

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CRIMINAL ACTIONS
	)	
LAWRENCE ANTHONY FRANKLIN,	)	1:05-cr-225
	)	1:05-cr-421
Defendant.	)	
_____	)	

REPORTER'S TRANSCRIPT

MOTIONS HEARING

(Reduction of Sentence)

(PROCEEDINGS HELD IN OPEN COURT)

Thursday, June 11, 2009

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BEFORE: THE HONORABLE T.S. ELLIS, III  
Presiding

APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY  
BY: NEIL HAMMERSTROM, AUSA  
THOMAS REILLY, AUSA

For the Government

PLATO CACHERIS, ESQ.  
JOHN HUNDLEY, ESQ.

For the Defendant

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MICHAEL A. RODRIQUEZ, RPR/CM/RMR  
Official Court Reporter  
USDC, Eastern District of Virginia  
Alexandria, Virginia

MICHAEL A. RODRIQUEZ, RPR/CM/RMR

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PROCEEDINGS

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(Court called to order at 5:45 p.m. in USA v. Franklin.)

THE COURT: All right. This is United States against Franklin.

What is the number of the case?

THE CLERK: Case number 05 criminal 225, and case number 05 criminal 421.

THE COURT: All right.

Who is here on behalf of the government?

ATTORNEY HAMMERSTROM: Good afternoon, your Honor. Neil Hammerstrom and Thomas Reilly for the United States.

THE COURT: All right. Good afternoon.

Mr. Cacheris, you are here on --

ATTORNEY CACHERIS: And John Hundley, your Honor.

THE COURT: And John Hundley, on behalf of --

ATTORNEY HUNDLEY: Good afternoon.

ATTORNEY CACHERIS: On behalf of Mr. Franklin, who is also present.

THE COURT: -- of Mr. Franklin.

Good afternoon, Mr. Franklin.

THE DEFENDANT: Good afternoon.

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1 PRELIMINARY MATTER RE: SEALING

2 THE COURT: The first order of business is that  
3 I want to be sure this hearing is open. I saw everything  
4 filed under seal, but I see no reason for these pleadings to  
5 be under seal, Mr. Hammerstrom.

6 ATTORNEY HAMMERSTROM: There very much is a  
7 reason for ours to be under seal, your Honor.

8 THE COURT: All of it?

9 ATTORNEY HAMMERSTROM: Virtually all of it.

10 THE COURT: Why?

11 ATTORNEY HAMMERSTROM: Well, I can tell you,  
12 but I can't tell you in open court. I am happy to come up  
13 to the bench.

14 THE COURT: All right. We will do it in that  
15 fashion.

16 ATTORNEY HAMMERSTROM: And I also would like to  
17 address a few points in Mr. Cacheris' pleading, and that, of  
18 course, is under seal. And what I want to address is a  
19 sealed matter, as well.

20 ATTORNEY CACHERIS: Our position is it should  
21 be unsealed, and the hearing should be open, your Honor.  
22 That's our position.

23 THE COURT: All right.

24 Mr. Lowell, you are here.

25 ATTORNEY LOWELL: I am, sir.

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1 THE COURT: You were counsel in this case.

2 ATTORNEY LOWELL: I was.

3 THE COURT: All right.

4 I will consider at the bench whether it should  
5 be closed.

6 I also want to hear from Mr. Hammerstrom  
7 whether you should be excluded. You will be excluded from  
8 the bench conference, but I have in mind that you are here  
9 and that you wish to be here.

10 And who are the other gentlemen with you?

11 ATTORNEY CACHERIS: David Charney (phonetics);  
12 he is a local psychiatrist that I have asked to be here,  
13 your Honor.

14 THE COURT: All right.

15 And?

16 The other gentlemen?

17 UNIDENTIFIED SPEAKER: I am a friend of  
18 Mr. Franklin.

19 THE COURT: All right, sir. That's fine.  
20 That's fine.

21 Well, let's have counsel come to the bench. I  
22 need to consider first whether it's an open or a closed  
23 hearing.

24 (Sidebar conference held as follows:)

25 THE COURT: Actually, let's exclude everybody,

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1 so I can sit down, and do it that way.

2 ATTORNEY HAMMERSTROM: Okay.

3 THE COURT: All right.

4 (End of sidebar conference, open court as  
5 follows:)

6 THE COURT: Let me ask Mr. Lowell, would you  
7 and the other gentleman leave.

8 And the other two gentlemen seated here are  
9 interns in my chambers, and they may remain. And we will  
10 deal with this in open court.

11 We will get back to you just as quickly as we  
12 can --

13 ATTORNEY LOWELL: Thank you, Judge.

14 THE COURT: -- on the result.

15 (Courtroom closed in USA v Franklin.)

16 ---

17 (Proceedings held under seal under separate  
18 transcript.)

19 ---

20 (Proceedings resume in open court at 6:08 p.m.  
21 in USA v. Franklin.)

22 THE COURT: We have added a body here.

23 All right. The hearing is now public. It's  
24 open to the public.

25 For the public, I should advise the public that

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1 the pleadings in this matter were filed under seal. I  
2 issued an order today requiring the parties, when they  
3 arrived today, to give me reasons why the pleadings should  
4 remain under seal, or why this hearing should be under seal.

5 We have now had a closed hearing about that.  
6 And as a result of that, I have ordered that the government  
7 file its pleading redacted for certain matters. And the  
8 redactions will be noted in the public record as to what --  
9 where the redactions are. The rest of it will be, will be  
10 in the public record. It is important that as much as  
11 possible of anything any court does should be open to the  
12 public.

13 Now -- and the defendant's brief also had a  
14 short piece that I concluded, after hearing argument, should  
15 be under seal. And the defendant will file a redacted  
16 public version.

17 And I have also heard brief -- well, at least I  
18 have had some statement of it. It's fairly well explicated  
19 in the briefs. So I have heard information about that.

20 And I have also indicated that if, in the  
21 course of the argument that I hear on this matter, that it  
22 becomes necessary in either party's view to get into these  
23 sensitive matters, to let me know, and I will consider  
24 whether I agree that they are, or are not, sensitive.

