

continuous streaming, of the so-called ‘documentary’ titled *Operation Varsity Blues: The College Admission Scandal*.

2. No individual, including a defendant awaiting trial in a criminal case, is required to sit by and permit the unlawful and unfair destruction of their reputation by a global media outlet. For this reason, prior to Defendant Netflix, Inc. (“Netflix”) and the other Defendants named herein airing their publication, the Wilson family literally warned them in writing of the specific, publicly available and fully exculpatory facts surrounding the charges against Mr. Wilson and made clear that Mr. Wilson and his children could not simply be grouped into a narrative about the many individuals who, unlike Mr. Wilson, have pled guilty to committing crimes. Among other things, the Wilsons made clear to Defendants that Mr. Wilson’s son was a real and talented water polo player who was part of the United States Olympic development program, that his daughters had 99th percentile test scores based on tests that they themselves took, and other publicly available exculpatory information, all of which the Wilsons provided to Defendants.

3. The Wilsons further supplied Defendants with the results of extensive polygraph testing conducted by highly respected and experienced professionals which Mr. Wilson uniformly passed. Yet, Netflix and the other Defendants knowingly and recklessly ignored those facts and painted the Wilsons with the broadest and dirtiest brush possible. They included the Wilson family in the broad and sweeping allegations of misconduct made by the government against other “Varsity Blues” defendant parents who have admitted their guilt in court and who are not going to trial. This presentation is completely contrary to director Christopher Smith’s purported claim that he and the other filmmakers “were trying to paint a slightly more complex portrait of the whole landscape as opposed to painting it with one brush.” *See*

<https://www.yahoo.com/entertainment/lori-loughlin-felicity-huffman-fbi-transcripts-omitted-operation-varsity-blues-film-director-171730624.html>. Indeed, Mr. Wilson is the only one of the “Varsity Blues” parent defendants featured in the ‘documentary’ who has not pleaded guilty. By deliberately blurring the lines between the parents featured in the ‘documentary,’ by deliberately ignoring publicly available information on the docket in Mr. Wilson’s criminal proceeding to which they were specifically directed and with which they were provided, and through defamatory suggestions of fact and innuendo of and concerning the entire Wilson family, the Defendants gave and continue to give viewers the false and defamatory impression that the Wilsons engaged in substantially similar conduct as the other parents and families included in the publication. The Wilson family members named herein seek monetary damages and other legal redress for the malicious and reckless destruction of their reputations caused by Defendants.

ii. Parties

4. Mr. Wilson is an individual and a resident of Lynnfield, Essex County, Massachusetts.
5. Plaintiff Leslie Wilson (“Mrs. Wilson”) is an individual and a resident of Lynnfield, Essex County, Massachusetts. She is the wife of Mr. Wilson.
6. Plaintiff John B. Wilson, Jr. (“Johnny Wilson”) is an individual and a resident of Los Angeles, California. He is the son of Mr. Wilson and Mrs. Wilson.
7. Defendant Netflix is a media-services provider and production company that streams media content worldwide to its subscribers. Upon information and belief, it is a Delaware corporation with a principal place of business in the State of California.
8. Defendant Netflix Worldwide Entertainment, LLC (“Netflix WE”) is, upon information and belief, a wholly owned subsidiary of Netflix. Upon further information and

belief, Netflix WE owns the trademarks and copyrights for the ‘documentary’ at issue. Upon further information and belief, it is a Delaware limited liability company with a principal place of business in the State of California.

9. Defendant 241C Films, LLC (“241C”) is a producer of the ‘documentary’ at issue. Upon information and belief, 241C is a California limited liability company with a principal place of business in the State of California.

10. Defendant Library Films LLC (“Library Films”) is a producer of the ‘documentary’ at issue. Upon information and belief, Library Films is a California limited liability company with a principal place of business in the State of California.

11. Defendant Jon Karmen (“Karmen”) is an individual and, upon information and belief, a resident of the State of California. He is a principal of 241C and Library Films, and the credited producer of the ‘documentary’.

12. Defendant Chris Smith (“Smith”) is an individual and, upon information and belief, a resident of the State of California. He is a principal of 241C and Library Films, and the credited director of the ‘documentary’.

iii. Jurisdiction and Venue

13. This Court has jurisdiction over this matter pursuant to G.L. c. 212, § 4.

14. Venue is proper in this Court pursuant to G.L. c. 223, § 1, as Mr. and Mrs. Wilson are residents of Essex County.

iv. Background

15. Mr. Wilson is a defendant in *United States v. Colburn*, 19-cr-10080, a criminal case pending in federal court in Boston which arises from the so-called “Varsity Blues” investigation. Other defendant parents caught up in the investigation include both famous Hollywood individuals as well as other parents.

16. Unlike these and other high-profile defendant parents who have pleaded guilty, Mr. Wilson is innocent. He was deceived by the confessed felon behind the ‘Varsity Blues’ scandal, the highly-skilled con artist Rick Singer (“Singer”), and is waiting for his day in court to prove his innocence.

17. Mr. Wilson is a hardworking, generous person with no prior criminal record who is extremely supportive of his family and his children. Mr. Wilson and the Wilson family have a long record of community service, including Mr. Wilson’s fifteen-plus years of service as a board member of Cure Autism Now and Autism Speaks. During his lifetime, Mr. Wilson has donated millions of dollars to charitable organizations.

18. Mr. Wilson did not seek out Singer. Instead, he was referred to Singer by a world-renowned financial advisory firm. This firm told Mr. Wilson that Singer was a highly reputable college admissions counselor used by many of their other clients and implied that his services were fully legitimate. Mr. Wilson was never given any reason to believe that Singer’s services, including his now infamous “side-door” program which he openly marketed to Mr. Wilson and countless other parents (including in a presentation at Starbucks’ corporate offices), was anything but legitimate.

19. Lacking the type of evidence of fraud or other willful wrongdoing that the government has against many of the other parents, the government’s case against Mr. Wilson is

made up of out-of-context email fragments and a series of deliberately ambiguous sound bites, scripted by government agents over several months of set up calls with Singer.

20. In contrast to many of the other defendants in the ‘Varsity Blues’ prosecution, many of whom have pleaded guilty, neither Mr. Wilson nor his children (or Mrs. Wilson for that matter) are accused of participating in any kind of standardized test cheating. All of the Wilson children worked hard, studied hard and took their own college admissions tests with each scoring in the top 90+ percentile, and the government has never alleged otherwise. Likewise, Mr. Wilson is not accused of “photoshopping” or staging photos for fake athletic profiles or making a payment to line the pockets of any athletic coach or other university employee in order to gain admission to a prestigious college or university.

21. Rather, Mr. Wilson is accused of making payments which Singer and others assured him were legitimate donations, in order to assist with (but not guarantee) the admission of his very qualified children to their preferred universities. Employing a completely novel legal theory which stretches the definition of “bribery” beyond all recognition, the government has chosen to label these payments as “bribes.”

22. Mr. Wilson is falsely accused of conspiring with Singer to “bribe” his son’s way into the University of Southern California (“USC”) as a water polo player in 2014. However, it is undisputed that Johnny Wilson was a star athlete, an invited member of the United States Olympic water polo development program, and that his grades and test scores were more than sufficient to gain admission to USC. He was a starter on multiple highly nationally ranked high school and club teams and was approached by more than one Division I college water polo and swimming teams to possibly join their programs. Johnny’s high school coach – himself an NCAA MVP and Olympic team alternate – was openly involved with the Wilson family and was

in contact with the USC coaches about Johnny's participation in USC water polo. Unlike most of the children of the other defendant parents in the investigation, Johnny was actually an athlete and ultimately became a member of the USC water polo team. Below is a photo published in the San Jose Mercury News of Johnny Wilson competing in the West Bay Area League swimming championships in 2013, in which he won first place in the butterfly:



23. With respect to his two daughters, Mr. Wilson is accused of conspiring with Singer to gain their admission to Harvard and Stanford through the use of Singer's "side door" program in 2018. But here again, it is undisputed that Singer continued to assure Wilson in 2018, four years after Johnny's admission to USC, that the "side door" program was fully legitimate and was widely accepted by multiple universities, with Singer having done over 700 side doors in the previous year at schools across the country. Singer even told Mr. Wilson that he was personally arranging with the president of Harvard to do more side doors there. It is further undisputed that Singer told Wilson that the side door was available to non-athletes who

were academically qualified and available to serve as a team assistant manager or in other team or academic department support roles. Wilson's daughters were in fact academically qualified for admission to Harvard and Stanford, having legitimately achieved scores in the 99th percentile on their college entrance exams. One daughter achieved a perfect score on the ACT.

24. Mr. Wilson's donations in 2018 to Singer's IRS-approved foundation were made when his daughters were just 16 years old and their college applications were not even due until the year 2020. As part of his cooperation with the government, Singer told Mr. Wilson that donations made years in advance could have more impact on tight university budgets. He also told Mr. Wilson that he could even change which schools he ultimately donated to through Singer's foundation up until mid-2019.

25. Nonetheless, the Wilsons have been unfairly branded as cheaters and criminals in the media, without regard to the true facts related to their family, and how diametrically opposed they are from, for example, other parents who had their children pose for staged athletic photos or who paid a Singer representative to take their children's college entrance exams for them.

26. Defendants have now materially focused to a world-wide audience the unfair branding of the Wilson family with their new 'documentary' first streamed on Netflix on March 17, 2021. This production lumps the Wilson family in with other defendant parents, all of whom have already admitted to wrongdoing, and has the effect of making the Wilsons appear guilty simply by their association with Singer and, by extension, the other defendant parents that are now admitted felons. In fact, Mr. Wilson is the only parent featured in the documentary who has pleaded not guilty and is intending to go to trial to prove his innocence.

27. Worse, Defendants ignored publicly available facts and documents that were readily accessible to them from court filings that make clear that Mr. Wilson is innocent and has

been falsely accused and any suggestion that his children benefitted from any alleged wrongdoing and were not capable of gaining admission to college on their own is not true.

28. Even a cursory viewing of the actual production makes clear that Defendants made no attempt to separate Mr. Wilson and his family out from the dozens of other defendant parents who pled guilty and were sentenced as part of the “Varsity Blues” prosecutions. Other than momentarily acknowledging at the end of this approximately 100-minute piece that Mr. Wilson has pled not guilty, Defendants made no attempt to educate its worldwide viewers that, for example, Johnny was not a “fake athlete” or the academic gifts of each of the Wilson children.

29. Instead, the ‘documentary’ contains reenactments of telephone calls between Singer and Mr. Wilson just as it does for calls Singer’s calls with other defendant parents that have pleaded guilty. Excerpts of calls with Mr. Wilson are taken out of context and spliced into sequences with excerpts of calls featuring other parents making genuinely incriminating statements. As a result, any reasonable viewer of the ‘documentary’ is rendered unable to distinguish between the various parent defendants and is left with the untrue perception of the Wilsons being just like the defendant parents who orchestrated through Singer standardized test cheating, staging or “photoshopping” photos of non-athlete children for fake athletic profiles, and paying bribes to college or university personnel in order to gain admission for their children. Indeed, in a highly and deliberately misleading fashion, the opening credits of the documentary feature audio of a call between Mr. Wilson and Singer while highly inflammatory images pertaining to other defendant parents – including a sequence clearly depicting the “photoshopping” of a photo of a water polo player – are displayed on the screen.

30. Worse, prior to the publication of the ‘documentary’ last month, the Wilson family warned Defendants about lumping Mr. Wilson in with the other defendant parents in a letter dated March 5, 2021, which included publicly available supporting documentation for a number of exculpatory facts related to Mr. Wilson’s case (the “Wilson Letter”). A copy of the Wilson Letter with its enclosures is attached hereto as **Exhibit 1**.

31. First, the Wilson Letter put Defendants on notice of the following facts and provided documentary support for them:

- a. Mr. Wilson’s son was a highly competitive high school and club water polo player *and was a member of the USC water polo team*.
- b. Singer wrote in his own notes that Mr. Wilson’s payment to USC was a “*donation to USC program for real polo player*” and told the FBI that he had no recollection of Wilson knowing of any “inaccuracies in his son’s athletic profile.”
- c. Of the funds that Mr. Wilson intended to donate to USC in connection with his son’s admission, Singer stole \$100,000 and \$100,000 went to USC itself (not a coach or any other USC employee), with USC acknowledging the gift *in an official USC thank you letter*. Indeed, Singer consistently told Mr. Wilson that all monies paid in connection with his “side door” program went to the schools.

See Ex. 1 at p. 3 (citing and including exhibits to the Wilson Letter).

32. The ‘documentary’ fails to even mention these material and exculpatory facts that show the Wilson family’s circumstances are entirely different. Instead, it insinuates throughout that the Wilsons are no different from any other family caught up in this scandal.

33. Second, the Wilson Letter warned Defendants that the reenactment of any recorded calls between Singer and Mr. Wilson that did not include the following un rebutted facts available in the public record would necessarily be highly misleading to the audience and defamatory of the Wilson family, and not a fair and accurate report of the proceedings against Mr. Wilson:

- a. When Singer and Mr. Wilson discussed possible donations to Harvard and Stanford in connection with Wilson's daughters' college admissions, Singer assured Wilson of the propriety of such donations, including by telling Mr. Wilson that he was "going to Harvard next Friday, because the president wants to do a deal with me, because he found out that I've already got four already in, without his help, so he's like . . . 'why would you go to somebody else if you could come to me?'"
- b. Singer promoted his "side door" as a fully legitimate option, including in a presentation to dozens of management employees at Starbucks' offices.
- c. In calls which were recorded without Singer's knowledge and prior to his becoming a government cooperator, Singer described payments made as part of his "side door" program as legitimate donations to universities. Then, once he was cooperating, Singer, at the government's direction, began subtly introducing purposefully ambiguous language, including in calls with Mr. Wilson. This purposefully ambiguous language was intended to allow the government to insinuate that Mr. Wilson and other defendants understood payments were going to coaches' personal accounts rather than to those coaches' programs.
- d. Singer's own notes reflect that, during a "[l]oud and abrasive call with agents" early on in his cooperation, investigators instructed him to "bend the truth" and get "each person to agree to a lie[.]" by "continu[ing] to ask me to tell a fib and not restate what I told my clients as to where there [sic] money was going -to the program not the coach and that it was a donation and they want it to be a payment."

See Ex. 1 at pp. 3-4 (citing and including exhibits to the Wilson Letter).

34. Further, the Wilson Letter explained that the Government's manipulation of Singer's post-cooperation recorded calls with Mr. Wilson was particularly egregious, evincing a deliberate effort to create highly misleading "sound bites" which it could later take out of context to create the false impression that Mr. Wilson agreed to make illicit payments to university officials. On a September 28, 2018 FaceTime call with the Wilson family to discuss the Wilson daughters' college application process, which took place after Singer's cooperation began, Singer made highly exculpatory statements that continued to reassure the Wilson family of the propriety of the side door program. Singer said that side door donations, like Mr. Wilson's 2014 contribution to USC's water polo program, were a legitimate and prevalent aspect of college

admissions that allowed schools to fund their programs. Singer explained that schools and teams can admit non-athlete applicants with the necessary academic credentials, if those students worked as assistant managers or in other support roles. The Government made no record of this 30+ minute FaceTime call, even though Singer made the call from an FBI office at a break during an interview conducted by half a dozen agents and “Varsity Blues” prosecutors. The Government has not disputed Mr. Wilson’s evidence concerning the FaceTime call, including his own sworn affidavit, or explained its failure to record the call other than to claim their agents were not present with Singer during the call. According to a public pleading, the “Government have taken steps to remove all traces of this call from text messages, reports, and notes[.]” See Ex. 1 at p. 4 (citing and including exhibits to the Wilson Letter).

35. Additionally, the Wilson Letter warned that, beginning September 29, 2018, and continuing for weeks after the government’s “loud and abrasive” instructions to Singer to “bend the truth,” Singer began interjecting false incriminating phrases during calls that the government *did* record. An October 15, 2018 call with Mr. Wilson included this exchange:

SINGER: So I know when . . . we get the girls in, it’s a done deal and you’re gonna take care of your part of it, you’re gonna make the payments *to the schools* and the -- *to the coaches*. And that’s what I need . . . so I’m not worried about that.

WILSON: Uh, uh, help me understand the logistics? I thought I make the payment to you and you made the payment *to the school*.

SINGER: Correct. That’s correct.

WILSON: Oh you said that *I* make the payments *to the schools*.

Singer’s references to payments going “to the coaches” are misleading and paint a false picture given his earlier statements to Mr. Wilson that, as before, his payments would go to the university. That is precisely what the Government agents wanted when they told Singer to “bend the truth” and get “each person to agree to a lie.” Of course, the distinction between a payment

to a coach's personal account and a payment to a coach's university program is critical where the latter is not a crime. Indeed, the court in another of the Varsity Blues prosecutions observed that a payment which is received by the university, as opposed to a coach personally, is "not a bribe," and the Government's prosecution based on payments to universities is "a case in search of a bribe or a kickback." *See* Ex. 1 at p. 5 (citing and including exhibits to the Wilson Letter).

36. The 'documentary' includes no less than nine (9) reenactments of calls between Singer and Mr. Wilson but fails to even mention these material and exculpatory facts.

37. Finally, the Wilson Letter put Defendants on notice that, in order to establish the truth and to protect his children from false claims, Mr. Wilson had taken the extraordinary step of submitting to a two-day polygraph examination, which he passed uniformly. Since the trial of his case has already been delayed over two and a half years, Mr. Wilson took this step to clear his family's name should anything happen to him before he can be exonerated at trial. The polygraph examination was conducted by Kendall W. Shull, former Chief and Program Manager of the FBI's Investigation Polygraph Unit, and the results were independently reviewed by Donald J. Krapohl, a former polygraph manager and examiner at the CIA. The results indicate that Mr. Wilson was being truthful in response to all of the many questions asked including, without limitation, whether Mr. Wilson ever knowingly bribed or directed anyone else to bribe a college official, whether he was aware of any fabrications in his son's athletic profile, and whether he knew Singer's college application process was illegal. *See* Ex. 1 at pp. 5-7.

38. The 'documentary' contains no reference to Mr. Wilson's polygraph test.

39. There is nothing fair or accurate about how the Wilsons are portrayed in the 'documentary' now streaming on Netflix. Defendants did not heed the Wilson family's warning and made no effort in the 'documentary' to distinguish the Wilson family circumstances from the

scores of defendant parents who pled guilty to such crimes. Nor did Defendants exercise the option available to them to delay the release of ‘documentary’ in order to edit the ‘documentary’ to include the facts necessary to fairly and accurately report on the nature of the Wilson Family’s involvement with Singer.

40. Instead, Defendants merely provided the Wilson family with a terse and dismissive response to the Wilson Letter on the day before the ‘documentary’ was first streamed to a worldwide audience that continues to sit at home and watch television while they wait for a return to normal life. A copy of Defendants’ response is attached hereto as **Exhibit 2**.

41. The publication of this ‘documentary’ has already had a profound effect on the Wilson family and has caused irreparable damage to their reputation in the community.

Count I – Defamation

42. Plaintiffs repeat and re-allege the allegations set forth above.

43. Each member of the Wilson family is a private citizen.

44. Through their streaming of the ‘documentary’ on Netflix, Defendants have published statements of and concerning the Wilson family, and each individual member thereof, that they knew to be false, recklessly disregarded their falsity, or should have known to be false in the exercise of reasonable care. These statements are defamatory.

45. Defendants held the Wilson up to public scorn and ridicule and destroyed their good name and reputation. A reasonable viewer of the ‘documentary’ would be led to believe that the Wilsons are no different from other families caught up in the “Varsity Blues” investigation and that their children pretended to be athletes and cheated on standardized tests in order to gain admission to prestigious colleges and universities.

46. As a result of this defamation, Plaintiffs have suffered, and continue to suffer, substantial harm and damages. They are entitled to public apologies and retractions and the award of significant monetary damages.

WHEREFORE, Plaintiffs respectfully requests that this Court grant them the following relief on this Complaint and Jury Demand:

- (i) find in favor of Plaintiffs and against Defendants;
- (ii) order public apologies and retractions;
- (iii) award Plaintiffs monetary damages; and
- (iv) grant such other and further relief as this Court deems equitable and just.

Jury Demand

Pursuant to Rule 38(b) of the Massachusetts Rules of Civil Procedure, Plaintiffs hereby demand a jury on all claims and issues so triable.

THE WILSON FAMILY,

By their attorneys,

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April 6, 2021

EXHIBIT 1



March 5, 2021

Via Email

Netflix, Inc.

ATTN: David Hyman, Esq., General Counsel
100 Winchester Circle
Los Gatos, CA 95032
dhyman@netflix.com

Re: “Operation Varsity Blues: The College Admissions Scandal”

All:

Please be informed that this office represents the Wilson family, which is comprised of John Wilson, his wife Leslie Wilson, and their three children (together, the “Wilson family”).

We write in connection with Netflix’s upcoming broadcast of a documentary entitled **“Operation Varsity Blues: The College Admissions Scandal,”** which is currently scheduled to begin streaming worldwide to viewers on March 17, 2021. Based upon pre-publication publicity concerning the documentary, we seek both to ensure that the documentary is truthful and accurate of and concerning the Wilson family and to place Netflix on notice that, if it is not, the Wilson family will consider their legal options including a lawsuit seeking damages for defamation.

As you know, Mr. Wilson is a defendant in *United States v. Colburn*, 19-cr-10080, a matter which arises from the so-called “Varsity Blues” investigation currently pending in federal court in Boston. Mr. Wilson is innocent. He was taken advantage of by a highly skilled, confessed con artist and is waiting for his day in court to prove his innocence. The case against Mr. Wilson is made up of out-of-context email fragments and deliberately ambiguous sound bites, neither of which tells the whole story. While there may be no shortage of bad actors caught up in the college admissions scandal, Mr. Wilson and his family are not among them.

While there is little publicly available information concerning the documentary’s specific content, it is clear from Netflix’s pre-publication promotional material that it will feature what Netflix describes as “an innovative combination of interviews and narrative recreations of the FBI’s wiretapped conversations between Singer and his clients.”¹ Mr. Wilson was one of those clients whose calls with Singer were recorded by the FBI. As such, we have reason to believe

¹ https://www.washingtonpost.com/local/education/netflix-doc-to-examine-man-behind-college-admissions-scandal/2021/02/22/d9bc94c0-7516-11eb-9489-8f7dacad51e75_story.html



the documentary will make reference to Mr. Wilson and, in so doing, make potentially defamatory suggestions of fact and innuendo of and concerning the entire Wilson family. Accordingly, it is critically important that any reference to the Wilson family and the government's case against Mr. Wilson accurately reflect the government's actual allegations against Mr. Wilson, and not lump him and his family in with the other defendants facing different allegations, many of whom have admitted to wrongdoing. By way of illustration only, neither Mr. Wilson nor his children are accused of participating in any kind of standardized test cheating, "photoshopping" photos for fake athletic profiles, or making a payment to any coach or any other university employee.

On the contrary, Mr. Wilson's son in fact was a star athlete, an invited member of the United States Olympic water polo development program, and his grades and test scores were more than sufficient to gain admission at his chosen school. He was a starter on multiple top 10-20 nationally ranked teams, and was approached by college water polo and swimming teams. The son's high school coach (himself an Olympic-qualifying player) collaborated with the Wilson family and was in contact with the USC coaches in regard to the son's participation in USC water polo. Most telling is the fact that the Wilson's son was a member of the USC water polo team.

Similarly, the Wilson children are all academically gifted, with his daughters achieving legitimate scores in the 99th percentile on their college entrance exams. One of his daughters achieved a perfect score on her exam.

Mr. Wilson did not seek out Singer. Instead, he was referred to Singer by a world-renowned financial advisory firm. This firm told Mr. Wilson that Singer was a highly reputable college admissions counselor used by many of their other clients and that he offered legitimate services. Singer consistently assured Mr. Wilson that the side door program was fully legitimate, and there was no reason for Mr. Wilson to believe otherwise. Nonetheless, the Wilsons have been unfairly branded as cheaters and criminals in the media, without regard to the true facts. We urge Netflix not to contribute to, or amplify, this defamatory portrayal of the Wilson family, which would only result in broader and irreparable reputational harm and emotional distress to the family members, and for which Netflix would bear legal responsibility.

Set forth below are the true and accurate facts, supported by documents, all of which are publicly available to Netflix from readily accessible court filings. Together, we believe they make clear that Mr. Wilson is innocent and has been falsely accused and that any suggestion that his children benefitted from his wrongdoing and were not capable of gaining admission to college on their own is not true.

Netflix is hereby placed on notice of the following:²

² For your convenience, we have attached the cited materials herewith.



- i) Mr. Wilson's son was a highly competitive high school and club water polo player, *and was a member of the water polo team at the University of Southern California* ("USC"). See **Exhibit A**, Dkt. No. 699 at pp. 1-2 and Ex. 3, Ex. 9; **Exhibit B**, Dkt. No. 805 at p. 2; **Exhibit C**, Dkt. No. 995 at Ex. 11 and Ex. 3, p. 5.³
- ii) Singer wrote in his own notes that Mr. Wilson's payment to USC was a "*donation to USC program for real polo player*," **Exhibit C**, Dkt. No. 995 at Ex. 14, p. 2, and told the FBI that he had no recollection of Wilson knowing of any "inaccuracies in his son's athletic profile." **Exhibit B**, Dkt. No. 805 at p. 2.
- iii) Of the \$200,000 that Mr. Wilson intended to donate to USC in connection with his son's admission, Singer stole half, and USC itself (not a coach or any other USC employee) received the other half as planned, acknowledging the gift *in an official USC thank you letter*. **Exhibit A**, Dkt. No. 699 at p. 1 and Ex. 2. Indeed, Singer consistently told Mr. Wilson that all monies paid in connection with his "side door" program went to the schools. **Exhibit D**, Dkt. No. 972-45 at p. 9.

Based on the foregoing, it would not be a fair and accurate report of the proceedings against Mr. Wilson to suggest that Mr. Wilson's son was a "fake athlete," that Mr. Wilson knowingly falsified any aspect of his son's USC application, or that Mr. Wilson paid a "bribe" to a USC coach to facilitate his son's admission. Any such suggestion would be defamatory and would be published with a knowing and reckless disregard for the truth.

Further, as the documentary will apparently feature "re-enactments" of recorded calls between Singer and his clients, you are hereby put on notice that any presentation of any recorded calls featuring Mr. Wilson which does not include the following un rebutted facts available in the public record will necessarily be highly misleading to the audience and defamatory of the Wilson family, and not a fair and accurate report of the proceedings against Mr. Wilson:

- i) When Singer and Mr. Wilson discussed possible donations to Harvard and Stanford in connection with Wilson's daughters' college admissions, Singer assured Wilson of the propriety of such donations, including by telling Wilson that he was "going to Harvard next Friday, because the president wants to do a deal with me, because he found out that I've already got four already in, without his help, so he's like . . . 'why would you go to somebody else if you could come to me?'" **Exhibit A**, Dkt. No. 699 at p. 2 and Ex. 4, p. 8.

³ Unless otherwise noted, all references herein to "Dkt. No." are to docket entries in *United States v. Colburn*, 19-cr-10080 (D. Mass. 2019).



- ii) Singer promoted the “side door” as a fully legitimate option, including in a presentation to dozens of management employees at Starbucks’ offices. **Exhibit E**, Dkt. No. 1533 at p. 4 and Exs. A-D.
- iii) In calls which were recorded without Singer’s knowledge and prior to his becoming a government cooperator, Singer described payments made as part of his “side door” program as legitimate donations to universities. Then, once he was cooperating, Singer, at the government’s direction, began subtly introducing ambiguous language, including in calls with Mr. Wilson. This purposefully ambiguous language allowed the government to insinuate that Mr. Wilson and other defendants understood payments were going to coaches’ personal accounts rather than to those coaches’ programs. **Exhibit A**, Dkt. No. 699 at p. 9 and Ex. 10, p. 9.
- iv) Singer’s own notes reflect that, during a “[l]oud and abrasive call with agents” early on in his cooperation, investigators instructed him to “bend the truth” and get “each person to agree to a lie[.]” by “continu[ing] to ask me to tell a fib and not restate what I told my clients as to where there [sic] money was going -to the program not the coach and that it was a donation and they want it to be a payment.” and **Exhibit D**, Dkt. No. 972 at Ex. A, p. 1.

