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7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA, ) NO. CR 95-779-DT  
12 )  
12 Plaintiff, )  
13 )  
13 v. )  
14 )  
14 DUK KYUNG KIM, )  
15 )  
15 Defendant. )  
16 )  
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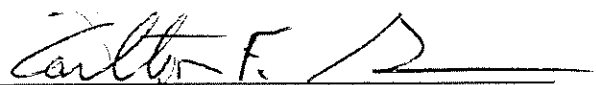
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18 Defendant DUK KYUNG KIM, through his counsel of record, Deputy  
19 Federal Public Defender Carlton F. Gunn, hereby applies to this  
20 Honorable Court for two pretrial subpoenas duces tecum. The first  
21 directs a private individual named Steve Kang to provide a voice  
22 exemplar in which he speaks in Korean the phrases "tired of running  
23 from the law", "bad cargo", and "have to be careful about the  
24 police". The second directs Deputy Steve Kim of the Los Angeles  
25 County Sheriff's Department to provide a voice exemplar in which he  
26 (1) reads in Korean the FBI report of interview attached to this  
27 application as Exhibit A and (2) asks in Korean the question, "Did  
28 you know you were dealing with stolen property?"

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This application is made pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure and is based on the attached memorandum of points and authorities and declaration, all files and records in this case, and such further information as may be submitted to the court regarding this application.

Respectfully submitted,  
MARIA E. STRATTON  
Federal Public Defender

DATED: October 31, 1995

By   
CARLTON F. GUNN  
Deputy Federal Public Defender

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1 interview; indeed, it appears that this was the main focus of the  
2 second interview. See Exhibit B. The report of the second  
3 interview also reflects at least one specific question which Deputy  
4 Kim apparently asked in Korean: "Did you know you were dealing  
5 with stolen property?" Id.

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7 One of the factual issues which will arise at the trial will  
8 be whether Mr. Kang's translation and Deputy Kim's translations  
9 were accurate and unambiguous. If they were not, the jury could  
10 conclude that Mr. KIM did not admit knowing the property was  
11 stolen. The defense intends to retain a Korean language expert to  
12 evaluate the accuracy, clarity, and fluency of Mr. Kang's and  
13 Deputy Kim's Korean.

14  
15 In order for the defense expert to form an opinion, he needs  
16 to hear Mr. Kang and Deputy Kim speaking in Korean. It will not be  
17 sufficient if he merely hears them speak briefly in court without  
18 having an opportunity to listen carefully. The court should  
19 therefore order issuance of the pretrial subpoenas duces tecum  
20 which are requested in this application.

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II.

ARGUMENT

A. A VOICE EXEMPLAR OF AN INTERPRETER'S TRANSLATION OF WORDS USED DURING THE INTERROGATION OF A DEFENDANT IS SUBJECT TO SUBPOENA UNDER RULE 17(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

Rule 17(c) of the Federal Rules of Criminal Procedure provides that a subpoena may not only command a witness to appear and give testimony, but may also "command the person to whom it is directed to produce the books, papers, documents, or other objects designated therein." While the catch-all phrase "other objects" is not defined in the rule, the Supreme Court has described the rule as applying to "any document or other materials, admissible as evidence." Bowman Dairy Co. v. United States, 341 U.S. 214, 221 (1951). In construing a comparable statute authorizing Internal Revenue Service summonses for tax investigations, the Supreme Court has explained:

The scope of the "testimonial" or evidentiary duty imposed by common law or statute has traditionally been interpreted as an expansive duty limited principally by relevance and privilege. . . .