25 So, as of now, the hearing is open.

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RECAPITULATION BY THE COURT

THE COURT: This matter is before the Court on a motion for reduction of sentence pursuant to Rule 35. The parties have filed their memoranda.

And I did receive, Mr. Cacheris, the additional memorandum, which I think you sent just to include the additional letter.

ATTORNEY CACHERIS: That's correct; just one letter.

THE COURT: Yes. And I have reviewed that letter, as I have the other attachments.

None of the attachments to your memoranda are anything I have required to be sealed.

All right. Now, I am prepared to hear any argument the parties want to offer on this, legal or factual. And if you feel that you do have to get into sensitive matters, either because I ask a question or because you feel it's necessary, don't hesitate to let me know.

All right. It's your motion, Mr. Hammerstrom. You may go first.

ARGUMENT BY THE GOVERNMENT

ATTORNEY HAMMERSTROM: Your Honor, we have pretty much laid out all of the cooperation, the full extent of Mr. Franklin's cooperation. And certainly, had he not



1 proactively cooperated early on in the investigation, we  
2 would not have been able to go forward on another  
3 significant case.

4 That said, Mr. Franklin was not what you would  
5 say is an ideal cooperator. I know the Court has had  
6 hundreds and hundreds of Rule 35 motions brought before it.  
7 In many cases you see a cooperator, from day one, cooperate  
8 fully, a hundred percent, give everything they've got, and  
9 never look back.

10 And there were problems with Mr. Franklin.  
11 From the day that he entered his plea, we went through -- as  
12 you will recall from the extensive hearings in the Rosen and  
13 Weissman case, we had something that's called the  
14 Jakooz (phonetics) list. And that was something that was a  
15 subject of overt acts in the indictment.

16 And we went through that with Mr. Franklin in  
17 preparation --

18 THE COURT: Is that referred to by name in the  
19 indictment? I don't recall.

20 ATTORNEY HAMMERSTROM: I don't recall, either.

21 THE COURT: So I think even referring to it in  
22 that fashion probably isn't -- is that classified?

23 ATTORNEY HAMMERSTROM: I don't think that name  
24 is. It's certainly not going to --

25 THE COURT: Well, Emile Zola's use of it

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1 probably isn't. But this was not Emile Zola that you are  
2 referring to. So -- (laughs).

3 And, of course, we don't reach today whether  
4 any of this should have been classified. That's not the  
5 Court's task, or it's not my prerogative to say what should  
6 be classified or not.

7 But go ahead.

8 ATTORNEY HAMMERSTROM: Well, in discussing that  
9 particular incident with Mr. Franklin in preparation for the  
10 plea, and during debriefings, we pointed out to him that of  
11 that information, some of those bullets, were classified.  
12 And, in fact, he had gotten that information over a secure  
13 system from a colleague of his in the intelligence  
14 community.

15 And when we told him that this classification  
16 authority had looked at this list and determined that a  
17 couple of these bullets were, in fact, classified,  
18 Mr. Franklin immediately said, "Well, if he" -- knowing this  
19 person very well -- "if he says they are classified, they  
20 are classified." And he signed a statement of facts to that  
21 effect.

22 And then he appeared up in open court when we  
23 entered the plea. And when I was reciting the -- or  
24 summarizing the statement of facts, when I got to that  
25 portion and I said the government would prove that this

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1 information was classified, Mr. Franklin audibly spoke up,  
2 "Not a chance."

3 And then I said, trying to -- try to get him to  
4 come around, I said, "Well, the government would prove  
5 that," you know, for some reason, if he didn't agree with  
6 this.

7 And he said, "It's not classified."

8 And I went to the website the other day, to a  
9 Google website, and that statement he made and that whole  
10 recitation appeared in numerous articles around -- around  
11 that time.

12 That's not an ideal cooperator, to make a  
13 statement like that after he has already agreed that the  
14 information is, in fact, classified, and that he has signed  
15 a statement of facts to that -- to that effect.

16 My point of bringing this all up is that  
17 it's -- you have to balance those things against the good he  
18 did. And there are a number of good things he did. There  
19 is no question about it.

20 And you have to keep that separated from the  
21 hardships he has endured. I think the hardships, the  
22 financial strain, the condition of his wife, those are  
23 factors the Court should consider under 3553. We don't  
24 dispute that.

25 Our recommendation is based solely on the

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1 extent of the cooperation, and that and other -- the factors  
2 that we outlined in the memorandum.

3 THE COURT: Yes.

4 ATTORNEY HAMMERSTROM: And I --

5 THE COURT: I take it, however, the Court can  
6 consider the 3553(a) factors?

7 ATTORNEY HAMMERSTROM: Certainly. Certainly.  
8 And we don't dispute that. And we told Mr. -- I told  
9 Mr. Cacheris that when we met, when we discussed this  
10 recommendation.

11 Obviously, he was very upset that our  
12 recommendation wasn't higher, and rightfully so. I can  
13 understand that, because of Mr. Franklin's background.

14 We have had four years of litigation, in which  
15 Mr. Franklin has worked a number of odd jobs, as  
16 Mr. Cacheris points out in his pleading.

17 But obviously, if he had been in jail during  
18 this time, he would have had no income coming in. And there  
19 are a lot of cooperators who wait their time sitting in jail  
20 or federal prison before any Rule 35 is filed.

21 I also ask the Court to keep -- to put  
22 something in perspective here, in the last four years there  
23 has been a lot of emphasis on the Rosen and Weissman case.  
24 But you have to really look at that case and look at  
25 Mr. Franklin's role to see how critical his role was in the

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1 scheme of things.

2 In many ways he was a more significant violator  
3 than Rosen and Weissman ever were alleged to be, because he  
4 was the government employee who signed nondisclosure  
5 agreements, who was tasked and held responsible for keeping  
6 the secrets of the United States, or the intelligence  
7 community, and he is the one that violated it.