The government’s manipulation of Singer’s post-cooperation recorded calls with Mr. Wilson was particularly egregious, evincing a deliberate effort to create highly misleading “sound bites” which the government could later take out of context to create the false impression that Mr. Wilson agreed to make illicit payments to university officials. On a September 28, 2018 FaceTime call with the Wilson family to discuss the Wilson daughters’ college application process, which took place after Singer’s cooperation with the government began, Singer made highly exculpatory statements that continued to reassure the Wilson family of the propriety of the side door program. Singer told them that side door donations, like Mr. Wilson’s 2014 contribution to USC’s water polo program, were a legitimate and prevalent aspect of college admissions that allowed schools to fund their programs. **Exhibit D**, Dkt. No. 972-43 (Affidavit of John Wilson) at 1-2. Singer explained that schools and teams can admit non-athlete applicants with the necessary academic credentials, if those students worked as assistant managers or in other support roles. *Id.* at 2-3. The government made no record of this FaceTime call, even though Singer made the call from an FBI office at a break during an interview conducted by half a dozen agents and the “Varsity Blues” prosecutors. **Exhibit D**, Dkt. No. 972-44 at 1-2. The government has not disputed Mr. Wilson’s evidence concerning the FaceTime call, including his own sworn affidavit, or explained its failure to record the call other than to claim their agents were not present with Singer during the call. **Exhibit F**, Dkt. No. 1141 at 6-7. According to a public pleading, the “[g]overnment have taken steps to remove all traces of this call from text messages, reports, and notes[.]” **Exhibit G**, Dkt. No. 1184 at 1.



As referenced above, beginning September 29, 2018, and continuing for weeks after the government's "loud and abrasive" instructions to Singer to "bend the truth," **Exhibit D**, Dkt. No. 972 at Ex. A, p. 1, Singer began interjecting incriminating phrases during calls that the government *did* record. An October 15, 2018 call with Wilson included this exchange:

- SINGER: So I know when . . . we get the girls in, it's a done deal and you're gonna take care of your part of it, you're gonna make the payments *to the schools* and the -- *to the coaches*. And that's what I need . . . so I'm not worried about that.
- WILSON: Uh, uh, help me understand the logistics? I thought I make the payment to you and you made the payment *to the school*.
- SINGER: Correct. That's correct.
- WILSON: Oh you said that *I* make the payments *to the schools*.

Exhibit D, Dkt. No. 972-17 (10/15/18 Wilson Tr.) at 9. Singer's references to payments going "to the coaches" are misleading and paint a false picture given his earlier statements to Wilson that, as before, his payments would go to the university. That is precisely what the government agents wanted when they told Singer to "bend the truth" and get "each person to agree to a lie." **Exhibit D**, Dkt. No. 972 at Ex. A, p. 1. Of course, the distinction between a payment to a coach and a payment to a university program is critical where the latter is not a crime. Indeed, the court in another of the Varsity Blues' prosecutions observed that a payment which is received by the university, as opposed to a coach individually, is "not a bribe," and the government's prosecution based on payments to universities is "a case in search of a bribe or a kickback." **Exhibit H**, Transcript of Sentencing in *United States v. Bizzack*, 19-cr-10222, at 15-16.

Finally, Netflix is also hereby put on notice that, in order to establish the truth and to protect his children from false claims, Mr. Wilson has taken the extraordinary step of submitting to a two-day polygraph examination which he passed uniformly. Since the trial of his case has already been delayed over two and a half years, Mr. Wilson took this step in order to clear his family's name should anything happen to him before he can be exonerated at trial. The polygraph examination was conducted by Kendall W. Shull, former Chief and Program Manager of the FBI's Investigation Polygraph Unit, and the results were independently reviewed by Donald J. Krapohl, a former polygraph manager and examiner at the CIA.⁴ The results indicate that Mr. Wilson was being truthful in response to all questions asked. The complete set of the results is attached hereto as **Exhibit I**. A complete list of the questions and answers is included in an Addendum to this letter. Those questions and answers included the following:

⁴ Curriculum vitae for Mr. Shull and Mr. Krapohl are attached hereto as **Exhibits J & K**.



Question	Answer
At the time you paid money to Singer, did you know Singer's college application process was illegal?	No.
Did you agree with Singer to put any fraudulent materials into any of your children's college application documents?	No.
Did you bribe or direct anyone else to bribe any college official to violate their college admissions policies?	No.
Did you verify with the USC coach, a separate USC administrator and your tax advisors that making donations through Singer's organization was legitimate?	Yes.
Prior to 2019, did you ever read the athletic profile that Singer prepared for your son in 2014?	No.

At stake in your broadcast is nothing short of the future of the Wilson family from a reputational and emotional health perspective. Mr. Wilson's reputation, and the reputations of his wife and children, have already been tarnished by the media's desire to paint with an unfairly broad brush that lumps all of the "Varsity Blues" defendants together and presumes their guilt. Mr. Wilson is a hardworking, generous person with no prior criminal record who is extremely supportive of his family and his children. Mr. Wilson and the Wilson family have a long record of community service, including Mr. Wilson's fifteen-plus years of service as a board member of Cure Autism Now and Autism Speaks, and charitable contributions which over the past twenty (20) years have been noteworthy and considerable.

We ask to hear from you in response to this letter as soon as possible, but in any event no later than Friday, March 12, given the March 17 scheduled release date of the documentary. Please forward this letter to counsel for Jon Karmen and Chris Smith, and anyone else who should receive it.

Very truly yours,

Howard M. Cooper

HMC/lmm

cc: The Wilson Family



ADDENDUM – POLYGRAPH QUESTIONS AND ANSWERS

Question	Answer
Did you agree with Singer to put any fraudulent materials into any of your children’s college application documents?	No.
Prior to 2019, did you ever read the athletic profile that Singer prepared for your son in 2014?	No.
Before college did your son play water polo for top 10-20 nationally ranked teams?	Yes.
At the time you paid money to Singer, did you know Singer’s college application process was illegal?	No.
Did Singer tell you that contributions to his charitable organization were totally pass through to the university programs?	Yes.
Did you verify with the USC coach, a separate USC administrator and your tax advisors that making donations through Singer’s organization was legitimate?	Yes.
Did a senior USC athletic administrator tell you that your donations through Singer’s organizations were appropriate?	Yes.
Did you bribe or direct anyone else to bribe any college official to violate their college admissions policies?	No.
Did you agree for anyone to change the results of any of your children’s college entrance exams?	No.
Did one of your daughters get a perfect score on her college entrance exam?	Yes.
Did all of your children score in the top 92-99% on their college entrance exams?	Yes.
Did you verify that each of your children’s test scores put them in the middle 50% range or above for their targeted colleges?	Yes.
Is HPC Inc. your wholly owned Sub S corporation where all donations and income are 100% consolidated with your personal tax returns?	Yes.
Does HPC have a multi-year history of making donations to various charities?	Yes.
Did your tax experts tell you the Key Worldwide Foundation was an IRS approved charitable organization?	Yes.

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DAVID SIDOO et al.,

Defendants.

No. 1:19-cr-10080-NMG

**DEFENDANT JOHN WILSON'S SUPPLEMENTAL MOTION TO
COMPEL PRODUCTION OF EXCULPATORY EVIDENCE**

I. INTRODUCTION

Defendant John Wilson, joined by other defendants,¹ hereby (a) joins in the motion to compel submitted by defendants Giannulli and Loughlin, ECF No. 693 (the “Giannulli Motion”); and (b) moves further to compel production of the additional categories of exculpatory evidence discussed below. To avoid repetition, this brief incorporates by reference the background and law described in the Giannulli Motion.

The government has implausibly denied that it possesses any exculpatory evidence, and has rejected wholesale the defendants’ requests for specified categories of exculpatory evidence. *See* Ex. 1 (previously filed at ECF No. 693-2). Several categories of exculpatory evidence carry special importance to Wilson’s defense. As the indictment recognizes, Wilson did not pay a single dollar as a bribe to any individual. Of the \$200,000 Wilson intended to donate to USC, Rick Singer stole half; USC received the other half as planned, acknowledging the gift in an official thank-you letter. Ex. 2. When USC classified Wilson’s son as a water-polo recruit,

¹ The following defendants (through counsel) join this motion: David Sidoo, Gregory Colburn, Amy Colburn, Gamal Abdelaziz, Diane Blake, Todd Blake, Joey Chen, Mossimo Giannulli, Elisabeth Kimmel, Lori Loughlin, Homayoun Zadeh, and Robert Zangrillo.

Wilson had no reason to suspect misconduct: His son was a highly competitive high-school and club water-polo player, who in fact joined USC's team as planned. Ex. 3. And when Singer and Wilson subsequently discussed possible donations to Harvard and Stanford, Singer assured Wilson (in a Title III-recorded conversation) of the propriety of such donations, reporting that the President of Harvard was on board:

[T]hat's why I'm going to Harvard next Friday, because the President wants to do a deal with me, because he found out that I've already got four already in, without his help, so he's like . . . why would you go to somebody else if you could come to me?

Ex. 4, at 8. Wilson now understands that Singer had no such conversation with the President of Harvard. This was just one of the many false statements Singer made to soften up his marks for his con.

Wilson is entitled to the categories of evidence discussed below, all of which defendants requested from the government, in order to defend himself and establish his innocence.

II. ADDITIONAL CATEGORIES OF EXCULPATORY EVIDENCE

A. Singer's Descriptions of His Practices

The Giannulli Motion explains the significance of Singer's statements to his clients about who would be receiving their money. ECF No. 693, at 8-15.² Similarly important to the charges are Singer's more general explanations about his donation-related strategies. See Ex. 1 ¶¶ 3-7.

² The government has argued that it does not matter whether the defendants' money was intended to be delivered to USC or to individual employees. The cases that the government cites do not support that view. Generally, those cases involve defendants who betrayed fiduciary duties in exchange for payments to their relatives, businesses, or preferred charities. See *United States v. DeMizio*, 741 F.3d 373 (2d Cir. 2014) (payments to "family, friends, or others loyal to the defendant"); *United States v. Hausmann*, 345 F.3d 952 (7th Cir. 2003) (payments to individuals who had provided services to the defendant, to a firm working for the defendant, to businesses in which the defendant held interests, and to charities that the defendant supported). And in the case the government identified most recently, the Second Circuit *reversed* a conviction where the defendant was not "paid to act in breach of his duties," such that the

The context for such discussions was the standard-issue college-counseling services that Singer provided: advising families about which colleges to apply to, tutoring applicants for standardized tests, reviewing draft application essays, and tracking the application process. Against the backdrop of such relationships, Singer gave clients additional advice about making potentially impactful donations to colleges. One of his insights was that specific college programs and teams would be more appreciative of relatively modest donations than centralized development offices. At USC, for example, all but the largest athletic teams received limited budgets, and covered the remainder of their expenses through independent fundraising. To support such efforts, aimed both at applicants' families and others, USC stationed more than a dozen full-time development officers (i.e., fundraisers) within the athletic department. *See Ex. 5.* Singer believed that the staff responsible for smaller teams and programs were more likely than the university-wide development office to advocate for the admission of an applicant related to a team-specific donor.

Singer called the practice of donating moderate amounts to specific programs a “side door” to admission. He assured clients and potential clients that such donations, and their potential impact on admission, were common, lawful, and endorsed by the colleges. For instance, Singer wrote to one parent:

There is a side door in most schools as I did 409 of them last year—which means you support the school at a lot lesser cost than through institutional advancement.

Ex. 6. Singer told another parent:

“element of corruption [was] not present.” *United States v. Dixon*, 536 F.2d 1388, 1400-01 (2d Cir. 1976). It would be both unprecedented and illogical to view a donation to an employer, such as USC, as a bribe to the employee, such as a coach, in derogation of the employee’s employment duties.

[S]ide door is not improper nor is back door[,] both are how all schools fund their special programs or needs.

Ex. 7. And as noted *supra*, Singer told Wilson (falsely) that the President of Harvard supported the “side door” practice and wished to personally negotiate additional side-door donations.

Singer’s representations to clients about the legitimacy of “side door” donations directly rebut the government’s allegations that they acted “with bad purpose, either to disobey or disregard the law,” and in a “wrongful, immoral, depraved, or evil” manner. *See* 1st Cir. Pattern Jury Instructions § 4.18.134 (defining “willfully”); *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005) (defining “corruptly”). It is impossible to believe that the government did not discuss this topic with Singer. The defendants are entitled to any evidence arising from those discussions in the government’s possession.

B. Singer’s Referral Sources

For similar reasons, the defendants are entitled to evidence about Singer’s efforts to foster sources of referrals to his college-consulting business. Families such as the Wilsons received their introductions to Singer from highly reputable financial or educational advisors. Many were affiliated with the most respected financial institutions or high schools in the United States. Singer caused such contacts to portray him as reliable, professional, and expert. Through such introductions, Singer minimized the likelihood of clients doubting his representations regarding the legitimacy of his practices.

Title III recordings produced in discovery show that Singer devoted time and energy to developing his relationships with his referral sources. The discovery does not, however, reveal the full magnitude or character of those relationships, including the extent to which Singer’s references were familiar with his practices, and the degree to which they benefitted financially

(or otherwise) from their referrals. The defendants specifically requested that information, Ex. 1 ¶¶ 27-28, and the Court should compel the government to produce it.

C. Colleges' Attitudes Toward Fundraising from Applicants

To a significant degree, Singer's representations to his clients were true. Colleges such as USC were highly focused on fundraising, and openly supported the admissions cases of potential donors' family members. As the Giannulli Motion points out, "there is good reason to believe that numerous USC officials were aware of Singer's operation." ECF No. 693, at 16, as evidenced by the fact that Singer met with USC Athletic Director Pat Haden. USC's more general attitudes toward fundraising and admissions decisions are likewise important to the defense.

The government has charged the defendants with, among other things, depriving USC of the honest services of its employees. With regard to defendants such as Wilson (whose money did not go to any college employee), the government's theory is that a college employee violated fiduciary duties by fundraising for the college's benefit. This far-fetched view is further undermined by evidence that USC endorsed the precise type of fundraising at issue here, namely supporting the admission of applicants related to actual or potential donors.

The motion practice regarding defendant Robert Zangrillo's subpoena to USC has placed before the Court discovery documents showing that fundraising considerations influenced (a) the admissions decisions of USC's admissions office, and (b) the admissions recommendations of USC's athletic department. *See* ECF No. 546. For instance, spreadsheets listing applicants supported by the athletic department, which the Dean of Admissions promised to "handle with care," regularly highlighted applicants' ties to donors. *See* ECF Nos. 546-1 to 546-10. In one memorable instance, Donna Heinel reported to the Dean that an applicant's family "came through Athletics due to father endowing our community services position for 5 mil.," to which

the Dean responded: “I have just been directed to admit this student.” ECF No. 546-14. USC was so fixated on fundraising from parents that—with “approv[al] by compliance” and by Haden, the Athletic Director—the athletic department offered to grant an athletic scholarship to the daughter of a donor in connection with his promise to make a \$500,000 gift. Ex. 8.³ The discovery contains numerous other examples of USC’s pro-donor admissions philosophy, dating back at least to 2007.

USC’s readiness to support the application cases of potential donors directly negates the allegation of a conspiracy to deprive USC of its right to honest services. There could be no such conspiracy where the relevant USC personnel were doing exactly what USC wanted. Likewise, any misrepresentation or omission by a USC employee to other USC personnel concerning an applicant-related donation was not “material” where USC sanctioned the very practice of soliciting such donations. *See* 1st Cir. Pattern Jury Instructions § 4.18.1343.

It is not plausible that the government has refrained from discussing this topic with witnesses from USC, the purported victim. Information from those witnesses consistent with the attitude consistently displayed in the discovery is exculpatory.⁴ The defendants made specific requests relating to this topic, Ex. 1 ¶¶ 16-24, as well as requests for related internal investigations, *id.* ¶¶ 25-26. The Court should compel compliance with these requests.⁵

³ In effect, USC allowed the donor to receive a tax deduction for his daughter’s tuition costs.

⁴ Documents inconsistent with that attitude are “material to preparing the defense” within the meaning of Rule 16.

⁵ Among other information, such requests would necessarily cover (a) the identities of all students known to the government to have benefitted from USC’s practice of favoring the applications of potential donors; and (b) any communications known to the government among USC personnel, or between USC personnel and Singer, about the candidacies of Johnny Wilson or other defendants’ children. Personal identifying details in such information would presumably be governed by the Protective Order (ECF No. 377).

D. Singer's Concealment of His Misrepresentations

The charges require the government to prove that the defendants intended to deceive the alleged victim(s). *See* 1st Cir. Pattern Jury Instructions § 4.18.1343; *United States v. Sawyer*, 85 F.3d 713, 732 (1st Cir. 1996) (“a demonstrated intent to deceive is required”). To satisfy this requirement, the government relies on inaccuracies in applicants’ application materials, principally relating to athletics. Wilson disputes the government’s theory as legally and factually inadequate. But in any event, any inaccuracies could at most inculcate only defendants who knew about them, believed that they were material, and intended the admissions decision-makers to rely on them to the schools’ detriment.

As noted *supra*, Wilson’s son was a high-caliber swimmer and water-polo player at the high-school and club levels. Indeed, the government has collected information from U.S. Water Polo about the son’s water polo career, which shows (among other things) that he was selected for the U.S. Olympic Development Program and competed in national championships. *See* Ex. 9. It was reasonable for Wilson to expect that his son would be supported for admissions as a bona fide water-polo walk-on.

The discovery indicates that Singer and those working with him were able to introduce misinformation into applicants’ materials by taking control of those materials—collecting applicants’ log-in credentials, and then revising applications on their own. The defendants requested additional evidence relating to such practices and thus rebutting the government’s allegations of intent to deceive. Ex. 1 ¶¶ 8, 11. Again, it is impossible to believe that the government has not discussed this topic with Singer and his staff. Evidence resulting from these discussions is exculpatory and discoverable.

E. Singer’s Embezzlement from His Clients

The government maintains that the defendants conspired with Singer for 12 years, from 2007 to 2019. 3d Supers. Ind. ¶ 57. The charges against each defendant rely on the theory that Singer acted in harmony and concert with his clients—that the clients were full and willing participants in his tactics.

The discovery belies this worldview. First, numerous recordings and documents show Singer lying to his clients about a myriad of topics, such as his business operations and his professional relationships. Moreover, financial records in discovery have revealed that Singer embezzled money that he had promised to deliver as donations. The government acknowledged as much at a recent sentencing, saying with ironic understatement that Singer “did not disclose his middleman fee.” *United States v. Bizzack*, No. 19-cr-10222, ECF No. 34, at 25. In Wilson’s case, for instance, Singer represented that he would receive no compensation relating to Wilson’s USC donation, prompting Wilson to pay Singer another \$20,000. *See* 3d Supers. Ind. § 200. Wilson learned only from the discovery that Singer had secretly stole another \$100,000—half of Wilson’s intended donation to USC.

The defendants requested evidence about Singer’s embezzlement of their money, as well as his efforts to prevent them from learning about the fate of that money. Ex. 1 ¶¶ 12-15. That evidence directly negates at least the allegations of conspiracy, is therefore exculpatory, and must be produced.

F. Singer’s Obstruction and Instructions from the Government

The government has alleged that, after agreeing to cooperate with the government and to make recordings on its behalf, Singer obstructed justice by enabling certain of his coconspirators to escape detection. At his Rule 11 colloquy, Singer clarified that the government had actually directed him to create incriminating evidence against people who had not committed any crime:

“I went into the home and told the dad . . . you haven’t done anything wrong yet, so please don’t say anything that would be harmful to you guys because you haven’t done anything”

United States v. Singer, No. 19-cr-10078, ECF No. 24, at 29.

Singer’s consensual recordings of Wilson likewise reveal the government’s efforts to manufacture arguably incriminating exchanges. Prior to Singer’s cooperation, as noted *supra*, he had assured Wilson that his donations were approved by the President of Harvard. But subsequently, when under the government’s control, Singer occasionally mentioned payments “to coaches” in his calls with Wilson. The obvious purpose of this ambiguous phrase was to permit the government to argue that Wilson’s payment was intended for an individual; but Wilson’s reactions show that he continued, obviously, to believe Singer’s earlier representation that Wilson would be donating “to the school”:

SINGER: So I know when . . . we get the girls in it’s a done deal and you’re going to take care of your part of it, you’re gonna make the payments *to the schools* and the—to *the coaches*. And that’s what I need . . . so I’m not worried about that.

WILSON: Uh, uh, help me understand the logistics? I thought I make the payment to you and you made the payment *to the school*.

SINGER: Correct. That’s correct.

WILSON: Oh you said that *I* make the payments *to the schools*.

Ex. 10, at 9 (first, second, third, and fifth emphases added). This attempted manipulation contrasts starkly with Singer’s statement to a different (and uncharged) parent, eight days later, that “the Georgetown coach . . . wants me to wire him the \$100,000 bribe.” Ex. 11, at 2. The disparity between these conversations—both orchestrated by the government—reveals that Singer knew that Wilson would never have agreed to bribery, and that only vaguely worded trickery could draw Wilson into conversational exchanges potentially useful to the government.

Both Singer's alleged obstruction and the government's instructions to him are discoverable. Duplicitous conduct by Singer relating to his cooperation would undermine the prosecution's theory of a single mega-conspiracy among dozens of charged and uncharged persons. And the government's instructions to Singer about his cooperation would undermine both Singer's account and his consensual recordings, by exposing the prosecution's manipulative efforts to ensnare innocent conduct in this case. The defendants therefore requested these two categories of evidence, which are necessarily in the government's sole possession. Ex. 1 ¶¶ 29-30. The Court should compel compliance with those requests.⁶

G. Promises, Rewards, and Inducements

Summaries and copies of promises, rewards, and inducements to likely witnesses are a category of exculpatory evidence required expressly by Local Rule 116.2(b)(1) and requested specifically by the defendants. Ex. 1 ¶ 31. The government has maintained that it possesses no such evidence, *see* ECF No. 693-1, at 8, but that position is not believable. Sentencing courts have repeatedly postponed the sentencing hearings of several cooperating witnesses. Trial will center around Singer, and will require testimony from USC as the victim. Yet the discovery reveals potential exposure for at least Singer and USC, including exposure that no agreements disclosed by the government address: Singer and several of his family members engaged in tax evasion and money laundering, running cash from the gambling-related business of Singer's brother through one of Singer's charitable organizations:

[Singer:] I do have a brother . . . he's in the credit card business . . . anybody who gambles off shore . . . comes to him . . . [H]e makes a lot of money but he also makes a lot of cash. . . . [Y]ou can't put the cash in the bank. . . . And what he does is like when we're doing the Oakland Soldier gig . . . and we have to put four

⁶ The defendants reserve the right to make additional, specific requests of the government regarding the circumstances surrounding Singer's alleged obstruction.

or five hundred thousand dollars into the facility to upgrade it . . . we'll pay that to the contractors cash. . . . That's how he gets to utilize his money.

See Ex. 12, at 6-7.⁷ USC, as well as some of its employees, likely violated tax laws through the practice of recycling donations into scholarships for at least one donor's child. *See* Ex. 8. The Court should compel the government to comply with its obligations under *Brady* and the Local Rules.

III. CONCLUSION

For the foregoing reasons, the Court should order the government to produce all exculpatory evidence within its possession, custody, or control, including all documents and information responsive to the requests enumerated in Exhibit 1.

Respectfully submitted:

John Wilson,

By his counsel,

/s/ Michael Kendall

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And the defendants listed *supra* note 1, by their respective counsel.

⁷ Singer also apparently placed his infirm father and his father's caregiver on the payroll of his college counseling business. *See* Ex. 13.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 7.1 AND 112.1

I hereby certify that, before filing this motion, defense counsel attempted in good faith to confer with the government to resolve or narrow the issues. Defense counsel's efforts included a letter asking the government to identify the issues "actually in dispute" and emails requesting an in-person conference. The prosecutors declined to narrow the issues and stated that they "believe [they] have satisfied [their] meet-and-confer obligations."

/s/ Michael Kendall
Michael Kendall

CERTIFICATE OF SERVICE

I hereby certify that the above document is being filed on the date appearing in the header through the ECF system, which will send true copies to the attorneys of record.

/s/ Michael Kendall
Michael Kendall

Exhibit 1

September 27, 2019

Eric S. Rosen, Justin D. O’Connell, Leslie A. Wright, and Kristen A. Kearney
Assistant United States Attorneys
United States Attorney’s Office
John Joseph Moakley United States Courthouse
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***United States v. Sidoo et al.*, No. 19-cr-10080**

Dear Counsel,

The government has taken the position that it possesses no exculpatory evidence or information within the meaning of Local Rule 116.2(b)(1). *See* May 30, 2019 letter from Eric S. Rosen. Apparently relying on that position, the government has failed to disclose any FBI form 302 memoranda, and has not disclosed any information originating from witness interviews or grand jury testimony. However, the categories of evidence and information described in this letter—whether contained in contemporaneous documents (e.g., emails, text messages, Skype messages or other instant messages, or audio recordings) or learned from witnesses (e.g., interviews, depositions, or grand jury testimony)—are exculpatory under Local Rule 116.2(a)(1), *Brady v. Maryland*, 373 U.S. 83 (1963), and *Brady*’s progeny. We therefore ask that you produce these categories of evidence and information forthwith, as Local Rules 116.2(b)(1) and 116.1(c)(1) required their production 28 days from our clients’ May 2019 arraignments.

Our requests refer to the time period prior to March 2019. They use the following definitions (in which “includes” and “including” denote inclusion without limitation):

- “Advised” includes stated, suggested, recommended, told, gave information, offered, or made a representation, directly or indirectly.
- “Clients” includes Rick Singer’s actual client, potential clients to whom he sought to provide services, and persons he claims to have been his clients; it includes the student applicants and any family members or guardians with whom Singer interacted or claimed to have interacted.
- “Colleges” includes all colleges, graduate schools, and universities relevant to this matter, including all colleges, graduate schools, and universities to which Clients applied, and all colleges, graduate schools, and universities with whom Rick Singer communicated or claimed to have communicated about student admissions.
- “Educational institutions” includes Colleges, high schools, and public school districts.
- “Evidence” includes documents, recordings, or information in any form.
- “The Key” includes The Edge (d/b/a The Key), the Key Worldwide Foundation, and all related organizations.

- “Payments” includes all transfers of money, however described and for whatever purpose.
- “Rick Singer” includes all persons affiliated or working, directly or indirectly, with Rick Singer or The Key.
- “Personnel” of a College excludes any individual who, at the time of the relevant acts or events, was receiving funds for personal use from Rick Singer; but otherwise includes staff of the athletics department, the admissions office, the advancement office, and the president’s office.

The categories of Evidence we request (divided among topical headings for convenience only) are the following:

*Evidence Regarding Rick Singer’s Representations
to Clients*

1. All Evidence that Rick Singer advised Clients that Payments from Clients to The Key would be (a) transferred, directly or indirectly, to Educational Institutions; (b) used, directly or indirectly, to fund academic, athletic, or other school-related programs; or (c) used solely for charitable purposes.
2. All Evidence that Rick Singer advised Clients that Payments from Clients to a College athletic coach, whether directly or via The Key, would ultimately benefit (a) the athletic team or program with which the coach was affiliated; or (b) another athletic team or program at the College.
3. All Evidence that Rick Singer advised Clients that the term “side door” referred to preferential admissions treatment for prospective students whose families had, either directly or indirectly, made or agreed to make a payment to a program of the College.
4. All Evidence that Rick Singer (a) advised Clients that any College or College staff knew about, approved of, or authorized any “side door” arrangement; or (b) otherwise gave Clients incorrect information about the scope or nature of his relationships with Colleges or College staff.
5. All Evidence that, in communications with Clients, Rick Singer (a) characterized Payments to any coach, athletic program, or College as lawful, permissible, legitimate, or “above board”; (b) otherwise described such Payments in any way tending to indicate that the Payments would be made in good faith or would not violate the law; or (c) did not describe Payments to Colleges as “bribes” or using other language suggesting impropriety.
6. All Evidence that Rick Singer advised Clients that Colleges afforded athletic coaches the discretion to (a) utilize preferential admission “slots” based on factors other than athletic skill; or (b) allocate preferential admission “slots” to prospective students who would not necessarily participate in NCAA competition.

