

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA

v. Criminal Case 20-165-JEB

KEVIN CLINESMITH,

Defendant

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Washington, D.C
Friday, January 29, 2021
11:00 a.m.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE JAMES E. BOASBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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ALSO PRESENT

FOR CARTER PAGE: Leslie McAdoo Gordon, Esq.
 Lawson Pedigo, Esq.

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P R O C E E D I N G S

THE DEPUTY CLERK: We're here for criminal sentencing in 20-165, the United States of America versus Kevin Clinesmith.

Starting with counsel for government, would you please identify yourselves for the record.

MR. SCARPELLI: Good morning, Your Honor. Anthony Scarpelli on behalf of United States. Also with me is Assistant United States U.S. Attorney Neeraj Patel and Investigator Timothy Fuhrman.

THE COURT: Welcome to all of you gentlemen.

MR. SHUR: Good morning, Your Honor. Justin Shur and Megan Church on behalf of Kevin Clinesmith. Mr. Clinesmith is present.

THE COURT: Okay. Ms. Church, I see you, good morning.

And Mr. Shur, Mr. Clinesmith, good morning to you.

Then let's have counsel, Ms. McAdoo, I will let you state your appearance.

MS. GORDON: Good morning. Thank you, Your Honor. This is Leslie McAdoo Gordon and my cocounsel on Lawson Pedigo for Dr. Carter Page who is also the present.

THE COURT: All right.

Dr. Page, I see you as well. Good morning.

So Mr. Scarpelli, let me just say before we start,

1 my intent is to hear from Dr. Page, then from the
2 government, then from the defense and then from Mr.
3 Clinesmith.

4 Is there anything preliminary that the government
5 wishes to address before we begin?

6 MR. SCARPELLI: I just think that we need to put
7 on the record that Mr. Clinesmith is agreeing to proceed by
8 way of video with respect to the sentencing.

9 THE COURT: Okay. Thank you. I'm happy to do
10 that.

11 Mr. Shur or Ms. Church, given the pandemic we're
12 obviously holding most of these court proceedings including
13 pleas and sentencings by video. Does your client have any
14 objection to proceeding in this manner?

15 MR. SHUR: No, Your Honor.

16 THE COURT: Okay.

17 Mr. Scarpelli, anything else preliminary?

18 MR. SCARPELLI: No, Your Honor.

19 THE COURT: Okay. Does the defense have anything
20 preliminary it wishes to raise?

21 MR. SHUR: No, Your Honor.

22 THE COURT: Okay. I will hear then, Dr. Page,
23 from you.

24 DR. PAGE: Thank you, Judge Boasberg, for allowing
25 me to reintroduce myself. I am Dr. Carter Page. In

1 accordance with your order last week, I will precisely focus
2 my remarks during these few minutes on the injury that the
3 fourth FISA application caused, with all the falsehoods
4 about who I am, as submitted to the Foreign Intelligence
5 Surveillance Court in June 2017.

6 I'll try to be brief so as to reserve time at the
7 end of my short statement for any related questions you may
8 have.

9 You have noted the defendant's family life. My
10 own personal life has been severely impacted by the fourth
11 FISA application too. As context, consider a recent
12 declassification related to my prior relationship with a
13 former friend in London while I was being illegitimately
14 spied upon.

15 As the lies about me broke, I was told by my close
16 friend that she could no longer be associated with me at
17 all. She effectively shut her door in my face. Worse yet,
18 it is no exaggeration that literally each and every member
19 of my family has been severely impacted by the fourth FISA
20 application as well.

21 Consider how members of your family would feel if
22 the lead interview in the A- block on MSNBC prime time went
23 as follows in the wake of these continued crimes and exactly
24 one year later:

25 Rachel Maddow: "They bluntly describe Carter Page

1 as, quote, an agent of a foreign power. Quote: The FBI
2 believes Page has been the subject of targeted recruitment
3 by the Russian government."

4 Then, David Kris, as part of his answer to Ms.
5 Maddow's first question: "So, FISA is focused on spies and
6 terrorists."

7 With the continued impact stemming from Russian
8 disinformation like this, it's easy to understand why I was
9 frequently harassed on the streets. And even under the
10 streets, such as in the Washington Metro beneath the
11 Courthouse. Such buffoonery may seem laughable now as
12 disclosures over the subsequent years began to debunk this
13 complete nonsense associated with the fourth FISA
14 application. But it was deadly serious at the time. I
15 received many lurid death threats as a quote-unquote
16 "traitor."

17 To avoid the media and mitigate such complete
18 humiliation upon friends and family, I was forced to change
19 my location in hotels nationwide and worldwide. This
20 manufactured scandal and associated lies caused me to adopt
21 the lifestyle of an international fugitive for years.

22 The defendant at least has a family life. I often
23 have felt as if I've been left with no life at all. If the
24 Court opts for leniency today, I will not dispute it. In
25 fact, I hope you let this Defendant get back to his family

1 whenever this Court deems appropriate.

2 I have often prayed for this Defendant and have no
3 personal desire to see him suffer, as he has inflicted upon
4 me. I know what it is like to have your life destroyed,
5 although in my case it didn't happen because of something I
6 myself did.

7 As you know, the criminal false statements in this
8 Defendant's case directly pertained to my years of service
9 to the U.S. Intelligence Community. More specifically, the
10 CIA. Unfortunately, the majority of the current amicus
11 curiae in the FISC have enjoyed their positions since before
12 the historic crimes committed against me in that forum.
13 They never did anything to help me.

14 The deepest disrespect and worst specific
15 associated injuries by this Defendant as well as other
16 Article II, Article III and civilian authorities alike thus
17 cuts directly to the core criminal acts in the instant case
18 as it relates to this fourth, 100-plus page FISA
19 application.

20 More precisely and per the FISA Statute's
21 Subsection (i)(3)(A), the qualifications of Amicus Curiae:
22 "shall be persons who possess expertise in privacy and civil
23 liberties, intelligence collection--" et cetera.

24 The list of current FISC amici with direct
25 expertise in intelligence collection largely consists of

1 those with Signals Intelligence or SIGINT. The criminal acts
2 by this Defendant falsely denied my extensive experience and
3 decades of often life-threatening service to our country in
4 Human Intelligence or HUMINT.

5 In the interest of diversity, equity and balance,
6 I believe that I could help you in that other
7 intelligence-related forum that's co-located in this same
8 Prettyman Courthouse.

9 Contrary to the countless criminal lies from this
10 Defendant and his politically-motivated colleagues with that
11 fourth FISA, I have always been entirely trustworthy with
12 national security secrets which are far more sensitive than
13 most matters that they once handled at the Bureau.

14 During my military service, when I had my first
15 collaboration with the CIA while I worked on U.S. Nuclear
16 weapons matters, I was granted a Top Secret clearance with
17 multiple high-level SCI designations. But unlike associated
18 criminal leakers who frequently put my life at risk, I have
19 never betrayed that trust.

20 As for expertise in privacy and civil liberties,
21 perhaps no one on this planet has dedicated as much time and
22 effort over the course of these many dark years to this very
23 cause. Effectively banished as an international fugitive in
24 the wake of the fourth FISA, I recently completed my LL.M in
25 the U.K., where the focus of my thesis was on the FISA

1 regime's failure in relation to associated judicial entities
2 across our country and other FVEY's jurisdictions.

3 Your Honor, I believe my own experience as the
4 target of wrongful surveillance based on the criminal acts
5 of this Defendant and others gives me concrete experience
6 that could be invaluable to the FISC. Because of the
7 secrecy of the FISA process, we simply don't know how many
8 individuals have been subject to wrongful surveillance based
9 on inaccurate FISA requests.

10 (There was a pause for technical difficulties.)

11 DR. PAGE: I have unsurpassed personal knowledge
12 of the harm that wrongful surveillance can cause. Such
13 personal experience would give me a unique perspective as an
14 amicus for the FISA Court.