8 And if you don't have people like Mr. Franklin  
9 in government doing that, you don't have people passing  
10 classified information. It all starts with the people that  
11 have the classified information and have the responsibility  
12 to hold it secure and not reveal it to people not entitled  
13 to receive it.

14 And I think that's a very important factor in  
15 this case, because -- we can't lose sight of that.

16 Mr. Franklin doesn't come before the Court with  
17 clean hands, too. If you recall from the presentence  
18 report -- in fact, I think it was paragraph 56 -- in 1997,  
19 when he was an employee of the DIA, he was investigated and  
20 admitted approximately 16 times taking classified documents  
21 home. And he got a reprimand. He got censured, and  
22 something was put in his personnel file.

23 But look what happened -- fast-forward to the  
24 time he was charged in this case: He had 80-some classified  
25 documents at his home out in West Virginia, and 30-some of

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1 those were top secret.

2 So, this is -- this is -- and again, we  
3 appreciate the cooperation he gave the government, but this  
4 needs to be balanced with the fact that you have before you  
5 an individual that just can't seem to follow the law when it  
6 comes to protecting classified information.

7 So I think the Court needs to balance that with  
8 the good that he has done and the cooperation that he has  
9 provided.

10 Thank you.

11 THE COURT: All right.

12 Mr. Cacheris.

13 ARGUMENT BY THE DEFENDANT

14 ATTORNEY CACHERIS: Well, your Honor, I am very  
15 surprised at the position that the government has taken on  
16 Mr. Franklin.

17 In their motion to reduce the sentence, they  
18 say he was, quote, "a substantial factor into bringing the  
19 case against Rosen and Weissman." That's their words.

20 They say that the best evidence in the case  
21 involving false statements by the other defendants came from  
22 Mr. Franklin.

23 He was proactive. He wore a wire. He did  
24 everything the government wanted him to do for a period of  
25 four (sic) months, from July through September '04.

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1 Everything they wanted him to do, he did.

2 They didn't complain then that he had  
3 classified documents in his house, or that he had previously  
4 been reprimanded for having classified documents. No. They  
5 didn't complain then. They used him. They used him over  
6 and over and over. And he was without counsel during that  
7 period of time, your Honor.

8 Other cases he gave them -- and we won't go  
9 into the sensitive cases that the Court has excluded, but he  
10 has given them other cases involving people who cannot come  
11 into this country.

12 He has given them criminal cases. He was also  
13 approached --

14 THE COURT: You are referring to the West  
15 Virginia matter.

16 ATTORNEY CACHERIS: That's one; and another one  
17 about somebody that came to tamper with Mr. Franklin, to  
18 have him, in effect, disappear, and he immediately reported  
19 that to the government.

20 The complaints --

21 THE COURT: Let me ask, while we are on it -- I  
22 need to ask Mr. Hammerstrom.

23 What has come of the West Virginia one, if you  
24 know?

25 ATTORNEY HAMMERSTROM: Are you talking, your

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1 Honor, about the -- when he was approached right before  
2 entering his plea?

3 THE COURT: No, sir.

4 ATTORNEY CACHERIS: No.

5 THE COURT: I am talking about the information  
6 he provided with respect to drug trafficking, based on  
7 people coming to him for help.

8 He wasn't involved in it at all, but he, in  
9 effect, was the person who managed to get somebody to pay  
10 attention to this problem, is, I think, what it was.

11 Is that right, Mr. Cacheris?

12 ATTORNEY CACHERIS: That's correct, your Honor.

13 ATTORNEY HAMMERSTROM: The Court's indulgence.

14 THE COURT: But that matter is not under seal  
15 in any way.

16 ATTORNEY CACHERIS: No.

17 ATTORNEY HAMMERSTROM: No, that is not. There  
18 was no federal involvement in that case.

19 THE COURT: Right.

20 But you may not -- and I can understand why you  
21 may not know.

22 Maybe Mr. Cacheris knows.

23 ATTORNEY CACHERIS: We just gave them the  
24 information, your Honor. We don't know what they did with  
25 it. Mr. Franklin was not involved in the case in the sense

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1 that he was a participant. But he was a -- gave them the  
2 information.

3 (Counsel conferring.)

4 ATTORNEY CACHERIS: I am told by Mr. Hundley  
5 that he knows there were arrests, but we do not know the  
6 outcome of the case.

7 THE COURT: And just so that we are very clear  
8 about this, Mr. Franklin was not involved in the activity in  
9 any way.

10 ATTORNEY CACHERIS: That's correct.

11 THE COURT: It was just people who came to him  
12 and asked him for help.

13 ATTORNEY CACHERIS: Right.

14 ATTORNEY HAMMERSTROM: Your Honor, it's our  
15 understanding that a search was conducted based on the  
16 information and drugs were recovered. But we don't know  
17 what the outcome of the case was.

18 THE COURT: Thank you. That's helpful.

19 Go ahead, Mr. Cacheris.

20 ATTORNEY CACHERIS: So, your Honor, he has done  
21 a substantial amount of cooperation.

22 Now, the government has seen fit to drop the  
23 case against Rosen and Weissman, and that's their right.  
24 But it smacks of vengeance to try to ask this Court to  
25 impose an eight-year sentence on Mr. Franklin, because it's

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1 just not justified, in my opinion.

2 In fact, as I say, their complaints, I think,  
3 are nit-picking: The off-the-script comment, the "no way"  
4 statement, the fact that he refused, at the end of the day,  
5 to plead to 794, having been four months without counsel,  
6 and they confronted him for the first time and said, "Now,  
7 Mr. Franklin, we are going to give you a lawyer and you're  
8 going to plead guilty to 794," the more serious of the  
9 espionage charges.