7. With regard to all Payments that the Government categorizes as “bribes,” all Evidence that (a) the relevant Clients intended the Payment to be transferred to a College; (b) the relevant Clients were told that the Payment would be transferred to the College; or (c) the Payment actually was transferred to the College.
8. All Evidence that Rick Singer introduced any misrepresentations into the admissions materials of any applicant (including any “common app” or athletic resume) without the Client’s knowledge or without the applicant’s knowledge; including all Evidence that Rick Singer had control over the final submission of the admissions materials of any applicant (including any “common app” or athletic resume).
9. All evidence that Rick Singer, Mark Riddell, or others altered ACT scores, SAT scores, or any other test scores without the Clients’ knowledge or without the applicants’ knowledge.
10. All evidence that Rick Singer or his employees misrepresented themselves as Clients in communications with the College Board or the Educational Testing Service.
11. All statements Singer made to anyone regarding his representations to Clients (a) about what any Payments were for, or where any Payments would go; (b) about the Colleges’ awareness or lack of awareness regarding the purpose of the Payments; or (c) about any incorrect information in the admissions materials of any applicant (including any “common app” or athletic resume).
12. All Evidence that Rick Singer discouraged Clients from speaking to College employees about Payments that the Client or Rick Singer had made to the Colleges or to any College programs.
13. All Evidence that Rick Singer diverted any portion of Payments from Clients, without the Clients’ knowledge, (a) for himself or for The Key; or (b) to pay money to a College employee personally, rather than to the College or one of its programs.
14. All Evidence that Rick Singer advised Clients that they should route money to help fund academic, athletic, or other school programs at Educational Institutions through The Key, as opposed to delivering the money directly to the Educational Institutions.
15. All Evidence that Rick Singer wanted Clients to make Payments through The Key, rather than directly to Colleges or College programs, because this enabled him to divert a portion of the Payments, without the Client’s knowledge, to himself, to The Key, or to an athletic coach personally.

*Evidence Regarding Colleges’ Knowledge of and Attitudes Toward
the Alleged Conduct*

16. All Evidence that any College’s Personnel understood or agreed that whether a prospective student-athlete would receive preferential admissions treatment would not necessarily be determined solely based on the prospective student-athlete’s athletic skill.

17. All Evidence that any College's Personnel were aware that prospective students whose families had made Payments, or had agreed to make Payments, to any of the College's athletic programs, either directly or indirectly, had been promised or afforded (a) slots on College athletic teams; or (b) any other form of preferential admissions treatment.
18. All Evidence that any College coach or other employee was (a) encouraged to recruit prospective students whose families could or likely would make donations to the College or its sports programs (whether directly or through a third party), either as potential student-athletes or as team managers and support staff; or (b) rewarded or praised for doing so.
19. All Evidence that, at any College, the acceptance rate for prospective students whose families could or likely would make donations to the College was higher than the overall acceptance rate.
20. All Evidence of communications between Rick Singer and the administration, admissions department, or advancement office at any College.
21. All Evidence of communications between any College's athletic department staff and that College's advancement office or admissions office concerning the potential for donations by an applicant's or student's family.
22. All Evidence relating to the fundraising-related practices, procedures, or cultures at any College.
23. All Evidence of any College soliciting donations from the parents of any applicant or student-athlete.
24. All Evidence that admissions staff at any College were aware that the admissions materials of any applicant (including any "common app" or athletic resume) contained a misrepresentation.

Additional Categories of Evidence

25. All Evidence concerning any inquiries or investigations by or on behalf of a College, including compliance or internal audit reports, concerning Rick Singer's activities, including (a) an unredacted copy of UCLA's July 2014 report of a compliance investigation relating to student-athlete admissions; (b) an unredacted copy of Georgetown University's internal investigation into Gordon Ernst's recruitment practices; and (c) any investigation report prepared in connection with Rick Singer's activities by or on behalf of USC.
26. All Evidence concerning any inquiries or investigations by or on behalf of a College, including compliance or internal audit reports, concerning (a) interactions between the College's athletics department and its advancement office; (b) interactions between the College's admissions office and its advancement office; or (c) any individuals that have entered into cooperation agreements with the government.

27. All statements Singer made to financial advisors, employers, or other referral sources to persuade them to refer Clients to him.
28. All Evidence concerning benefits or things of value Singer gave to or received from financial advisors, employees, or other of his referral sources as part of his referral relationship with them.
29. All statements Singer made to Clients, defendants, or alleged conspirators in which he is alleged to have warned them of the Government investigation in violation of his obligations to the Government.
30. All statements the Government made to Singer as to what he should say to Clients, defendants or alleged coconspirators in his conversations with them, and any criticisms or comments the Government made to him about such conversations.
31. For every prospective government witness, including every individual identified in the government's "no-contact" letter of July 1, 2019: a written description of all promises, rewards, and inducements given to the witness; a copy of any promise, reward, or inducement reduced to writing; a copy of the witness's criminal record; and a written description of any criminal cases pending against the witness.
32. All Evidence concerning communications between Rick Singer and Donna Heinel that occurred outside the presence of Clients (see, e.g., ECF No. 3-3, ¶ 187, No. 1:19-mj-6087).

* * * * *

Each of the requests is continuing in nature. We request prompt notice in the event that any responsive evidence or information comes to the government's attention at any time.

If the government declines to provide any category of evidence and information that this letter requests, please (within 14 days) state the basis for your position in writing. If the government takes the position that it has already produced evidence or information that this letter requests, please (within 14 days) so confirm in writing, identify the Bates ranges corresponding to each request, and agree to produce as soon as practicable any additional responsive evidence or information that may come within your possession in the future.

Sincerely,

Counsel to the defendants

Exhibit 2

July 28, 2014

John & [REDACTED] Wilson
[REDACTED]

Dear John & [REDACTED],

Thank you for your generous gift to USC Athletics in the amount of \$100,000. Maintaining state-of-the-art facilities is an essential part of USC's commitment to excellence. Through your contribution, you are helping the University achieve this important goal.

On behalf of the young student-athletes that will benefit from your anonymous gift, thank you.

Fight On!

Ron Orr
Associate Athletic Director

Exhibit 3

From: Scott Simon <SSimon@usc.edu>
To: Jovan Vavic
CC: Pat Haden; Donna Heinel; Steve Lopes; Sandy Olsen; Russ Romano; Phaidra Nicole Crayton; Darcy Couch; Tim Tesselone; Tim Ojeda; Ivan Lewis; Susie Cогnetta; Magdi M El Shahawy; Jennifer Amran; Jennifer Hong; Marilee Pischel; Clare Pastore; Christina Tangelakis; Cody Busia; Todd Hewitt; Jeff Fucci; Todd Davis; Marko Pintaric; Casey Moon; Stefan Luedecke; David M. Roberts; Paul Perrier; Kevin Sergent; Joyce Bell; Bradley T Boswell; Aaron Stephen Price; Kyle Edward Waterstone; Nathan Roy Wood; Andrew Price Matson; Damilola Sule
Sent: 10/3/2014 5:56:54 PM
Subject: Updated MWP Eligibility Report - 10.3.14
Attachments: MWP Eligibility Report - 10.3.14.pdf

Jovan -

Attached to this e-mail is an updated 2014-15 eligibility report for the men's water polo team as of today, **October 3, 2014**. Please be aware of the following status changes and eligibility issues:

Change in Status:

Wilson – Eligible for all CARA, including competition.

Eligibility Issues:

Not eligible for any CARA. Eligible for financial aid. Pursuant to bylaw 12.8.2.5, former student-athlete may continue to take part in organized, institutional practice sessions in that sport without being a counter, provided the individual has eligibility remaining under the five-year rule. However, SA must receive required medical exam (see Sandy Olsen).

Not eligible for any CARA. Eligible for financial aid. Pursuant to bylaw 12.8.2.5, former student-athlete may continue to take part in organized, institutional practice sessions in that sport without being a counter, provided the individual has eligibility remaining under the five-year rule. However, SA must complete required NCAA Compliance forms (see Scott Simon) and receive required medical exam (see Sandy Olsen).

Please remember that only those students whose names appear on the roster attached to this report may practice or compete. Students marked with a status change indicating that they are no longer on the roster (e.g. 'Quit', 'Dropped', 'Withdrawn') may not practice or compete. Only students marked with a 'Y' under eligibility on the attached spreadsheet may compete. No other students may practice or compete until they are cleared by the Compliance Office, and their name appears on a subsequent Eligibility Report. Please note that "practice" includes all athletically-related meetings, required workouts, and any athletic activities at which coaches are present or about which coaches receive any reports, including attendance. Please notify our office immediately if you wish to add any other student-athletes to your squad.

Scott Simon
Director of Athletic Compliance
University of Southern California
213-740-0543 (Office)
213-407-7704 (Cell)
213-740-4559 (Fax)



Stay Connected With USC Athletics



Exhibit 4

1 **Call date:** 9/15/18

2 **Duration:** 18:00

3 **Call Begin:** [] **Call End** []

4 **Call Participants:**

5 Rick Singer

6 John LNU

7 **File Name:** 9163848802 2018-09-15 13-04-26 08137-001

8 **Bates No.:**

9

10 _: [00:00] Good morning.

11 SINGER: Good morning (inaudible).

12 LNU: Hello, Rick.

13 SINGER: Hey, John.

14 _: (inaudible) how you doing?

15 LNU: How you doing?

16 SINGER: Good. How you doing?

17 LNU: Hey, you at a game?

18 SINGER: No, no. I'm just leaving somewhere.

19 LNU: OK. [laughter] Hey, what's the best way for us to put
20 together a structured relationship for the girls and, uh,
21 you know, get some -- you know, let's say regular advice
22 or at least some periodic advice for them as they go
23 through the search process and they're trying to identify
24 majors --

1 SINGER: So --

2 LNU: -- in schools and all that.

3 SINGER: So we just need -- you decide that that's what you
4 want to do. You want to go forward then --

5 LNU: Yeah.

6 SINGER: -- I will -- I will meet with the kids via Skype or
7 Facetime, um, every 4 weeks and, uh, if they need help in
8 between they can call me or text me or whatever and
9 that'll be it.

10 LNU: OK, that sounds good. And, uh, what's the fee for that?
11 How does that work?

12 SINGER: So are we going to do any, um, test prep [01:00]
13 stuff with them?

14 LNU: Uh, potentially. I -- I don't know. They've done a lot
15 of test prep already. You -- did you see -- you saw the
16 test scores, right?

17 SINGER: Yeah.

18 LNU: And they were from like a year ago.

19 SINGER: (inaudible).

20 LNU: They were when they were freshmen so they're pretty --
21 you know, they're pretty good scores already. I assume
22 they're going to get better now that they're juniors.

23 SINGER: So that's a question for you. So are we going to
24 help them prepare for -- so they get the right -- they

1 get the -- the best scores and on the subject tests, too?

2 Or are we just -- am I just going to work with them, uh,

3 every 4 weeks?

4 LNU: The -- oh, I don't know, I think the scores, too. How

5 does that -- what's the difference in price (inaudible)

6 going to work with somebody local on that? How does that

7 work for you guys to do something on the test prep?

8 SINGER: So what we do is we just have somebody -- one of my

9 better people Skype with them every week and they work

10 with -- on the testing with them every week and then they

11 have homework in between and then I -- I see them every

12 fourth week.

13 LNU: OK. I feel like it makes sense. I got to make sure it's

14 doable from their schedule and all that stuff. But, uh,

15 that probably [02:00] makes sense, too, yeah.

16 SINGER: OK. So -- so the difference is -- one is \$8,000

17 annually and one's \$5,000 annually.

18 LNU: OK. I'll go for the full Monty, yeah.

19 SINGER: It's up to you. Whatever you guys want.

20 LNU: Yeah. Let's -- let's try the full Monty and -- and try

21 to make sure... Well, I got to, you know, make sure it

22 works for them but, uh, we can pay for it and if it

23 doesn't work I guess (inaudible) yeah, just not do it. I

24 just worry about their overall schedule. But they'll

1 make it flexible, right? You guys are not on the West
2 Coast always or... Are you guys spread out? Or that
3 would help them do the test prep?

4 SINGER: I could-- could you say that again, John?

5 LNU: In terms of the guys who would help on the test prep, is
6 that something that is -- like they're based on the East
7 Coast or West Coast or -- just in terms of timeline.

8 SINGER: OK. They're based on both and they can make the
9 time. The is--

10 LNU: OK.

11 SINGER: I mean, they're -- they're doing it with kids all
12 over the country and it's been pretty (inaudible).

13 LNU: OK, great. So you've got the logistics down. OK.

14 SINGER: Yeah.

15 LNU: So logistics work.

16 SINGER: Yeah.

17 LNU: OK, super. That's good to hear. And I'd love to have a
18 -- a game plan and kind of overall strategy session with
19 you up front with them, (inaudible) how do we think about
20 visiting schools and how do we think about that stuff,
21 [03:00] how do we think about the extracurricular, you
22 know, the whole clue or whatever, et cetera.

23 SINGER: Right. So we can -- we can definitely set that up.

24 Um, because they're both probably different because of

1 their circumstances, right, and they're probably -- are
2 they -- yeah, right. Are they going to be going to the
3 same schools or are they looking at separate schools?

4 LNU: Uh, probably looking at separate schools but there'll
5 probably -- I imagine be a lot of overlap, too. You
6 know, they'd love to go to, you know, some top school. I
7 think right now they're leaning a little bit more
8 towards, you know, science and engineering, which is
9 great. I think that the -- you know, great for gals who
10 are good in science and engineering and math.

11 SINGER: And do you -- and, I mean, do we have like schools
12 in mind that they're thinking about?

13 LNU: Uh, they've mentioned (inaudible) they don't really know.
14 Maybe undecided. I think [REDACTED]'s looking at, you know,
15 the top schools. Whether that's Ivy or whether that's,
16 you know, the kind of, you know, the Cornells or the
17 Princeton's for engineering or that kind of stuff, she
18 could. She'd love to get into those top schools. Then
19 there's a second --

20 SINGER: (inaudible).

21 LNU: I mean, I have to look at the secondary school.

22 SINGER: Yes. Yeah. [04:00] To get into engineering in
23 those schools she's got to have perfect grades, perfect
24 score.

1 LNU: You need perfect grades you think? Yeah.

2 SINGER: And perfect score on the subject test and SATs. I
3 mean, you've got to be -- be in engineering, you've got
4 to be 1550 plus and you've got to be 800 in the math on
5 the subject test and at least 780 on the, um, science
6 subject test, as well. So that's if you want to apply in
7 those -- in those majors.

8 LNU: OK. Uh, and if you want to be applying in, uh, other
9 majors like science or something like that or math or...?

10 SINGER: Science -- science is the same thing.

11 LNU: (inaudible).

12 SINGER: They're all -- they're all the same unless you're
13 applying --

14 LNU: (inaudible).

15 SINGER: Unless you're applying in humanities.

16 LNU: OK. What if you want to go into like business or is that
17 considered humanities?

18 SINGER: Um, it's less than. I mean, you know that the Ivies
19 potentially post -- you know, Princeton, Yale, Harvard,
20 none of them have undergraduate business programs.
21 They're all econ.

22 LNU: Yeah, economics. Yeah, economics or some schools [05:00]
23 have business but not the Ivies, right.

24 SINGER: Only Penn does.

1 LNU: In the Ivies, right. But they --

2 SINGER: Yes.

3 LNU: But they (inaudible) they want to (inaudible) second tier
4 schools, as well, (inaudible) Boston Colleges and
5 Georgetowns and (inaudible) second tiers --

6 SINGER: They -- they -- they all have -- they have pre--
7 they have -- BC, Georgetown, um, you know, Northwestern
8 is -- does not -- Duke does not. Um, Emory does. So it
9 just depends on where they want to go to school.

10 LNU: Yeah, they like west -- either East Coast or West Coast I
11 think is what they're looking at. So West Coast they'd
12 love to be everything from USC to UCLA to Stanford, you
13 know, kind of stuff. Um...

14 SINGER: So --

15 LNU: And those are obviously top-notch, too, right?

16 SINGER: Right, right. So, you know, back to the, uh... And
17 we'll try and (inaudible).

18 LNU: Well, they only have a 32, whatever, on the ACT or
19 whatever the hell that thing is called. But that was as
20 a freshman. That's not bad, I guess, but, you know, it's
21 not a 35 or 6.

22 SINGER: No, that's good. Right. And that's what it's going
23 to take to even play in the game [06:00] on their -- on
24 their own, right.

1 LNU: Right.

2 SINGER: If you said -- and you know that -- that if you said
3 you wanted to go somewhere like Stanford or Harvard or
4 Yale and go through a different door, you can do that.
5 But to go in directly you've got to be -- just to play
6 you've got to be 35, 36 plus essentially perfect grades
7 and then you've got to have subject test scores in the
8 mid-700s.

9 LNU: Right. OK. Well, that's good, uh, good general
10 direction. And then on the, um -- the other doors, you
11 have certainly things like crew. Can they try that? Is
12 that still your -- your number one differentiator? If
13 they had a really good time, they could work on that and
14 get a time of X, that might be a second door. Or you
15 have the other door, where, you know, you can, you know,
16 make a contribution kind of thing.

17 SINGER: Yeah. So we -- we're -- that's why I'm going to
18 Harvard next Friday, because the president wants to do a
19 deal with me [07:00] because he found out that I've
20 already got 4 already in without his help. So he's like,
21 "How about -- why would you go to somebody else if you
22 could come to me?" I said, "Well, I didn't know I could
23 come to you." Huh.

1 LNU: That's funny, yeah. I knew Drew. Drew used to be on our
2 board but she's gone now. I don't know this new guy.

3 But, uh...

4 SINGER: Yeah.

5 LNU: So what kind of deals is it there? Is it like, you know,
6 (inaudible) water polo, and a donation? Or what is it
7 like, you know, to get into that?

8 SINGER: So where was -- so pick a place you want to go.

9 LNU: So if you said, uh, HP -- uh, Harvard (inaudible). But
10 if you said Harvard or Princeton or Georgetown, you know,
11 what are those things?

12 SINGER: So Harvard -- Harvard is, uh... It's usually about
13 1.2.

14 LNU: Jesus.

15 SINGER: Stanford is 1.2. Um, but, you know, the backdoor is
16 -- Harvard's asking for 45 million.

17 LNU: [laughter] God.

18 SINGER: Stanford's asking for 50 million. [08:00]

19 LNU: Wow.

20 SINGER: And they're getting it. That's the crazy thing.
21 They're getting it from the Bay Area and from New York.
22 Crazy.

23 LNU: Wow.

24 SINGER: Crazy. Absolutely crazy. (inaudible).

1 LNU: What about -- what about like Georgetown or, uh, those
2 other ones or, yeah?

3 SINGER: Yeah. So Georgetown's like 500. BC's the same
4 thing. Um, so -- you know, those are your -- kind of
5 your numbers across the board at different places. You
6 know, USC hasn't changed. Um, UCLA can be done for about
7 3. Um, you know, public schools are really hard in
8 California because everybody's watching them.

9 LNU: Mm-hmm, mm-hmm.

10 SINGER: But...

11 LNU: So (inaudible) the sports angle and, you know, 3 and UCLA
12 or something?

13 SINGER: Yes, yes. Yes. Yes. So I'm doing -- now we're
14 doing -- John, this is how crazy it's gotten. We're
15 doing -- I'm going to do over 730 of these [09:00] side
16 doors this year.

17 LNU: Wow. And how many schools are you doing those at now?

18 It's like just the top 20 or 50 or is it more than that?

19 SINGER: Uh, it's, you know, 50 to 60 different schools.

20 LNU: So 50 or 60. OK.

21 SINGER: Yes.

22 LNU: And in terms of engineering schools, uh, what are the
23 best ones these days? MIT, do they have a side door?

1 SINGER: No. But MIT's not even a fun place to go to school,

2 John. It's --

3 LNU: I know. I looked at it and I didn't -- I didn't go.

4 SINGER: Nobody likes it.

5 LNU: But RPI sucked, too. [laughter]

6 SINGER: Yeah.

7 LNU: (inaudible) all the engineering schools kind of suck.

8 SINGER: But -- but --

9 LNU: For pure engineering.

10 SINGER: But you see -- but if you... Like the great thing

11 about going to Harvard or going to Stanford or places

12 like that, if I -- you know, if I could get you in, you

13 can do whatever you want when you get there.

14 LNU: Yeah.

15 SINGER: Because they don't care, right.

16 LNU: Yeah.

17 SINGER: Um, if you're -- if you're going to go to a -- you

18 know, a -- a traditional engineering school, you know,

19 then you're -- you -- you want to go to, you know,

20 Berkeley and UCLA [10:00] are almost impossible to get

21 into. Um --

22 LNU: Because of the Asian factor?

23 SINGER: (inaudible)?

24 LNU: The scores are (inaudible) high?

1 SINGER: Uh, no. The -- the dean -- yeah. Essentially --
2 I'll give you an example. The dean at Berkeley came in
3 to meet with all the coaches in the AD and told them --
4 them, "We don't care who you recruit. We don't care how
5 strong they are. They cannot be engineers because
6 they're -- they're going to miss too much practice and
7 too many labs. So don't recruit them for that." See,
8 the nice thing about USC, for example, in engineering,
9 you get to cut out half of your general ed. So you get
10 into engineering on day 1. They already start you there.
11 So you're not playing --

12 LNU: (inaudible).

13 SINGER: Yeah. All the humanities games and all the other
14 stuff. Now, the best engineering school they could go
15 to, if you really wanted to do that, truthfully, they're
16 ranked number one in the country [11:00] in computer
17 science and number three in engineering, is Georgia Tech.

18 LNU: Yeah, that's kind of... I'm not sure. I always think of
19 that as just being too, uh, too redneck and...

20 SINGER: Well, Atlanta's not redneck.

21 LNU: I know, I know. It's just... [laughter]

22 SINGER: Atlanta -- Atlanta's very, very hip. But anyways,
23 but that -- you asked for the best schools. They are the
24 best.

1 LNU: But what are the 5 -- top 5 or 10 if you listed
2 engineering and science schools, you know, the Georgia
3 Techs, the MITs, the CalTechs, the, uh...

4 SINGER: Yeah. Nobody goes to CalTech or MIT that's a
5 regular kid.

6 LNU: Cornell?

7 SINGER: Cornell's not. (inaudible).

8 LNU: Princeton.

9 SINGER: Stanford.

10 LNU: Stanford.

11 SINGER: Stanford, Harvard, um, if you're going to do comp
12 sci then Brown is. Um, if you're going to do -- and then
13 obviously Georgia Tech is in there, um, then you have the
14 UCs, um, Carnegie Mellon, Casewestern, [12:00]
15 Northwestern, Penn. Those are all your top schools.
16 Yale's becoming --

17 LNU: Not (inaudible) Dartmouth?

18 SINGER: Dartmouth's OK.

19 LNU: Dartmouth (inaudible).

20 SINGER: They don't have a -- Dartmouth doesn't have a true
21 engineering program.

22 LNU: Yeah.

23 SINGER: You get an --

24 LNU: Cornell.

1 SINGER: You get an AP -- Cornell has one but it's really a
2 grind.

3 LNU: Uh-huh.

4 SINGER: Um, and then you got -- like Yale's becoming a
5 math/science school.

6 LNU: Yeah. Yale's way too liberal, I think, (inaudible) my
7 friend's have gone there. They're disappointed with
8 their kids, want to get them out.

9 SINGER: [laughter]

10 LNU: Becoming like this liberal like, you know, hotspot.

11 SINGER: Yeah, but your -- your kid doesn't have to make that
12 decision to do that. Your kid's going to be who they
13 are.

14 LNU: Yeah, I know, I know. But the parents don't want to even
15 support the school anymore. It's funny. Three
16 generations you've been a Yale family saying, "This place
17 sucks." Anyway, I -- I wouldn't want them to go to Yale.
18 But an-- in terms of, um, uh, [13:00] if they wanted to
19 go more economics, as well, then it's going to be the --
20 what, the top Ivies, some of the UCs?

21 SINGER: Yes. Yes. Duke, Northwestern.

22 LNU: Georgetown.

23 SINGER: Georgetown (inaudible).

1 LNU: They want to stay East Coast. Yeah, East Coast or West
2 Coast.

3 SINGER: Yeah. So USC, UCLA, Berkeley, the Claremont
4 colleges.

5 LNU: Stanford, of course, (inaudible).

6 SINGER: [sneezing]

7 LNU: Bless you.

8 SINGER: Sorry?

9 LNU: Stanford, of course, would be --

10 SINGER: Of course. They're -- they're --

11 LNU: -- (inaudible).

12 SINGER: -- the number one school in America.

13 LNU: Yeah.

14 SINGER: They got everything. They got the weather --

15 LNU: Yeah.

16 SINGER: -- they got sports, they got grade inflation, they
17 offer every major. I mean, they're the --

18 LNU: Yeah.

19 SINGER: That's -- if anybody could go there, that's the
20 place.

21 LNU: (inaudible). Yeah. So you're saying that's the minimum,
22 the 1.2 and the side door?

23 SINGER: Yeah.

1 LNU: What sports would be best for them? Is -- is crew the --
2 the best -- you know, you talk about the Ivies and
3 (inaudible) stuff like that. Is that not going to even
4 matter?

5 SINGER: Crew -- [14:00] they'll -- oh, for me it doesn't
6 matter. I'll -- I'll make them a sailor or something
7 because of where you live.

8 LNU: That's probably more than they'll want to go for. Is
9 there a 2-for-1 special, you got twins?

10 SINGER: [laughter] Unfortunately -- I know -- you've -- but
11 you've probably been asking that your whole life.

12 LNU: Yes. [laughter]

13 SINGER: Um, I know you, John. You've been asking for --
14 every time you go out for dinner, is there a 2-for-1
15 sale.

16 LNU: Yeah, exactly. There's no piggybacking like that at all,
17 I assume?

18 SINGER: No, I'm sorry about that. They are independent
19 people.

20 LNU: Yeah. And so in terms of things that are more in the
21 half or 300, what is that set of schools?

22 SINGER: You know, so that's, uh, Georgetown, Boston College,
23 Georgia Tech, USC, US-- um, UCLA, Berkeley, you know...

24 LNU: So UCLA is in that range, too, huh? OK, that's not bad.

1 SINGER: Yeah, yeah.

2 LNU: [15:00] And in the northeast it's just Georgetown, BC?

3 SINGER: Georgetown, BC. Duke's more expensive. Duke has
4 become the hottest school.

5 LNU: Duke, wow.

6 SINGER: Um, yeah. It's the hottest school there is.

7 LNU: And if I want to try to get anything, you know, backdoors
8 at like Harvard, you know, being an alumni doesn't really
9 help much. Is it going to be better from Lynnfield than
10 from, um, Andover, just because of how many kids are
11 already legacy?

12 SINGER: (inaudible) that?

13 LNU: I'm not really legacy --

14 SINGER: Yeah.

15 LNU: -- from the undergrad, I'm legacy from the grad school.

16 SINGER: And -- and a lot of undergrad. But you know what?
17 At the end of the day it's easier if... You know, the
18 easiest way, as you know, is -- is being a student
19 athlete because you can -- you can -- you overlap and
20 overplay the, um, the, uh, legacy.

21 LNU: Yeah, so --

22 SINGER: But the athlete -- athlete gets first priority.

23 LNU: Athlete first priority, then a legacy [16:00] will help,
24 and then, uh --

1 SINGER: Yeah.

2 LNU: -- some additional side door money or you have to do all
3 3?

4 SINGER: Um...

5 LNU: Can you try the first 2?

6 SINGER: Well, you -- we -- if we just tried the athlete, uh,
7 and you were using the side door with the athlete, it's -
8 - it's a done deal. Just like with [REDACTED].