One application of this broad duty to provide relevant evidence has been the recognition, since early times, of an obligation to provide certain forms of non-testimonial physical evidence. In Holt v. United States, 218 U.S. 245, 252-253 (1910) (Holmes, J.), the Court found that the common-law evidentiary duty permitted the compulsion of various forms of physical evidence. In Schmerber v. California, 384 U.S. 757, 764 (1966), this Court observed that traditionally witnesses could be compelled, in both state and federal courts, to submit to "fingerprinting, photographing, or measurements, to write or

1 speak for identification, to appear in court,  
2 to stand, to assume a stance, to walk or to  
3 make a particular gesture." See also United  
4 States v. Wade, 388 U.S. 218 (1967). In  
5 Gilbert v. California, 388 U.S. 263, 266-267  
6 (1967), handwriting was held, "like the . . .  
7 body itself" to be an "identifying physical  
8 characteristic" subject to production. In  
9 United States v. Dionisio, 410 U.S. 1 (1973),  
10 and United States v. Mara, 410 U.S. 19 (1973),  
11 this Court again confirmed that handwriting is  
12 in the nature of physical evidence which can be  
13 compelled by a grand jury in the exercise of  
14 its subpoena power. See also United States v.  
15 Mullaney, 32 F. 370 (CC Mo. 1887).

This broad duty to provide most relevant,  
nonprivileged evidence has not been considered  
to exist only in the common law. The court has  
recognized that by statute "Congress may  
provide for the performance of this duty."  
Blackmer v. United States, 284 U.S. 421, 438  
(1932). By imposing an obligation to produce  
documents as well as to appear and give  
testimony, we believe the language of § 7602  
suggests an intention to codify a broad  
testimonial obligation, including an obligation  
to provide some physical evidence relevant and  
material to a tax investigation, subject to the  
traditional privileges and limitations.

16 United States v. Euge, 444 U.S. 707, 712-14 (footnotes omitted).  
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18 The same analysis ought to apply to Rule 17 of the Federal  
19 Rules of Criminal Procedure, which provides for the production of  
20 documents in subsection (c) and provides for the appearance and  
21 giving of testimony in subsection (a). Consistent with this, lower  
22 courts have applied Rule 17 to subpoenas of handwriting exemplars  
23 and fingerprints from defendants and other witnesses. See, e.g.,  
24 United States v. Kloepper, 725 F. Supp. 638, 641 (D. Mass. 1989);  
25 United States v. Vanegas, 112 F.R.D. 235, 237-38 (D.N.J. 1986);  
26 United States v. McKeon, 558 F. Supp. 1243, 1245-47 (E.D.N.Y.  
27 1983). See also United States v. Mara, 410 U.S. 19 (1973) (no  
28 fourth or fifth amendment bar to grand jury subpoena requiring

1 production of handwriting exemplars).

2  
3 Voice exemplars are no different; they, like handwriting, are  
4 "constantly exposed to the public" and "repeatedly produced for  
5 others". United States v. Dionisio, 410 U.S. at 14. See also  
6 Mara, 410 U.S. at 21. Because of this, a witness has no privacy  
7 interest or other privilege which would preclude an order that he  
8 produce a voice exemplar. See Dionisio, 410 U.S. at 14. See also  
9 United States v. Wade, 388 U.S. 218, 222-23 (1967) (privilege  
10 against self-incrimination does not preclude requiring defendant to  
11 repeat words used by robber).

12  
13 As required for a subpoena issued pursuant to Rule 17(c),  
14 moreover, the voice exemplars Mr. Kang and Deputy Kim will be  
15 admissible in evidence. Just as handwriting exemplars are  
16 admissible evidence which serve as the basis for a handwriting  
17 expert's opinion, see United States v. Vanegas, 112 F.R.D. at 239,  
18 the voice exemplar here will be admissible evidence which serves as  
19 the basis for the opinion of Mr. KIM's Korean language expert.

20  
21 B. PRETRIAL PRODUCTION OF MR. KANG'S AND DEPUTY KIM'S VOICE  
22 EXEMPLARS SHOULD BE REQUIRED UNDER RULE 17(c).

23  
24 Rule 17(c) also provides that in appropriate circumstances a  
25 court "may direct that books, papers, documents or objects  
26 designated in the subpoena be produced before the court at a time  
27 prior to trial or prior to the time when they are to be offered in  
28 evidence and may upon their production permit the books, papers,

1 documents or objects or portions thereof to be inspected by the  
2 parties and their attorneys." An order of pretrial production of  
3 exemplars which are relevant and not otherwise procurable in  
4 advance of trial is appropriate under this provision when the  
5 defendant "cannot properly prepare for trial without such  
6 production and inspection in advance of trial and . . . failure to  
7 obtain such inspection may unreasonably delay the trial." United  
8 States v. Vanegas, 112 F.R.D. at 239.