15 To show the value of such experience, here's more
16 detail about the injury that the fourth FISA application
17 caused. It's essential to recognize the media tactics
18 which occurred during the period of June through the
19 expiration of my final illegitimate warrant in September
20 2017. Rather than helping to set the record straight, as I
21 had essentially begged this Defendant to assist me with in
22 April 2017, I received countless calls from journalists
23 throughout those months. They often asked about the deadly
24 disinformation then emanating from the FBI and the Bureau's
25 political allies.

1 For example, on June 26, 2017, the same day that
2 the Acting Assistant AG for NSD Dana Boente received his
3 copy of the fourth false FISA application which he has "no
4 recollection of reading", Devlin Barrett of the Washington
5 Post published an article titled "FBI has questioned Trump
6 campaign adviser Carter Page at length in Russia probe."

7 As my life continued to spin out of control from
8 these constant leaks relating to the manifold errors and
9 omissions which then emanated from the FBI, including those
10 related to the Defendant's conduct, I spent much of that
11 summer mitigating other such life-threatening disgraceful
12 statements and the public reaction that they precipitated.

13 The FISA warrant application in this case was
14 finished in June 2017, and the resultant surveillance
15 continued until September 2017. During that period of time
16 and because of the warrant, I had no privacy in any of my
17 communications. My every email and phone call was monitored
18 by the government. Worse yet, and as declassified in April
19 2020, footnote 379 of the OIG FISA Abuse Report revealed,
20 that there was also a physical search of my fugitive-escape
21 hotel room on July 13, 2017. And in a separate incident on
22 July 29, 2017, the FBI took photographs in connection with
23 another search of my living space and belongings.

24 In essence, my offer to help you here and now is
25 in many ways similar to the assistance that I volunteered

1 four years ago to this Defendant, Mr. Comey, Case Agent 1,
2 Case Agent 6 and many other U.S. Government officials.
3 Severe damage could have been avoided if they had only
4 respected my offer.

5 With the FISC's legitimacy still subject to much
6 doubt by millions of Americans, I have had a lifetime of
7 service to our country and had hoped today might mark a
8 turning point with my amicus offer now. While nothing else
9 that may be achieved today can remedy the specific crimes in
10 focus here, it's an honor to finally meet you. I firmly
11 believe that I can be of assistance to you and our country
12 over the longer term.

13 Thank you for the opportunity to make this
14 statement. I would happy to answer any questions you may
15 have. Also, I apologize for the bad acoustics. I would be
16 happy to provide a full transcript for any discrepancies for
17 the record, if will be of any help.

18 THE COURT: Thank you so much for being here.
19 Thank you for explaining what happened to you and the harm
20 you suffered. If you don't mind submitting your written
21 transcript to the court reporter, that might aid her in the
22 event she was unable to accurately transcribe it.

23 MR. SHUR: Yes, Your Honor, we'll do.

24 THE COURT: I have carefully read all the
25 submissions including the submissions by Dr. Page. But

1 I've read the government's submissions. I have read the
2 defense's submissions including all the letters submitted on
3 behalf of Mr. Clinesmith. I've read the presentence
4 investigation report by Ms. Lustig.

5 Thank you very much, Ms. Lustig, I know you are
6 here as well.

7 So Mr. Scarpelli, I'll give you now the chance to
8 add anything you would like to your submission.

9 MR. SCARPELLI: Thank you, Your Honor. And before
10 I begin, I would like to just state for the record the
11 government has no objection to the presentence report in its
12 final form.

13 The defendant's criminal conduct tarnished and
14 undermined the integrity of the FISA program. As the Court
15 is well aware, the defendant was a dually licensed attorney
16 for the FBI and had taken an oath of candor.

17 But on June 19, 2017, the defendant altered an
18 e-mail from an other government agency which was material
19 and that changed the content of the e-mail, which in turn,
20 led the FBI, the Department of Justice to submit a FISA
21 application to the FISA Court that failed to disclose
22 relevant and material facts. In turn the FISA Court did not
23 have all the facts to make a complete and thorough
24 assessment regarding a FISA warrant on a U.S. Citizen.

25 The government understands that the Court has a

1 full understanding of the facts in this matter,
2 nevertheless, feels compelled to at least address some facts
3 so the Court can both digest those in fashioning the
4 appropriate sentence. The government has requested a
5 sentence of at least in the mid to upper range of the
6 Guidelines range.

7 The defendant had been a member of the Michigan
8 Bar since 2007, and at the time of the offense was an
9 attorney with the FBI's Office of General Counsel. He had
10 been an attorney for approximately 10 years, two of those
11 years at the FBI .

12 As part of the defendant's employment, he received
13 periodic training regarding the FISA, as well as government
14 attorney's ethical obligations. Part of his duties and
15 responsibilities included providing support to FBI agents
16 and working with other of Department of Justice attorneys
17 who submitted applications to the FISA Court, which sought
18 to conduct surveillance on individuals believed to be agents
19 of foreign powers.

20 Additionally, the defendant was assigned some of
21 the FBI's Office of General Counsel's most high-profile and
22 important cases such as the FBI's Mid-year investigation
23 into the former Secretary of State Hillary Clinton's use of
24 a private email server; Crossfire Hurricane investigation
25 into whether individuals associated with former President

1 Trump's presidential campaign were colluding or coordinating
2 with Russian officials to interfere with the 2016
3 presidential election; and he was also part of the Special
4 Counsel investigation headed by Robert Mueller into whether
5 there were links between the Russian government and
6 individuals associated with former President Trump's
7 campaign.

8 Additionally, the defendant had supervisors at the
9 FBI's Office of General Counsel who he communicated with
10 regularly about his assignments, as well as consulted with
11 FBI agents who he was working with on his FISA applications,
12 as well as DOJ national security attorneys and other
13 government agencies. In short, the defendant had ample
14 training regarding the FISA process, training regarding his
15 ethical obligations, and supervisory support regarding his
16 attorney position with the FBI.

17 Among the FISA applications that the defendant
18 worked on were the four FISA applications with regards to
19 Dr. Page.

20 In June 2017, prior to the submission of the
21 Fourth and final application, and after Dr. Page stated
22 publicly that he had assisted the U.S. Government in the
23 past, the FBI Supervisory Special Agent who was going to be
24 the affiant on the final application, asked the defendant to
25 inquire with the Other Government Agency as to whether Dr.

1 Page had ever been a source for the Other Government Agency.

2 The defendant sent an email to a liaison at the
3 Other Government Agency seeking clarification as to whether
4 Dr. Page was a source for the Other Government Agency. And
5 in his email, he recognized the importance of this issue by
6 acknowledging in the email, "This is a fact we need to
7 disclose in our next FISA renewal".

8 The OGA Liaison emailed the defendant a list of
9 documents, including an August 17 Memorandum, that the OGA
10 had previously provided the FBI, which detailed Dr. Page's
11 relationship with the Other Government Agency as an
12 operational contact and information he had provided to the
13 Other Government Agency concerning his prior contacts with
14 certain Russian intelligence officers. In that memo, the
15 OGA had assessed that Dr. Page was candid in describing his
16 contacts to the OGA.

17 The OGA also wrote that the Dr. Page was a
18 digraph, which meant he was a person who provided reporting
19 to the OGA, and the Liaison indicated that the listed
20 documents will explain the details. The OGA liaison offered
21 to provide a formal definition for the FISA application.

22 The defendant did not take up the OGA Liaison's
23 offer. Instead, the defendant forwarded the OGA Liaison's
24 email to the case agent and another FBI supervisory special
25 agent, and later in a separate email to an attorney at

1 Department of Justice's Office of Intelligence who was
2 working on the FISA. In each email, the defendant removed
3 his initial email that he sent to the OGA Liaison inquiring
4 about Dr. Page's status as a source. The defendant
5 responded: "Yes, the OGA confirmed explicitly he was never a
6 source."

