

THE COMPLEXITIES OF REALITY WINNER'S CASE

I suggested in this post that some of the coverage of Reality Winner's arraignment was less than stellar.

Case in point: I didn't see any reporting of the hearing that the government had moved to declare her case complex because they intended to use the Classified Information Procedures Act (CIPA, which governs how the government uses or substitutes classified information to be used in a trial); Winner's attorney did not object. The court formally approved that on June 14. Then, on June 19, the government moved for a CIPA pretrial conference, which (credit where due) the Augusta press covered on Friday.

Perhaps this is just formality. At the end of its CIPA motion, the government refers to the "fast-moving nature of this case" even while admitting that it may not need some (or most?) of the CIPA procedures it had just laid out.

Given that this investigation concerns the disclosure of classified material and that the government's evidence includes classified information, the government respectfully moves for a pretrial conference, pursuant to Section 2 of CIPA, to establish a discovery and motion schedule relating to any classified information. The government notes that some of the CIPA sections outlined above may not be invoked or need to be addressed.

Further, dependent upon future events and potential pretrial resolutions and proceedings, there may be no need for hearings pursuant to CIPA. Because of the fast-moving nature of this case, the precise amount of classified information that may be discoverable or used as evidence is still being determined.

Claims of thumb drives inserted into Air Force computers last year notwithstanding, on its face, this appears to be a cut-and-dry case: out of a pool of six potential leakers, one – Winner – has already confessed to the FBI. So perhaps the government is just doing this to ensure it has a Court Information Security Officer involved and a hefty protection order imposed on Winner's defense team.

But in the same motion, the government makes it clear that it collected classified material beyond the document that Winner is alleged to have leaked to The Intercept.

The indictment in this case charges the defendant with unlawfully retaining and transmitting classified national defense information in violation of 18 U.S.C. § 793(e). Classified material, *including but not limited to the document which the defendant is charged with unlawfully retaining and transmitting*, was collected as part of the underlying investigation and will be the subject of certain procedures set forth in CIPA, as well as in other applicable rules, statutes, and case law. The disclosure of such material will raise issues of national security that the Court must address before the material is provided to the defense. [my emphasis]

That might just refer to data the NSA and FBI used to hone in on Winner. Or it may mean there's more to the case than meets the eye.

And whatever that is will remain out of eyesight, behind CIPA.