9 LNU: Right. But you're saying athlete side, even as an
10 alumni, is (inaudible) 1.2?

11 SINGER: Absolutely. The guy's giving up --

12 LNU: But if you're --

13 SINGER: Guy's giving up a spot. He's -- they're not a good
14 enough athlete to compete (inaudible).

15 LNU: Well, what would it have to be in terms of crew, I guess,
16 (inaudible) good enough athlete (inaudible)?

17 SINGER: She'd have to be one of -- she'd -- they'd have to
18 be one of the best in the country. They'd have to be
19 rowing --

20 LNU: So (inaudible) top times.

21 SINGER: They got to have top times and be rowing at the Head
22 of the Charles, which is coming up, and then they got to
23 go to nationals and they got to compete.

1 LNU: Yeah. So they've got to be top -- tops in the nation.

2 Yeah.

3 SINGER: You got -- yeah. They can get whoever they want.

4 LNU: And they'll get (inaudible).

5 SINGER: [17:00] That's the problem. That's the problem.

6 LNU: Yeah. No, that's a big issue. [laughter] Oh, my God.

7 And is that -- uh, are those numbers, is there any way to

8 make those like tax deductible? Are they donations to

9 the school and stuff?

10 SINGER: Yeah.

11 LNU: How does that work?

12 SINGER: They're all tax de-- it's all tax deduct--

13 deductible. It's -- it's going into a nonprofit,

14 501(3)(c). It's all non-- it's all -- it's all tax

15 deductible. Every one -- every piece of it.

16 LNU: OK.

17 SINGER: All of it.

18 LNU: Still big numbers. Wow.

19 SINGER: It's actually --

20 LNU: When there's so many people who want to do that.

21 SINGER: I'm --

22 LNU: They're just all...

23 SINGER: They -- yeah. And they can do it (inaudible) you

24 know, so the guy's from Goldman called me yesterday.

1 They got 4 families that have seniors right now, it's
2 late though, and they wanted to know if I could help
3 them. (inaudible) because that's like -- compared to
4 what they're being quoted by the development office,
5 they're like [18:00] --

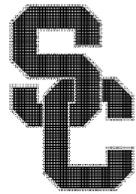
6

7

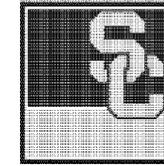
END OF AUDIO FILE

Exhibit 5

USC ATHLETICS - DEVELOPMENT
ORGANIZATIONAL STRUCTURE



ATHLETICS



TROJAN
ATHLETIC
FUND

INVESTING IN TODAY'S CHAMPIONS
& TOMORROW'S LEADERS

Ron Orr
Sr. Associate AD

- Chief Development Officer
- Oversight of Trojan Athletic Fund & all Athletic fundraising activities
- Supervise Heritage Initiative Co-chair John Robinson
- Football

Jen Noriega
Associate AD Development & Stewardship

- Signature Events
- Stewardship
- Member/Gift Processing
- Scholarship Club Management
- Front Office Management

Alexandra Bitterlin
Associate AD Development

- Campaign Materials
- Coliseum Marketing & Communications
- Endowment
- Regional Development
- Capital Gifts
- Lacrosse

Scott Jacobson
Associate AD Development

- Annual Fund manager
- Major Gifts for Heritage Initiative
- Coliseum Planning/Fundraising
- Trojan Club Oversight
- W/M Tennis

Scott Wandzilak
Assistant AD of Development

- Coliseum Fundraising
- Endowment
- Regional Development
- Capital Gifts
- W/M Track
- Heritage Association
- W/M Golf & Coaches Council

Julian Bonse
Assistant AD of Development

- Trojan Club Orange County
- Social Media/Marketing
- Car Dealers (Stewardship)
- Young Alumni
- UAC Sports

[REDACTED]
Assistant AD of Development

- TAPA
- Baseball & Diamond Club
- Touchdown Club
- Trojan Club LA and Desert

Jordan Bradley
Receptionist/Admin. Assistant

- Front Desk Receptionist
- Office Manager

Suzanne Ebner
Assistant Director of Development

- Membership Services and Development Administration
- TAF Stewardship
- TAF Marketing
- HA & Sport Reunions

Becky Gramstrup
Director of Stewardship & Events

- Assist Special Events
- Stewardship
- Endowment Reporting
- Sports Banquets
- Beach Volleyball

Alina Arakelian
Director of Development

- Advantage Oversight
- Gift Processing
- Capital Accounts
- Membership Accounts
- Events Assist
- Research
- F/S Trojan Club

Tara Quarrie
Director of Development

- Women's Athletics
- WOT Development
- Communications
- Annual Fund
- Heritage Association (former female SA)
- W Bball, Soccer, W VBall

Brent Watson
Director of Development

- TAPA
- TBOD
- Trojan Club San Diego, San Fernando and San Gabriel Valley
- Annual Fund Calendar
- M Bball, M VBall, Crew
- Annual Fund
- Car Program Assist

Joseph Aguirre
Assistant Director of Development

- Trojan Club Development
- Season Ticket Holder Development
- Annual Fund
- Trojan Club Beach Cities & NorCal

Exhibit 6

From: Rick Singer <rwsinger@gmail.com>
Sent: Thursday, June 8, 2017 8:11 PM
To: [REDACTED]
Subject: Re: Thx and TPG Re: Confidential Re: Confirming 1:15pm Meeting Today

Thx

Sent from my iPhone

> On Jun 8, 2017, at 5:08 PM, [REDACTED]:

>
> Ok and great to hear regarding Bill and Bono!

>
>
> Sent from my iPhone

> On Jun 8, 2017, at 5:07 PM, Rick Singer <rwsinger@gmail.com> wrote:

>>
>> Thank you. Btw we had a great meeting with Bill McGlashan today- cleared things up - thx
>>
>> Sent from my iPhone

>>> On Jun 8, 2017, at 4:54 PM, [REDACTED]:

>>> We want this summer but will be discussing this weekend more of the specifics so let me get back to you early next week.
>>> Thx!

>>> Sent from my iPhone

>>>> On Jun 8, 2017, at 8:54 AM, Rick Singer <rwsinger@gmail.com> wrote:

>>>> When do you want us to get started with [REDACTED]?

>>>> Sent from my iPhone

>>>>> On Jun 8, 2017, at 7:54 AM, [REDACTED] wrote:

>>>>> I am happy to help - you are on my most important team of my family!

>>>>> Sent from my iPhone

>>>>> On Jun 7, 2017, at 3:49 PM, Rick Singer <rwsinger@gmail.com<<mailto:rwsinger@gmail.com>>> wrote:

>>>>> Thank you for your nice comments and willingness to help me professionally. Let me spend more time with Bill and his RISE team and I will let you know if I could use your expertise.

>>>>> It is very much appreciated to know you are on my side.

>>>>> On Wed, Jun 7, 2017 at 2:41 PM, [REDACTED] wrote:

>>>>> Rick - 3 quick things:

>>>>> 1. Thank you very very much. [REDACTED] really liked you and what you said (so did [REDACTED]).

>>>>> 2. I loved watching and listening to you do what you do! I could visualize you doing it through the years with thousands of students, athletes and your team!!

>>>>> 3. Regarding TPG and other prospective investors you have, I would be happy to have a call to learn more about what you are doing and brainstorm on potential alternatives. Bill McG is s real pro, but \$200 mm of equity capital sounds potentially like a square peg in a round hole for you at this stage. However, I really don't know what you are trying to do, so I could be very wrong.

>>>>> Let me know if you want to squeeze in a call on your business alternatives.

>>>>> Otherwise, I will reach back next week about this summer and [REDACTED]

>>>>>

>>>>> Many thanks!

>>>>> [REDACTED]

>>>>>

>>>>> Sent from my iPhone

>>>>>

>>>>>> On Jun 7, 2017, at 1:11 PM, [REDACTED]

wrote:

>>>>>>

>>>>>> Understood Rick and yes it could be.

>>>>>> Thankfully it is her ninth grade year.

>>>>>> My main goal for he attending Sacred Heart Prep is to be in a smaller environment that has a supportive counseling environment and proactively pushing community services.

>>>>>> I just want her to be happy while getting a good high schooling educations and have appropriate college choices.

>>>>>>

>>>>>> Sent from my iPhone

>>>>>>

>>>>>>> On Jun 7, 2017, at 11:34 AM, Rick Singer <rwsinger@gmail.com<mailto:rwsinger@gmail.com>> wrote:

>>>>>>>

>>>>>>>> [REDACTED] there is a side door in most schools as I did 490 of them last year- which means you support the school at a lot lesser cost than through institutional advancement. Is this an option because the Brown's of the world are not achievable with any B's

>>>>>>>>

>>>>>>>> Sent from my iPhone

>>>>>>>>

>>>>>>>>> On Jun 7, 2017, at 10:58 AM, [REDACTED]

[REDACTED] wrote:

>>>>>>>>>

>>>>>>>>> Rick -

>>>>>>>>>> Heading into our meeting, I want you to know that [REDACTED] is emotionally struggling at times from the divorce and that she is feeling she is going to get more Bs than As this semester, as she completes her finals today and tomorrow.

>>>>>>>>>> In addition, she has been doing only the minimum required for soccer and eating unhealthily, so she has gained some weight (she is relatively big and strong by nature).

>>>>>>>>>> Consequently, I think a focus today on getting into schools like Brown or Santa Clara is more appropriate than her BHAG schools academically.

>>>>>>>>>> [REDACTED] also appears to be going through a difficult time, as evidenced by not wanting to meet at my house - lots of unneeded drama in my family two daughters and an Ex-wife.

>>>>>>>>>> I hope you find this email constructive.

>>>>>>>>>> Thanks,

>>>>>>>>>> [REDACTED]

>>>>>>>>>>

>>>>>>>>>>> Sent from my iPhone

>>>>>>>>>>>

>>>>>>>>>>>> On Jun 7, 2017, at 10:38 AM, Rick Singer <rwsinger@gmail.com<mailto:rwsinger@gmail.com>> wrote:

>>>>>>>>>>>>

>>>>>>>>>>>>> Thx

>>>>>>>>>>>>>

>>>>>>>>>>>>>> Sent from my iPhone

>>>>>>>>>>>>>>

>>>>>>>>>>>>>>> On Jun 7, 2017, at 10:35 AM, [REDACTED]

[REDACTED] <mailto:[REDACTED]>

>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>> Okay. Thanks for heads up I will get there at 1 pm ish to save get a table

>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>> Sent from my iPhone

>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>> On Jun 7, 2017, at 10:34 AM, Rick Singer <rwsinger@gmail.com<mailto:rwsinger@gmail.com>> wrote:

>>>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>>>>> Confirmed but [REDACTED] sent an email that she did not want to meet at your house so we were meeting at Peet's?

>>>>>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>>>>>>> Sent from my iPhone

>>>>>>>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>>>>>>>>> On Jun 7, 2017, at 8:58 AM, [REDACTED]

[REDACTED] <mailto:[REDACTED]>

>>>>>>>>>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>>>>>>>>>>> Hi Rick -

>>>>>>>>>> I know you are juggling a busy schedule so I am writing to confirm that you will still be meeting with [REDACTED] and me at 1:15pm today at my house in [REDACTED].

>>>>>>>>>> The address for ease of reference is:

>>>>>>>>>> [REDACTED]

>>>>>>>>>> Please confirm and thank you again for offering to work with Grace

>>>>>>>>>> [REDACTED]

>>>>>>>>>> Sent from my iPhone

>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

>>>>>>>>>> _____

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>>>>>>>>>> _____

>>>>>>>>>> --
>>>>>>>>>> Rick Singer
>>>>>>>>>> (916) 384-8802

>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

Exhibit 7

From: [REDACTED]
Sent: Wednesday, February 5, 2014 9:50 PM
To: Rick Singer <rwsinger@gmail.com>
Subject: Re: Hello Rick/college visits

ok, but should we mention it to him?

On Feb 6, 2014, at 4:49 AM, Rick Singer <rwsinger@gmail.com> wrote:

Ok side door is not improper nor is back door both are how all schools fund their special programs or needs. Nevertheless we can apply to some of his top choices that are above his qualifications but the chances of getting in would be limited.

Sent from my iPhone

On Feb 5, 2014, at 5:44 PM, [REDACTED] wrote:

Thanks. If a " backdoor" is a donation to the school or something like that I do not want to do anything improper and I am ambivalent whether we should tell [REDACTED] or not. I do not want to ruin his motivation or make him feel he did not accomplish on his own merit. On the other hand I do not want it keep stuff from him. Any thoughts?
Sent from my iPhone

On Feb 6, 2014, at 3:30 AM, Rick Singer <rwsinger@gmail.com> wrote:

Weekdays. I can set up whatever we decide.

On Wed, Feb 5, 2014 at 5:25 PM, [REDACTED] wrote:

Are college visits typically during the weekend or weekdays?

Sent from my iPhone

On Feb 6, 2014, at 12:55 AM, Rick Singer <rwsinger@gmail.com> wrote:

For Our discussion

School choices -- ***** schools with that notation will need to be done through the side door as [REDACTED] is not close with his grades and scores.

Boston

Northeastern
Boston U
Babson

NY

Fordham
NYU*****

Philly

Drexel
Villanova

DC

Georgetown*****
GW
American
U Maryland College Park

Miami

U Miami

New Orleans

Tulane

Chicago

Loyola U
DePaul

Colorado

Denver U
CU Boulder

Midwest

Indiana U
U Michigan*****
U Wisconsin

LA

USC*****
UCLA*****
UCSB

Bay Area

Santa Clara
Cal Poly
USF
UC Davis

On Wed, Feb 5, 2014 at 12:39 AM, 

██████████ wrote:

Hi Rick,
greetings from south africa..i am here for a quick
business trip, and will be back sunday. so i look forward
seeing you on monday for our usual get together with
██████████

One thing i would like to resolve is the choice of which
colleges to visit in the spring break for ██████████

1. which colleges should we visit?
2. When? ██████████ is on spring break from March 8 th the
23rd. I will be in brussell on wed12-thrusday13, so I
could visit colleges on the east coast (or west coast) the
weekend and monday (8-11), or when i am back sat15
all week until the 23. what do you suggest?

Once we decide where and when, we can contact the
colleges for logistics and also i can get going with
airplane tickets and all that ♦.

let me know what you think and thank you for all your
help!

██████████

--

Rick Singer
(916) 384-8802

--

Rick Singer
(916) 384-8802

Exhibit 8

From: Donna Heinel <dheinel@usc.edu>
To: Ron Orr
CC: Pat Haden; Alexandra Bitterlin; STEVE LOPES
Sent: 1/31/2013 11:01:07 AM
Subject: Re: [REDACTED]

Let everyone know it has been approved by compliance. [REDACTED] can give a gift that ultimately is used for scholarship dollars for his daughter

Sent from my iPhone

On Jan 31, 2013, at 7:44 AM, Ron Orr <rorr@usc.edu> wrote:

Nice gift ! I too have some concerns on gift agreement

Sent from my iPhone

On Jan 30, 2013, at 11:15 PM, Pat Haden <adpat@usc.edu> wrote:

Not sure about all of this. Let's discuss tomorrow and get it right. Thx

Sent from my iPhone

On Jan 30, 2013, at 4:23 PM, Alexandra Bitterlin <a.bitterlin@usc.edu> wrote:

Right, but I'm not including that in writing in the gift agreement as it would appear we are giving scholarship in exchange for donation

*Alexandra Bitterlin, Director of Development
Heritage Hall, 203A | Los Angeles, CA 90089
p 213.740.4168 | f 213.740.1306*

From: Donna Heinel [<mailto:dheinel@usc.edu>]
Sent: Wednesday, January 30, 2013 3:51 PM
To: 'Alexandra Bitterlin'; adpat@usc.edu; slopes@usc.edu; rorr@usc.edu
Subject: RE: [REDACTED]

We will also be awarding an athletic scholarship to his daughter for 2013 spring and 2013-2014 full year.

Donna C. Heinel Ed.D
Senior Associate Athletic Director
University of Southern California

From: Alexandra Bitterlin [<mailto:a.bitterlin@usc.edu>]
Sent: Wednesday, January 30, 2013 3:30 PM
To: adpat@usc.edu; 'Donna Heinel'; slopes@usc.edu; rorr@usc.edu
Subject: [REDACTED]

All,
To be clear on the stipulations of [REDACTED] gift—
\$500,000 to be paid in \$100k installments over 5 years; USC Athletics to match each payment

Monies to be put in Heritage Initiative account (Lopes, not sure how this works if we are paying ourselves into a capital account??)

Upon [REDACTED]'s graduation, we will name "[REDACTED]'s Corner" in Sand VB Court

In return for gift, we will give Lifetime Committee membership to [REDACTED], inclusive of 4 Committee seats (better location than he has now)

Whatever is to be worked out with giving her a scholarship for the next two years, I'll leave it to you and Coach Collier. I don't want to put that information into the gift agreement...

Thanks
Alexandra

*Alexandra Bitterlin, Director of Development
Heritage Hall, 203A | Los Angeles, CA 90089
p 213.740.4168 | f 213.740.1306*

<image001.jpg>

Stay Connected With USC Athletics

<image002.png><image003.png><image004.png><image005.png>

Exhibit 9

Email - ID: 4637405

Message New! - Emails Sent

Activity Code: ODP Invitation Notice

Sent By:

Done

Anne Laurence

Sent To:

██████████ Wilson

Date Sent:

7/27/2010 1:43:00 PM

Subject:

USAWP - ODP Invitation Notice

Message:



Dear ██████████ Wilson

CONGRATULATIONS on being selected for your respective ODP Zone Training Team! The entire Olympic Development Department is happy to formally welcome you to USA Water Polo's Olympic Development Pipeline. Your selection is an important part of the Olympic Development Program and you will soon have the opportunity to integrate yourself into our highly successful system. [Click here](#) for the ODP Handbook that provides an in depth description of the entire Olympic Development Program.

The Olympic Development Program is moving in a new and exciting direction in 2010-11. We have in place 6 principles that will be the driving force of the Olympic Development Program. (1) Respect for the Game; (2) Feeder System for the Youth, 17u 15u and 14u National Teams; (3) Progressive Learning of the American System of Play; (4) Evaluative Standards for Long Term Improvement; (5) Opportunity to be seen by National Team Coaches; (6) Raise College Profile. It is our goal that through our ODP principles we will be able to provide a true value of excellence and service to athletes, coaches and referees who are selected to the Olympic Development Program. Please keep this letter for your college records. One of our principles of the Olympic Development Program is to raise your college profile and with your selection you are now part of a select group of athletes in our country.

The purpose of the Olympic Development Program is to serve as the feeder system for USA Water Polo's 17 and under, 15 and under and 14 and under National Teams. The foundation of the program is a systematic approach to athlete, coach, and referee development through a year round training program that stresses the importance of being physically fit with a strong overall technical base that inter-connects with tactical component of the game.

After 32 hours of training, there will be 4 Regional Championships held at different times around the country. Following the Regional Championships, a collaboration of a National Teams Staff member, the National Technical Director, the Regional Technical Director and Zone Head and Assistant Coaches will select Zone athletes to represent their respective Region at the National Training and Selection Camp. A total of 70 players will be selected respectively for the 11th grade and under, 9th grade and 8th grade and under ODP National Training and Selection Camp. Following each National Training and Selection Camp the 17u, 15u and 14u National Teams will be named.

With your selection come some responsibilities that are very important. As mentioned the ODP Handbook is provided with this letter. Please read and have your parents read the ODP Handbook because there are important guidelines and deadlines that must be followed. To accept this invitation to the ODP program, please follow the registration instructions below.

Registration Instructions:

- [Click here](#) to log into your USA Waterpolo Membership Account.
 - Your Username is 463507
 - If you forgot your password, please [click here](#).
- Once you are logged in, you will see a link to register for ODP on your homepage.
- On the final page of the registration process you will have the ability to select how you wish to pay for your ODP registration.
- Once you submit your registration, please check back to the homepage of your membership account to review any other important information relating to ODP.

Once again congratulations on your great achievement. You join a select group of athletes and your journey is now one step further in the Olympic Development Pipeline.

Sincerely,



Guy Baker



AC_ID 1022

Entered: 7/27/2010 1:48:00 PM By: Anne Laurence || Modified: 7/27/2010 1:48:00 PM By: Anne Laurence

Edit Email

Delete Email

(🔑) = Editable only by SysAdmin. Please enter a HelpDesk task for assistance.)
(⚙️) = Editable only by Advanced Users. Please call the national office for assistance.)

Powered by



Exhibit 10

1 **Call Date:** 2018-10-15

2 **Call Duration:** 11:18

3 **Call Begin [] Call End []**

4 **Call Participants:**

5 Rick Singer

6 John Wilson

7 **File Name:** 9163848802 2018-10-15 17-45-46 10126-001

8 **Bates No.:**

9

10 SINGER: [00:00] John. How are ya?

11 WILSON: Hey, Rick. Doin' well. And yourself?

12 SINGER: It's ki-- you're goin' in and out. Sorry.

13 WILSON: I got a -- I got a bad, uh, (inaudible). It's just a

14 --

15 SINGER: Where is tha--?

16 WILSON: -- (inaudible) they got a big thunderstorm goin'

17 through. Can you hear me better here?

18 SINGER: Yeah, I can hear you better.

19 WILSON: Uh...

20 SINGER: That's much better.

21 WILSON: Uh, you're pr-- busy these days, huh?

22 SINGER: Yeah. We got early decision comin' up.

23 WILSON: Sh--

1 SINGER: Uh, you're gonna be goin' through the same thing,
2 so...

3 WILSON: Oh, I know, next year, exactly. So, hey, uh, there
4 were a couple topics. One was, ya kno-- my
5 daughter's, and, uh, making some donations now,
6 whatever -- how that can work. And then, second, I do
7 want to give some time, uh, to, uh, talk a bit about
8 your overall, uh, pricing strategy and your economic
9 model, if you want.

10 __: Uh...

11 WILSON: I don't want to force it on you. But I just think --

12 SINGER: No, no. Uh, yeah. So le--

13 WILSON: -- could be helpful.

14 SINGER: -- well, let's -- let's start with number one. So
15 what would be great is... You know, w-- I have a
16 bunch of schools that we work with directly. And, you
17 know, it's kind of a first serve-- firs-first come,
18 first [01:00] served. Right? So like I have
19 opportunity with Stanford in sailing. And I can do
20 other Stanford sports potentially too. And we have
21 Yale and we have Harvard. And then I can go after all
22 these other schools too. But, of course, I don't know
23 what the girls want.

1 WILSON: Right. Well, help me understand where you have first
2 come, first serve and, uh... So, uh, you have, as you
3 said, Stanford, sailing.

4 SINGER: Stanford, sailing. Got Yale, soccer, um, Harvard...

5 WILSON: They probably wouldn't want Yale. Harvard? What, uh
6 -- what do you have at Harvard?

7 SINGER: Harvard, we could do multiple sports. I just need to
8 go to them. I could actually even go to Y-- uh, you
9 don't want Yale, because you thought that they were
10 too what? Too conservative or they were too liberal?

11 WILSON: Too liberal.

12 SINGER: OK. I don't know which -- I don't know which side of
13 the room, uh, you know, you -- you come from. So.
14 Uh, you know, we could do Stanford. We can do,
15 obviousl-- USC with anything. Right? So that's an
16 easy one.

17 WILSON: How about UCLA?

18 SINGER: UCLA, I could do the same thing.

19 WILSON: And [02:00] what about, uh...? Got, uh, multiple
20 there. And what about the, um -- uh, Georgetown?

21 SINGER: Uh, for where?

22 WILSON: Georgetown?

23 SINGER: Georgetown, we could do the same thing. Yeah.

24 WILSON: Lots of mul--ple options.

1 SINGER: Yeah.

2 WILSON: So Stanford only has 1 or 2. Just sailing? Is that
3 about it?

4 SINGER: Um, so, uh, usually I can go t-- sailing, I can go to
5 the crew coach, 'cause I'm friendly with her, um, and
6 we can, you know, d-- always do women's lacrosse. And
7 again, ya know, they don't have to play. They just --
8 I j-- that's the path I'm gonna get 'em in on.

9 WILSON: Gotcha. And what about Harvard? Crew, sailing.
10 Anything else?

11 SINGER: Um, sailing, crew, sometimes tennis. The key to here
12 is that, if I were to get a deposit, l-- you know,
13 like, uh, uh, half a million dollars in the bank, then
14 it's --

15 WILSON: Uh...

16 SINGER: -- ya know, we can figure out where they wanna go. So
17 what I'd like to do is... I'm gonna be in town on
18 November 1st and 2nd. If you can start probin' with
19 the girls as [03:00] to potentially their -- what
20 they're thinking, then we -- you and I could -- if
21 you're -- if you can be in town one of those days -- I
22 think it's a Thursday, Friday -- and we could talk
23 face-to-face, then we could figure out, OK, what are
24 we gonna go after. So if anybody asks me for like a

1 Stanford spot and we're not sure yet, then I can call
2 you and say, "Hey, somebody wants that spot and I only
3 have 1," or "I'm gonna get a second one," or whatever.
4 But having the money already, in advance, makes it
5 much easier. Because I gotta go with whoever's gonna
6 ante up.

7 WILSON: Yeah. And who do we make these, uh, checks out to?
8 And, uh, what's, uh -- uh, what's your foundation? Do
9 you have a whole wiring -- send me an email with all
10 your wiring and all, uh...?

11 SINGER: Yeah. I can send ya a email with all the wiring
12 instructions. And then g-- uh, uh, your check will be
13 -- to into our foundation's account.

14 WILSON: Ri-- goes to your foundation, right.

15 SINGER: Yeah.

16 WILSON: Uh, uh, do you have mul--? So you have multiples, uh,
17 at Harvard and Stanford and, uh...

18 SINGER: Correct.

19 WILSON: You have mul--ples everywhere, it sounds like.

20 SINGER: Correct.

21 WILSON: And they don't actually have to do that sport, you're
22 saying. They could just go in and --

23 SINGER: Correct.

24 WILSON: -- be like the, uh -- the [04:00] scorekeeper or --

1 SINGER: Corre--

2 WILSON: -- water boy, water girl.

3 SINGER: Manager or whatever you want to call 'em. Yeah.

4 WILSON: Uh, manager, those things. OK. And you can do 2 at 1
5 school, as well. You could do 2 at, uh...?

6 SINGER: It's more difficult to do.

7 WILSON: Uh...

8 SINGER: That's why it depends on where it is. And the earlier
9 I know, then that gives me a chance to go after it.

10 'Cause I'll have to solicit, uh...

11 WILSON: Uh, let's say it's 2 at either Stanford or Harvard.

12 SINGER: So then, uh...

13 WILSON: Are those impossible or...?

14 SINGER: No, it's not impossible, absolutely not. It's just a
15 matter of I just need to know that I go-- I gotta
16 start doin' my work now on that. So by you makin' the
17 deposit, it makes it easier for me, because I know I
18 g-- uh, because what they're gonna first say to me...
19 If I go to them... And let's say we're doin' 2 girls
20 in 1 place. Then they're gonna say to me, uh, "We're
21 gonna give up a spot for you. Are you --"

22 WILSON: Uh...

23 SINGER: "-- are you guaranteeing me that's she's comin'? And
24 is the family guaranteeing me that they're gonna ante

1 up and they're gonna make a payment?" Because they
2 don't want to give up a spot. And the earlier I do
3 it, the better.

4 WILSON: Gotcha. So, uh, what about Princeton? They have
5 multiples [05:00] too?

6 SINGER: 1. Usually, I could try to get a second, but it's
7 more difficul--

8 WILSON: Only 1 at Princeton. OK.

9 SINGER: Yeah.

10 WILSON: And same kinda deal, any spor--? You don't have to
11 really play the sport?

12 SINGER: That's correct.

13 WILSON: And you can do that -- you can also get some kinda
14 chair things too, if you don't do the sport?

15 SINGER: Uh...

16 WILSON: Or, uh, sport mostly is your...?

17 SINGER: Um, yeah, the... It jus-- well, like it depends on
18 the school. To go after a dean is a little more
19 difficult. With your girls, because they're athletic
20 and they're big and all of that, I can sell to anybody
21 that they're athletic enough to be able to take 'em
22 and there'll be no question.