7 The supervisory Special Agent responded,
8 "interesting." The defendant said, "but like interesting
9 good, right? I mean, at least we don't have to have a
10 terrible footnote." The supervisory Special Agent said,
11 "Sure, just interesting they say not a source. We thought
12 otherwise based on the writing. I will reread."

13 The defendant responded. "At most, it's another
14 person, being the CHS, and you talking to the other person."
15 The Supervisory Special Agent then responded, "Got it, thank
16 you. Do you have that in writing?" The defendant
17 responded, "On TS. I'll forward."

18 As reflected in this conversation, the defendant
19 told the SSA that Dr. Page was never a source and that the
20 OGA had confirmed explicitly that he was never a source.
21 When the Supervisory Special Agent asked if the defendant
22 had it in writing, the defendant responded he did and he
23 would forward the e-mail that the OGA had provided under the
24 top secret e-mail system.

25 Immediately following the conversation, the

1 defendant forwarded to the SSA, the OGA's liaison's June 15,
2 2017 e-mail, which he had altered, and again he omitted the
3 initial e-mail that he had sent to the OGA liaison inquiring
4 about Dr. Page's status as a source.

5 Specifically, he inserted the words, "not a
6 source" into the OGA's liaison's e-mail, which made the
7 altered e-mail a false document that he sent to the FISA
8 affiant.

9 In fact, according to the OGA liaison, Dr. Page
10 had been a source for the OGA and had provided direct
11 reporting to the OGA in the past.

12 Your Honor, in fashioning a sentence, you are to
13 consider 18 USC 3553 factors and first, the nature and
14 circumstance of the offense.

15 The nature and circumstance of the false document,
16 changing Dr. Page's status with the OGA to not a source is
17 incredibly egregious and has had lasting effects on the
18 Department of Justice, the FBI, the FIS, the FISA process
19 and the trust and confidence United States citizens have in
20 their government.

21 In addition, the warrant allowed Dr. Page to be
22 surveilled for another three months. Dr. Page has
23 addressed this Court about the effects on him. The act of
24 altering the e-mail to change its meaning may seem simple in
25 a momentarily lapse of judgment on the part of the

1 defendant. But the resulting harm is immeasurable. By
2 altering the OGA's e-mail, the defendant completely changed
3 the meaning of the content.

4 The defendant attributed the false statement to
5 the OGA liaison, which is akin to identity theft by making
6 it appear that the OGA liaison was the author and had stated
7 Dr. Page was not a source of the OGA.

8 Not surprising, the OGA liaison was adamant that
9 she did not alter the altered e-mail and was troubled by the
10 fact that it was altered. As she later stated, Dr. Page
11 was a source for the OGA as the FBI uses that term.

12 Also the altered e-mail provided the FBI SSA
13 without truthful and accurate information he was required to
14 have to do his job. The FBI SSA knew of his responsibility
15 when preparing a FISA application was to provide the FISC
16 with all relevant and material information regardless if it
17 was helpful to the overall investigation.

18 The FBI Supervisory Special Agent even asked that
19 the defendant provide him the information regarding Dr.
20 Page's status in writing. He wanted to document his facts.
21 The defendant falsified a document that in turn did not
22 provide the FBI SSA with a fulsome understanding of the Dr.
23 Page's status. And therefore, put in motion the FBI SSA not
24 providing accurate and material details to the FISC.

25 Furthermore, the altered e-mail misled the FISC

1 regarding salient and necessary facts it needed to consider
2 probable cause. Regardless of whether the FISA application
3 would have been approved the FIS requires all relevant and
4 material facts. And withholding material facts for any
5 reason is a violation of an attorney's ethical standards in
6 a criminal offense.

7 Additionally, the public deserves better from
8 attorneys working for the government, assigned to handle
9 some of the most important and sensitive matters. And
10 anything less dilutes the public confidence in our
11 government.

12 The defendant's actions had significant
13 ramifications. Among other things, the FBI and DOJ were
14 appropriately required by the FISC to review all FISA
15 matters handled by the defendant, and also required the FBI
16 and DOJ to implement numerous and extensive remedial policy
17 and procedures. Dr. Page has also discussed how the
18 warrant has impacted.

19 Secondly, the Court must consider the history and
20 characteristics of the defendant. The government recognizes
21 that the defendant is 38 years old, has a law degree and has
22 no criminal history to this point. The defendant's
23 character references submitted on his behalf attests to the
24 defendant's good character.

25 Additionally, the defendant has accepted

1 responsibility by pleading guilty, conserved resources of
2 the Court and government. These all weigh positively for
3 his history and character.

4 However, one aspect of this process the government
5 would like to point out to the Court that weighs against his
6 history and character, is the defendant's explanation as to
7 why the offense occurred.

8 The defendant claims that he was confused and
9 believed at the time he altered the e-mail that his
10 alteration was accurate. He claims that he later learned
11 that was not true. This is troubling in many ways. First,
12 his explanation that he thought it was true and that Dr.
13 Page was a subsource of a source but not a source is
14 fanciful. The liaison e-mail plainly stated that had Dr.
15 Page provided reporting to us, meaning the OGA. There is no
16 evidence to support his belief that Dr. Page was a
17 subsource of a source.

18 And critically important, Your Honor, is, if he
19 thought the OGA liaison's e-mail was clear, that Dr. Page
20 was not a source, there would be no reason to alter the
21 e-mail. In other words, if he believed that Dr. Page was
22 not a source based on the OGA's e-mail, there is absolutely
23 no reason to add the words "not a source."

24 Second, even if he believed it was true, there is
25 no excuse to essentially fabricate an e-mail from an Other

1 Government Agency and mislead another FBI agent, an affiant
2 on an application to the Court who was relying on the
3 information and had him believe that the e-mail was
4 authentic.

5 Third, if the defendant was confused as he
6 suggests, why did he just not go back to the OGA liaison for
7 clarification? The OGA liaison offered to provide language
8 about Dr. Page's relationship for the FISA. Clearly the
9 OGA liaison was available and willing to assist the
10 defendant. She was merely a telephone call away if he was
11 confused. But that never happened.

12 In addition, the defendant could have addressed
13 his confusion with his supervisor. That never happened. He
14 had access to the August 17, OGA memorandum that explained
15 Dr. Page's status; however, he failed to review that. He
16 could have requested and reviewed the OGA reports. That
17 never happened.

18 Furthermore, after receiving the e-mail from the
19 OGA liaison on June 15th, and in forwarding the unaltered
20 e-mail to the case agent and then to the Office of
21 Intelligence attorney, he removed his portion of the e-mail
22 asking the OGA about Dr. Page's status as a source.

23 Then on June 19th, when the defendant sent the
24 altered e-mail to the Supervisory Special Agent, he again
25 removed his question to the OGA liaison. He removed his

1 original question to the OGA liaison, which was crucial to
2 the understanding of the context of the liaison's response.

3 The defendant's explanation that he believed the
4 information was true and that he must have been confused
5 flies in the face of the facts. And in the end, does not
6 provide an explanation for why he altered an e-mail from an
7 Other Government Agency, therefore, creating a false
8 document.

9 Lastly, on the topic of the defendant's possible
10 motive for alteration, his own words potentially explain why
11 he altered the e-mail. During the instant message
12 communication on June 19th with his supervisory Special
13 Agent, the defendant stated, "We don't have a terrible
14 footnote."

15 The defendant knew that a footnote in the FISA
16 application would be terrible because then they would have
17 to tell the Court that Dr. Page was a source, had
18 previously disclosed his -- and would have to previously
19 disclose his previous contacts with the OGA. They would
20 have to disclose to the FISC that they had this information
21 all along, but omitted this material information in three
22 prior FISA applications on Dr. Page.

23 In sum, Your Honor, the nature and circumstances
24 of this offense and the harm caused warrant a term of
25 imprisonment. The defendant's explanation that he was

1 confused and believed that Dr. Page was not a source is
2 inconsistent with the facts. The alteration may have been
3 isolated, but the repercussions were extensive.