10 It was at that point that he decided that he  
11 should seek other counsel. And we advised him not to plead  
12 to 794, your Honor. It was our advice. And for that  
13 reason, he stopped --

14 THE COURT: Well, I'm not sure any of this is  
15 really important --

16 ATTORNEY CACHERIS: Well --

17 THE COURT: -- but let me be sure the facts are  
18 right.

19 Is that your view, Mr. Hammerstrom, as to what  
20 happened? Briefly.

21 ATTORNEY HAMMERSTROM: It is not, your Honor.  
22 I mean, it's close, but it's not exactly right.

23 THE COURT: What's the only distinction?

24 ATTORNEY HAMMERSTROM: The distinction is that  
25 he had previous counsel, and we he had proposed a 794 plea.

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1 He turned that down. He retained Mr. Cacheris. We met with  
2 Mr. Cacheris. We ended up modifying our plea offer to 793,  
3 and he rejected that and took us through two indictments, a  
4 first indictment and a superseding indictment.

5 THE COURT: All right.

6 ATTORNEY HAMMERSTROM: That was after we had  
7 offered the 793 plea.

8 THE COURT: All right.

9 Go ahead, Mr. Cacheris.

10 ATTORNEY CACHERIS: And it was because of  
11 counsel advising Mr. Franklin what position he should take,  
12 again remembering that for four months he was without  
13 counsel and he was guideless in this whole situation.

14 He has had -- and, your Honor, the government  
15 has agreed that you should consider his exemplary life. He  
16 has served his country both as a civilian in the Department  
17 of Defense and as a military man, as a colonel.

18 He has, since 2006, when this 12-year sentence  
19 was imposed, I suggest to the Court he has been essentially  
20 under home detention. He has paid his penalty, and he has  
21 suffered greatly.

22 He brought the case. The government rejected  
23 the case after a while, but it was not because of anything  
24 Mr. Franklin did.

25 They can talk all they want to about they may

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1 not call him as a witness, but I suspect Mr. Franklin would  
2 have been a witness, and would have been entitled to the  
3 benefits of that.

4 So, for four and a half years, essentially,  
5 with some modifications, he has been cooperating.

6 The generosity that the government has shown to  
7 Rosen and Weissman is not being shared with Mr. Franklin.

8 And we think that's wrong. So --

9 THE COURT: I don't think the government would  
10 characterize what they did as an act of generosity.

11 ATTORNEY CACHERIS: I characterize it as an act  
12 of generosity. Whatever they did, they did. But they were  
13 the principals that they were asking Franklin to bring.  
14 Franklin brought them.

15 And then Franklin had nothing to do with the  
16 government's -- if I may use the word again -- generosity  
17 with regard to Rosen and Weissman. He had nothing to do  
18 with that.

19 So we suggest to the Court, the fact that he  
20 has lived under this eight-year -- eleven-year sentence,  
21 twelve-year sentence since January 2006, over three and a  
22 half years now, is punishment enough. We don't think any  
23 further punishment is warranted.

24 And for the Court -- we are beseeching the  
25 Court, asking the Court to consider giving him no sentence

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1 at all, or at least a halfway house or something --

2 THE COURT: Well, let me ask you this,  
3 Mr. Cacheris. I don't usually listen to allocution by a  
4 Defendant on Rule 35 --

5 ATTORNEY CACHERIS: I understand.

6 THE COURT: -- but I would do so, if he  
7 requests it.

8 ATTORNEY CACHERIS: He does.

9 THE COURT: All right.

10 I want to be clear, because I have clearly in  
11 mind what he did. And I understand your argument that he  
12 did he it out of a strong feeling of patriotism for his  
13 country.

14 ATTORNEY CACHERIS: That's correct.

15 THE COURT: Namely, he had a strong view about  
16 the position that the government should take with respect to  
17 Iran, and that failure to take that position would be  
18 harmful, detrimental, dangerous to the United States; and  
19 that the essential way to do this is to leak information to  
20 individuals who would pass it on to people who could do  
21 battle with those forces within the United States Government  
22 that had a different view.

23 ATTORNEY CACHERIS: Correct.

24 THE COURT: Now, I am going to ask him in a few  
25 minutes, does he understand why that's wrong?

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1                   ATTORNEY CACHERIS: Well, that's why he entered  
2 his plea, your Honor. He does understand it's wrong.

3                   THE COURT: Well, the fact you think you are  
4 doing the best thing for your country doesn't give you a  
5 license to violate the law.

6                   ATTORNEY CACHERIS: That's correct. We don't  
7 disagree with that.

8                   On the other hand, the fact that he has done so  
9 much for the United States Government should be a factor  
10 that grants him more than a mere --

11                  THE COURT: I understand that.

12                  ATTORNEY CACHERIS: -- 35 percent reduction.  
13 That's where we come from.

14                  THE COURT: So, I take it when he allocutes, he  
15 would respond that however well-established some people  
16 might feel this back-channel process is, that he now  
17 understands in spades that it's a violation of the law.

18                  ATTORNEY CACHERIS: Yes, your Honor. He will  
19 say that to you.

20                  And of course, as you know, as a result of this  
21 conviction he will never have a security clearance again.  
22 He will never be in a position to do anything like this  
23 again, ever.

24                  Because look at what he has been doing. He has  
25 been unable to find a meaningful job. He has been digging

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1 ditches. He has been cleaning cesspools, et cetera, et  
2 cetera. We have detailed all that in our motion.

3 So if you want to hear from him, your Honor, we  
4 will have Mr. Franklin answer the question.

5 THE COURT: Well, that's not -- if I have a  
6 request, I will think about it. But I don't typically hear  
7 from defendants on Rule 35.

8 I'm going to give Mr. Hammerstrom an  
9 opportunity, of course, to respond what you and --

10 ATTORNEY CACHERIS: Very good.

11 THE COURT: -- what Mr. Franklin have said.

12 Mr. Franklin, do you wish to be heard? You are  
13 not required to say anything, if you don't wish to.

14 THE DEFENDANT: Yes, your Honor, I do.

15 THE COURT: All right. Come to the podium.

16 THE DEFENDANT: (Complied.) Okay to go?

17 THE COURT: Yes, you may proceed.

18 ALLOCUTION BY THE DEFENDANT

19 THE DEFENDANT: God is present in the  
20 conscience of everyone in this courtroom, and, your Honor,  
21 God is my witness that what I say here is true, is simple  
22 truth.

