrorism Threat" Document

(U//FOUO) This document is classified overall as "Secret," because the information contained therein reveals classified technical details of NSA capabilities, but not to a degree that adversaries could design or employ countermeasures, and classified budget information that reveals a specific level of effort and commitment by NSA. Finally, the document contains "Confidential" information, because the information contained therein reveals sources and methods associated with a specific program of NSA. In addition, the classified information in this document appears in other "source" documents, and these documents are classified at a similar level.

12. "Note Card 1" Document

(U//FOUO) This document is classified overall as "Secret," because the information contained therein reveals classified budget information that demonstrates a specific level of effort and commitment by NSA. In addition, the classified information in this document appears in other "source" documents, and these documents are classified at a similar level.

13. "Note Card 2" Document

(U//FOUO) This document is classified overall as "Secret," because the information contained therein reveals classified budget information that demonstrates a specific

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level of effort and commitment by NSA. In addition, the classified information in this document appears in other "source" documents, and these documents are classified at a similar level.

(U//FOUO) The United States reserves the right to supplement this expert summary. You may schedule an appointment at the NSA to review Ms. Murray's classification review of the aforementioned documents.

Very truly yours,

By:



**WILLIAM M. WELCH II**  
Senior Litigation Counsel  
Criminal Division  
United States Department of Justice



U.S. Department of Justice

Criminal Division

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Washington, D.C. 20530

March 7, 2011

VIA EMAIL

James Wyda, Esq.  
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100 South Charles Street  
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Baltimore, Maryland 21201

**Re: United States v. Thomas Andrews Drake**  
**Case No. 10 CR 00181 RDB**

Dear Attorneys Wyda and Boardman:

This letter shall supplement the previous unclassified Rule 16(g) expert summary of Catherine Murray.

4. "What a Success" Document

(U//FOUO) This document is classified overall as "SECRET," because the information contained therein reveals classified technical details of NSA capabilities and a specific level of effort and commitment by NSA, but not to a degree that adversaries could design or employ countermeasures. More specifically, the combination of the cover terms for this network architecture implied a level of effort, scale, and scope by NSA, and a level of activity and commitment by NSA, to this network architecture such that the information was classified as "SECRET."

(U//FOUO) On July 30, 2010, the classification guide for this information was updated by NSA in accordance with the Executive Order, and NSA determined that this information no longer required the protection of classification. The information, however, was appropriately classified as "SECRET" through the time of the defendant's possession, which ended on November 28, 2007, and through the date of the indictment, April 14, 2010.

(U//FOUO) In addition, this document also discussed NSA efforts related to a malicious computer attack by an external actor or third party on a U.S. government computer system. This fact was classified as "SECRET//REL TO USA, FVEY." Additionally, the document included a specific cover term that had been assigned to this intrusion in order to protect the sensitive nature of the discovery and vulnerability to U.S. government computer networks. The fact that a



specific malicious computer activity had been found on a U.S. government computer system or network, and the U.S.'s identification of and/or response to the malicious activity, was classified as "SECRET." Unauthorized disclosure of exposure of the success or failure of a malicious computer activity against a U.S. government computer system would provide a determined adversary insight into the strengths and/or vulnerabilities of U.S. government computer systems or networks and allow a more focused intrusion.

(U//FOUO) On July 30, 2010, the classification guide for this information was updated by NSA in accordance with the Executive Order, and NSA determined that this information no longer required the protection of classification. The information, however, was appropriately classified as "SECRET" through the time of the defendant's possession, which ended on November 28, 2007, and through the date of the indictment, April 14, 2010.

Very truly yours,

\_\_\_\_\_/s/\_\_\_\_\_  
William M. Welch II  
Senior Litigation Counsel  
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Public Integrity Section  
United States Department of Justice