4 In fashioning a sentence, Your Honor, the
5 government would also ask you to consider the deterrence
6 factor. Although specific deterrence is minimal here,
7 general deterrence is very important and something the Court
8 should focus on in fashioning a sentence.

9 In sentencing the defendant, the Court has a
10 strong platform to send a message to the community that
11 falsifying relevant and material information, particularly
12 on which the Court must rely, will not be tolerated and will
13 have serious consequences.

14 The case has received media attention and the
15 Court can show the public that the defendant's criminal
16 conduct will be weighed appropriately by the Court and not
17 an insignificant punishment.

18 The defendant has raised several arguments in its
19 sentencing memo and the government would like to just
20 address a few of those. Specifically, the defendant cites
21 numerous cases where individuals received probationary
22 sentences for the proposition that a probationary sentence
23 would not create a sentencing disparity.

24 The government would point to the Court's
25 sentencing hearing in the *United States versus Papadopoulos*.

1 At the sentencing hearing in *U.S. v. Papadopoulos* on
2 September 7, 2018, Judge Moss sentenced Mr. Papadopoulos to
3 a short term of imprisonment.

4 During Judge Moss' sentencing statement, he stated
5 that he was surprised that, quote, In almost 60 percent of
6 the cases, similar to the Papadopoulos case, those cases
7 received a sentence of probation. What this means is
8 presumably 40 percent of individuals sentenced on 1001
9 offenses receive a term of imprisonment. And in the
10 government's estimation, the defendant's conduct was more
11 egregious than Mr. Papadopoulos.

12 Furthermore, Judge Moss considered the sentencing
13 in *United States versus Van Der Zwaan*, who was a lawyer,
14 when he fashioned the sentence for Mr. Papadopoulos. Judge
15 Moss stated, "In some sense, one might say a lawyer is the
16 last person you would expect should be lying to the
17 government, to the FBI. And that they know the
18 consequences." It should be noted that Mr. Van Der Zwaan
19 received a term of imprisonment longer than Mr.
20 Papadopoulos..

21 In the sentencing memo the defendant cites
22 numerous cases where the defendants received probation
23 sentences. Those cases are not analogous because the harm
24 caused by the defendant's alteration cannot be compared to
25 those cases. Here, the defendant's actions had a horrendous

1 effect on the FISA Program and confidence in the
2 government's process.

3 In many 1001 cases, the defendants were targets of
4 an FBI investigation, adversaries or individuals who the FBI
5 was supposed to look at with a skeptical eye. Here,
6 however, Mr. Clinesmith was an FBI employee. He was
7 someone that the FBI agents should have been able to trust.
8 He betrayed the trust by knowingly altering an e-mail from
9 an Other Government Agency about a key material fact.

10 The defendant also asked the Court to take into
11 consideration the harm a term of imprisonment would cause on
12 his family. The government is mindful of the impact on his
13 family, and surely understands the impact the sentence will
14 have on them. However, this consideration is involved in
15 most, if not all, defendants who are sentenced to terms of
16 imprisonment. The defendant and his family are not unique.

17 It is the defendant's criminal conduct that put
18 his family in this situation. And the distress a term of
19 imprison would cause is a collateral consequence that flows
20 from his own actions and not something the Court should look
21 to for substitution in sentencing.

22 The sentencing guidelines note that family ties
23 and responsibilities are not ordinarily relevant in
24 determining whether a departure is warranted.

25 The defendant also notes in his sentencing memo

1 that a term of imprisonment is unnecessarily harsh because
2 it would expose him to COVID.

3 THE COURT: Mr. Scarpelli, just so we're clear,
4 you mentioned departure. But the defense is not asking for
5 a departure.

6 MR. SCARPELLI: That's correct. I'm just citing
7 that that is at least recognized in the guidelines.

8 THE COURT: Go ahead.

9 MR. SCARPELLI: The defendant also cites the COVID
10 ramifications. The government recognizes the seriousness of
11 the COVID virus, but this should not be a reason to avoid a
12 term of imprisonment. In every sentence where there is a
13 possibility that the defendant will receive a term of
14 imprisonment, the Court considers the COVID ramifications.

15 As the Court is well aware, the Bureau of Prisons
16 has taken numerous remedial steps and has initiated
17 guidelines for individuals entering a BOP facility. By way
18 of example, at intake, individuals are tested, and if they
19 are symptomatic, they're put in isolation. If they are
20 asymptomatic and test negative, they will be placed in
21 quarantine for 14 days. There are additional remedial steps
22 made with having contact from outside individuals.

23 Lastly, Your Honor, the government would point out
24 that we recognize the United States probation officer's
25 recommendation. And the government respects the United

1 States Probation's position and routinely agrees with them
2 on numerous matters.

3 However, in this matter, the government believe
4 that for all the reasons outlined in our sentencing memo and
5 during this allocution, a more significant sentence is
6 warranted. The defendant's conduct is outside the heartland
7 of 1001 cases that the Court sentences. And a meaningful
8 sentence would take into account the nature and
9 circumstances of the offense and the valuable deterrent
10 effect.

11 For these reasons, Your Honor, the government asks
12 that you sentence the defendant to a term of imprisonment
13 between at least the mid and upper guideline range.

14 Thank you.

15 THE COURT: Thank you very much, Mr. Scarpelli.

16 I'll hear now from defense counsel. And let me
17 say that I have carefully read your submissions which was
18 comprehensive and thorough and so, you don't need to repeat
19 every point therein, nor do you need to feel that you need
20 to speak at the length that the government did or you won't
21 be credited sufficiently.

22 So, Mr. Shur, with those caveats, I'll hear from
23 you.

24 MR. SHUR: Understood. Sure. Thank you, Your
25 Honor.

1 I want to thank you, Judge, for your time and
2 attention to this matter, and for the care that I know you
3 have taken in reviewing all the submissions. As Your Honor
4 suggested, I don't intend to rehash all the points we've
5 previously made in support of our request for a sentence of
6 probation. But there are a few issues I would like to
7 address, as well as respond to some of the arguments that
8 have been made since we filed our sentencing memorandum.

9 First I would like to briefly discuss the various
10 letters that we submitted to the Court. Counsel for the
11 government had commented to us that they had never seen so
12 many character letters attached to a sentencing memorandum.
13 I can assure you, Your, Honor we weren't looking to break
14 any records here. And we certainly weren't looking to
15 inundate the Court with paper.

16 But, in sentencing the defendant, I think the
17 Court is well aware, it's important not only to consider
18 transgressions issue but to consider the history and
19 characteristics of the defendant. Our hope is that, through
20 these letters, it has been able to assist the Court by
21 giving Your Honor some insight on who Kevin Clinesmith is as
22 a person.

23 The reason we submitted so many letters is that,
24 like many of us, Kevin is not defined by a single event or
25 person. It's the many little things, the every-day moments

1 and interactions that are detailed in each of these letters
2 that give you a real sense of who Kevin is. How he's lived
3 his life, the decisions he's made and the decisions he's
4 likely to make in the future.

5 These letters are from all sorts of different
6 people and people from different stages of Kevin's life:
7 Members of his family back in Michigan, a college professor,
8 a law school classmate, former FBI colleagues and
9 supervisors, as well as many, many friends.

10 Despite their different backgrounds and the
11 different relationships with Kevin, there's an overwhelming
12 consensus that emerges from these letters about the type of
13 person Kevin is. Over and over again, they describe him
14 both in his personal and professional life, using words like
15 kind, selfless, honest, thoughtful, dependable,
16 hard-working, and trustworthy.

17 But if there's one single, common theme that
18 stands out, more than anything else, it's this: Kevin
19 Clinesmith has lived his life in service of others. His
20 dedication to public service and his significant
21 contributions to Department of Energy, the FBI, and the
22 country are detailed in our submission and speak for
23 themselves. But it goes well beyond that.