23 WILSON: Yeah. Their size and, uh... So they... Yeah.

24 SINGER: Correct.

1 WILSON: Even though they wouldn't play. OK.

2 SINGER: R--

3 WILSON: And Brown? Is, uh, Brown also 2? Or wh--?

4 SINGER: Brown's an option too. Yeah, sure.

5 WILSON: A couple of 'em. OK.

6 SINGER: Yeah.

7 WILSON: Uh, and those are all -- except for like UCLA and

8 USC...? Those are like the 350 and the other ones are

9 gonna be like 1,000,000, whatever?

10 SINGER: Yeah. The -- the big boys are gonna cost you over

11 1,000,000. And, uh, probably -- if I know early

12 enough, I could probably get it done at 1.5 for both

13 girls. Uh, I just need to -- [06:00] I need to push

14 now.

15 WILSON: OK. So, yeah, I can get ya more now, if that helps

16 you and makes everything certain. Uh, yeah. So I'll

17 give you at least half. Maybe I can get ya $\frac{3}{4}$ of a

18 million now, if that makes it like, you know, more

19 certain and you're gonna say --

20 SINGER: OK.

21 WILSON: -- (inaudible) done, that's a better way to do it, for

22 you.

23 SINGER: Uh...

1 WILSON: It makes it better -- you're saying better with the
2 schools, everything, it's much better to get it --

3 SINGER: We-- uh, th-the --

4 WILSON: -- as a guarantee.

5 SINGER: -- the amount, uh, that doesn't ma-matter right now.

6 It matters you're committed. And you putting down

7 some money, th-that I know... John, I kn-- known you

8 for years. So I know, when, uh, we get the girls in,

9 it's a done deal and you're gonna take care of your

10 part of it, you're gonna make the payments to the

11 schools and the -- to the coaches. And that's what I

12 need -- that's -- tha-- so I'm not worried about that.

13 WILSON: Uh, uh, help me understand the logistics? I thought I

14 make the payment to you and you make the payment to

15 the school.

16 SINGER: Correct. That's correct.

17 WILSON: Oh, you said I make the payment to the schools.

18 SINGER: Well, no, no.

19 WILSON: You're (inaudible)...

20 SINGER: Uh, essentially, uh, it's gonna come to my

21 foundation... That's correct.

22 WILSON: And you pay. Uh, r-- OK.

23 SINGER: That's correct.

1 WILSON: Now, um, uh, how does that actually wor--? What if

2 they don't actually get in? Uh, it's not a b-- uh...

3 SINGER: Oh, no, no, no. Y-you don't have to [07:00] worry

4 about it. They're -- it's g-- it's a done deal. And

5 I'll know beforehand if it's gonna be done or not.

6 WILSON: Uh...

7 SINGER: But, uh --

8 WILSON: When will you know --

9 SINGER: -- see, uh --

10 WILSON: -- in the summer of next year?

11 SINGER: -- I need a score. See? That's why I need their

12 grades and scores. And that's wh--

13 WILSON: Yeah. They get PSATs. And they just took the PSATs.

14 SINGER: Correct. And then I need the real scores. That would

15 be -- that's gonna -- that's gonna be able to tell me

16 how easy it is to -- to flow it through or no-- and

17 I'm hopefu-- both girls get the same or something

18 similar to each other.

19 WILSON: They've gotten pretty similar scores all along, plus

20 and minus math and English, that kinda stuff.

21 SINGER: Right.

22 WILSON: Yeah.

23 SINGER: Right.

1 WILSON: As long as, you know, like you can -- 1300 or so, is

2 that OK --

3 SINGER: Correct.

4 WILSON: -- is it --

5 SINGER: Yes. Yeah.

6 WILSON: -- 1300 plus? OK.

7 SINGER: Yeah.

8 WILSON: Now, do you ha-- when you say you need to know, we

9 have to actually have picked a school by when too,

10 that it's -- OK, it's 2 to Stanford, 2 at Harvard, or

11 1 in each --

12 SINGER: Well, uh, late --

13 WILSON: -- 1 in USC, or...?

14 SINGER: -- so I need that late spring.

15 WILSON: So late spring only. OK.

16 SINGER: Right. And you guys are gonna visit the schools by

17 then. You'll have so much fun, uh.

18 WILSON: Yeah, yeah. They're g-- they haven't gone to these

19 place-- they've been to some of them.

20 SINGER: Correct.

21 WILSON: But they didn't go to them, look at 'em. Uh, does it

22 matter if they go to them and look at the -- an-and

23 have this whole tour, with the [08:00] school knowing,

24 or just go and look at themselves?

1 SINGER: No, uh. It's a --

2 WILSON: Want to suck up to the dean?

3 SINGER: -- uh, a regular tour -- regular -- regular tour.

4 WILSON: OK. Do those have to be done durin' the week too?

5 They can't do 'em --

6 SINGER: Yeah.

7 WILSON: -- on a weekend really?

8 SINGER: Yeah. The weekends -- you know, because they don't

9 have the same energy.

10 WILSON: No, no. I understand that. But I meant for the

11 school, to meet with the whatever, faculty -- or not

12 the facu-- but the...

13 SINGER: Well, they d-- they're just gonna go on a regular

14 tour. They're not gonna meet, uh, faculty anyways.

15 WILSON: I mean, see the class, I mean-- not meet the faculty

16 but see the classrooms.

17 SINGER: Well, if we have kids that go there. We can set it up

18 with 'em. If I don't kids that go, they don't go see

19 classes. People do--

20 WILSON: Oh, they do not. They just go on a tour --

21 SINGER: No. People are worried --

22 WILSON: -- of campus by --

23 SINGER: -- about all that. Yes.

1 WILSON: -- admissions? OK. So it's admissions tour, not like
2 a classroom tour.

3 SINGER: Correct.

4 WILSON: OK. Uh...

5 SINGER: Correct. Unless I have kids there.

6 WILSON: Uh, gotcha. OK. So if I do it early on, you might
7 even get, you said, 2 -- uh, 2 (inaudible) the top
8 ones (inaudible) 1 (inaudible).

9 SINGER: Correct.

10 WILSON: And does it really matter, though, if it's 2 at 1 or,
11 uh, not?

12 SINGER: It d--

13 WILSON: Ho-how much did you...?

14 SINGER: It makes it ea-- it makes it easier, if it isn't, but
15 it can be done.

16 WILSON: It could be done. OK. And you're pretty confident
17 right now, a-and all those top schools, you could get
18 something done, as long as they get --

19 SINGER: Yeah.

20 WILSON: -- a test score of [09:00] 1300.

21 SINGER: Because I'm -- I'm usin' up my spot now. And then you
22 have the ne-- you're early.

23 WILSON: OK. Great. And then, uh... You only have like 1 or
24 2 spots in each of these place, though, you're saying.

1 SINGER: Correct.

2 WILSON: Or, y-- uh, you have several, depending on the sport,
3 you were s-- uh, 'cause like --

4 SINGER: Well, it depends.

5 WILSON: -- Harvard, you can a couple --

6 SINGER: Uh, uh...

7 WILSON: -- both crew and saili--

8 SINGER: Well, John, it, uh -- it depends on boy or girl, all
9 of that, right? Because --

10 WILSON: But I'm saying 2 girls.

11 SINGER: -- (inaudible). Yeah, usually 2 girls.

12 WILSON: So my t-- you can get a couple girls in each year, to
13 these places. And they may --

14 SINGER: Correct.

15 WILSON: -- take both of those spots.

16 SINGER: Correct.

17 WILSON: OK. Sound like you got 20 spots. You may only have
18 2.

19 SINGER: No. Uh, right. You're crazy.

20 WILSON: No. It's why you need to charge a bigger premium, my
21 friend.

22 SINGER: I got it. Well, we'll have that discussion in --

23 WILSON: Uh...

24 SINGER: -- in, uh, November. How's that?

1 WILSON: OK. And that sounds great. So I w-- I will get
2 you... Send me an email with where you need to send
3 these funds. And so you don't care. Half a million,
4 whatever, is good, $\frac{3}{4}$ of a million, doesn't really
5 matter, you're saying, just send something to you.

6 SINGER: Correct.

7 WILSON: And then, uh -- uh, then you know we're locked in for
8 2. We don't know where yet.

9 SINGER: R--

10 WILSON: We'll determine that a little bit later in the year,
11 maybe November. [10:00] So you have your dates? Is
12 it 1 and 2, for sure? What is your schedule?

13 SINGER: Excuse me?

14 WILSON: The dates (inaudible) --

15 SINGER: Yeah. November --

16 WILSON: -- come back to Boston, uh.

17 SINGER: -- 1st and 2nd. Yeah. November 1st and 2nd -- it's a
18 Thursday, Friday -- I'll be...

19 WILSON: OK. Yeah. Right now we were plannin' on being out of
20 town, damn it. We're gonna be in Europe. Uh, when's
21 the next time you're in, uh, Boston, uh?

22 SINGER: Uh, I'll have to figure that out. I'll let you know,
23 though.

1 WILSON: OK. My girls'll be in town. But w-- [REDACTED] and I
2 will be out, yeah.

3 SINGER: OK. Gotcha.

4 WILSON: All right. Oh, by the way, you should mark your
5 calendar for next Ju-July, if you want, in, uh, Paris.
6 Got a big birthday, July, uh, 19.

7 SINGER: OK.

8 WILSON: I rented out Versailles.

9 SINGER: Oh, my God. You're crazy.

10 WILSON: I know. A black-tie party there. So you'll have to
11 come.

12 SINGER: Uh...

13 WILSON: Anyway. Uh, I will -- I'll get you -- uh, I'll parti-
14 -

15 SINGER: I'll send you the -- I'll send you the w-- uh,
16 information about the bank and the wiring stuff, uh,
17 probably in the next day or so.

18 WILSON: OK. That's great. It's good to hear that earlier is
19 better.

20 SINGER: Yeah.

21 WILSON: I'm glad we had this conversation. And then I'll have
22 the girls run a filter, over the next few weeks. Uh,
23 they could meet with you in November without us. Is
24 that [11:00] OK? Or would you --

1 SINGER: Sure.

2 WILSON: -- want (inaudible) with us?

3 SINGER: Absolutely.

4 WILSON: OK.

5 SINGER: Absol--

6 WILSON: So I'll have the girls plan on meeting you sometime

7 November 1 and 2. Let me know the next time you're on

8 (inaudible).

9 SINGER: Will do.

10 WILSON: Yeah. I'd be happy to help you with your business

11 model. So I think you're leaving a lotta money on the

12 table.

13 SINGER: I know y-- I know that. We'll have that discussion.

14 WILSON: OK. So the g--

15 SINGER: All right, John.

16 WILSON: Uh...

17 SINGER: Thanks.

18 WILSON: Take, uh...

19 SINGER: OK. Buh-bye. [11:18]

20

21

END OF AUDIO FILE

Exhibit 11

1 **Call Date:** 2018-10-23

2 **Call Duration:** 4:04

3 **Call Begin** [] **Call End** []

4 **Call Participants:**

5 [REDACTED]

6 Rick Singer

7 **File Name:** 9163848802 2018-10-23 19-58-30 10531-001.wav

8 **Bates No:**

9

10 [REDACTED] [00:00] Hello?

11 SINGER: [REDACTED]?

12 [REDACTED] Hi, Rick! How are you?

13 SINGER: I'm fabulous. How about yourself?

14 [REDACTED] Good, good. Thank you, so much. We just walked in

15 -- I just walked into the hotel at Colgate.

16 SINGER: Terrific.

17 [REDACTED]: We were at Williams for 2 days --

18 SINGER: OK. Terrific.

19 [REDACTED] -- and just arrived to Colgate! Yeah! How are you,

20 Rick?

21 SINGER: I'm doin' great. So I jus--

22 [REDACTED] Good, good.

23 SINGER: -- I just wanted to touch base with ya. 'Cause I

24 spoke to the Georgetown coach.

1 [REDACTED]: Yes.

2 SINGER: And he needs the down payment as soon as possible.

3 [REDACTED]: OK.

4 SINGER: Because he has some --

5 [REDACTED] Don't worry.

6 SINGER: -- he has some personal issues to take care of.

7 [REDACTED]: OK.

8 SINGER: So he wants me to wire him the \$100,000 bribe

9 essentially --

10 [REDACTED]: Uh...

11 SINGER: -- as soo-soon as we can.

12 [REDACTED] Yeah! Well, are you -- will you be able to send me
13 the wiring instruction? I can send it like quickly.

14 SINGER: Yeah. So what I'm gonna do is I'm goin' to give you
15 my broker's information now --

16 [REDACTED]: Uh-huh.

17 SINGER: -- but I need -- [01:00] but, uh -- via email. But
18 I need you to text me your email address. 'Cause that's
19 one thing I don't have, is your email address.

20 [REDACTED]: Sure. Sure, sure. And then you know what, Rick? I
21 haven't decided whether I want to send securities.

22 Because I love my securities. I'm emotionally attached
23 to it. But I'll either send, uh, cash, uh, or -- or
24 securities --

1 SINGER: Well, it doesn't make --

2 [REDACTED] -- but mostly likely cash.

3 SINGER: -- it makes no differe-- OK. So then what I'll do
4 is, when you send me your email, I will then, um, send
5 you the information to wire your money to our foundation.

6 [REDACTED]: OK. OK. That would be great. Um, no-now, Rick, is
7 there a difference why we're sending it to you, as
8 opposed to the school itself?

9 SINGER: Uh, this is how we normally do it, um --

10 [REDACTED] OK.

11 SINGER: -- and, uh, a couple reasons why.

12 [REDACTED]: Mm-hmm.

13 SINGER: Uh, it keeps the -- uh, so your son -- [REDACTED] doesn't
14 know what's goin' on, that, uh --

15 [REDACTED] Yeah. He already knows.

16 SINGER: -- so [REDACTED] --

17 [REDACTED] But anyway. Yeah?

18 SINGER: -- OK --

19 __: Uh...

20 SINGER: -- s-so kids just don't feel like, you know, [02:00]
21 th-they, uh, you know, bought their way into school.

22 [REDACTED] Yeah.

23 SINGER: So this is the way that we do things.

24 [REDACTED]: Mm-hmm.

1 SINGER: And, uh -- and then what I would do is I'll take the
2 -- send the payment, uh, directly to the coach.

3 [REDACTED] OK. OK. Um, so, Rick, I just have 1 quick
4 question. First of all, by the way, just because I'm a
5 financial advisor... I'm sure you're fully aware of
6 this. But in the future, if your clients do have
7 securities with low-cost basis, that's sort of an
8 attractive, uh, way for them to contribute to -- shares,
9 the, uh -- versus cash. Because they don't have to pay
10 capital gain taxes --

11 SINGER: Correct.

12 [REDACTED] -- on the securities they -- they send over. But,
13 uh -- but anyway. So I have a very, very important
14 question, Rick.

15 SINGER: OK.

16 [REDACTED] I don't wanna... Uh, uh, I mean, what's the
17 likelihood of -- once we get that "like-likely" letter,
18 what's the likelihood of getting the admitted letter on -
19 - on April 1st, going this [03:00] r--?

20 SINGER: 100%. Uh...

21 [REDACTED] Seriously?

22 SINGER: Once you get your "likely" letter, it's 100%, unless

23 --

24 [REDACTED] Mm-hmm.

1 SINGER: -- your son drops classes or does --

2 [REDACTED]: Where?

3 SINGER: -- poorly in school.

4 [REDACTED] Oh. Drops classes where, at Campbell Hall?

5 SINGER: Yeah.

6 [REDACTED] I see. No, no, no. He's actually having a good

7 semester --

8 SINGER: Right.

9 [REDACTED]: -- having a good, uh...

10 SINGER: So then no problem. It's 100%. You're good.

11 [REDACTED] Really? OK. Rick, I don't want to put all my eggs

12 in 1 basket! I'm so worried. What if this doesn't work

13 out, even though --

14 SINGER: It's gonna work, uh...

15 [REDACTED] -- we send them the mon--? Really?

16 SINGER: Relax.

17 [REDACTED] Really?

18 SINGER: It's gonna work out. It's done -- I've been doin'

19 this for years.

20 [REDACTED] Really? I know, I know. I trust you with my entire

21 life. I -- I know. I'm just -- I just don't want to put

22 all my eggs in 1 basket, ya know?

23 SINGER: Well, that's wh-- You're visiting some schools now.

24 But this is done deal. This...

1 [REDACTED] Really?

2 SINGER: All I need you to do is...

3 [REDACTED] OK.

4 SINGER: I'm gonna...

5 [REDACTED]: OK.

6 SINGER: Send me your -- uh, text me your email address, so I

7 can --

8 [REDACTED] I'll text the email address right now.

9 SINGER: -- you can get this wire done.

10 [REDACTED] Yeah. I'll do it -- I'll do it like right away.

11 __: Uh...

12 SINGER: You got it.

13 [REDACTED] OK. Perfect.

14 SINGER: OK. Thank you.

15 [REDACTED] Thank you, so much, Rick. [04:00] I'll talk to you

16 later. Uh...

17 SINGER: OK. Buh-bye.

18 [REDACTED]: Thank you, so much. B-- [04:04]

19

20

END OF AUDIO FILE

Exhibit 12

07/26/2018 12:38:20 Incoming call to Rick SINGER from RUDY MEREDITH
[Session 3706]

RS	Rudy, commissioner.
RM	What's up man?
RS	I'm in London. Working.
RM	You in London. Can you stay in one spot?
RS	I can't because the posse will come after me.
RM	Who's the mafia?
RS	No the posse.
RM	Oh the posse. Who's the posse?
RS	I got people always chasing me, big boy. Everybody wants something from me.
RM	Cause they know you the man, that's why.
RS	I don't know about that, but I'm getting tired of being the man. Um, so, I'm waiting for an answer from this family. They're driving me freaking crazy. So um
RM	Ok.
RS	I'll i'll be back in the states, this weekend. On Sunday.
RM	Kk, Ok.
RS	So I'm hoping I'll get to meet with them on Monday.
RM	Ok. Do you have you have a name or something for me? Do you have a name?
RS	Well there's two families. So I've given them first first right of refusal. They both have good scores and grades. I just got I just I don't want to give you their name and then. Like I'm doing the same thing at Stanford, and I got..two people and...I....I don't want to present a name cause then if he goes to admissions with a name, then I'm....then the other person...the person, then I'm screwed.
RM	For who? For Stanford?
RS	Yeah.
RM	Or for me.
RS	For both of you.
RM	You (OV)
RS	So I have two at (OV) two at two at Stanford on- and two kids at Yale, two kids at Stanford. I'm trying to find out who's stepping up first.
RM	Ok. Alright. It don't matter cause maybe I might maybe I might have a name or a spot for both of them.
RS	I'm sorry?
RM	I said maybe I might have a spot for both of them.
RS	Really?
RM	Maybe. Yeah. Give me the...give me the names. I'm working on it... I got a new athletic director. That's what I'm trying to tell you, I'm trying to work it.
RS	Ok, alright. Well let me I'm..like I said (OV)
RM	Just give me both names. Just give me both names, and I'm good.

RS	I'll get you them this weekend. I'm I'm I'm just finishing, um, just finishing my dinner with this...with a bunch of my employees here in London.
RM	Ok.
RS	We're doing training so, let me just finish up with these guys cause I know you called me and I wanted to get back to you.
RM	I got one more question for you. You hear this thing about Jason Allen?
RS	I'm sorry?
RM	J- Jerome Allen. Did you hear this thing about Jerome Allen?
RS	Jerome Allen. Yes, I....actually I know the family.
RM	Oh you know them.
RS	I know them. I here's the...so I'll give you the skivvy, ok?
RM	Ok.
RS	Hold on one second. I gotta figure out something, one thing. So, so, [REDACTED] [REDACTED]. Was um Orthodox Jewish guy that was making more money than god. Um...
RM	Umhm.
RS	None of us..none of us knew that he was stealing money. You know we (OV)
RM	Umhm.
RS	None of us. I mean he was involved with alot of people. So his oldest daughter was a client of mine and I
RM	Umhm.
RS	I got her into USC. She lasted a year, and then I had to get her into FIT cause she wanted to do something in, um, fashion merchandising.
RM	Umhm.
RS	But the fam-[REDACTED] bought...had a house in Miami, and he bought the house next door to him and built a full court basketball court, and made the house into a gym for the kids.
RM	Umhm.
RS	And he used the..he hired Dwayne Wade. And he hired Kenny Anderson, and a bunch of folks to work with [REDACTED], and [REDACTED] the youngest son, in basketball.
RM	Umhm.
RS	He used to...Dwayne use Dawanye used to come over and train, um, Moris.
RM	Ok.
RS	Paying him like you know for like 10 sessions, \$50,000.
RM	Wow.
RS	So, it's ju- the the guy just had cash running out of his freaking ears. You know.
RM	Umhm.
RS	We all thought he had rehab centers and he was just doing great.
RM	Umhm.
RS	Nobod- Nobody knew until he went to jail. Wife is the
RM	Ok..
RS	Sweetest, wife is the sweetest person in the world. She didn't know

	anything that was going on, nothing.
RM	Umhm.
RS	So, what happened was dad, █████ asked me if I could help █████ go to Penn.
RM	Umhm.
RS	And I said,
RM	Hmmm
RS	You know what? He can't play there. I mean you want him know on the team, actually playing. I can't do that.
RS	Because he can't play,
RM	Right.
RS	He's a little little short Jewish guy.
RM	(Laughs)
RS	Seriously. So, so, █████ called up another guy named Martin Fox, and he called up Martin Fox, and Martin, who runs all these tournaments, like that all the college teams go to. Like you know, they go to Vegas in or the Maui Invitational and all that. So he knows all the college coaches cause the you know they all play in these tournaments.
RM	Umhm.
RS	He called up Martin, and then Martin called up Jerome, and Jerome actually whatever money they say, Jerome actually got about a million dollars.
RM	Umhm.
RS	Under the, under the table. Cash payment. Booked many more flights. Uh █████ took him
RM	So who
RS	To the Bahamas everything.
RM	So who gave Jerome the money?
RS	█████ did.
RM	Ok. Ok.
RS	And what happened was, █████ got indicted and █████ went to jail. Hold on, I have to find one thing. Hold on one second let me just, I have to do I have no idea where I am here in London but it is way...
RM	Umhm. No problem.
[Buzzing noise]	
RS	Ok. OK. So um...so █████ gets indicted. Um, and, █████ the next son that's coming up and he's calling me to help █████. And again, he wants █████ to be, you know freaking at Duke, playing on the Duke team.
RM	Right.
RS	He he can't play.
RM	Right.
RS	So, of course I tell him that. He's like no, you gotta help us. I said, I'm not doing it █████ because you first of all, the kid kid can't play, second of all, you don't want to follow the way I do things, which is the clean way. You want to do everything your way. And
RM	Umhm.

RS	And you already did that with Jerome, and I'm not getting involved. So, [REDACTED] gets indicted and he doesn't say a word to anybody, cause that's the kind of guy he is. But what they did is...
RM	Umhm.
RS	They had to audit all the money he's given away.
RM	Umhm.
RS	And they and they audited him. And that's where they found out that he gave this money to Jerome.
RM	Ok. Ok. Alright. So none of this can come back to you and I? None of this stuff
RS	Oh no no no. I'm not no I'm not we're not involved at all. This is all [REDACTED]
RM	Okay Good
RS	With this, what this that's his gig. You know? [REDACTED] wanted to see these people they think they can do it their way.
RM	Umhm.
RS	They can't. They can't
RM	Umhm
RS	They have no idea. And then [REDACTED], [REDACTED] gave Jerome a million dollars.
RM	Ok. Ok.
RS	All cash.
RM	So how you doing it, so how you doing it different than them so that so that we're all good?
RS	(OV) Cause I'm doing, Cause I'm doing, Cause I'm doing..I'm doing it through my business. I'm I'm doing it through my foundation. Right? And
RM	Umhm.
RS	You're, you're a program that we are funding in my foundation. Just like
RM	Ok..
RS	80 other programs. Right, we're paying Summertime Sports, essentially is, the way we've written it up, is to help kids. Um and utilizing sports to help kids in education.
RM	Gotcha. Ok.
RS	So, you look like a bunch of my businesses that we run through our foundation. Like, we have an aftercare recovery program, that we designed, like I told you a deal with LabCorp for \$150 million. And all that is run through our foundation. What's great about that, is that, and people always can't believe I would do this, but all my programs..let's just say that we do really well on our after care program. Alright?
RM	Umhm.
RS	And, somebody, somebody comes to me and says 'Hey, we want to buy it.' Well, if we sell it, I don't,
Rick Singer, makes zero money.	
RM	Umhm.
RS	All the money goes all the money goes to the foundation.

RM	Right.
RS	So (UI) Rick Singer's not involved in the foundation that's making money. So
RM	Right.
RS	So, I am...I'm totally out of it. So nobody can ever say to me that I'm making money of off things and doing stuff. I'm not because Rick Singer makes zero money out of the foundation.
RM	Ok.
RS	We make money we make money
RM	Okay
RS	We make money to help programs like yours. Like we bought the facility in Oakland.
RM	Umhm.
RS	For the Oakland Soldiers and Nike..
RM	Umhm.
RS	Cause we're funding that as well.
RM	Right So how do you explain it to the parents, How do you explain it to the parents when they when they come aboard? Like how do you get them aboard?
RS	I tell them listen you're gonna make a a donation to my foundation, and I'm going to, uh, help the folks who helped us. You the family are out of it. You have now made it...you're name is now public. You made a a donation to my foundation.
RM	Umhm.
RS	And that's what it looks like. You just made a a donation to an educational foundation. And they don't even know they don't know like if you ask any family, they have no idea where their money went, except for it went to me. Not to a university.
RM	Umhm. Ok.
RS	Because there's no attachment to the university.
RM	Oh okay. Alright.
RS	The family's name is not known to Yale, is it. No.
RM	Oo. Okay, alright. Well that makes me feel better.
RS	It's only my foundation. So like I get the thank you letters from Stanford, and USC and all these other places. All these thank you letters come to my foundation. Thank you for your donation. Thank you for this. That's how we do it.
RM	Makes sense. Alright that makes sense.
RS	That way, Rick Singer or anything like that is not involved at all.
RM	Ok.
RS	And then what we do is we hav-, we have a board meeting. Um..
RM	Umhm.
RS	Our foundation. And..
RM	Umhm
RS	Summertime sports is brought up as to we want to fund this program. It helps kids in education.

RM	Umhm.
RS	And the board.
RM	Umhm.
RS	Approves.
RM	Gotcha. Ok.
RS	So, it's not Rick Singer approving. It's, the board approves.
RM	Oh, okay okay Alright. So, if. so if parents had a question about this, I could just tell him to talk to you and you could explain that to the parent?
RS	Absolutely. They totally know. Yeah just always come back to me.
RM	Ok. Ok. Wow. So how many how many you doing this year?
RS	Aw shit. Probably, I don't know, between 700 and 800.
RM	How do you do... you cant do that many...that"s too many. How can you do that many?
RS	No, it's not.
RM	How...how the heck can you keep track of all this (OV)? Dude, you must have a twin brother.
RS	NO (Laughs) I do have a brother, but I don't have, um, he's in the...he's in the credit card business so
RM	Ok.
RS	He's got he's got actually a great business cause he sits in his fucking house and he rings up money.
RM	(Laughs) (OV) So who's making more money your brother or you?
RS	Well, I am. But, he...he has all the offshore gambling, uh, credit cards. So anybody who gambles off shore um comes to him the problem he has...
RM	Umhm.
RS	Is he makes alot of money but he also makes alot of cash. And he can't really do much with his cash.
RM	Why not?
RS	Because you...the only way you can do it is if you were to buy houses and re-do them or, you know what I mean?
RM	Oh ok.
RS	Cash, you can't put the cash in the bank.
RM	Ohhh oh ok ok ok ok. I gotcha I gotcha I gotcha I gotcha I gotcha.
RS	Right so like he goes on vacation all the time...
RM	Umhm.
RS	And he just takes cash everywhere he goes.
RM	(Laughs) So he just has like a boatload of money in cash, he just walks around with all this cash money.
RS	That's what he has to do because he can't put it in the bank.
RM	Ok. Wow. That's crazy. You go on sports positions with him or...(UI)?
RS	No. no. no. no no no. Definitely not. He wants to a, he invests in alot of our stuff. And what he does is like when we're doing the Oakland Soldier gig..
RM	Umhm.
RS	And we and we have to put four or five hundred thousand dollars into the facility to upgrade it?
RM	Umhm.