9  
10 Pretrial production of the voice exemplars here is necessary  
11 for the same reasons pretrial production of the handwriting  
12 exemplars was necessary in Vanegas. Mr. KIM's expert will need  
13 time to listen to the voice exemplars and discuss them with defense  
14 counsel prior to testifying. Simply having Mr. Kang and Deputy Kim  
15 repeat the Korean words they used in court will not leave time for  
16 preparation unless the trial is interrupted while Mr. KIM's expert  
17 perhaps listens to the witnesses repeat the words and/or consults  
18 with defense counsel about his conclusions. Having Deputy Kim read  
19 a four and a half page statement in Korean will be a waste of the  
20 jury's time, since they will likely not understand a word Deputy  
21 Kim is saying. A tape recording of Mr. Kang and Deputy Kim will  
22 also be the only record which may be preserved for appeal, because  
23 the court reporter will presumably be unable to effectively  
24 transcribe the Korean which they use.

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26 In sum, pretrial production should be required here just as it  
27 is in the case of handwriting exemplars. Such a requirement is  
28 hardly burdensome, and it will permit both more effective



1 preparation for trial and more efficient conduct of trial.

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III.

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CONCLUSION

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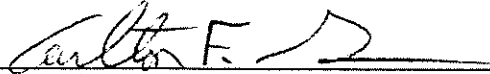
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For the foregoing reasons, Mr. KIM respectfully requests that this Court approve the proposed order submitted with this application and require Mr. Kang and Deputy Kim to provide the requested voice exemplars. The court should also order the exemplars to be provided prior to trial.

Respectfully submitted,

MARIA E. STRATTON  
Federal Public Defender

DATED: October 30, 1995

By   
CARLTON F. GUNN  
Deputy Federal Public Defender



**EXHIBIT A**

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/17/95

DUK KYUNG KIM, date of birth 9/17/45, 612 Glenwood Avenue, #12, Glendale, California, telephone number (818) 244-7470, was advised of the identities of the interviewing investigators and of the purpose of the interview. KIM furnished the following information:

KIM stated that he was "tired of running from the law" and that he wanted to fully cooperate. He added that, since the day of his interview by law enforcement officials, he has been sleeping inside his van, and that he was out of money. KIM added that he was very upset because he asked JAE HOON CHANG, his "boss", to assist him with negative results.

SA LADSOUS told KIM that his cooperation would have to be strictly voluntary. SA LADSOUS added that he could not promise him anything and that the United States Attorney's Office (USAO) would be made aware of his cooperation. SA LADSOUS explained that, should he be found guilty, his sentencing would be dictated by sentencing guidelines set forth by the United States Justice Department. SA LADSOUS said that the USAO could make a recommendation to the court for a downward departure and that his full cooperation and acceptance of responsibility could have an impact on his sentencing. KIM stated that he understood and furnished the following information:

KIM stated that he first met CHANG in 1990. CHANG worked in the clothing "close-out business" in Los Angeles. KIM said that he had been working for CHANG since April of 1994.

CHANG offered KIM \$3,500 (per container) to handle "bad cargo". KIM said that CHANG met to say stolen cargo. CHANG told KIM that "he would have to be careful about the police". KIM was paid for the handling of the following cargo: Nike shoes, Reebok shoes, Fisher/Sanyo electronic, Symphonic TV/VCR units, and tools.

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Investigation on 7/17/95 at Gardena, California File # [REDACTED]  
by SA E. LADSOUS/el  
Investigator JIM GRIFFITH - C.H.P. Date dictated 7/17/95

KIM's duties included the transloading of cargo from containers into bobtail trucks, and the rental of storage spaces at public storage facilities.

The cargo was transloaded at SEAWAY INTERNATIONAL located at 675 West Victoria Street, Compton, California. KIM paid Mr. LEE, the president of SEAWAY INTERNATIONAL, approximately \$500 per container.