24 As these letters demonstrate, Kevin has lived his
25 life putting the needs of others before his own. He's the

1 person who others reach out to when they need help, who
2 people rely on for advice, or to vent to or to lift their
3 spirits. And that's because no matter how busy he is, no
4 matter what else is going on in his life, he drops
5 everything to help others, to improve the lives of his
6 family, his friends, his colleagues, and members of his
7 community. And that remains true today.

8 In fact, I saw it for myself. When Kevin first
9 learned he may be facing criminal charges, his first concern
10 wasn't for himself or what was going to happen to him. His
11 concern was for others. He was worried about his family,
12 about his friends and colleagues and about the FBI. He was
13 worried about what was going to happen to all of them, how
14 this might affect them, their lives, the work they do. He
15 put their interests before his because that's who Kevin is.

16 The fact that so many people submitted letters,
17 says something, too. These folks had absolutely nothing to
18 gain by sticking their necks out and supporting someone
19 convicted of a crime. But they did. They chose to stand by
20 Kevin at their own personal and professional risk, which I
21 think speaks volumes about what Kevin means to them and how
22 he has positively impacted their lives.

23 We hope, Your Honor, that these letters have
24 provided an opportunity for you to get to know Kevin
25 because, while it's clear that the alteration of the email

1 that led to this case was inexcusable, it does not represent
2 the person before you.

3 The email incident was clearly an aberration, an
4 aberration in an otherwise honorable and productive life,
5 filled with good deeds, which, when considered with
6 everything else, weighs strongly in favor of a sentence of
7 probation.

8 I recognize that, after talking about what a good
9 person Kevin is, it begs the question: If he's such a good
10 person, why are we here? How did this happen?

11 It happened because sometimes good people make
12 poor decisions. Not for any malicious or nefarious reason,
13 but because they're human beings. And despite wanting to
14 always be at their best, they're not; they make mistakes.
15 And there's no question about it. Due to stress, due to a
16 significant error in judgment, by altering that email, Kevin
17 made a serious mistake. In doing so, he failed to live up
18 to the standards we expected of him and that he expected of
19 himself. And he's paid the price .

20 But I think it's important that, in evaluating the
21 offense conduct for purposes of sentencing, that we're
22 clear about the nature and the scope of Kevin's conduct.

23 I don't think any disagrees that the facts and
24 circumstances surrounding the various FISA applications are
25 complicated. You don't have to look beyond the fact that

1 the IG report concerning this matter is nearly 500 pages
2 long.

3 As described in that report, there were many
4 people involved with these applications. And there were
5 many mistakes that were made. And many of those mistakes
6 had absolutely nothing to do with Kevin.

7 Kevin's mistake is that, by forwarding the altered
8 email, he represented to the recipient, the Supervisory
9 Special Agent, that the additional words he added, "not a
10 source" were contained in the original email when he knew
11 they weren't.

12 So while he believed Dr. Page was, in fact, a
13 subsource and therefore "not a source," he knew those words
14 were not contained in the original email that he had
15 received. That's what the evidence shows. And that's what
16 he pled guilty to.

17 It's been suggested, however, that Kevin
18 intentionally lied about Dr. Page's prior relationship with
19 the CIA. And that he did so to hide it from the Court.
20 Those allegations are truly unfortunate because they're
21 simply not true. And they are not supported by the record
22 or the evidence.

23 For one thing, if Kevin's intent had been to lie
24 about or conceal the fact that Dr. Page had a prior
25 relationship with the agency, he would have never gone

1 around describing Dr. Page as a "subsource." After all, a
2 subsource is someone who, in fact, has a relationship with
3 the agency.

4 And if his intent had been to lie about or conceal
5 Dr. Page's prior relationship with the CIA, he would have
6 never forwarded the original unaltered email to the two
7 people primarily responsible for preparing the application,
8 the case agent and the DOJ attorney. But he did. And, in
9 doing so, he provided them with the list of reports which
10 detail Dr. Page's prior relationship with the agency.

11 That's not something someone would do if they were looking
12 to lie about or conceal that fact.

13 The same can be said for the altered email he sent
14 to the SSA. Even with the alteration, the email still makes
15 clear that Dr. Page had a prior relationship with the CIA.
16 The forwarded email still says Dr. Page provided reporting
17 to the agency. The forwarded email still includes the CIA's
18 offer to provide language for the application about that
19 prior relationship.

20 Again, that's not an email Kevin would have sent
21 if his goal had been to lie about or conceal the fact that
22 Dr. Page had a prior relationship with the agency.

23 The government has questioned whether Kevin
24 believed in good faith that Dr. Page was a subsource and
25 therefore not a source. The record is clear that, when

1 Kevin told his colleagues that he understood Dr. Page was a
2 subsource, he may have been mistaken but he wasn't lying.
3 As reflected by the record, he truly believed that to be the
4 case.

5 To be clear, we're not saying the Agency's email
6 says that Dr. Page is a subsource but that's what Kevin got
7 that understanding from. Kevin did not precisely remember
8 how he arrived at that incorrect understanding, which, as
9 we've explained in our submission, is not entirely
10 surprising given the fast pace nature of the investigation
11 and the various tasks that he was juggling at the time. But
12 as we discuss in great detail in our submission, there are a
13 number of factors that may have contributed to him having
14 that understanding.

15 However, the more important point here is that
16 referring to Dr. Page as a "subsource" is contrary to any
17 theory that Kevin intended to conceal the fact that Dr.
18 Page had a relationship with the Agency.

19 The government also talked about the fact that
20 Kevin forwarded the agency's response but not his underlying
21 email. That fact doesn't change the analysis here. You
22 don't need to see Kevin's initial email to understand the
23 agency's response. And what they're talking about.

24 It's clear from the agency's email that they're
25 responding to inquiry about Dr. Page's relationship with

1 the agency. The email says: My recollection is Dr. Page
2 provided reporting to us. These reports will explain the
3 details.

4 I'd also like to respond to the government's
5 suggestion that Kevin's clear reference to a terrible
6 footnote says something about (inaudible). Firstly, the
7 reference, we explain this in our submission, but the
8 reference to terrible footnote related to the fact that
9 many of the prior applications, there was a one had a half
10 page long footnote regarding information provided by another
11 source.

12 But more important than that is, there is no
13 reason to think that Mr. Clinesmith would have faced
14 personal exposure or embarrassment if the FBI had disclosed
15 that footnote in the final application Dr. Page's prior
16 relationship with the Central Intelligence Agency. No, the
17 individuals that would have faced criticism or embarrassment
18 were the folks that previously had that information, Dr.
19 Page's status, that had the August 17th memorandum and
20 decided not to disclose it.

21 So that, even it may have been relief not to have
22 to correct the prior oversight, (unintelligible) then faced
23 personal exposure or embarrassment or criticism that they
24 had to make that disclosure, and therefore, had no motive to
25 lie or submit anything about Dr. Page's prior relationship.

1 With respect to Dr. Page's alleged harm, I have
2 sat here and listened very carefully. There's nothing he
3 said today that he hasn't said before in his motion which
4 we've already responded to.

5 To be clear, I don't mean to make light of what
6 it's like to be the target of an investigation and what that
7 person goes through. But none of the harm Dr. Page has
8 alleged was the result of any improper conduct by Kevin.
9 And therefore it should not be a factor in the Court's
10 sentencing analysis.

11 Dr. Page, in his filings, also makes factual
12 allegations that are contrary to the record. He suggests,
13 for example, that his status as an operational contact would
14 have been disclosed to the FISC had Kevin not altered the
15 email. And that, if Dr. Page's status had been disclosed,
16 the application would not have been approved.

17 But, as we discuss- in great detail in our
18 submission, based on the record, there is no reason to think
19 that but for the altered email things would have been
20 handled differently.