RS	We'll pay we'll pay that to the contractors cash.
RM	Ok.
RS	So, that's his investment in it. That's how he gets to utilize his money.
RM	Umhm. Ok. So, yeah what was your uh Ph.D. in at Stanford?
RS	Business organizational management. So I created a I created a coaching model for middle
RM	Mhmm
RS	Middle for the middle tier employee so so you look at the company you look at a company today 20% at the bottom their shit head they're not ever get any better
RM	Mhmm
RS	20% are at the top
RM	Mhmm
RS	And these are great performers, then I created a coaching model. A corporate coaching model for the 60% in the middle that we never spend anytime with
RM	Hmm
RS	Because think about it it's like a high school kid who's a 3.4 3.5. Hey you know what
RM	Mhmm
RS	They're, they're really smart, they're really good but they don't bother us they don't cause any issues so we don't ever help make them great we just put them to be who they are
RM	Right
RS	But an incorporation if you took the middle and you focused on making them better and you prior the bottom in a working style
RM	Mhmm
RS	You'd be so much better off
RM	Gotcha I gotcha I'm gonna have to bring you out here for a guest speaker at Yale man
RS	I picked over the third largest bank in the US I became the president of the retail bank which I knew nothing about banking zero I took over a bank called First Union
RM	Wow
RS	Remember First Union and they were they they bought
RM	Yeah yeah
RS	We bought core states so we bought core states and we bought First Unions then we bought was- then Wahovia bought us and then they gave everybody a golden handshake
RM	Mhmm
RS	Inlcuding me
RM	Oh that's good
RS	It was great. Oh yeah
RM	That's good that's good
RS	I got nothing to complain about
RM	No, no you got in you get in your swim today?

RS	I'm waiting I'm going to the bank the bank's giving me a hard time. Already rowed today and I'm going that's why I'm trying to find this bank here because we have a bunch of money here in Europe an you know you deal with the pound and the Euro
RM	Euros? Yeah
RS	(UI)
RM	Okay don't worry you can get paid at the end so don't worry about it. You gonna get paid at the end don't worry about it.
RS	Oh you think so.
RM	Well you must why why would you be going over over to England? I know you ain't going over to England for nothing
RS	No I have like uh 120 employees there
RM	In England?
RS	Yeah we have a ton of families there
RM	Doing the same stuff?
RS	Yep they all wanna come to the US to go to school
RM	So you meet with them over there? In person?
RS	I don't my employee's do
RM	Ohhhhhh okay okay okay okay I gotchu I gotchu and then they do the same things and then they come to you when the kid when the family talks to your employees and they come to you?
RS	The family needs a side door.. they call me if the family just going in the front door then they handle themselves if the family's going in the backdoor like today I had a conversation with Chris Christina Paxton do you know who Christina Paxton is?
RM	No who is she?
RS	She's the President of Brown so I called her this morning
RM	The President? The President at Brown
RS	Yeah
RM	Okay
RS	So I called her this morning to tell her that [REDACTED] (PH) wants to meet with her um who is a client of mine who is [REDACTED]. And both their girls want to go there. And
RM	[REDACTED]?
RS	Yep
RM	[REDACTED]?
RS	Yeah she used to be [REDACTED]
RM	Okay
RS	And she just picked a job at [REDACTED] so [REDACTED] called me to say hey can you set it up with Christina so we can meet her so that both my girls could potentially go there. And I said sure
RM	Mhmm
RS	And I said [REDACTED] I gotta a better way for you to get in and it cost you less money is like I you know [REDACTED] is of the CEO of a Publicly Traded Company and I just would rather she wants me to anti-up anti-up up I'll anti-up also give jobs to the Brown students and that's what I'll handle I said cool no problem

RM	Okay wow man
RS	Everybody handles it differently
RM	Right man you got your fingers in everything dude
RS	I am just wanna be I just wanna play pickleball that's all I wanna do
RM	(Lauhing) (UI) need you to buy me pickleball court stadium somewhere that's what you're gonna be doing me
RS	A stadium? I never that would be actually really interesting how do they when they have tournaments how do they how do they I mean like where do they if they has enough courts
RM	They build it just like they're doing at Indian Wells they're building they're turning that dance facility into a pickleball facility
RS	But what happens when they're not using the pickle ball facility?
RM	Um they are gonna have to use it all the time then they gotta figure they gotta be enough interest to do it or they wouldn't do it
RS	Can you do uh can well there isn't down there but maybe there is for the old can you do a uh can you can you create a portable facility where you put down a court you know that kind of stuff and then pull it back up like on tennis squares?
RM	I guess I guess you could I guess you figure out you must know somebody in like some engineering school somewhere you you could figure that out you figure everything else out
RS	Oh that's easy I just didn't know if that's what they did because I just don't know if I just don't know
RM	No
RS	If there's enough interest to have it year round.
RM	Yeah yeah alright in certain places they do have it year around so yeah just a question if the need if you have the interest so
RS	Right
RM	I think the key now is do it in a place where you can do indoor and out so when the weather's bad you can go inside and play
RS	Got it got it think I found where I'm going wouldn't you know
RM	That's good
RS	I am fricken, I don't like these one-way streets bull shit thing
RM	I know and you're on the left side of the road
RS	I know so okay
RM	So you gotta be careful
RS	Tell me about it okay now I'm on 2/3 where's 4/5? Fricken a where the fuck is it? Now I'm on the main street again (UI) you know what I'm glad I live in the US
RM	(Laughing) It wouldn't be that bad if you were in Sweeden you'd be okay
RS	Well I gotta find myself a good Sweedish girl woman then
RM	Alright well next time I go to Sweeden I'll look tell me what you're looking for and I'll see what I can do
RS	Well yeah you know here's what I you know what I thought about actually creating a business around when I was in college I dated just like you did I dated all the women athletes.
RM	Mhmm

RS	And they're amazing. And so what I found
RM	Mhmm
RS	Older in my age that the women I would like to date are the I would call the girly-guy right?
RM	Mhmm
RS	They can be you know but the problem is that their either mom and they're great moms or
RM	Mhmm
RS	They're gay or they're gay there's no in-between.
RM	Okay right
RS	So I was gonna start a dating site like you know match.com for those kinds of women to find those women because like it's impossible to find
RM	True true (OV) I know another one I know another one would help would do is you get them the women golfers to come over here cause there is more women golfers over there then here and bring them over here you have all the guys in the US that will be playing golf
RS	Okay
RM	You would make a killing
RS	Yeah well I will tell you this. Yeah so it's hard to find at my age it's it's hard to find the right people that's the hardest thing
RM	Yeah yeah that's true that's true
RS	Especially (UI)
RM	I I I would understand that I I I see that
RS	Somebody's gotta be whoever I'm with gotta be really fit that's the biggest issue.
RM	Right exactly exactly
RS	(UI) That were FIT it's the most overused word on the planet everybody thinks their fit
RM	Right
RS	They go for a walk
RM	There's different degrees of fitness
RS	Absolutely they go for a walk they think their fit
RM	Right that is not fit
RS	No I dated I went out with a gal I was fixed up with a gal she runs they told me nobody wants to date this gal because their scared of her they think she makes too much money she runs a publicly traded company and this that doesn't matter to me I just wanna you know
RM	Mhmhm
RS	She runs this company called DSW it's Designer Shoe Warehouse the base is in Columbus she parts in um
RM	Mhmm
RS	She lives part time in California
RM	Mhmm
RS	She's making about 5 mil a year
RM	Mhmm
RS	And she told me yes she's great she's fit she's this she's that I'm like I

	showed up at her door and she's a good good 10-15 heavy
RM	(Laughing) So that wasn't fit enough for you?
RS	Well and then we would go out for dinner right? Lagunna beach go out for dinner and she orders dinner and she's talking to me how she's been working out getting shape blah blah blah meanwhile she orders 2 glasses of wine that ain't helping the fitness level
RM	(Laughing)
RS	She orders dessert that ain't helping the fitness level
RM	No
RS	I said I don't think she's a pretty gal if she would just lose the 10
RM	Right right
RS	Can't
RM	Maybe you can like train her with you and she can (OV)(UI)
RS	I need I need you on day one to be all ready because if you're not you know what that means? Overtime you get comfortable and when you get comfortable you start gaining it back
RM	Okay so you need someone 10 pounds underweight and then when they then then they'll gain it to be when they grow with you it that'll be perfect in 10 years
RS	Nah I just 10 I just need them to be in good shape from day one. They gotta be able to hang with me
RM	Okay okay alright you're a tri- athlete man
RS	What's that?
RM	You're a tri-athlete man that's hard man that's kind of hard to find somebody who a tri-athelte man that's hard
RS	They don't need to I mean they just need to be able to go you know I don't need them to get up with me in the morning they can sleep till 7 I've already done two things no big deal
RM	Okay
RS	But that's hard that's hard to find those people
RM	I'll keep my eyes out for you I'll keep my eyes and ears open for you
RS	Get me some I think my guess the Yale coaches the women's coaches are probably dikey (PH)
RM	Well yeah one of them of them is yeah
RS	And you're AD's dikey(PH) so shit right?
RM	Well I got some I got some I got some formal players that graduated like 23 years ago that are close to my age that live out in California
RS	Are they married?
RM	Uh a couple of them are not
RS	Are they good looking? They in shape? They play sports? They competitive?
RM	Yes yeah come on man would I do you like that
RS	Okay well you know unless and I don't care if they're white green polka dot or blue
RM	Okay
RS	They're gonna have a better life they're not gonna be more educated then

	me
RM	Okay well they went to Yale though dude
RS	That's okay so I I gotta Berkley MBA a Stanford PHD and I and I
RM	Oh that's true that's true
RS	And that part isn't happening
RM	Okay so you're good you're good then Rick how old are you Rick?
RS	Um 58 and I am looking like I'm 40
RM	You're 58?!
RS	Yeah
RM	Oh yeah well one picture I've seen you don't look 58
RS	Well I'm not I mean seriously nobody can even hang with me that's the key
RM	Well you did not look I have seen one picture and you did not look 58 wow you do take good good care of yourself
RS	I am in I am 41 um my (UI) calls not my blood pressure but my um heart rate 41
RM	Oh yeah yep mhmm
RS	I'm telling ya pickleball I'm telling ya all I need is an hour of just practicing that shits over
RM	You beat me at pickleball man listen you beat me at pickleball I will come to your house and clean your house and your car
RS	Well you'll be doing that anyways
RM	If you beat me at pickleball
RS	I love it alright I'll I'll talk to you I'll talk to you early next week
RM	Alright when you know his name as soon as you can
RS	Okay okay okay okay
RM	Alright cool
RS	Alright bye-bye
RM	Alright bye bye-bye

Exhibit 13

1 **Call Date:** 2018-10-10

2 **Call Duration:** 18:20

3 **Call Begin** [] **Call End** []

4 **Call Participants:**

5 [REDACTED]

6 Rick Singer

7 **File Name:** 9163848802 2018-10-10 17-48-54 09884-001.wav

8 **Bates No:**

9

10 __: [00:00] -- was, uh...

11 [REDACTED] Hey, Rick.

12 SINGER: Uh...

13 [REDACTED] Uh, uh...

14 __: Uh...

15 [REDACTED] Unfortunately, I'm driving too. So I'm hoping you can
16 hear me.

17 SINGER: I can h--

18 [REDACTED] Um, uh... You can or you cannot hear me?

19 SINGER: I can. Go ahead.

20 [REDACTED] OK.

21 __: Uh...

22 [REDACTED] Great. So a few things I have. I'm -- I'm on the

23 road, so I don't have the detail -- the billing

24 questions. But I do have overall questions on, uh,

1 payroll for, uh, your dad and Marlo.

2 SINGER: OK.

3 [REDACTED] Uh, so here's the deal. Uh, since I started, uh, the
4 deal has been that they're -- they are supposed to get
5 a certain amount of net -- net payroll, net of taxes.
6 So... And then I saw another note recently that said
7 Marlo was supposed to make 45, [01:00] I think Nick
8 60. Uh, they're gonna make... Marlo's gonna make
9 well over that. Uh, because, if it's a net paycheck,
10 she's grossed up. And I needed to know, you know,
11 what the situation really is.

12 SINGER: So what...? So I'm --fused. Uh, they're supposed
13 to... So she makes 4,000 a month.

14 [REDACTED] Uh, say that a--? \$4,000 a month? So 48 a year?

15 SINGER: Yeah.

16 [REDACTED] Hey, Rick?

17 SINGER: Yeah.

18 [REDACTED] OK. Well, that's not what's been done. She gets a
19 net amount, which -- she's gonna be -- uh, she's gonna
20 be making at least \$60,000, uh, becau-- gross amount,
21 because of her payroll taxes.

22 SINGER: How long you --

23 [REDACTED] Uh, mo--

24 SINGER: -- been doin' that?

1 [REDACTED] Since I started work, since I started here [02:00]
2 with you. Uh...

3 SINGER: An-and, uh, wh-- um, why was that done? Who h-- who
4 said to do that?

5 [REDACTED] I don't know. Uh, that was the instruction I got from
6 Steve. And I started -- you know, obv-- I mean, since
7 I don't do the foundation work, I've been able to look
8 more into things. And I thought, "OK, that's a whole
9 lotta money." Uh...

10 SINGER: Yeah.

11 [REDACTED]: Uh...

12 SINGER: They're supposed to get -- they're supposed to g--
13 they're supposed to make f-- uh, fou-- she's supposed
14 to make 4 grand a month, and whatever taxes are taken
15 outta that. And he's supposed to make -- what is it,
16 5 grand a month or somethin' like that?

17 [REDACTED] That's be right, 48 and 60. But as we've been paying
18 them, they make a lot more. And, uh, I wasn't sure
19 what -- you know, because you're -- they're your
20 family, if there sp-special circumstances or what.
21 But now we're at the point that I do a lot more, uh,
22 [03:00] deeper investigation into things. And I
23 thought, "Oh, gosh. Marlo's gonna make at least 60,
24 if not 70." And same for Nick. Uh, and the pro-- the

1 deal is, with Nick -- is that he's on 0, uh, federal
2 withholding and state withholding, which is why last
3 year -- I didn't get it last year. I mean, uh, wasn't
4 there for long. But, uh... And he -- he had called
5 me a few times and said his taxes w-- you know, they
6 di-- he didn't have enough taxes, and, uh... Well,
7 that's because he was getting a net paycheck of what
8 he needed -- or whatever --

9 __: Uh...

10 [REDACTED] -- whoever (inaudible). And, uh, so he wasn't having
11 a whole lot of taxes. Now I've tried, off and on this
12 year, to withhold taxes for him, so he wouldn't get
13 into a tax problem at the end o' the year.

14 SINGER: Well, he shou--

15 [REDACTED] But I just need to know...

16 SINGER: -- he should only be makin' --

17 [REDACTED] Go ahead.

18 SINGER: -- he should be makin' 5 grand... That's his check.

19 And whatever the taxes are outta the 5 grand.

20 [REDACTED] [04:00] OK. So then I need to check with Nick.

21 Because for some reason, his, um... I'm sorry I don't
22 know the reason. 'Cause this was set up before I was
23 here. But he's set up for 0 federal withholding and 0
24 -- I believe, 0 state. Uh, so I put in a few, you

1 know, \$500 payments here and there, just so he
2 wouldn't get into too much trouble, uh, n-- I don't
3 know that he has trouble. But, uh... Yeah. So I can
4 keep, uh --

5 SINGER: Uh, the bottom li--

6 [REDACTED] -- I c--

7 SINGER: -- the bottom line is I'm only payin' him 5 grand a
8 month and she's gettin' 4 grand a month. And th--
9 whatever the taxes are on that.

10 [REDACTED] OK. So we're gonna have an issue. And I would expect
11 that, as soon as I put that into... I just processed
12 payroll, yesterday morning. Uh, but as soon as I put
13 that into place, uh, there -- I would expect there
14 would be some backlash -- uh, and not because o' me.
15 I mea-- uh, I'm just doing what has been done
16 historically. Uh, [05:00] but, yeah. So if that's
17 what you want me to do, I can do it. And I also need
18 to reach out to Nick, and, uh, him, probably his tax
19 person, and say, "OK. Uh, what do you want your
20 withholding to be?" Because it's been 0, unless I put
21 in withholding, which only cost the company more. Uh,
22 so if it's 60 and 40, I can do that without a problem.
23 And I will reach out to Nick. Uh, uh, I just need
24 your blessing. So...

1 SINGER: W-- uh, I thought that, the -- the whole time, they
2 were only bein' paid 5 and 4 and that's it. I mean...

3 [REDACTED] Uh, unfortunately not. I mean, when I started
4 calculating it, it's --

5 SINGER: I know. But this, uh --

6 [REDACTED] -- it's a lot more than tha--

7 SINGER: -- this is like many, many months ago.

8 [REDACTED] Yeah.

9 SINGER: Why has it --

10 [REDACTED] And I j--

11 SINGER: -- taken this long?

12 [REDACTED] Um, uh, it's taken this long because I figured that
13 that's how you wanted it. Like I was told the net
14 paycheck. So I net the paycheck to whatever they
15 need. [06:00] Uh, yeah. So it -- it's just
16 historically how it's been. And the only reason I'm
17 reaching out to you now is because, to me, it seems
18 lopsided. So I just wanted to make sure you're aware
19 of it -- and if that's what I should continue to do or
20 if they have an absolute, you know --

21 SINGER: No.

22 [REDACTED] -- paycheck, like the rest of us.

23 SINGER: No. It's 4 -- 4 grand, 5 grand.

24 [REDACTED] OK.

1 SINGER: That's it.

2 █████ So I -- I will put that... I mean, we just got our
3 payroll done this week, early this week. And I'll put
4 that into play. But, uh, there's gonna be some... I
5 just want you to be prepared and I need to be
6 prepared, uh, for the phone calls and the text that --
7 you know, "Well, what's happening now?" and to say,
8 "Well, this has been done wrong from the beginning.
9 And I'm just doing what Rick told me to do." So if I
10 have your blessing --

11 SINGER: Well, I'm -- I'm gonna c--

12 █████ -- that's wha--

13 SINGER: -- I'm gonna g-- uh, yeah -- I'm gonna call 'em right
14 now and tell 'em both.

15 █████ OK. And then what we need to know for Marlo, [07:00]
16 it's -- it's easier. Uh, but for Nick, it's not, uh,
17 because he has, for some reason, no withholding. And
18 I don't know if that's on purpose. Like I don't know
19 his, you know, personal financial position. Uh, but
20 tha-- but, if he needs to withhold taxes, we need to
21 change that arrangement so his taxes are being
22 withheld. An-and then have to recalculate, for the
23 year, to -- to Marlo at 48, Nick at 60, uh, what they
24 will be. And they will -- it will be a lot less,

1 these next couple o' months -- 3 months. So, uh, I'll
2 do whatever you'd like. Uh, it's just gonna be, uh, I
3 think --

4 ___: Uh...

5 ██████ -- very, uh, shocking to them. Uh...

6 SINGER: Well, it shou-- it shou-- first of all, it should have
7 already been taken care of. And I'm shocked that, all
8 this time -- no question marks. I mean, it's always
9 been... Anyways, it is what it is. And that's what
10 frickin' pisses me off all the time.

11 ██████ Uh, no, uh.

12 SINGER: 'Cause it's been months, though! [08:00] But,

13 ██████, it's been months --

14 ██████: Yes. And I've --

15 SINGER: -- months and ask the question.

16 ██████ -- had this question...

17 SINGER: Well, why didn't you --

18 ██████ Rick...

19 SINGER: -- ask the question before?

20 ██████ Because that's what I was told.

21 SINGER: Well...

22 ██████ And it wasn't until...

23 SINGER: Anyways --

24 ██████ Rick, uh, uh --

1 SINGER: -- forget about it.

2 ██████ -- I'm pretty good at what I d-- Yeah. No, I don't
3 want to --

4 SINGER: I know, I know.

5 ██████ -- forget about it. Uh...

6 SINGER: But ju-- it's been months. It's been months, ██████
7 It -- it shoulda been already -- raised the question.
8 Because it wasn't supposed to be that way, the whole
9 time.

10 ██████ But...

11 SINGER: So here's the deal.

12 ██████ Uh...

13 SINGER: You got 3 months left. You just pay them f-- whatever
14 it is to be 4 grand. It doesn't have to 48,000 and
15 60,000, for right now. But going forward, it's
16 whatever you would pay them normally, 4 and 5 grand.
17 That's what they get paid for the next 3 mon--

18 ██████ Got it. Will do.

19 SINGER: So then they're cu-- they don't have to be cut as
20 much. But they're gonna be cut.

21 ██████ OK. I got it. Uh, and I will have to ask Nick, you
22 know, of his... Uh, I don't want to get too personal,
23 but [09:00] that's a...

24 SINGER: Well, don't worry about it. Just ask him the

1 question. He'll give you the answer. And that's it.

2 This is the way it's gonna be.

3 ██████ OK.

4 SINGER: He's gettin' paid 5 grand.

5 ██████ OK. Not a problem.

6 SINGER: He gets 5 --

7 ██████ Uh...

8 SINGER: -- he gets 5 grand a month -- whatever the taxes are
9 on the 5 grand. That's it. He's supposed to make 60
10 grand a year. And if he's an employee, what's the
11 burden on the 60 grand?

12 ██████ Exactly. I get that. And this has been one o' things
13 that has, you know, nugged at me. But, um, I just
14 figured you do special circumstances for them and,
15 uh...

16 SINGER: No. I didn't even know about it.

17 ██████ Uh, well, there ha-- there ha-- there was a -- uh,
18 there was a definite note about what they were
19 supposed to get. And I will --

20 SINGER: 4,000 and 5,000.

21 ██████ -- have a look and, uh... Uh, th-that wasn't the
22 note. But I will see, uh...

23 SINGER: Well, show me the note!

24 ██████: Uh, uh...

1 SINGER: Show me the note.

2 ██████ I will abso--

3 SINGER: Didn't say grossed up.

4 ██████ Not a problem. Uh, not a p-- uh, not a problem, Rick.

5 I will show that to you. Um, I -- I want you to kn--

6 I'm on your side.

7 SINGER: Uh...

8 ██████ I didn't get a re--

9 SINGER: I get it.

10 ██████ And now that, uh...

11 SINGER: But it's [10:00] been like months now. It's like b--

12 Anyway. So I'm tellin' 'em they're gettin' paid 5

13 grand, 4 grand. Whatever their taxes are, the burden

14 is for the company. We pay our taxes. We pay their

15 t-- whatever we have to do. And, uh, so, if they're

16 makin'... S-- she's supposed to get paid 4 grand

17 times 12. So she's gonna make 48. What's that cost

18 the company?

19 ██████ Uh, it's at least a good -- a good 10%.

20 SINGER: OK.

21 ██████ So that's, uh --

22 SINGER: So --

23 ██████ -- going up to 50. Yeah.

24 SINGER: -- so -- so that's fine. But that's the number.

1 ██████ OK. So, fine. I'll do that the rest of the year.

2 And I will do that, uh, here on out. Uh, not a

3 problem. Not a problem. Uh, a--

4 SINGER: What other --

5 ██████ Uh, s--

6 SINGER: -- what other surprises?

7 ██████ Well, there's no-- it's... Uh, the other thing is I'm

8 not sure what's gong on with the foundation, uh, at

9 all -- uh, which is fine. I mean, we turned that

10 [11:00] over months ago.

11 SINGER: Right.

12 ██████ Uh, but my -- m-- what we used to do is we used to

13 also bill back to the foundation Marlo's payroll.

14 SINGER: We're not doin' that.

15 ██████ But at this point...

16 SINGER: We're not goin' that.

17 ██████ So I can't do that at all.

18 SINGER: No.

19 ██████ OK. S-so that's not been... I jus-- I mean, I

20 been... OK. So we're absorbing that. And it's not

21 being charged out. Thank you, Jesus. Because, uh,

22 I've been hesitant about that. I'm no-- L-- again...

23 And the -- I guess the other question is, Rick... Uh,

24 you can be pretty straightforward with me. Uh, but, uh,

1 a thing with the -- uh, having receivables for The
2 Key, uh, and not having rec-- We've always had
3 receivables. Uh, Mikaela and I have talked about this
4 a couple times, since your email or text a couple
5 weeks ago. And right now I've billed out 95 [12:00]
6 perce-- I mean, with a few questions I have. And
7 unfortunately, I don't have them with me right now, in
8 the car. But is y-- what is, uh -- can you tell me
9 what your purpose -- wha-wha-what the point is...?
10 Because we've always run it that way. And it'd be --

11 SINGER: Here's why.

12 [REDACTED] -- very difficult now...

13 SINGER: Here's why.

14 [REDACTED] OK, go.

15 SINGER: If, uh -- if we end up in any type of audit issue,
16 from the foundation and the company, and there becomes
17 a black mark upon us at some point, people could just
18 as well decide not to pay.

19 [REDACTED] OK. Gotcha.

20 SINGER: So no-- so, if you're holdi-- so, if we have
21 receivables in January, February, March, of all these
22 fees and something were to happen, then I could see
23 people just say, "Well, I don't need to [13:00] pay,"
24 or "There's some issue," or whatever it is.

1 ██████ OK. Now, are you referring to the tuition as well --

2 SINGER: N--

3 ██████ -- as the reimbursable expenses?

4 SINGER: -- no. Uh, what do you mean? No, n-- Wha-what
5 tuition?

6 ██████ Well, the \$7,000 or \$8,000 a year per student.

7 SINGER: No, no. I'm... Well, I want to get that paid, yes,
8 absolu-- What I really want to get paid is all these
9 application fees and these -- and the, um, scores.
10 Because it's all comin' out of our pocket. I want to
11 have as much money... I don't want to be ch-chasing
12 money... If we have a problem, in -- with the
13 company, in January, February, March -- OK? --

14 ██████ Right.

15 SINGER: -- and something happens -- OK? -- with the foundation
16 or something happens publicly --

17 ██████ Uh...

18 __: D--?

19 SINGER: -- I -- what I don't want is people to bail and then
20 [14:00] they don't pay us. And we've already --

21 ██████ OK.

22 SINGER: -- we've already done all their applications, all
23 their essays, and they decide they're not gonna pay.

24 ██████ Gotcha. I mean, we've been pretty good on

1 collections, with that. We had very few that have
2 gone south, very few.

3 SINGER: Right, bu-but how long did it take, after all the
4 applications and essays were done and we paid all the
5 fees, to get paid back?

6 [REDACTED] Uh, well, uh, last year, because they weren't doi--
7 uh, they weren't done, uh, as quickly as they maybe
8 could have been done... I'm on it. Uh, and I'm on it
9 every, you know, week, uh, to collect that stuff. So
10 tha-that is very small number, compared to, you know,
11 the \$6,000, se-- \$5,000, \$7,000, and 8--you know--
12 thousand-dollar tuition that we bill out. So what I
13 need to know from you and what Mikaela and I have been
14 working on is if, uh... Just for [15:00] the
15 reimbursable, what I would suggest is, OK, we say...
16 And Mikaela's been great. She sent me a list and
17 whatever. OK. So we have \$1,000, k-kind of like a
18 retainer.

19 SINGER: Yes.

20 [REDACTED] Uh...

21 SINGER: Yes.

22 [REDACTED] And... Yeah. So that's what you need to do. And
23 give me a credit card. And if you have -- uh, if it
24 goes over that, I'll bill them right away. If it goes

1 under that, at the end of the year, we'd have to repay
2 them for whatever that wasn't used.

3 SINGER: That's fine. Uh, cool.

4 ████████ OK.

5 SINGER: That's good.

6 ████████ Uh...