23 I want to just say that I am grateful to be in  
24 such a court in a country where the rule of law and the  
25 respect for human rights is (sic) vibrant, because I have

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1       been in many countries around the world many needs where  
2       neither respect for law -- there is neither respect for law  
3       or rights.

4                   I just want to express so gratitude --

5                   THE COURT:   You feel the rule of law is  
6       important.

7                   THE DEFENDANT:  Yes, sir.

8                   THE COURT:   You are right.  And what follows  
9       from that?

10                  THE DEFENDANT:  Well, sir, I -- can I --

11                  THE COURT:   You want to do it in your order.

12                  THE DEFENDANT:  Is that all right?

13                  THE COURT:   That's all right.  But you --

14                  (Simultaneous discussion.)

15                  THE DEFENDANT:  I will answer --

16                  THE COURT:   -- know what --

17                  THE DEFENDANT:  -- that question.

18                  THE COURT:   -- I'm getting at.  I have lived in  
19       countries where there isn't rule of law.  I was born in one.

20                  THE DEFENDANT:  Okay.

21                  THE COURT:   And what really matters is that  
22       government officials obey the law.

23                  THE DEFENDANT:  That is correct, sir.

24                  THE COURT:   All right.  Go on.

25                  THE DEFENDANT:  I want to just --

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1 THE COURT: Now --

2 THE DEFENDANT: -- just thank --

3 THE COURT: -- I think this individual is a  
4 member of the press, and pretty soon I will get letters from  
5 everywhere, angry letters from several countries I have  
6 lived in, complaining --

7 (Laughter.)

8 THE COURT: -- that I have said they don't have  
9 rule of law. And I suppose that's all right. And it's  
10 true.

11 Go ahead.

12 THE DEFENDANT: I want --

13 THE COURT: You don't live in a country where  
14 la mordida is what really matters. That's "the bite."

15 Go ahead, sir.

16 THE DEFENDANT: I want to thank --

17 THE COURT: But I will get angry letters.

18 (Laughter.)

19 THE DEFENDANT: I just want to express my  
20 gratitude for the generosity that beats in the heart of  
21 Plato Cacheris. And it's through his efforts and the  
22 efforts of John Hundley and others in the firm of Trout and  
23 Cacheris, who gave me the full measure of their assistance  
24 and never asked for a dime.

25 His assistance and that of Dr. Charney helped

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1 me maintain my internal equilibrium so that I could  
2 discharge, during these five years, my duties to -- as a  
3 husband and a father.

4 I also want to thank those who stood by me who  
5 are not here, whose strength of character and commitment to  
6 friendship and, in some cases, acts of courage, were like  
7 oxygen for me.

8 Now, Judge Ellis, I fully admit to serious  
9 errors in judgment, and accept full responsibility --

10 (Simultaneous discussion.)

11 THE COURT: Well, let's --

12 THE DEFENDANT: -- for violations --

13 THE COURT: -- be clear --

14 THE DEFENDANT: -- of the law --

15 THE COURT: Let's be clear, Mr. Franklin,  
16 because words are important.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: "Errors," and "errors in judgment"  
19 are somewhat euphemistic. You know, an error is like  
20 putting on the wrong color tie. Or an error in judgment is  
21 like throwing something in the washing machine that should  
22 only be dry cleaned. Those are all within "errors" and  
23 "errors in judgment."

24 We are talking about crimes.

25 THE DEFENDANT: And I accept full

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1 responsibility.

2 THE COURT: All right. I just want you to be  
3 clear. Sometimes we use euphemisms to disguise the full  
4 weight, and I don't want that to be lost on you.

5 THE DEFENDANT: It is not, sir.

6 THE COURT: All right. Go on.

7 THE DEFENDANT: And neither have the  
8 consequences for my action s been lost on me, sir.

9 I especially apologize to those colleagues who  
10 were subjected to unwarranted and unwanted scrutiny. And  
11 the fact that I acted with incredible naiveté does not  
12 negate my culpability, for which I have contrition.

13 However, I want to inform the Court and my  
14 fellow citizens who are not present that my intentions were  
15 always motivated by love for our republic and for the safety  
16 of our military personnel that were about to go into Iraq.

17 And it is because of that love of our American  
18 republic, fostered by my own upbringing and admiration for  
19 the uniqueness in the annals of history that America is,  
20 that I foolishly and wrongfully entrusted sensitive  
21 information to people who were not authorized to receive it.

22 Once I illegally uttered those few sentences, I  
23 lost control over where that information might go. It no  
24 longer mattered that my intentions were pure.

25 And ironically, I didn't know that Mr. Rosen

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1 and Mr. Weissman were with AIPAC until I had met them. I  
2 had never been to AIPAC. I didn't even know where it was  
3 located. I thought that this information would only go to a  
4 particular NSC source, who had responsibility for that  
5 action. And I was wrong.

6 THE COURT: The meeting was arranged by  
7 Mr. McCoskey?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Go on.

10 THE DEFENDANT: And I had rationalized at that  
11 time that it was the right thing to do, even though I knew  
12 it was illegal.

13 Earlier, I said that I have accepted and  
14 endured the consequences of my rash actions. The most  
15 painful consequences of my behavior involve the erosion of  
16 integrity in my own family, the emotional impact on our  
17 youngest son, and the precipitous decline in my own beloved  
18 wife's health.

19 And there is one other consequence that I will  
20 regret until the day I die, sir, and that is my father, the  
21 hero, veteran of World War II, patriarch of the family, died  
22 perplexed as to my status. This is the most unsettling  
23 consequence of all for me.

24 And so I am asking you, Judge Ellis, to temper  
25 justice with mercy, and not for my sake, but for the sake of

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1 my wife. That is why I am begging your indulgence.

2 In closing, I profoundly regret, every day in  
3 these past years, that I have not been permitted, because of  
4 my actions, to employ my expertise to help our country.