21 At a minimum, Dr. Page's suggestion that the
22 warrant was improperly approved as a result of Kevin's
23 conduct is pure speculation. The IG identified 16 other
24 significant inaccuracies and omissions relating to these
25 applications. None of them having anything to do with

1 Kevin.

2 Dr. Page and others have made all sorts of
3 conclusory allegations that are simply not tied to any facts
4 or evidence. That may be the norm for interviews with cable
5 news networks. But that's not how we do business here, not
6 in this court or any other --

7 THE COURT: If I could just interrupt you for one
8 second, Mr. Shur, that although -- and I understand you are
9 commenting on the submissions. You had obviously written
10 this up before today. But Dr. Page here is not seeking any
11 kind of serious prison sentence in his remarks. He
12 described the harms, but he talked about he's more
13 interested in mercy than otherwise here. So, I think that
14 is an important fact to keep in mind.

15 MS. GORDON: If I might be heard on that also,
16 Your Honor.

17 THE COURT: I'm sorry, Ms. Gordon. I appreciate
18 your assistance to the Court and your submissions but I
19 don't permit punitive victim's counsel to also speak here.
20 But thank you very much for being here.

21 Okay, Mr. Shur. Back to you.

22 MR. SHUR: Thank you, Judge. To be clear what I
23 am referring to are comments that are suggested in the
24 submission but also outside the submissions that there is
25 some nefarious or malicious plot to hide things from the

1 Court or to unlawfully surveil Dr. Page, which is not the
2 case.

3 And to be clear, I don't for a second mean to
4 minimize the seriousness of the defendant's offense or any
5 intended consequences and importance of transparency with
6 the FISC when dealing with the FISA warrants. But the
7 offense conduct is a factor that the Court needs to evaluate
8 in sentencing.

9 I think it is important that we're clear about
10 the record about what Kevin did and didn't do. By altering
11 that email, Kevin screwed up. But he didn't act
12 maliciously. He didn't deliberately lie about Dr. Page's
13 status. And he didn't intend to hide anything from the
14 Court.

15 Finally, I'd like to talk about deterrence because
16 the Government has argued that a custodial sentence is
17 necessary to achieve general deterrence. Their argument is
18 that, because this is a press case, because it's received a
19 lot of publicity and media coverage, that it's a good
20 opportunity to send a message to potential violators.

21 To be honest, I was a bit surprised by this
22 argument. The notion that this case should be treated
23 differently, that Kevin should receive a harsher punishment
24 because this case has received media attention, that doesn't
25 make sense. And it's not right.

1 For one thing, it undermines the fundamental
2 principle that every defendant be treated equally and
3 fairly. Meaning, similar defendants who have engaged in
4 similar conduct should be treated in substantially the same
5 way, regardless of how much or little press attention their
6 case receives.

7 Unfortunately, Kevin has not been treated like the
8 average defendant. His fall from grace has been publicly
9 documented in detail, under the glare of public scrutiny and
10 media coverage. As a result, I think it's fair to say that
11 the message to potential violators that the Government is
12 talking about has already been sent. Anyone who has paid
13 any attention to the media coverage of this case understands
14 that if you engage in this type of conduct, there will be
15 significant consequences.

16 Because the consequences that Kevin has suffered
17 have been the subject of national attention, his reputation
18 has been ruined, his career is in shambles. He has been
19 unable to support his family at a time when he and his wife
20 are expecting their first child. And he's been publicly
21 shamed and subjected to threats and vicious attacks on
22 social media and elsewhere.

23 These consequences have been devastating for
24 Kevin, personally and professionally. And they've taken an
25 enormous financial and emotional toll on him and his family.

1 There's no doubt that these consequences, which have been
2 publicly documented, serve as a general deterrent. A
3 custodial sentence is not needed.

4 It's also worth noting that general deterrence is
5 a sentencing factor in every case. In every one of the
6 false statement cases we cited in our submission, that was a
7 factor. And in every one of those cases the Court found
8 that general deterrence was achieved by a sentence of
9 probation.

10 This is the first time we've heard from the
11 government that Kevin should be sentenced to prison because
12 one or more defendants in the Special Counsel Office
13 received a custodial sentence. That argument is not
14 persuasive.

15 Comparing those cases to this case is like
16 comparing apples to oranges. In those false statement
17 cases, the defendants lied during investigative interviews.
18 And they did so for some improper benefit, in an attempt to
19 avoid potential exposure to liability. As we discuss in our
20 submission, that is not the case here.

21 In our submission, we list a number of false
22 statement cases in this district and other courts around the
23 country where the defendants received a probationary
24 sentence. As is in those cases, a non-custodial sentence is
25 appropriate here.

1 In this case, the U.S. Probation Office, the
2 experts in this area, who the Court relies on day in and day
3 out in sentencing matters, determined that general
4 deterrence would be achieved by a non-custodial sentence.
5 We ask that the Court adopt that recommendation and impose a
6 within-Guidelines sentence of probation.

7 As a condition of probation, we propose Kevin
8 perform community service. In our submission, we offered
9 two potential organizations where he could do that. Based
10 on Kevin's skill sets, we believe he'll be able to add
11 tremendous value at either one. And both organizations
12 agree, and are excited to have him. That said, if neither
13 organization is acceptable to the Court, we're prepared to
14 sit down with the probation office or anyone else to find an
15 acceptable alternative.

16 A sentence of probation with community service
17 would serve to punish Kevin as well as benefit the public.
18 It would take into account Kevin's life of good deeds and
19 all of his positive contributions, as well as the
20 extraordinary circumstances of this case.

21 As discussed in our submission, a non-custodial
22 sentence is also appropriate given the risks posed by Covid.
23 Because of the pandemic, to the extent the Court is
24 considering a custodial sentence, we'd urge Your Honor to
25 consider a home detention which, as we discuss in our

1 submission, is consistent with DOJ and BOP guidance.

2 That said, probation is the appropriate punishment
3 here. It's a fair punishment, a just punishment, a
4 punishment that is sufficient but not greater than necessary
5 to achieve the goals of sentencing.

6 Thank you Your Honor.

7 THE COURT: All right. Mr. Shur, thank you very
8 much.

9 Mr. Clinesmith, would you like to say anything
10 before I impose sentence?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Go right ahead.

13 THE DEFENDANT: I have a duty to take
14 responsibility for my actions and mistakes. I believe this
15 is especially true because I was a civil servant. Civil
16 servants are the backbone of our government and preserve and
17 protect the very principles our nation was founded on. The
18 responsibility in holding such a position and my personal
19 values--

20 (There was a pause in the proceedings.)

21 THE COURT: I can hear you fine, Mr. Clinesmith.

22 THE DEFENDANT: I'm sorry, Your Honor.

23 THE COURT: Take your time.

24 THE DEFENDANT: You can hear me, sir?

25 THE COURT: Yes, I can hear you fine. In other

1 words, if the break is because of technical reasons--

2 THE DEFENDANT: I'm sorry, Your Honor. We had a
3 moment where it signed out of the prior Zoom.

4 THE COURT: Okay.

5 THE DEFENDANT: I'm sorry.

6 THE COURT: I haven't lost connection at all. I
7 have seen you the whole time.

8 THE DEFENDANT: If I may, Your Honor, may I start
9 over?

10 THE COURT: Please.

11 THE DEFENDANT: I have a duty to take
12 responsibility for my actions and mistakes. I believe this
13 is especially true because I was a civil servant. Civil
14 servants are the backbone of our government and preserve and
15 protect the very principles our nation was founded on. The
16 responsibility in holding such a position and my personal
17 values requires me to hold myself to the highest standard.
18 It is in this spirit that I stand before you now, Your
19 Honor.

20 I am fully aware of the significance of my action
21 and a critical error in judgment I made in altering the
22 e-mail. I take full responsibility for it. I let the high
23 standard I believe in slip to an unimaginable degree by
24 taking an unnecessary shortcut.

