

FRIDAY NEWS DUMP NOT DEAD YET: STEPHEN KIM GUILTY PLEA

Just when Kevin Drum declared the “Friday News Dump” dead, comes proof news of said death was greatly exaggerated.

As Josh Gerstein and others have reported, the plea will be entered this afternoon:

Under the terms of the agreement, Kim will plead guilty to a single felony count of disclosing classified information to Rosen in June 2009, and serve a 13-month prison sentence. Judge Colleen Kollar-Kotelly would have to accept the sentence or reject it outright?, in which case Kim could withdraw his plea. Kim would also be on supervised release for a year, but would pay no fine.

Judge Kollar-Kotelly is expected to accept the guilty plea at today’s hearing, but will not impose a sentence until sometime later.

Well, that is kind of a big deal dropped out of nowhere on a Friday afternoon.

As you may recall, this is the infamous case where the Obama/Holder DOJ was caught classifying a journalist, James Rosen of Fox News, as an “aider and abettor” of espionage. As the Washington Post reported, the scurrilous allegation was clear as day in a formal warrant application filed as an official court document:

“I believe there is probable cause to conclude that the contents of the wire and electronic communications pertaining to the SUBJECT ACCOUNT [the gmail account of Mr. Rosen] are evidence,

fruits and instrumentalities of criminal violations of 18 U.S.C. 793 (Unauthorized Disclosure of National Defense Information), and that there is probable cause to believe that the Reporter has committed or is committing a violation of section 793(d), as an aider and abettor and/or co-conspirator, to which the materials relate," wrote FBI agent Reginald B. Reyes in a May 28, 2010 application for a search warrant.

The search warrant was issued in the course of an investigation into a suspected leak of classified information allegedly committed by Stephen Jin-Woo Kim, a former State Department contractor, who was indicted in August 2010.

The Reyes affidavit all but eliminates the traditional distinction in classified leak investigations between sources, who are bound by a non-disclosure agreement, and reporters, who are protected by the First Amendment as long as they do not commit a crime.

[snip]

As evidence of Mr. Rosen's purported culpability, the Reyes affidavit notes that Rosen and Kim used aliases in their communications (Kim was "Leo" and Rosen was "Alex") and in other ways sought to maintain confidentiality.

"From the beginning of their relationship, the Reporter asked, solicited and encouraged Mr. Kim to disclose sensitive United States internal documents and intelligence information... The Reporter did so by employing flattery and playing to Mr. Kim's vanity and ego."

"Much like an intelligence officer would run an [sic] clandestine intelligence source, the Reporter instructed Mr. Kim

on a covert communications plan... to facilitate communication with Mr. Kim and perhaps other sources of information."

Of course, the fully justifiable uproar over the Rosen treatment by DOJ eventually led to "new guidelines", being issued by the DOJ. The new guidelines are certainly a half step in the right direction, but wholly unsatisfactory for the breadth and scope of the current Administration's attack on the American free press.

But now the case undergirding the discussion in the Stephen Kim case will be shut down, and the questions that could play out in an actual trial quashed. All nice and tidy!

Frankly, I have mixed emotions about the reported Kim plea itself. It is, all in all, a pretty good deal for Kim and his attorney, the great Abbe Lowell. The case is done, bad precedent does not get etched into a jury verdict and appeal, and the nightmare has an end in sight for the defendant, Stephen Kim. All things considered, given the seriousness of the espionage and false statement charges in the indictment, 13 months is a good outcome. And it is not a horrible sentence to have as a yardstick for other leakers (were I Ed Snowden and Ben Wizner, I would like this result). By the same token, the damage done by the ridiculous antics and conduct of the DOJ in getting to this point is palpable. It will leave a stain that won't, and shouldn't, go away.

That still leaves the matter of Jeffrey Sterling, and reporter James Risen, though. Whither DOJ on that? And it is an important question since the much ballyhooed and vaunted "New Media Policies" announced by DOJ left wide open the ability to force Risen (and others that may some day be similarly situated) to testify about his sources of face jail for contempt.