5 Even if I could have saved one life, it would  
6 have worth it. As in my study at home, all the walls are  
7 filled with the faces of our fallen. I want to help prevent  
8 other American families from enduring the loss of a loved  
9 one.

10 Whatever the outcome of this hearing, I am  
11 ready to contribute, and will, all my professional skills to  
12 that end.

13 So I am asking you, Judge Ellis, not to make my  
14 sentence too lengthy, so that I can spend the rest of my  
15 days attending to my wife's medical needs, but also to  
16 instructing our nation 's youth as to the danger that our  
17 civilization faces from those who would replace us.

18 THE COURT: You are no longer teaching at  
19 Shepherd, are you?

20 THE DEFENDANT: No, sir, I am not. But I --

21 THE COURT: Well, I am very interested -- go  
22 ahead.

23 THE DEFENDANT: I -- when -- the president of  
24 Shepherd said that upon completion of my obligation with the  
25 government, they would rehire me. And I have written a

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1 book, which is not published yet, which is directed to the  
2 American youth, as to the threat of radical Islam and  
3 terrorism. And everything I say in there is based upon my  
4 own experience.

5 THE COURT: I am much more interested,  
6 Mr. Franklin, not in your views about the threat of radical  
7 Islam, but in your understanding now of the importance of  
8 the rule of law insofar as it applies to government  
9 officials obeying the law.

10 Don't you think that's important to tell the  
11 youth about?

12 THE DEFENDANT: Absolutely, sir. And I have  
13 told my class about that, the one, when I did teach at  
14 Shepherd, that what I had done was wrong.

15 THE COURT: All right, sir.  
16 Do you have anything else?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right.

19 Mr. Cacheris, do you have anything you want to  
20 add?

21 And I will --

22 ATTORNEY CACHERIS: Nothing further --

23 THE COURT: -- ask Mr. --

24 ATTORNEY CACHERIS: -- your Honor.

25 THE COURT: All right.

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1 Mr. Hammerstrom?

2 ATTORNEY HAMMERSTROM: We will rest on the  
3 papers, your Honor.

4 THE COURT: I am going to take a few minutes  
5 more to reflect on this, but I want to make some remarks.

6 (Pause.)

7 RULING ON MOTION AND

8 IMPOSITION OF SENTENCE BY THE COURT

9 THE COURT: I have been reflecting on this for  
10 weeks. Indeed, I issued an order that said -- after I  
11 dismissed the charges against Rosen and Weissman, I issued  
12 an order requiring the government to let me know what --  
13 whether there were any motions with respect to Mr. Franklin.  
14 I didn't limit it to Rule 35. I said "any motions," I  
15 think.

16 So this has long been in my thoughts. And when  
17 I received your briefs, I read those carefully and thought  
18 about them. And I have heard your arguments.

19 It's a very difficult unusual situation.  
20 Mr. Hammerstrom is absolutely right. I have seen hundreds  
21 of these things over the past 20-plus years, going into my  
22 23rd. But this one is unique in many respects, chiefly, of  
23 course, because of the context and because of the fact that  
24 the government, for its own reasons, decided to discontinue  
25 the case against Rosen and Weissman.

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1           It is not the judiciary's business whom to  
2 prosecute and what they should be prosecuted for. It is not  
3 the judiciary's business to decide when to proceed and to  
4 continue with a prosecution and when not to do so. Those  
5 issues are entirely up to the discretion of the Executive  
6 Branch, and I express no view about that.

7           The only time I have expressed views about that  
8 is when the Executive Branch makes decisions to use judicial  
9 resources in a way that, really, I cannot stand by. And  
10 that's only happened once, and that was in connection with  
11 Lorton.

12           If some of you may recall, I thought Lorton was  
13 a disgrace, and said so on the front page of one of these  
14 newspapers. The only solution to Lorton is what occurred:  
15 to close. It was a disgrace.

16           But we would receive a ton of cases over here  
17 involving assaults within Lorton, on inmate on inmate. And  
18 there is an internal grievance proceeding. So I sat on  
19 several cases, case after case after case, in which one  
20 inmate -- they would prosecute one inmate for an assault by  
21 another.

22           And so you had groups of inmates who would come  
23 in and testify. And the jury would scratch their heads and  
24 say: How can we determine whom to believe when they are all  
25 felons, and they don't look like very reputable folks.

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1                   And after a while, that seemed to me to be a  
2 waste of judicial resources. That's the only time that the  
3 judiciary -- that I have, as a judge, interfered with the  
4 government's decision of whom to prosecute, whom not to  
5 prosecute, when to continue or not to continue.

6                   So I don't express any view about the  
7 discontinuing of the Rosen and Weissman case.

8                   However, it is significant, in the context of  
9 Mr. Franklin, that it was discontinued.

10                  Having said that, however, I don't have any  
11 doubt -- and Mr. Franklin has made clear that he doesn't  
12 doubt, and Mr. Cacheris does not contest, that Mr. Franklin,  
13 in what he did, violated the law.

14                  Whether it was specifically 792 or something  
15 else is something maybe for dispute.

16                  The main issue in Rosen and Weissman -- well,  
17 not the main -- we have an expert here -- or we have the  
18 experts here, Mr. Reilly, Mr. Hammerstrom, Mr. Lowell. But  
19 a principal issue in that case, and something that I don't  
20 think is well-understood, is that the information had to be  
21 national defense information. It wasn't enough that it be  
22 classified. It had to be NDI for there to be a violation.  
23 And that was a very disputable issue.

24                  And as I said, I don't have a view on whether  
25 something should be classified or not. That's only part of

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1 the NDI equation. That's the closely held part.

2 It isn't the judge, the judge's view, it isn't  
3 the judiciary's task or obligation to determine what should  
4 or shouldn't be classified. That's, again, an Executive  
5 Branch decision.

6 It is, however, the province of the  
7 judiciary -- and in this case it would have been the  
8 province of the jury -- to decide whether or not the  
9 information was NDI. That's really what a major dispute was  
10 about.