25 I let the FBI, the Department of Justice, my

1 colleagues, the public and my family down. I also let
2 myself down. I will live with the consequences of my
3 actions, as well as the deeply held feelings of regret,
4 shame for the rest of my life.

5 Beyond my family, my career as a civil servant
6 meant more to me than anything else. From a young age, I
7 was fortunate enough to realize that public service was a
8 way for me engage in meaningful and interesting work. But
9 more importantly, that it was a way for me to give back to
10 the country that I love. And I did everything I could to
11 reach what I considered to be my dream career.

12 During my 11 years of federal service, I proudly
13 worked alongside highly intelligent, enthusiastic colleagues
14 who shared love of public services and love of country. To
15 this day, they remain a constant source of inspiration for
16 me. Never was this more true than during my time at the
17 FBI. Working alongside dedicated men and women of the FBI
18 to protect the national security of our nation was the
19 greatest privilege and honor I believe I will ever have.

20 To me, working at the FBI is not just a job but a
21 calling and a purpose. My coworkers were not just
22 colleagues, but my family. In my lapse in judgment, I have
23 permanently lost my career in federal service and my FBI
24 family. But even worse, I harmed the very institutions that
25 I cherish and admire.

1 I am truly ashamed about the harms that I have
2 brought to the FBI and the Department of Justice through my
3 action. I am sincerely heartbroken for having provided
4 reason for others to question the work of the distinguished
5 professional and hard-working investigators and prosecutors
6 I supported.

7 I witnessed nothing but the highest of integrity
8 in their work, despite having worked during a stressful and
9 turbulent time for the FBI and the DOJ. My regret does not
10 end there. Though I am not before the Foreign Intelligence
11 Surveillance Court today, I am before its presiding judge.
12 This is not lost on me as I reaffirm my responsibility for
13 the conduct that brings me before Your Honor today.

14 I am deeply remorseful for any effects my action
15 may have had on the FISC or anyone involved in the process.
16 As an attorney, I know that the government holds strict
17 adherence to the very highest of standards in all aspects of
18 ex parte proceedings, most especially those concerning our
19 national security. I failed to live up to those standards
20 by altering the e-mail to my colleague.

21 While I thought, albeit incorrectly, that I was
22 accurately representing the truth of Dr. Page's history
23 with the Other Government Agency, I recognize that altering
24 the e-mail was unacceptable. For that, I am sincerely
25 sorry.

1 Beyond these immediate circumstances, I am also
2 truly and duplicate deeply ashamed to have necessitated
3 additional reviews that others must now take on concerning
4 my prior work on other FISC proceedings. I apologize to
5 everyone for that additional burden.

6 My only solace is that I hope these reviews will
7 confirm what I have tried to present to this Court, that
8 while altering the e-mail was an unacceptable mistake that I
9 made, it is truly an aberration of my conduct and my work
10 ethic. I never intended to mislead my colleagues about Dr.
11 Page's status. And I most certainly never intended to
12 mislead the FISC, an institution I immensely respect for the
13 service it provides to our nation. Regardless of my intent,
14 I fully recognize that my action is inexcusable and that I
15 failed my responsibilities as an FBI attorney and as a civil
16 servant.

17 Altering the e-mail has forever changed the course
18 of my life. With my action, I failed to satisfy the high
19 standard that I have as a civil servant as as an attorney.
20 As a consequence, I've lost the means to provide for my
21 growing family. I have lost the career I relentlessly
22 sought most of my life. I have lost my sense of duty and
23 purpose. And I have lost the ability to give back to our
24 nation in the meaningful way that I've always wanted to.

25 I will continue my self reflection on this

1 incident beyond today. The shame and regret I feel as a
2 result of my conduct will stay with me forever. But I
3 pledge to Your Honor that I will never allow myself to show
4 such poor judgment again. I pledge that I will find another
5 way to continue to serve others albeit in a much different
6 way than I have in the past.

7 Along the way, I will encourage others to learn
8 from my error and not to repeat it. My path forward is
9 uncertain now. But I am determined to continue to grow as a
10 person, to stay on the upstanding and compassionate path I
11 traveled previously and to return to doing good for our
12 nation.

13 For failing to reach these highest of standards, I
14 apologize to my former colleagues and also to the FBI and to
15 the Department of Justice, the FISC and to this Court. I
16 also want to apologize to those in the civil service and to
17 public for letting you down. Please do not let my error
18 reflect on those who continue to serve our country.

19 Finally, I apologize to my wife, Stephanie, most
20 especially for the stress I added during her pregnancy in
21 these already uncertain times. I am so grateful for the
22 love and support she has provided me.

23 Thank you for allowing me to speak, Your Honor.

24 THE COURT: Thank you very much, Mr. Clinesmith.

25 All right. It's time now for me to pronounce my

1 sentence and to make clear what is at stake here. The
2 sentencing guideline range, everyone agrees, is zero to six
3 months. In this case, the government asks for several
4 months, the defense asks for probation.

5 Now that I've calculated the guideline range, I
6 then considered the 3553(a) factors in crafting a sentence.
7 And I'm very familiar with them and have no need to repeat
8 them here.

9 Also, I note that I very rarely give more than the
10 government asks for and this case is no exception, which
11 leads again to the question of what is the appropriate
12 sentence here, probation or, as the government seeks,
13 several months in jail.

14 I think we've heard particularly from Mr.
15 Scarpelli, and I believe he is exactly correct, but we've
16 also heard this from Dr. Page, Mr. Clinesmith, Mr. Shur.
17 I think it is critical to repeat that Courts all over the
18 country rely on representations from the government and
19 expect them to be correct, whether those are from
20 prosecutors in court or agents seeking search or arrest
21 warrants.

22 The reliance is greatest, of course, where the
23 government is appearing ex parte, meaning that there is no
24 defense lawyer to check the government's representation.
25 Those ex parte representations and appearances are always

1 the case in a Foreign Intelligence Surveillance Court
2 because the surveillance target, of course, is unaware of
3 the FISA application, and thus cannot appear to contest the
4 government's assertions.

5 The Court's expectations of the government are
6 high there, both because the government is acting without
7 contradiction or check, and because the stakes are so high.
8 In other words, the result of a successful application means
9 the search or surveillance of the United States person or
10 non-United States person on American soil.

11 Indeed, Dr. Page has just explained how he has
12 been harmed by that surveillance. That is why we FISC
13 judges require the highest degree of honesty and
14 transparency in the government's dealings.

15 I have been fortunate enough to be a member of the
16 FISC for almost seven years. So I know firsthand how
17 important this is. And indeed, Mr. Scarpelli spoke
18 correctly about how the FISC's reputation has suffered from
19 this incident, and from the public's lack of trust at times
20 when what it has done in necessitating a number of reforms
21 through the FBI and a number of other procedures to enhance
22 transparency.

23 I have been part of that and observed it firsthand
24 over the last year or so. And indeed I mentioned this early
25 on in the case last summer when I asked if either side

1 wished me to recuse myself given my personal involvement in
2 the FISC and neither did.

3 So, the government is correct here where it argues
4 in its sentencing memo that defendant's conduct undermined
5 the integrity of the FISA process and struck at the very
6 core of what the FISC fundamentally relies on in reviewing
7 FISA applications, namely the government's duty and candor.

8 In fact, as one of my FISC colleagues noted in a
9 published opinion, the FISC serves as a check on executive
10 branch decisions to conduct surveillance in order to protect
11 the Fourth Amendment rights of U.S. Persons. But it can
12 serve those purposes effectively only if the applicant
13 agency fully and accurately provides information in its
14 possession that is material to whether probable cause
15 exists.

16 Indeed, in my own FISC opinion last March, I noted
17 that only when the government fully and accurately provides
18 all information in its possession that is material to
19 whether probable exists can the Court's review effectively
20 serve as a check on executive branch decisions to conduct
21 surveillance.