KIM handled a total of five containers for CHANG. On two occasions, CHANG hired AMPAC TRANSPORT, 860 South Ardmore, #305, Los Angeles, California, to transport the cargo to public storage facilities. KIM said that CHANG paid AMPAC TRANSPORT directly.

KIM was paid \$1,500 in cash as soon as the cargo was transloaded into the bobtail trucks. KIM used some of the money to pay SEAWAY for the use of their loading dock, the use of the forklift, and labor. KIM paid the individuals who unloaded the cargo at the public storage facilities.

Part of the \$3,500 included the rental of storage spaces. KIM was paid \$2,000 in cash as soon as the bobtail trucks were unloaded. KIM gave the key for the padlock which secured the storage space to CHANG or CHANG DUK KIM. KIM said that he hired Mr. WEE and Mr. MIN to help him with the rental of the storage spaces.

CHANG contacted KIM via pager when he had a container which needed to be unloaded. KIM said that CHANG expected him to always have empty storage spaces available. When CHANG contacted him, KIM reported to SEAWAY and waited for the arrival of the tractor/container. KIM rented spaces at five different locations.

KIM stated that CHANG allowed him to attempt to sell the cargo. CHANG set the price and made samples available. With hope to earn a commission, KIM told WEE and MIN that they could also try to sell the cargo.

CHANG DUK KIM was CHANG's assistant. CHANG DUK KIM inventoried the stolen load and monitored the handling of the cargo. CHANG DUK KIM was at SEAWAY during the unloading of all

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Continuation of FD-302 of DUK KYUNG KIM . On 7/17/95 . Page 3

five stolen containers. CHANG DUK KIM also followed the bobtail trucks to the storage facilities.

With regards to the 4/23/95 theft at the INTERNATIONAL TRANSPORTATION SERVICE terminal located at 1281 Pier J Avenue, Long Beach, California, of a container loaded with 407 cartons of Nike footwear valued at \$369,230 (per Long Beach Police Department report number 9530296).

On the day before the delivery, CHANG told KIM that a load would be delivered to SEAWAY on the next day. CHANG instructed KIM to go to the warehouse in the morning and to be prepared to transload the cargo.

In view of the delivery, KIM rented storage space number 14 and 15 at the PUBLIC STORAGE MANAGEMENT (PSM) facility located at 3017 San Fernando Road, Los Angeles, California, telephone number 254-7532. KIM said that he rented the storage spaces in his own name.

KIM stated that CHANG and CHANG DUK KIM were at SEAWAY during the transloading of the shoes. CHANG hired two AMPAC TRANSPORT bobtail trucks to move the merchandise to the PSM facility. CHANG paid KIM \$1,500 at SEAWAY. CHANG DUK KIM followed the bobtail trucks to the PSM facility and paid KIM an additional \$2,000. KIM gave the key of the padlock to CHANG DUK KIM.

CHANG told KIM that he could attempt to sell the shoes for \$6 per pair.

With regards to the 4/25/95 armed hijacking of a WESTERN PORTS TRANSPORTATION container loaded with 976 cartons of Reebok footwear valued at approximately \$200,000 (per Los Angeles Police Department report number 95-0517113).

CHANG contacted KIM on the day before the delivery of the container. The container loaded with Reebok shoes was unloaded at SEAWAY. The shoes were delivered to the afore mentioned PSM facility with one U-Haul bobtail truck driven by CHANG DUK KIM who made two trips. KIM said that the shoes were subsequently taken out of the storage facility by CHANG DUK KIM.

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Continuation of FD-302 of DUK KYUNG KIM . On 7/17/95 . Page 4

CHANG told KIM that he could attempt to sell the shoes for \$6 per pair.

With regards to the 5/2/95 and 5/3/95 thefts at the YUSEN CONTAINER TERMINAL located at 701 New Dock Street, Terminal Island, California, of three containers loaded with Fisher/Sanyo product (per Los Angeles Police Department Harbor Division report number 950517855).

CHANG contacted KIM and advised him of the eminent arrival of one container. CHANG did not mention any other container. The load was transferred to the PSM facility by AMPAC TRANSPORT. CHANG DUK KIM was present at SEAWAY and at the PSM facility.