11 Am I correct, Mr. Reilly; there was a major or  
12 dispute about that?

13 There may have been others, but that was a  
14 major dispute.

15 ATTORNEY REILLY: I believe that's correct,  
16 your Honor.

17 THE COURT: And I see Mr. Lowell smiling, and  
18 so I think it was.

19 And I don't know whether that's the reason.

20 There were a lot of witnesses that the defense  
21 had lined up. There were rulings that I made. Those were  
22 referred to in the media.

23 I don't know. It doesn't matter. I don't know  
24 and don't care. That's a matter for others to write about,  
25 think about.

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1 I do want to say that the lawyers in that case  
2 on both sides, both the government and the defendant, were  
3 exemplary and did an exemplary job.

4 Now -- but it has some relevance to this case,  
5 and I'll come to that in just a moment.

6 In deciding on a Rule 35, I do consider the  
7 3553(a) factors, but it's not a resentencing. And I  
8 considered the factors under 5K. They are all advisory.  
9 The Guidelines are advisory. The factors there are not  
10 binding. But I consider those and 3553(a).

11 And my task at the end of the day is to  
12 evaluate his cooperation, to make a decision about the  
13 importance of it, the substance of it, to evaluate the other  
14 3553(a) factors, which, of course, are his personal history  
15 characteristics, the nature of the offense, the need to  
16 insure that there -- whatever is done is just -- and I'll  
17 come back to that -- promotes respect for the law, does not  
18 involve unwarranted disparities in on sentences imposed on  
19 this defendant. In this case, it wouldn't be unwarranted  
20 disparities in the sentencing. It really would be  
21 unwarranted disparities, also, in the reductions.

22 And also, I have already mentioned, or should  
23 mention, deterrent effect. Mr. Hammerstrom made a very  
24 important point. He said that this case is different from  
25 Rosen and Weissman, in that Mr. Franklin was a government

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1 official.

2           And I think the government's view -- correct me  
3 if I am wrong, Mr. Hammerstrom -- is that these back-channel  
4 efforts, insofar as they involve classified information, are  
5 not justified, cannot be justified. And that had to be a  
6 significant motivation in the government's originally  
7 bringing the prosecution.

8           Would that be reasonably accurate?

9           ATTORNEY HAMMERSTROM: Yes, your Honor.

10          THE COURT: And so what I do today has to  
11 continue to send that message. That's very important.

12          Now, it's true that there have been  
13 disclosures, as Mr. Cacheris points out, in which people  
14 have disclosed classified information to the press, when  
15 they shouldn't have under the law, and they haven't been  
16 pursued and prosecuted.

17          I don't have a problem with people doing that  
18 if they are held accountable for it. To use the Jack Bauer  
19 analogy, one might hope that, for example, someone might  
20 have the courage to do something that would break the law if  
21 it meant they're the savior of the country; but then one has  
22 to take the consequences, because the rule of law is so  
23 important.

24          So, if someone discloses an NIE about Iran,  
25 which happened, and a day later it appears in the newspapers

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1 because that was a very hot topic in those days; if one  
2 discloses NSA surveillance -- that was -- because someone  
3 clearly thought that that was wrong -- and I can understand  
4 that feeling, but it was wrong to disclose it. There were  
5 other ways to go about it.

6 Now, disclosing it was okay if the person is  
7 willing to stand up and say, "I did it. Give me the  
8 consequences."

9 So, what I do today -- what has happened to  
10 Mr. Franklin and what will happen after I rule today has to  
11 stand as a beacon to government officials, because  
12 Mr. Hammerstrom is absolutely right, it is important that  
13 government officials, more than anyone else, get this  
14 message: You cannot engage in disclosure of classified  
15 information, certainly not NDI -- I mean, it may turn out in  
16 the end not to be NDI, under the statute. But you are  
17 precluded by your agreement with the government and by  
18 internal regulations from disclosing classified information,  
19 which in all likelihood might well be NDI; and that if you  
20 do so, there are consequences; and that noble motives don't  
21 erase the violation.

22 And it's important that what I do today  
23 reflects that.

24 It is also important to have what I do today  
25 reflect the very substantial amount of cooperation that he

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1 has provided in a range of areas that we reviewed, some of  
2 which are under seal; and that I consider all of the other  
3 factors that Mr. Cacheris has brought to my attention in his  
4 submission, the bulk of which will not be under seal and be  
5 publicly available.

6 This case has clearly had a very severe effect  
7 on him, his family. But those -- that's a result of choices  
8 that Mr. Franklin made. Life is making choices and living  
9 with the consequences of the choices that you make.

10 We don't determine where we are born, to whom  
11 we are born, or whether we are born with handicaps, but we  
12 all determine how we respond to those. And what choices we  
13 make, those choices shape our lives. He made a bad choice,  
14 he made a criminal choice, and there must you be  
15 consequences for that.

16 I also remember and take into account that  
17 Mr. Franklin made a heartfelt, I think, sincere statement  
18 about his feelings about our country and about our warriors  
19 in uniform. I think those were sincere. And he can make  
20 those because he was a warrior. He did serve. And he also  
21 had very close friends who were killed as warriors.

22 This country cannot survive without its  
23 warriors. Of course, it won't survive very well unless we  
24 use our warriors well and carefully. But his heartfelt  
25 statements, I think, are genuine and they have some basis.

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1                   So I take all of that into account.

2                   In the end, I grant the motion to reduce his  
3 sentence. And I reduce his sentence on the three counts to  
4 a sentence of probation with a special condition that he  
5 serve ten months in community confinement.

6                   As a further special condition of his  
7 probation, I am going to require that he do a hundred hours  
8 of community serve. And I want this hundred hours of  
9 community service focused on giving talks to young people.

10                  But I am not interested in giving -- in your  
11 giving talks to young people about the Islamist threat to  
12 our country -- not that I don't think there is one. We  
13 might not agree on precisely what it is. It doesn't matter.