22 Without facts that are both accurate and complete,
23 the Court is necessarily hamstrung in its ability to balance
24 the interests of national security with those of personal
25 privacy. And that's the lense, therefore, through which I

1 must view the defendant's actions as I consider whether a
2 sentence of confinement is appropriate here. And as we've
3 all agreed, that action is the altering of one e-mail to say
4 that Dr. Page was not a source of the Other Government
5 Agency.

6 On the other side of the ledger, the defendant
7 presents strong considerations why probation, as opposed to
8 several months in jail, is warranted. First, he obtained no
9 real personal benefit from his actions and he had no active
10 intent to harm.

11 Although the government has contested this, my
12 view of the evidence is that Mr. Clinesmith likely believed
13 that what he said about Dr. Page was true, namely that he
14 was a subsource but not a source of the Other Government
15 Agency. By altering the e-mail, he was saving himself some
16 work and taking an inappropriate shortcut. But I do not
17 believe that he was attempting to achieve an end he knew was
18 wrong.

19 Of equal importance, the exhaustive OIG report,
20 also called the Horowitz Report after its principal author,
21 Inspector General Michael Horowitz, determined after a
22 detailed investigation that Mr. Clinesmith had not acted
23 with any political bias or any desire to harm the Trump
24 campaign, or anyone affiliated with it, in forwarding the
25 e-mail. I see no reason to disagree with that conclusion.

1 Second, although I have said, and the government
2 has made very clear correctly, that the FISC expects the
3 highest duty of candor and I also recognize the harm Dr.
4 Page explains, it is not at all clear to me that the FISA
5 warrant, meaning the fourth application here, would not have
6 been signed but for this error.

7 In other words, as the OIG report makes clear and
8 Mr. Shur has emphasized, there were other significant
9 errors and omissions beyond Mr. Clinesmith's on the face of
10 the fourth application. As a result, even if Mr.
11 Clinesmith had been accurate about Dr. Page's relationship
12 with the Other Government Agency, the warrant may well have
13 been signed and the surveillance authorized.

14 Third, this conduct is the only stain on the
15 defendant's character that I've been able to discern. I'm
16 not sure it is a record in terms of number of letters I've
17 received in his support. But if it's not, it's pretty close
18 because I received over 50 letters and they were not typical
19 platitudes or bromides about the defendant's character, but
20 they were rather detailed recitations of his acts and his
21 history, both in the office and out of the office. They
22 speak of his kindness, his dedication to public service and
23 his integrity.

24 The defense has also made clear that Mr.
25 Clinesmith is not coming from a life of privilege, but

1 rather overcame difficult childhood circumstances, stepped
2 out at an early age to care emotionally and financially for
3 his family and to independently support himself, putting
4 himself through college as the first member of his family
5 with a college degree. I consider that, therefore, I
6 consider his acts in the context of the rest of his life.

7 Finally, I cannot ignore what Mr. Clinesmith has
8 already suffered. Indeed, Dr. Page, to his own credit, has
9 spoken today of mercy and has not been asking for
10 imprisonment.

11 Mr. Clinesmith has lost his job. Government
12 service is what has given his life much of its meaning.
13 Indeed, his remorse and his sentencing allocution today
14 speaks well of how much acting as a public servant has meant
15 to him in his life.

16 He was also earning \$150,000 a year. And who
17 knows where his earnings go now. He may be disbarred or
18 suspended from the practice of law. He may never be able to
19 to work in the national security field again. These are
20 substantial penalties.

21 What is more, he went from being an obscure career
22 government lawyer to standing in the eye of a media
23 hurricane. He has been threatened, vilified and abused on a
24 nationwide scale. And unlike say other elected officials or
25 political appointees, he is not someone who ever sought the

1 limelight or invited controversy other than by his criminal
2 action here.

3 So I therefore, no doubt that the mental effect,
4 the mental health effects of all of this have been
5 substantial. I believe therefore, that when Mr. Scarpelli
6 speaks of general deterrence, I absolutely agree with him
7 that that is a component of sentencing. But anybody who has
8 watched what Mr. Clinesmith has suffered is not someone who
9 would readily act in that fashion. I think the general
10 deterrence is significant.

11 Weighing all of these factors together, both in
12 terms of damage that he caused and what he has suffered and
13 the positives in his own life, I believe that a probationary
14 sentence is appropriate here, and will, therefore, impose
15 it.

16 I will also require 400 hours of community service
17 because I believe that, Mr. Clinesmith, you, as your memo
18 has stated and as you have stated, you have much to impart
19 to people, talk to them about the value of public service
20 and the risks of those who fail to fulfill its highest aims.

21 Therefore, I will now impose the sentence. It is
22 the judgment of the Court that you, Kevin Clinesmith, are
23 hereby sentenced to a term of 12 months of probation on
24 Count I. In addition, you are ordered to pay a special
25 assessment of \$100 in accordance with 18 USC Section 3013.

1 You shall follow the general conditions of probation. I
2 will not order any fine because I determine you do not have
3 the ability to pay that. Special conditions that you are
4 required to fulfill will be to complete 400 hours of
5 community service within your year of probation.

6 Now, Mr. Clinesmith, pursuant to 18 USC 3742, you
7 do have the right to appeal the sentence imposed by the
8 Court. If you choose to appeal, you must file any appeal
9 within 14 days after the Court enters judgment. In
10 addition, you have the right to challenge the conviction
11 entered or sentence imposed if new and currently unavailable
12 information becomes available or if you claim you received
13 ineffective assistance of counsel in connection with the
14 plea or sentencing.

15 Do you understand all of that?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: Does either counsel have any
18 objections or other matters to raise that have not already
19 been noted?

20 Mr. Scarpelli?

21 MR. SCARPELLI: No, Your Honor.

22 THE COURT: Thank you.

23 Mr. Shur?

24 MR. SHUR: Your Honor, one small point. To the
25 extent that mandatory drug testing is part of the --

1 THE COURT: There will be no drug testing
2 required.

3 MR. SHUR: Thank you, Judge.

4 THE COURT: Again, thank you, everybody.

5 Dr. Page, thank you.

6 Ms. Lustig?

7 THE PROBATION OFFICER: Just to interject, the 400
8 hours of community services may be difficult for him to
9 complete within a one year period. We are, our community
10 services sites are limited at this point due to the
11 pandemic. And hopefully at some point during the year,
12 we'll be back up and running full time. But he would, even
13 if he starts now, he would have to complete almost 35 hours
14 of community service a month.

15 THE COURT: Right. So again, Mr. Shur has
16 offered several, a couple of options of places where he
17 could perform this. I approved both of those. Again, if he
18 can't perform it -- I expect him to perform it within the
19 year. If there is a problem at the end of the probationary
20 term, I'll hear people and we may extend that as necessary.

21 THE PROBATION OFFICER: Okay. Thank you, Your
22 Honor.

23 THE COURT: Again. Thank you, everyone for your
24 contribution.

25 Dr. Page, thank you for being here.

1 Ms. Gordon, thank you for assisting. I
2 appreciate that help.

3 MS. GORDON: You're welcome, Your Honor.

4 THE COURT: Mr. Scarpelli, Mr. Shur, Ms.
5 Church, thank you for your work, your timely and thorough
6 and persuasive submissions. I appreciate all of that as
7 well. All counsel have fulfilled their obligations to a
8 very high degree here. Certainly made the Court's job
9 easier. So I thank you all.

10 Mr. Clinesmith, best of luck to you. We are now
11 in recess.

12 (Whereupon, at 12:30 p.m., the hearing concluded.)
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CERTIFICATE OF REPORTER

I, Lisa Walker Griffith, certify that the foregoing is a correct transcript from the record of the remotely reported proceedings in the above-entitled matter.

Please Note: This hearing was held in compliance with the COVID-19 pandemic and the standing orders of this court, and is therefore subject to the technological limitations of court reporting remotely, including static, signal interference and other restrictions.

Lisa Walker Griffith, RPR

2-2-2021
Date