CHANG told KIM that he could attempt to sell the radios for \$20 each.

With regards to the 5/5/95 hijacking of a WESTERN VAN LINES container loaded with 450 Symphonic TV/VCR combo units valued at \$117,618 (per El Monte Police Department report number 95CR3400).

CHANG contacted KIM and said that a container was in route to SEAWAY. CHANG and CHANG DUK KIM met KIM at SEAWAY. The container, loaded with Symphonic TV/VCR units, was unloaded. The product was delivered with two SEAWAY bobtail trucks to storage space number 49 and 55 at the PSM facility located at 4820 San Fernando Road, Glendale, California.

CHANG instructed KIM to give CHANG DUK KIM two TV/VCR units and keys for the two storage units. KIM also gave two samples to a friend named KAP S. KIM.

CHANG asked KIM to determine the value of the TV/VCR units. CHANG then told KIM that he could sell the units for \$150 each. KIM said that he attempted to sell the product with negative results.

With regards to the 5/13/95 theft of a container loaded with 1,789 cartons of pneumatic tools and fittings valued at \$220,216 from the PACIFIC RIM TRANSPORT, INCORPORATED (PRTI) yard located at 1284 Caspian Avenue, Long Beach, California (per Long Beach Police Department report number 953 4533).

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CHANG contacted KIM and said that a container would be taken to SEAWAY. KIM met CHANG DUK KIM at SEAWAY. The tools were unloaded and stored at SEAWAY for two days. The tools were then moved to rental spaces at the PSM facility.

KIM gave Mr. HWANGBO samples of the tools.

KIM stated that he and KAP S. KIM rented a 10' X 10' space at STOR IT ALL Self Storage, 2856 Los Feliz Place, Los Angeles, California.

KIM also rented two storage spaces at the PSM facility located at 6467 Foothill Boulevard, Tujunga, California. KIM said that he never used the spaces but that he rented them in the event CHANG needed storage.

KIM described JAE HOON CHANG as follows:

Name: JAE HOON CHANG  
Sex: male  
Race: asian  
Age: 34 - 35  
Place of birth: Chula, Korea  
Height: 5' 8"  
Weight: 170 pounds  
Hair: black, short  
Eyes: brown, wears prescription glasses  
Address: Resides near 8th Street and Catalina Avenue,  
often visits "New York bakery"  
Vehicle: Black Q-45 Infinity  
Telephone number: (213) 384-0918  
Pager number: (213) 580-4800  
Pager number: (213) 349-2225  
Misc.: May be related to SUNG IL KANG,  
married, one child (one year old)

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**EXHIBIT B**

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## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/2/95

DUK KYUNG KIM, date of birth 9/17/45, was advised of the identities of the interviewing investigators. KIM was interviewed with the assistance of Deputy STEVE D. KIM, Los Angeles County Sheriff's Department, Industry Station.

Deputy KIM translated the content of an FD-302 dated 7/17/95 for the interview of DUK KYUNG KIM. Deputy KIM asked KIM if the FD-302 was accurate. KIM replied "yes" and voluntarily furnished the following information:

With regards to the load of Symphonic TV/VCR units, KIM gave two brochures for the TV/VCR units to Mr. HWANGBO. KIM gave KAP S. KIM one 9-inch and one 13-inch TV/VCR. KIM, at the request of JAE HOON CHANG, gave two samples to CHANG DUK KIM.

KIM said that CHANG was a friend of Mr. HWANGBO.

With regards to the load of pneumatic tools, KIM gave samples to Mr. WEE, who then gave the samples to Mr. MIN. Mr. MIN gave the samples to Mr. HWANGBO, who sold some of the tools to JAY C. LEE, doing business as EVERGREEN U.S.A..

KIM said that he had donated two Symphonic TV/VCR units and air tools to the Yang Kog Presbyterian Church.

SA LADSOUS asked KIM the following questions:

Did you know you were dealing with stolen property?  
KIM responded "yes".

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Investigation on 8/2/95 at Rancho Dominguez, CA File # [REDACTED]  
by SA E. LADSOUS/el  
Deputy STEVE D. KIM, LASD Date dictated 8/2/95