7 SINGER: I like that.

8 ████████ Yeah. So that's what I was thinking. I talked to
9 Mikaela last night. And I'm like, "OK, this is the
10 only way." But as far as tuition, uh, we -- I don't
11 think... At least when I wrapped it up last year, uh,
12 there was nobody that owed us tuition. I mean...

13 SINGER: OK. Well --

14 ████████ And the othe-- uh...

15 SINGER: -- h-how many people owe us tuition now?

16 ████████ Well, I'd have to look at the thing, which, I'm --
17 just need to get in the house, right now. I'm waitin'
18 for you, in the car. But, uh, there's a lotta people
19 that owe us. But I've -- as you know, I've been
20 sending, you [16:00] know, reminder --

21 SINGER: Right.

22 ████████ -- after reminder.

23 SINGER: I've seen the...

24 ████████ And I know... Yes. And the people that have said,

1 oh, they didn't get the email... Like the one who
2 said... I sent 3 emails. And I was reticent to, you
3 know -- "OK. I'll -- I'll give you ever-- all 3 of
4 'em." Today I sent the 1, from the person who said
5 they didn't get it. I forget what the name was. But,
6 um, i-if it's -- if it's that... I mean, this is up
7 to you. Because I don't want to push anybody away
8 that, uh... It's up to you. Uh, yeah.

9 SINGER: Yeah, but we're...

10 [REDACTED] Uh, I can...

11 SINGER: Here's the deal. We're already seeing 'em. Right?

12 So I'm already --

13 [REDACTED] Uh, if, uh...

14 SINGER: -- in their home.

15 [REDACTED] Yes!

16 SINGER: So --

17 [REDACTED] Yeah.

18 SINGER: -- so there should no pushback by the family. 'Cause
19 I'll just stop seein' 'em.

20 [REDACTED] That's exactly what I was gonna say. So with your
21 blessing -- uh, and, you know, I can send out an
22 email, you know, "Unless this is paid before your next
23 appointment, you won't have a next appointme--" I
24 mean, I'd try to soften it up some way, but something

1 like that.

2 SINGER: Well, just say that, uh --

3 ██████ Uh...

4 SINGER: -- uh, uh, "We need to get this paid, um, because,
5 [17:00] uh, we have -- uh, there's a potential that
6 we'll have to change Rick's schedule --"

7 ██████ OK.

8 SINGER: "-- to fill in. 'Cause we have other people waiting,
9 to fill into the schedule. And if we're n-- and, if
10 this isn't paid, then, uh, we need to move forward
11 with other -- other families."

12 ██████ Gotcha. So I kind of was feeling that way but, again,
13 needed your OK. So I can do that.

14 SINGER: Yeah.

15 ██████ And just be prepared, 'cause I will probably copy you
16 on every one.

17 SINGER: That's fine. You can. No problem.

18 ██████ Uh...

19 __: Uh...

20 ██████ OK. Gotcha. Uh...

21 SINGER: I just want to --

22 ██████ All right. 'Cause, uh...

23 SINGER: -- I jus-- I am fearful of -- of -- something goes
24 down, something goes wrong, that I want to have as

1 much money already in the company -- and not anybody
2 to make excuses for why they don't have to pay.

3 ██████ Yeah, absolutely, and especially if the deal is they
4 were supposed to pay, you know, when w-- when we start
5 billing, which, we started billing in July, heavy
6 August, uh, September. Um, yeah, absolutely. And I'm
7 just -- if I have your blessing, uh, [18:00] I'll say
8 it. But I don't want to be, uh, the hard-ass, when --
9 you know, they're like, "Well, ██████ said this."
10 'Cause I'll copy you on every one and just say, "Hey,
11 uh, we, uh..."

12 SINGER: Yeah, you can, uh...

13 ██████ OK.

14 SINGER: That's fine.

15 ██████ I will do that.

16 SINGER: OK.

17 ██████ OK. Gotcha. All right, Rick.

18 SINGER: Uh, thanks.

19 ██████ So, uh, we'll talk to you soon. Bye.

20 SINGER: OK. [18:20]

21

22

END OF AUDIO FILE

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DAVID SIDOO et al.,

Defendants.

No. 1:19-cr-10080-NMG

Leave to file granted on
December 23, 2019

**REPLY BRIEF IN SUPPORT OF DEFENDANT JOHN WILSON'S
SUPPLEMENTAL MOTION TO COMPEL PRODUCTION OF
EXCULPATORY EVIDENCE**

I. INTRODUCTION

Brady and the Local Rules impose a solemn, self-enforcing obligation on the government to disclose exculpatory evidence within predefined deadlines. Prosecutors in this District have recently devised a strategy for sidestepping their obligations: stating in “automatic discovery” letters that they are “aware of no information or materials” that are exculpatory within the meaning of the Rules; stonewalling defendants’ specific requests for exculpatory evidence; requiring those defendants to file motions to compel; subsequently disclosing certain exculpatory information without conceding their obligation to have done so; and asking the Court to deem the defendants’ motions moot. Through this series of maneuvers, the prosecutors arrogate to the government the discretion over the scope and timing of its disclosures, deprive defendants of protections to which they are entitled, and elude judicial oversight.

In the current case, automatic discovery of exculpatory evidence was due by May 30, 2019. The government declared at that time that it possessed no exculpatory evidence subject to disclosure. *See* ECF No. 693-1, at 8. The government then rejected the defendants’ specific, enumerated *Brady* requests, reciting platitudes and refusing to identify which requests were actually disputed. *See* ECF Nos. 693-2, 693-3, 693-4, 693-5. Stymied, the defendants filed a

series of five motions to compel. In its oppositions, the government characterized the defendants' requests as "meritless" and "speculation," and claimed to have "scrupulously adhered to its discovery obligations." Opposition 1, 26, 34, 35, 37. As discussed in more detail below, the government's Opposition countered the defendants' measured *Brady* requests with farfetched theories, artful phrasing, and non-sequiturs.

On January 28, 2020—after the original deadline for the defendants' reply briefs—the government delivered to the defendants a six-page, single-spaced letter containing edited snippets from FBI 302 reports. The letter's disclosures are obviously exculpatory. The letter discloses, for example:

- That, according to Wilson's son's high school water polo coach, Wilson's son "was recruited by various colleges" to play water polo, and the coach specifically "talked to coaches at USC about Wilson's son."
- That Wilson's son's teammate "was not surprised that Wilson's son was recruited to USC's water polo team."
- That Singer had no recollection of Wilson knowing "of the inaccuracies in his son's athletic profile."
- And that Steven Masera, the employee of Rick Singer who sent allegedly fraudulent invoices to Wilson's company, "dealt with John Wilson's assistant . . . and does not remember talking to Wilson directly."

The government offers no explanation for its failure to disclose such information until eight months after the automatic-discovery deadline. The government does not suggest that it has only recently obtained the information contained in its letter. It neither admits nor denies that that information is exculpatory.

Ordinarily, courts grant substantial deference to the government's efforts to discharge its discovery obligations. But the government has demonstrated that that ordinary deference would be misplaced here. The prosecutors are unable or unwilling to abide by the Local Rules' timing

requirements. They are unable or unwilling to determine with reasonable fairness whether information in their possession is exculpatory.

To put an end to the government's continuing violation of the defendants' rights, the Court should (a) grant the Motion; (b) find that the specific categories of evidence the defendants seek are exculpatory and discoverable; (c) require the government to produce the complete FBI 302 reports relating to this case; and (d) impose a specific deadline in the near future for the completion of that production.

II. THE SUPPLEMENTAL REQUESTS

The following subsections address the specific categories of evidence that Wilson's supplemental *Brady* Motion (ECF No. 699) requests, and the government's responses to those requests in its Opposition (ECF No. 736).¹ Generally speaking, the Opposition relies on the following diversionary tactics:

- The Opposition focuses heavily on the government's prior production of various documents. But the Constitution requires production of 100% of the *Brady* material in the government's possession, including exculpatory information the government knows from interviews of witnesses (in this case, particularly Singer). The Constitution trumps the Jencks Act, not the reverse.
- The government has adopted artful definitions and farfetched legal theories to claim that the defendants' charitable gifts are bribes. Relying on that premise, the government affects the attitude that such gifts are indefensible under any scenario, ostensibly relieving the government of the obligation to produce evidence that supports a central, commonsensical, and legally relevant defense.
- Singer, the government's key witness, and his family are enmeshed in criminal activity that ranges far beyond the scope of this case. Yet the Government refuses

¹ While the Motion was already pending, the government obtained its most recent indictment, which includes a tax charge against Wilson. Wilson has therefore posed specific tax-related *Brady* requests to the government. Wilson assumes that it would be most efficient from the Court's perspective to adjudicate all of the *Brady* motions in the same series of hearings. Accordingly, if the parties cannot resolve Wilson's tax-related *Brady* requests, Wilson proposes to further supplement the Motion with information and argument relating to those requests.

to disclose the full universe of promises, rewards, and inducements it has given Singer, including the criminal charges that the government is not pursuing and the forfeitable assets it is allowing Singer to keep.

The Court should reject these tactics, as discussed further below, and grant the relief described *supra*.

A. Singer’s Descriptions of His Practices to Parents

The charges that the government has brought require proof that the defendants acted “with bad purpose, either to disobey or disregard the law,” and in a “wrongful, immoral, depraved, or evil” manner. 1st Cir. Pattern Jury Instructions § 4.18.134; *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005). The Motion seeks evidence that Singer assured his clients that their donations were lawful and were welcomed by the recipient institutions. That evidence directly negates the existence of the required element of bad intent. The Motion presents discovery documents showing that Singer offered his clients precisely such assurances, such as his statement to Wilson that the President of Harvard had authorized Singer’s “side door” program and would personally help to implement it.

The government’s excuses for withholding such plainly exculpatory evidence are illusory. The government describes various pieces of evidence it *has* selectively produced (Opposition 35-36), ignoring the fact that its obligations encompass *all* exculpatory evidence in its possession. The government claims that it has not withheld “documentary evidence” based on disagreements about what is exculpatory in this case (Opposition 3-4), obscuring the fact that it is withholding exculpatory non-documentary information (i.e., witness interviews) based on the very same reason.² The government claims that Singer’s statements to any parents other than

² As noted *supra*, evidence that is exculpatory within the meaning of *Brady* and the Local Rules must be produced in accordance with those authorities, even if they also qualify as “witness statements” under the Jencks Act. See *United States v. O’Brien*, No. 12-cr-40026, 2013

Wilson are not exculpatory or material (Opposition 36)—but it is the government that has chosen to accuse the defendants of a “nationwide” conspiracy,³ allegedly encompassing all of the parents charged in this courthouse and many other uncharged parents. Any exculpatory evidence as to any alleged coconspirator is thus exculpatory to Wilson, because it helps to undermine the overall conspiracy theory. Lastly, while the Motion, in plain English, seeks information about “Singer’s representations to clients about the legitimacy of ‘side door’ donations” (Motion 4), the government affects miscomprehension, stating unresponsively that “Singer has never advised investigators that the ‘side door’ was legitimate” (Opposition 35). Information regarding Singer’s representations to clients about the legitimacy of “side door” donations are exculpatory and discoverable.

B. Singer’s Referral Sources

The government offers similar non-sequiturs in response to the Motion’s request for evidence regarding Singer’s efforts to foster referral sources who would support his appearance of legitimacy. The government says that Wilson “knows how he was introduced to Singer” (Opposition 36)—which is not the information the Motion requests. The government says it has produced “voluminous” documents (*id.* at 36-37), as if doing so discharges the government’s obligation regarding any additional evidence. And the government promises future disclosures (*id.* at 37)—presumably including its letter of January 28—but the Local Rules required

U.S. Dist. LEXIS 34774, at *17 (D. Mass. Mar. 13, 2013); *United States v. Owens*, 933 F. Supp. 76, 84 (D. Mass. 1996); *United States v. Snell*, 899 F. Supp. 17, 21 (D. Mass. 1995).

³ See, e.g., Press Release, U.S. Att’y’s Office, Dist. of Mass., Arrests Made in Nationwide College Admissions Scam, <https://www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic> (Mar. 12, 2019).

discovery of exculpatory evidence many months ago. Evidence of Singer's arrangements with his referral sources is exculpatory and discoverable.

C. Colleges' Attitudes Towards Fundraising from Applicants

Evidence already produced, including evidence that the Court has reviewed, demonstrates that USC unapologetically granted preferential treatment in the admissions process to its donors and potential donors. This approach was both legal and consistent with the practices of practically all organizations whose missions depend on fundraising. Indeed, the government has recently disclosed that "Compliance sat in on all meetings" relating to development at USC "because they needed to be looped in."

With respect to Wilson's donation to USC, the government now concedes that Wilson donated money only toward a USC bank account (plus money that Wilson intended for USC but that Singer stole for himself). USC acknowledged its thanks for that gift with a letter from its charitable Trojan Fund. Wilson's payment was a donation by all commonsensical and precedent-based definitions of that word.⁴ Evidence showing that USC's ordinary practices and compliance-department guidance would give Wilson's son an advantage in the admissions process plainly contradicts the government's theory that USC was defrauded into admitting Wilson's son; or that any inaccurate disclosure to USC relating to Wilson's donation or his son's application were "material." Such evidence also may shed light on the states of mind of Wilson

⁴ There is apparently no set of facts that would dissuade the government from calling this payment—to the benefit of USC's water polo team (Opposition 37)—a "bribe." Indeed, after four earlier indictments, the government recently contrived the theory that gifts to "university accounts" are bribes if the gifts were solicited by an employee who "exercised discretion" over those accounts. 4th Super. Ind. ¶¶ 65, 280. The government's new theory would make every donation to the Missionaries of Charity a "bribe" if Mother Theresa personally supported the donation. The government's ability to persuade a grand jury to indict based on this theory does not relax the government's Constitutional obligations.

and other donors, to the extent that USC's actual attitudes were reflected in widespread public perceptions of the university and in Singer's spiel. Similarly, the government's theory that USC was defrauded would be undermined by any evidence that Athletic Department personnel (such as Pat Haden, Ron Orr, Alex Garfio, and others—all of whom the government presumably interviewed) were aware of Wilson's donation and his son's application, or of the role of donations in admissions more generally.

Instead of acknowledging its obvious obligation to produce evidence responsive to this request, the government's Opposition obfuscates. The government cites its production of "e-mails, audio recordings, financial records, [and] other documents" (Opposition 38), as if that production excuses the government from disclosing responsive information from additional sources, including witness interviews. The government relies on USC's assertion that the school collected information about donors "so that they could be tracked" (Opposition 38)—an assertion that the Court has already rejected—to draw an imaginary distinction between the evidence the defendants seek and the information the government possesses. The Court should reject these tactics. Evidence relating to the role of potential donations in the colleges' admission process is exculpatory and discoverable.

D. Singer's Concealment of Misrepresentations to Colleges

The government's case relies heavily on alleged misstatements in applicants' application materials. But the government now indicates that it has learned from Singer that he and his staff introduced falsehoods into application materials without their clients' knowledge. Opposition 38. The government also now concedes that Singer does not recall discussing any inaccuracies in Wilson's son's application materials with Wilson.

Again, instead of acknowledging that it was required to produce such information months ago, the government: irrelevantly lists information that it *has* produced; denies the significance

of information about anyone other than the specific defendant making a request (notwithstanding the government's own allegation of a single, overarching conspiracy); and promises to make additional disclosures. Opposition 38. None of these tactics discharges the government's obligations. Information about Singer's concealment of misstatements about any and all applicants is exculpatory and discoverable.

E. Singer's Embezzlement from His Clients

Discovery evidence proves that Singer embezzled donation money that Wilson and other clients provided to Singer and his foundation—following Singer's instructions—for delivery as donations to USC. That evidence obviously supports the inference that the embezzled parents were Singer's marks, not his compatriots.

Once again, whether the government has already selectively produced certain responsive pieces of evidence makes no difference. And the point obviously is not, as the government knows, whether "Singer's co-conspirators understood all the details of his actions" (Opposition 39). Rather, the defendants are entitled to the evidence in government's possession that tends to *disprove* the allegation that the defendants ever *were* co-conspirators. Complete information regarding Singer's thefts of intended donations is exculpatory and discoverable. Indeed, the fact that Singer was not separately charged with these numerous thefts over the years is another promise, reward, and inducement that the government must disclose.

F. Singer's Obstruction and Government Instructions

The government resists the Motion's request for evidence about Singer's cooperation and obstruction by citing Judge Gorton's statement that "instructions are not discoverable *by virtue of their status as instructions.*" *United States v. Prange*, No. 11-cr-10415-NMG, 2012 U.S. Dist. LEXIS 111045, at *5 (D. Mass. Aug. 7, 2012) (emphasis added). The defendants do not suggest otherwise. Rather, the Motion is consistent with the remainder of the same ruling: "[T]he

Government is obligated to produce, at the appropriate times, those portions of the instructions, if any, that constitute *Brady* or *Giglio* material, especially in the circumstance (if such circumstance exists) in which the cooperator failed to follow his/her given instructions.” *Id.*

In this case, discovery and Singer’s own in-court statements demonstrate that his cooperation produced evidence against innocent individuals, who in Singer’s words “ha[d]n’t done anything wrong.” *United States v. Singer*, No. 19-cr-10078, ECF No. 24, at 29 (statement of Rick Singer) (“I went into the home and told the dad . . . you haven’t done anything wrong yet, so please don’t say anything that would be harmful to you guys because you haven’t done anything . . .”). The government’s instructions relating to that objective “constitute *Brady* or *Giglio* material.” *Prange, supra*. Moreover, the instructions are discoverable particularly given that “the cooperator failed to follow his/her given instructions.” *Id.* The government’s instructions to Singer, its efforts to script arguably incriminating conversations, and Singer’s partial non-compliance with the government’s requests are all exculpatory and discoverable.

G. Promises, Rewards, and Inducements

The government’s refusal to produce promises, rewards, and inducements rests on two disingenuous assertions. To begin with, the government states that it has “made no decisions about which witnesses it will call as part of its case-in-chief” (Opposition 41). The notion that the government has not decided whether to call Singer in any of the indictments in this case is simply not credible—particularly where the government has attacked the defendants publicly for not yet deciding on the documents to be used in their cases-in-chief. Local Rule 116.2(b)(1)(C) requires the government to disclose such inducements for all witnesses it “anticipates” calling. To allow the government to play coy until the time of trial about whether it will call such central witnesses would gut this mainstay of the *Brady* obligation.

The government also implies that its disclosures of promises, rewards, and inducements to Singer may already be complete, because “Singer has, in fact, pled guilty to money laundering and tax fraud.” Opposition 40. It is hard to interpret this statement as anything but an effort to obscure the facts. Singer only pled guilty to tax and money-laundering charges related to the same college-admissions-related behavior that the government is pursuing in this docket. *See Singer*, No. 19-cr-10078, ECF No. 1, at 13-14, 19. The discovery evidence, on the other hand, shows that Singer engaged in separate tax-fraud and money-laundering activities, relating to his brother’s gambling-related business and his family members’⁵ compensation through sham appearances on Singer’s payrolls. The defendants are entitled to documents and information about any promises, rewards, and inducements the government has made regarding the consequences of those crimes for either Singer or his family members. Failure to disclose that information would be reversible error. *See LaCaze v. La. Corr. Inst. for Women*, 645 F.3d 728, 731-33 (5th Cir. 2011) (prosecution violated *Brady*, requiring habeas relief, by failing to disclose “that it had assured [a witness] that his son would not be prosecuted”); *Harris v. Lafler*, 553 F.3d 1028 (6th Cir. 2009) (same where prosecution did not disclose a promise to a witness “that his girlfriend would be released if [police] were satisfied with his statement”).

For essentially the same reasons, the government’s disclosure of Singer’s publicly-filed plea agreement is not sufficient. *Singer*, No. 19-cr-10078, ECF No. 2. That agreement concerns the offenses with which the government has charged Singer, and the assets he has agreed to forfeit. It says nothing about the offenses that the government has decided not to prosecute, or about any assets that the government has agreed to refrain from seizing. For instance, although

⁵ The Motion misidentified Singer’s sister as his father’s caretaker. *See* Motion Ex. 13.

the government required Singer to agree that he would deliver, upon request, a sworn disclosure of all current assets, *id.* at 8, the government has neither produced any such disclosure nor disclosed that it has decided it does not want one. The defendants are entitled to know about the government's promises, rewards, and inducements in connection with Singer's uncharged offenses and unforfeited assets. *See Ouimette v. Moran*, 942 F.2d 1, 6 (1st Cir. 1991) (affirming habeas relief under *Brady* where the prosecution failed to disclose, among other things, unprosecuted charges against a witness that "[t]he prosecutor agreed to help the witness dispose of").

If the Government takes the position that it has not yet told Singer whether he and his family members will be charged for these other crimes, and whether they will have to forfeit assets related to such crimes, then it should say so directly. The failure to take action is a promise, reward, and inducement. *See id.*

III. CONCLUSION

For the foregoing reasons and those described in the Motion, the Court should grant the Motion, find that the specific categories of evidence the defendants seek are exculpatory and discoverable, require the government to produce the complete FBI 302 reports relating to this case, and impose a specific deadline in the near future for the completion of that production.⁶

⁶ As they did with respect to the original Motion, defendants David Sidoo, Gregory Colburn, Amy Colburn, Gamal Abdelaziz, Diane Blake, Todd Blake, Joey Chen, Massimo Giannulli, Elisabeth Kimmel, Lori Loughlin, Homayoun Zadeh, Robert Zangrillo, and Marci Palatella join in this Reply. The government opposes the Motion, in part, on the basis that it has reviewed and produced certain evidence regarding Wilson. *See, e.g.*, Opposition 35 ("The government has also reviewed its reports of interviews with Singer for any statement suggesting that he advised Wilson that this scheme was legitimate"); *id.* at 36 ("[T]he government has produced Singer's actual descriptions of the side door to Wilson."). In doing so, the government ignores the fact that the Motion was joined by thirteen additional defendants and demands the production of exculpatory evidence as to all defendants.

Respectfully submitted:

John Wilson,

By his counsel,

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And the defendants listed *supra* note 6, by their respective counsel.

CERTIFICATE OF SERVICE

I hereby certify that the above document is being filed on the date appearing in the header through the ECF system, which will send true copies to the attorneys of record.

/s/ Michael Kendall
Michael Kendall

Exhibit C

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

DAVID SIDOO et al.,

Defendants.

No. 1:19-cr-10080-NMG

**DEFENDANT JOHN WILSON'S CONSOLIDATED MEMORANDUM OF
LAW IN SUPPORT OF HIS MOTIONS TO SEVER,
TO DISMISS, AND TO STRIKE**

I. INTRODUCTION

Defendant John Wilson stands out among the parents charged in connection with this case, because the evidence at his trial will be so different. By shoe-horning his different facts into the same indictment, the government cobbled together a mishmash of a prosecution that conflicts with binding case law. The government's joinder of Wilson with other defendants is both inefficient and unfairly prejudicial.

Wilson's son was a star-high school athlete, who became a contributing member of USC's renowned water polo team. The government recognizes that Wilson's son honestly earned grades and scores that met USC's admission standards (even for non-athlete applicants). Wilson's donations went only to ordinary USC bank accounts, not to any individual recipient. Indeed, when Wilson's son enrolled as a USC freshman—in 2014—William "Rick" Singer had not yet even met Donna Heinel, and she played no role in Wilson's son's admission.

Four and a half years later, in late 2018, Rick Singer was working as a government cooperator. At the government's direction, Singer advised Wilson to make advance donations to Singer's charity in connection with the future college careers of Wilson's daughters. The daughters were still first-term high-school juniors, whose college applications would not be due

until 2020. Based on those conversations between Singer and Wilson (the “2018 Conduct”), the Fourth Superseding Indictment (the “Indictment”) piles on five substantive fraud and bribery charges against Wilson alone (the “Substantive Counts”).

Wilson is joining the motions to dismiss that the defendants are filing jointly. He submits this memorandum in support of the additional motions that he makes individually, based on his unique factual situation. Wilson asks the Court:

- (a) To sever Wilson’s trial from those of his codefendants, for reasons of both fairness and efficiency, and try Wilson alone.
- (b) To dismiss the Substantive Counts, namely Counts Six, Eight, Nine, Eleven, and Twelve, as legally deficient and factually impossible.
- (c) To strike as surplusage the allegations concerning the 2018 Conduct in paragraphs 238-44 of the Indictment.

The Court should grant these motions for the reasons explained below.

II. BACKGROUND¹

A. USC 2013-2014

Singer ran a highly successful college consulting business that provided conventional services such as tutoring, editing essays, and helping applicants to select and apply for appropriate colleges. Wilson hired Singer at two separate junctures to provide help and advice in connection with the Wilson children’s college applications. Indictment ¶ 225. The first

¹ The facts recited in this brief are alleged in the indictment, not materially disputed, or both. See *United States v. Brissette*, 919 F.3d 670, 676 (1st Cir. 2019) (“[A] district court may consider a pretrial motion to dismiss an indictment where the government does not dispute the ability of the court to reach the motion and . . . does not dispute the pertinent facts.” (quoting *United States v. Musso*, 914 F.3d 26, 29-30 (1st Cir. 2019))).

engagement concerned Wilson's son, who applied to college in the fall of 2013. *Id.* Wilson's son was a successful swimmer and a top-caliber water polo player. He won individual awards and played on top-tier, nationally competitive club teams. He was selected for a United States Olympic Development Program Training Team, and for one of the California Coast Section All-Star Teams. Exs. 1, 2. Several colleges, including Division I schools, were interested in recruiting him for their water polo or swim teams; and his high-school coach spoke to the USC water polo coaching staff in support of his candidacy for the USC team. Ex. 3, at 1. Below is a photo of the son in high-school water polo action:



Wilson's son was also a good student—well within the range of USC's admission pool in terms of both GPA and board scores, all of which he attained (the government concedes) fairly and honestly.

Singer told Wilson that USC Water Polo was one of several college programs that welcome, and indeed rely on, donations from the families of applicants who are qualified to join the team as non-scholarship “walk-ons.” Singer said that the program provides additional support in the application process to applicants whose families pledge such gifts, which Singer called “side door” donations. Singer emphasized—in unrecorded calls that mirror his statements to many other parents—that the “side door” fundraising method is an equally legitimate analog of the “back door,” meaning (in Singer’s lexicon) larger donations to the university-wide development office, resulting in more potent and long-lasting solicitude toward the donor’s family.

The allegations against the other USC-connected defendants occurred years later, when Singer’s contact at USC’s athletics department was USC Senior Associate Athletic Director Donna Heinel. Indictment ¶¶ 119, 129, 149, 178, 208, 221, 247, 274. But when Wilson’s son was applying to colleges—in 2013—Singer had not yet even met Heinel; Athletic Director Pat Haden made the introduction almost two years later. *See* Ex. 4.

Singer did know USC water polo coach Jovan Vavic, Indictment ¶ 228, whose teams were legendary for their top-of-the-nation results, grueling training regimens, and deep rosters. Documents from both the government and USC disclose that Wilson’s son was one in a long line of walk-on water polo players who came to USC with both water polo talent and a family willing to support the program financially. USC’s practice of recruiting such applicants, soliciting donations from their families, and supporting their candidacies dated back to at least 2007, with

the backing of the top of the Athletic Department hierarchy. *See* Exs. 5, 6²; ECF Nos. 546-1 to 546-10.

Wilson agreed to donate \$200,000 to USC. Indictment ¶¶ 236-37. Though it is alleged that Singer relayed payments originating from certain parents to the pockets of college personnel, this did *not* occur in Wilson’s case: Singer persuaded Wilson to route his donation through Singer’s charity, the Key Worldwide Foundation (KWF), and through his for-profit consulting business. Singer forwarded \$100,000 to USC in Wilson’s name, whereupon USC issued a letter thanking Wilson for supporting “Men’s Water Polo,” and invited Wilson to become one of USC’s “Ambassadors.” Singer stole the other \$100,000 for himself. Indictment ¶¶ 237, 343, 344; Exs. 7, 8. Numerous members of USC’s athletics and development staff—including Haden, the Athletic Director—knew that Wilson had made a donation through Singer, though obviously they did not know about Singer’s theft. Exs. 9, 10.