14                  What I want you to do, Mr. Franklin -- come to  
15 the podium.

16                  THE DEFENDANT: (Complies.)

17                  THE COURT: What I want you to do is I want you  
18 to speak to these young people about the rule of law, the  
19 importance of the rule of law insofar -- and how important  
20 it is with respect to public officials, that public  
21 officials must obey the law.

22                  And simply because you believe that something  
23 that's going on that's classified should be revealed to the  
24 press and to the public, so that the public can know that  
25 its government is doing something you think is wrong, that

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1 doesn't justify it.

2 Now, you may want to go ahead and do it, but  
3 you have to stand up and take the consequences.

4 And Mr. Cacheris, you asked for straight  
5 probation, and largely because of two things: one, the case  
6 against Rosen and Weissman abated, and therefore you would  
7 think nothing worse could happen to Mr. Franklin. And  
8 number two, you point out that there are other people in the  
9 government who are doing this and not being prosecuted.

10 I agree with you. I think that's indisputable.  
11 And it's sad.

12 The person who disclosed those things that you  
13 refer to and that I refer to, probably thinks he or she is a  
14 hero.

15 They are not a hero, not a hero at all. They  
16 were a lawbreaker. And that's the point Mr. Hammerstrom  
17 wants driven home.

18 Am I right, Mr. Hammerstrom?

19 ATTORNEY HAMMERSTROM: Yes, sir.

20 THE COURT: So what I want you to speak to  
21 these young people about, Mr. Franklin, is the rule of law  
22 and the obligation that public officials especially have,  
23 and the importance of classified information. Secrets are  
24 importance to a nation. If we couldn't keep our secrets, we  
25 would be at greater risk.

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1 Don't you agree?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: No, whether or not we overclassify  
4 things is certainly open to great debate. In fact, Mr.  
5 Lowell was ready to engage in that debate full bore in the  
6 case.

7 Am I right, Mr. Lowell?

8 ATTORNEY LOWELL: May I say "yes" on the  
9 record, sir?

10 THE COURT: (Laughs.) So, that is not  
11 something -- that's true, we may overclassify some things.  
12 But we need to protect our secrets with the law. Don't you  
13 agree?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I want you to explain to young  
16 people the importance of public service under the rule of  
17 law.

18 And I am going to ask that a probation officer  
19 send me copies of your lectures on this subject during  
20 the -- and you can do it in high schools, you can do it at  
21 Shepherd. You can do it at various places.

22 THE DEFENDANT: I would love to do it, sir.

23 THE COURT: Well, you will have an opportunity  
24 to do it, and time to do it. And to the extent that there  
25 are hours left over, I want you to go to veterans hospitals

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1 and help with the veterans. And I know that is close to  
2 your heart, and you have already done some of that.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But I want you to talk to your  
5 people about that.

6 I am going to permit you to surrender  
7 voluntarily, of course.

8 The reason that have kept some element of the  
9 sentence that goes beyond what Rosen and Weissman have to  
10 endure -- and we don't know whether a jury would have found  
11 Rosen and Weissman innocent -- or not guilty or guilty. We  
12 don't know that. Because there was a clear fight about  
13 whether anything they did was illegal. We don't know why  
14 the government -- and I don't want to know why the  
15 government -- abated. It's none of my business.

16 The only thing I can say is that it made my  
17 trial docket easier to manage.

18 (Laughter.)

19 THE COURT: That's about all I can say.

20 But it's important that you have a consequence  
21 from this. It includes the papers you took home, after  
22 being told not to.

23 Mr. Hammerstrom was dead right on that, and I  
24 remembered it clearly. After being told not to, you did it.  
25 You can't do that as a public official. You have a higher

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1 obligation to the rule of law, not to your own estimate of  
2 what you think is good or not.

3 The fact that you had these strong views about  
4 the threat of Iran, I understand that. But you had a forum  
5 in which to engage that within the Department of Defense.

6 THE DEFENDANT: Yes, I did.

7 THE COURT: And you arrogated to yourself the  
8 power to do something more about it. You know, you could  
9 have been wrong about that. Who knows? We don't. We  
10 don't.

11 In fact, we will never know whether one  
12 position or the other is right until one history takes  
13 care -- or we take one route, history tells us about that.  
14 But we will never know what would have happened if we had  
15 taken the other route. We do the best we can, and we will  
16 do better if we obey the rule of law.

17 Have I made myself clear?

18 THE DEFENDANT: Yes, you have, sir.

19 And one of the -- one of two principal  
20 objectives of our adversaries is to force us to change  
21 internally. And what I did was play into that objective by  
22 my violations.

23 THE COURT: All right.

24 Anything further in this matter today?

25 Let me end on a positive note.

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1                   You may be seated.

2                   THE DEFENDANT: That you.

3                   THE COURT: I have said this twice already  
4 today, and I will say it again. I haven't seen lawyers on  
5 the government side, and Mr. Lowell on your side -- that  
6 includes Mr. Weiss and all the other folks -- work any  
7 harder, any more diligently, any more honestly and  
8 effectively than this group here.

9                   I know I imposed a lot of burdens on you, but I  
10 want to end on that positive note that you all did a very  
11 good job as lawyers. I appreciate it.

12                   And I think we are fortunate to have in our  
13 Department of Justice such capable, conscientious, honest  
14 lawyers; and on the defense side, Mr. Lowell, Mr. Weiss and  
15 all of those who aren't here, such able lawyers, honest,  
16 diligent and effective lawyers on the other side.

17                   I'll enter an order accordingly.

18                   Court stands in recess.

19                   (Court adjourned at 7:03 p.m.)

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CERTIFICATE

I, MICHAEL A. RODRIQUEZ, an Official Court Reporter for the United States District Court, in the Eastern District of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the motions hearing in the case of UNITED STATES OF AMERICA v. LAWRENCE ANTHONY FRANKLIN.

I further certify that I was authorized and did report by stenotype the proceedings in said motions hearing, and that the foregoing pages, numbered 1 to 45, inclusive, constitute the official transcript, of said proceedings as taken from my machine shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Michael A. Rodriguez, RPR/CM/RMR  
Official Court Reporter