USC admitted Wilson’s son in March 2014. Indictment ¶¶ 235-36. He joined the USC water polo team as planned. A government witness verified the content of Wilson’s son’s profile page on the USC team roster. Ex. 11; Ex. 3, at 5. Wilson’s son also appears in the team’s annual photo, below (rear left):

² Wilson will file Exhibit 6, either under seal or in the public record, following the Court’s resolution of his pending Motion for Leave to File (ECF No. 989).



Wilson's son left the team after completing the full 2014 season and playoffs, because of multiple concussions he had suffered in and out of the water polo pool over several years. Ex. 12. He graduated USC with good grades.³

B. Conversations in 2018-2019

The Indictment makes no allegations relating to Wilson during the four and a half years between April 2014, Indictment ¶ 237, and September 2018, *id.* ¶ 238.

When they reconnected, Wilson and Singer discussed the college plans of Wilsons' twin daughters. The daughters were first-term high school juniors at the time. They had strong academic backgrounds and serious academic ambitions. Their early test scores were good, with the potential to improve. Ex. 13, at 2, 7. At this early stage of the process, both daughters

³ Wilson expects that the Government may claim that Singer "embellished" the athletic accomplishments of Wilson's son presented to USC's admissions subcommittee. Indictment ¶¶ 229, 231-34. A closer examination of the evidence shows that Wilson took no part in any deceitful conduct in which Singer may have engaged.

wanted to take the same rigorous college engineering major, with strong doses of math and science. *Id.* at 5.

Wilson and Singer had one discussion before Singer began cooperating with the government. During that conversation, Singer described two levels of preparation services he could offer, at different prices. *Id.* at 2-3. When the discussion turned to “side door” donations, Singer again confirmed that such donations were a legitimate way of improving the odds of acceptance. Singer stated, in fact, that the President of Harvard had just endorsed such donations:

[T]hat’s why I’m going to Harvard next Friday, because the president wants to do a deal with me because he found out that I’ve already got 4 already in without his help. So he’s like, “How about—why would you go to somebody else if you could come to me?”

Id. at 8.⁴ Singer also explained that side door donations were now common: he was planning “to do over 730 of these side doors this year,” at “50 or 60” schools. *Id.* at 10.

Singer reiterated the legitimacy and commonness of the side-door-donation program in a subsequent video call, using the Apple FaceTime application, with Wilson and his family. During that lengthy call, Singer also noted that colleges now accepted “side door” donations from applicants who could join athletic teams as managers, or in other support roles, even if (unlike Wilson’s son) they were not strong enough athletes to compete at the varsity level. *Cf.* Indictment ¶¶ 238-39 (describing a subsequent call in which Singer stated that an applicant “could be on [the] team” even though she “may not be up to the [usual] level,” and that Wilson’s daughters “don’t have to play”). Although Singer told the government that he was going to

⁴ Wilson now assumes that Singer’s claim was false, i.e., that the President of Harvard had no such conversations with Singer.

make the FaceTime call to the Wilson family from the FBI's offices in Sacramento, and although he indeed did so—with six agents and prosecutors from Boston present and waiting for at least 48 minutes—the government apparently decided to neither record nor monitor that call. The agents' notes and reports do not even mention that Singer made this FaceTime call, never mind memorialize Singer's exculpatory sales pitch.

The Court is aware of the iPhone notes in which Singer described his “abrasive” conversations with government agents, who required Singer to “bend the truth” on recorded telephone calls. Ex. 14. In essence, even though Singer had told clients that their “money was going . . . to the program . . . and that it was a donation,” the government instructed Singer to describe such donations as “payments” going to “the coach.” *Id.* Also Singer expressed reluctance to “entrap” defendants, *id.*, his subsequent calls to Wilson followed the government's script—introducing ambiguous, prosecution-friendly phrases into the dialogue that contradicted Singer's prior representations and arguably obscured Wilson's innocent intent.

For example, in a call on September 29, 2018, Wilson repeatedly indicated that he was contemplating legitimate donations to universities, while Singer injected references to payments to “the coach”:

WILSON: . . . I remember last time I did this, you didn't really make any money . . . [Y]ou make *a donation to the school*, and that's it? . . .

SINGER: . . . [W]hat I'll do is I'll split the money potentially *to the coach* or other . . . parties that are [at] that school that need the money . . . Or it may go right *to the coach* . . .

WILSON . . . [S]o you [i.e., a donor such as Wilson] don't actually get credit for *a donation to the school*, or get hounded for that.

Ex. 15, at 2-3 (of 4 pages) (emphasis added). Singer also bolstered his credibility as Harvard-affiliated himself by stating that he was reading and evaluating college applications on Harvard College's behalf. *Id.* at 4 (of 4 pages).

Similarly, an October 15, 2018 consensual call between Singer and Wilson included the following exchange:

SINGER: So I know when . . . we get the girls in it's a done deal and you're going to take care of your part of it, you're gonna make the payments *to the schools* and the—*to the coaches*. And that's what I need . . . so I'm not worried about that.

WILSON: Uh, uh, help me understand the logistics? I thought I make the payment to you and you made the payment *to the school*.

SINGER: Correct. That's correct.

WILSON: Oh you said that *I* make the payments *to the schools*.

Ex. 16, at 2 (of 4 pages) (first, second, third, and fifth emphases added). Whereas Singer used the phrase “payments . . . to the coaches”—word-for-word the phrase he denounced in his iPhone notes as false—Wilson's reactions show that he continued to believe Singer's earlier explanation, i.e., that Wilson would be donating “to the school.”

One final illustration of the dynamic of these conversations is a November 5, 2018 call. There, Singer occasionally reinforced to Wilson the impression that the plan was a legitimate donation; he commented, for example, that “women's lacrosse is always looking for help. Women's fencing, looking for help.” Ex. 17, at 3 (of 4 pages). But as the government had demanded, Singer also three times injected short, ambiguous, misleading comments about paying a “coach.” *See id.* at 2 (of 4 pages) (“I have to pay the coach”); *id.* (“we'll pay the coach”); *id.* at 3 (of 4 pages) (“we pay the coach, we get it done”). Wilson remained oblivious to this ploy, conditioned by his prior contribution to USC, by his earlier conversations with Singer, and by their recent FaceTime discussion. Wilson thus continued to understand “the coach” as a shorthand for the coach's program. He asked, for example, “Does he [i.e., the sailing coach] care

about budget this year versus next year?” *Id.* at 4 (of 4 pages). (Obviously, while sailing programs have annual budgets, bribe recipients do not.)⁵

As the government’s investigation progressed, Singer urged Wilson to make an early “deposit” on his donations. Singer and Wilson’s discussions focused primarily on Harvard and Stanford, but the Wilson daughters were more than a year away from beginning the college-application process, and (naturally) had not even visited college campuses, taken the requisite standardized tests, or finalized their college choices. Ex. 16, at 3-4 (of 4 pages). Wilson eventually made the payments Singer proposed, making two wire transfers of \$500,000 each from his S-Corp to KWF. Indictment ¶¶ 241, 244.

C. Tax Return 2014

In the fifth and current iteration of the indictment, the government added a charge against Wilson of making a false statement on a tax return (26 U.S.C. § 7206). The charge relates to Wilson’s 2014 tax return. That return took deductions for the \$200,000 of donations Wilson had provided—for USC—to Singer, and an additional \$20,000 Wilson had paid to Singer himself. Indictment ¶ 365. Wilson’s bookkeeper made the arrangements concerning Singer’s invoices to Wilson and Wilson’s tax filings. Indictment ¶ 358-62. Wilson’s returns were prepared by two accountants, both of whom communicated about the returns with Wilson’s bookkeeper, not with Wilson himself. Ex. 3, at 3. Wilson is the only defendant going to trial on a tax charge.

⁵ In his scripted conversations with Wilson, Singer carefully refrained from using unambiguous language that would have alerted Wilson to the misleading record Singer was attempting to create. Singer did not, for instance, say to Wilson—as he did to another, uncharged parent—that the “coach . . . wants me to wire him the \$100,000 bribe.” Ex. 18, at 2 (of 4 pages).

III. MOTION TO SEVER

The Court should sever Wilson's trial from those of his codefendants and try Wilson alone. Wilson estimates that his severed trial would take 9 to 11 trial days to get to jury deliberations. Given the nature of the charged conduct and offenses, this severance would be both just and efficient.

Severance is warranted where there is "a serious risk that a joint trial would compromise a specific trial right." *Zafiro v. United States*, 506 U.S. 534, 539 (1993). "Such a risk might occur when evidence that the jury should not consider against a defendant . . . is admitted against a codefendant." *Id.* "When many defendants are tried together in a complex case and they have markedly different degrees of culpability, this risk of prejudice is heightened." *Id.* Even absent a risk to a "specific trial right," the District Court has the "power to order separate trials ' . . . as an aspect of its inherent right and duty to manage its own calendar.'" *United States v. Leichter*, 160 F.3d 33, 35 (1st Cir. 1998) (quoting *United States v. Gay*, 567 F.2d 916, 919 (9th Cir. 1978)).

The defendants are jointly filing motions⁶ demonstrating that the government improperly joined all defendants into conspiracy charges that violate *Kotteakos v. United States*, 328 U.S. 750 (1946). Each of the charged conspiracies alleges "no connection . . . between [the defendants] . . . other than that [Singer was] the instrument in each instance." *Id.* at 754-55. These archetypal hub-and-spoke conspiracies lack any "rim" connecting the parents to each

⁶ Motion to Dismiss Pursuant to Federal Rules of Criminal Procedure 8 and 12(b)(3)(B)(i), (iv), and (v) (to be filed by April 1, 2020); Motion to Sever Pursuant to Federal Rules of Criminal Procedure 12(B)(3)(D) and 14 (same).

other. The government does not even attempt to connect Wilson to any of his parent codefendants.

The problems of a joint trial are magnified because the facts and charges concerning Wilson are so different from those concerning his codefendants. These discrepancies mean (a) that a joint trial would cause incurable prejudice to Wilson, but also (b) that a joint trial of Wilson would not yield any efficiency gains. Three key aspects of Wilson's case yield this conclusion.

First, the government has consistently described this case as one about “fake athletes” gaining admissions with no true athletic prospects. *See, e.g.*, Feb. 27, 2020 Hr'g Tr. 16, 18, (“these were fake athletes”; “You pay the money. You get in as a fake athlete.”; “USC . . . does not have a legitimate admissions process for fake rowers, fake football players, fake pole vaulters, or fake anything”). That depiction is not necessarily accurate with regard to *any* defendants' facts or beliefs. But Wilson's son also was, in fact, truly qualified to join USC's athletic team in his chosen sport, and indeed joined the team as planned, *see supra* p. 5; Wilson appears to be the only defendant in this prosecution whose child actually participated as an athlete on his college's team. Likely for that reason, Singer—well into his government cooperation—wrote an iPhone note that included Wilson in a compilation of ultimately-uncharged individuals and duplicate payments, stating:

John Wilson . . . donation to USC program for real polo player.

Ex. 14, at 2. Including Wilson at a trial in which the government will continue to beat the “fake athlete” drum would thus be particularly unfair to Wilson. And on the other side of the scale, witnesses and evidence about Wilson's son's water polo career are likely to be necessary at Wilson's trial, but would be entirely irrelevant to the trials of his codefendants. Indeed, the government has already interviewed multiple witnesses solely to explore this topic.

Second, this case is charged primarily as one involving “bribery,” whether under 18 U.S.C. § 666 or pursuant to the “bribes or kickbacks” requirement of *Skilling v. United States*, 561 U.S. 358 (2010). The government has indicated that it will try to show that Singer directed money to the pockets of Donna Heinel and other individuals. But in Wilson’s case, there is no dispute that not a single dollar of the payments alleged in the Indictment went to any USC-related individual. USC received a \$100,000 donation; Singer stole the other \$100,000. A focus on “bribery” at trial would only mislead the jury regarding Wilson’s case. Moreover, the entire portion of the government’s case concerning Heinel’s conduct is irrelevant to the Wilson prosecution, whereas evidence concerning Singer’s arrangements with Coach Vavic is irrelevant to the cases of Wilson’s codefendants. *See United States v. Buchanan*, 930 F. Supp. 657, 668 (D. Mass. 1996) (“Where . . . the overlap between the . . . schemes . . . seems slight, the concerns of judicial economy balance lightly against the dangers of jury confusion . . .”).

Third, in its zeal to build pressure on Massachusetts-based Wilson, the government has leveled numerous charges against him that have no analogues in the cases against other parents. Wilson is the only defendant charged in a total of nine counts. He is the only one facing substantive federal-program-bribery charges, and the only one facing a tax charge. The Substantive Counts against Wilson arise from recorded conversations made during Singer’s cooperation, and will require intensive exegesis that is irrelevant to the other defendants’ cases.

Joining Wilson’s trial to any other defendant’s trial accomplishes few efficiencies. Most of the documents, recordings, and witnesses relating to Wilson are not relevant to the other defendants, and vice versa. The government has categorized more than a dozen recorded calls between Singer and Wilson as “pertinent,” whereas at most 2-4 recordings concern each other defendant. Evidence uniquely relevant to Wilson, including evidence about his son’s water polo

credentials, water polo career, and USC application could easily involve half a dozen witnesses irrelevant to every other defendant. For the tax charge alone, Wilson and the government are likely to call at least five witnesses, including Wilson's two tax preparers, Wilson's bookkeeper, an IRS Revenue Agent, and a possible defense expert. Even the Singer employees who worked with Singer in 2014, and are thus relevant to Wilson's son's application, are different from the employees who worked with the children of the other defendants. In total, there are likely to be 10 or more fact witnesses relevant to Wilson but irrelevant to every other defendant. And at Wilson's trial, the Court will need to instruct the jury on three substantive wire-fraud charges, two substantive federal-program-bribery counts, and the charge of making a false statement on a tax return—all of which are irrelevant to the other defendants. It is consequently likely that a joint trial will devote at least five to six days to evidence and legal issues relevant to Wilson and no other defendant.⁷

⁷ For essentially the same reasons presented in this memorandum, joining Wilson for trial with any grouping of defendants other than the grouping the Court has currently adopted would cause even greater unfairness and inefficiency. There is little overlap between Wilson's case and those of defendants (in the second trial grouping) who are charged with conduct other than, or in addition to, USC donations.

The following chart summarizes the foregoing factors:

Argument/evidence/topic	Role in other defendants' case	Role in Wilson's case
Applicants who did not join college teams ("fake athletes")	Likely	Irrelevant and unfairly prejudicial
Money provided to individuals ("bribes")	Likely (for some defendants)	Irrelevant and unfairly prejudicial
Donna Heinel's conduct (multiple witnesses)	Necessary	Irrelevant and unfairly prejudicial
Jovan Vavic's conduct (multiple witnesses)	Irrelevant and unfairly prejudicial	Necessary
Wilson's son's athletic career (multiple witnesses)	Irrelevant and unfairly prejudicial	Necessary
Wilson's tax returns (multiple witnesses)	Irrelevant and unfairly prejudicial	Necessary
Jury instructions on the substantive wire-fraud and federal-program-bribery counts arising from the 2018 Conduct	Irrelevant and unnecessarily complicating	Necessary (if not dismissed)
Jury instructions on making a false statement in a tax return	Irrelevant and unnecessarily complicating	Necessary

A separate trial of Wilson would thus entail benefits both of fairness and of efficiency.

The Court should exercise sever Wilson's trial and try Wilson alone.

IV. MOTIONS TO DISMISS

The government has leveled more charges against Wilson than against any other defendant, seizing on the fact that Wilson is the only defendant residing in Massachusetts, and thus adding multiple substantive charges that would plainly lack venue against other defendants.

The Indictment contains three conspiracy charges that join Wilson and other defendants, namely Counts One, Two, and Three. All three of these conspiracy charges are subject to dismissal for reasons that the defendants are describing in separate, joint motions.⁸

The five Substantive Counts arise from the 2018 Conduct, namely Wilson's communications with Singer beginning in the fall of 2018.⁹ The Substantive Counts are subject to dismissal for two sets of reasons. First, they each suffer from the deficiencies that, as the defendants explain in separate motions, defeat the Indictment's conspiracy counts. Second, these counts charge *substantive, completed* offenses that, because of Singer's cooperation with the government, were factually impossible.

⁸ These joint motions, to be filed by April 1, 2020, are:

- Motion to Dismiss, or in the Alternative to Sever, Pursuant to Federal Rules of Criminal Procedure 8, 12(b)(3)(B)(i), (iv), and (v), 12(b)(3)(D), and 14 (explaining that Counts One, Two, and Three charge rimless hub-and-spokes conspiracies).
- Motion to Dismiss Count One Insofar as It Alleges Conspiracy to Defraud Universities of Property (explaining that admissions "slots" are not a form of property recognized by the federal fraud offenses).
- Motion to Dismiss (1) So Much of Count One as Alleges Conspiracy to Commit Honest Services Fraud Against the University of Southern California and (2) Count Two Alleging Conspiracy to Commit Federal Programs Bribery (explaining that donations to universities are not "bribes" within the meaning of the honest-services and federal-program-bribery statutes).
- Motion to Dismiss the Money Laundering Conspiracy (Count III) (explaining that the monies alleged to have been laundered were not the proceeds of any specified unlawful activity).
- Motion to Dismiss for Lack of Venue (relevant to Wilson as far as Count Two).

⁹ The prosecutorial misconduct that gave rise to the evidence concerning the 2018 Conduct is discussed in Defendants' Motion to Dismiss Indictment with Prejudice or, in the Alternative, for Suppression of Evidence Based on Governmental Misconduct and for Discovery and an Evidentiary Hearing (ECF No. 971).

A. The Substantive Counts Share the Deficiencies of the Indictment’s Wire-Fraud and Bribery Theories

Each of the Substantive Counts alleges either wire fraud, 18 U.S.C. § 1343, or federal program bribery, 18 U.S.C. § 666, as follows:

- Counts Six and Nine charge wire fraud based on the two wire transfers, of \$500,000 each, from Wilson’s business to KWF.
- Count Eight charges wire fraud based on a telephone call between Wilson and Singer on October 27, 2018.
- Counts Eleven and Twelve charge federal program bribery based on the same two \$500,000 wire transfers from Wilson’s business to KWF.

The Substantive Counts rely on the same theories of fraud and bribery that undergird the Indictment’s charges of conspiracy to commit wire fraud (Count One) and conspiracy to commit federal program bribery (Count Two). As a result, the deficiencies that afflict the conspiracy counts (explained in separate motions) apply equally to the substantive counts against Wilson.

The three substantive wire fraud counts—Counts Six, Eight, and Nine—allege fraud of “money and property,” as well as fraud of “honest services” through “bribes and kickbacks.” Indictment ¶ 376. The *money and property* at issue are “admission to the Universities.” *Id.* The theory that admissions “slots” are property is also the basis of the “money and property” component of the conspiracy charged in Count One. But as the defendants explain in a separate, joint motion,¹⁰ admissions slots are not a “traditional concept[] of property” recognized by the fraud offenses. *Cleveland v. United States*, 531 U.S. 12, 24 (2000). This problem defeats the “money and property” component of Counts Six, Eight, and Nine.

¹⁰ Motion to Dismiss Count One Insofar as It Alleges Conspiracy to Defraud Universities of Property (to be filed by April 1, 2020).

The “bribes and kickbacks” alleged in Counts Six, Eight, and Nine are donations to university bank accounts over which (according to the government) specific university employees exercised discretion. Indictment ¶¶ 65. These same donations are also the “bribes” alleged as the basis for the federal-program bribery charged in Counts Eleven and Twelve. Indictment ¶¶ 280, 378.¹¹ And the same legal theory—that such donations are “bribes”—serves as the basis of Count One’s honest-services component, and of Count Two (the § 666 conspiracy). But as the defendants explain in a second joint motion,¹² that theory fails: a donation to a person’s employer, in this case a university, is not the type of “private favor” that constitutes a bribe within the meaning of *Skilling* and § 666. This flaw defeats (a) the “honest services” component of Counts Six, Eight, and Nine; and (b) Counts Eleven and Twelve in their entirety.

Together, all five Substantive Counts fail to state offenses as a matter of law.

B. The Substantive Counts Allege Factually Impossible Crimes

In addition to the grounds raised in the joint motions to challenge the conspiracy counts, the Substantive Counts are also untenable because Singer’s cooperation with the government made the charged substantive offenses factually impossible. “Factual impossibility refers to those situations in which, unknown to the defendant, the consummation of the intended criminal act is physically impossible.” *United States v. Luttrell*, 889 F.2d 806, 810 (9th Cir. 1989). A

¹¹ See also Feb. 27, 2020 Hr’g Tr. 16 (“[T]he payments were going to the program, not the coach . . . Judge, that’s our theory of the case that we’ve been proceeding on for the entirety of this case. . . . The parents were told that the money was going to the program and this was still a bribe”).

¹² Motion to Dismiss (1) So Much of Count One as Alleges Conspiracy to Commit Honest Services Fraud Against the University of Southern California and (2) Count Two Alleging Conspiracy to Commit Federal Programs Bribery (to be filed by April 1, 2020).

close examination of applicable precedents shows that only *inchoate* charges, such as conspiracy, can survive factual impossibility problems; and that they can do so precisely because of their inchoate nature.

The First Circuit’s discussion in *United States v. Zhen Zhou Wu* illustrates the point:

[A] defendant can be *convicted of conspiracy* to steal a trade secret even if the documents he sought to steal did not in fact contain trade secrets. Similarly, a defendant can be *convicted of conspiracy* to distribute cocaine and narcotics even though, unbeknownst to him, the substances he was distributing turned out to be innocuous.

711 F.3d 1, 25 (1st Cir. 2013) (emphasis added, citations omitted). The specific nature and evils of conspiracy are the reasons why that offense embraces impossible agreements:

The conspiracy poses a “threat to the public” over and above the threat of the commission of the relevant substantive crime—both because the “combination in crime makes more likely the commission of [other] crimes” and because it “decreases the probability that the individuals involved will depart from their path of criminality.” Where police have frustrated a conspiracy’s specific objective . . . these *special conspiracy-related dangers* remain.

United States v. Jimenez Recio, 537 U.S. 270, 274-75 (2003) (quoting *Callanan v. United States*, 364 U.S. 587, 593-94 (1961)) (emphasis added, first alteration in original). It is thus specifically the conspiracy offense that remains viable where “certain acts essential to the conspiracy’s success are to be carried out by individuals who turn out to be government agents.” *United States v. Giry*, 818 F.2d 120, 126 (1st Cir. 1987). The following examples illustrate.

In *United States v. Petit*, 841 F.2d 1546 (11th Cir. 1988), the defendants were charged with conspiring to receive stolen electronic equipment. The charges resulted from an FBI sting operation. The defendants argued “that the electronic equipment . . . had not been stolen but rather had been borrowed by the government with the [owner’s] permission.” *Id.* at 1549. The Eleventh Circuit upheld the *conspiracy* charge, while recognizing that the defendants “could not have been convicted of the substantive offense of possessing stolen merchandise.” *Id.*; *see also*

United States v. Sieger, No. 84-cr-158, 1985 U.S. Dist. LEXIS 20569, at *20 (S.D.N.Y. Apr. 19, 1985) (where “blank tickets were . . . supplied by the company in aid of law enforcement efforts,” the government properly “charge[d] defendants with conspiracy, not the substantive offense”).

Likewise, in *United States v. Jannotti*, 673 F.2d 578 (3d Cir. 1982), a government agent offered a defendant a bribe in connection with a property-development project. “[T]here never was any such planned project. The [developers], their plans, and their money were all entirely fictitious.” *Id.* at 590. The defendants were charged both with substantive Hobbs Act offenses and with conspiracy to violate the Hobbs Act. The Third Circuit addressed “the significant distinction” between the two types of charges. *Id.* at 591. A conspiracy requires only “an agreement . . . to commit criminal acts,” and therefore it is “irrelevant that the ends of the conspiracy were from the very inception of the agreement objectively unattainable.” *Id.* On the other hand, the District Court was correct to have “dismissed the *substantive* Hobbs Act counts of the indictment on the ground that there was no possibility that the bribe payments could actually have affected commerce.” *Id.* (emphasis added).¹³

The Substantive Counts arise from plans, relating to Wilson’s daughters, that Singer proposed as part of his government cooperation. Those plans “were all entirely fictitious.” *Jannotti*, 673 F.2d at 590. Singer was neither taking action to advance the admission of Wilson’s daughters nor preparing to do so; he was simply reciting government-written scripts. Singer falsely *told* Wilson that he was making arrangements with a “Senior Women’s Administrator” at

¹³ Accordingly, while the First Circuit Pattern Jury Instructions state that “factual impossibility” is not a defense to “the charge of attempt” (§ 4.18.00 cmt.4), and that, with regard to conspiracy, “[i]mpossibility is not a defense” (§ 4.18.371(a) cmt.8), no such guidance applies to substantive offenses.

Harvard, and with the sailing coach at Stanford—but the government does not allege that he was actually doing so. Indeed, the “Senior Women’s Administrator” did not even exist (just as Singer had no role in Harvard’s admissions process).

The essences and objectives of the Substantive Counts were thus impossible. The wire-fraud counts require the existence of “a scheme to defraud,” 1st Cir. Pattern Jury Instructions § 4.18.1343; *United States v. Cassiere*, 4 F.3d 1006 (1st Cir. 1993), but the scheme described in the Indictment was a government-manufactured mirage. Similarly, federal program bribery requires the existence of an “agent . . . of an organization” intended to receive a thing of value, and of a “business, transaction, or series of transactions . . . involving anything of value of \$5,000 or more,” 18 U.S.C. § 666(a)(2); but Singer’s descriptions of university “agents” poised to receive things of value were fictional, and there was no \$5,000 “transaction” at stake. The Substantive Counts disintegrate into nothing, and fail on impossibility grounds.

V. MOTION TO STRIKE

The Indictment also characterizes the 2018 Conduct as acts in furtherance of the wire-fraud conspiracy charged in Count One. Indictment ¶¶ 238-44. Wilson asks the Court to strike those allegations because they do not support the conspiracy charge, and are therefore “surplusage.” *See* Fed. R. Crim. P. 7(d).

For the reasons described in the preceding section, conspiracy charges can be viable even where the substantive offense is factually impossible. But conspiracy requires “at least two conspirators,” and “government agents do not count.” 1st Cir. Pattern Jury Instructions § 4.18.371(a) cmt.10; *Giry*, 818 F.2d at 126. Thus, “a conspiracy may not be between one individual and a government agent.” *United States v. Rivera-Ruperto*, 884 F.3d 25, 32 (1st Cir. 2018) (citing *United States v. Portela*, 167 F.3d 687, 699-700 (1st Cir. 1999)). The allegations concerning the 2018 Conduct fail this requirement.

As all defendants explain in separate, joint motions,¹⁴ the Indictment seeks improperly to combine numerous, independent agreements into a single conspiracy in violation of *Kotteakos*. Singer's two engagements with the Wilson family were likewise (at most) two independent agreements.

“[A] conspiracy generally ends . . . after the central criminal purpose has been accomplished.” *SEC v. Papa*, 555 F.3d 31, 36 n.3 (1st Cir. 2009) (quoting *Pyramid Sec. Ltd. v. IB Resolution, Inc.*, 924 F.2d 1114, 1117-18 (D.C. Cir. 1991)). For multiple behaviors to form a single conspiracy, “activities of one aspect of the scheme must be necessary or advantageous to the success of another aspect of the scheme,” and “each individual must think the aspects of the venture interdependent.” *United States v. Pappathanasi*, 383 F. Supp. 2d 289, 296 (D. Mass. 2005) (quoting *Portela*, 167 F.3d at 695).

The Indictment states that, first, Wilson worked with Singer “to facilitate [Wilson’s] son’s admission to USC”; and that, four and a half years later, Wilson worked with Singer “to facilitate [Wilson’s] twin daughters’ admissions to Stanford and Harvard.” Indictment ¶ 225. Singer’s work with Wilson’s son plainly achieved its purpose with the son’s admission in 2014. Indictment ¶¶ 234-36. Indeed, by late 2018, Wilson’s son was on the verge of graduating. *See United States v. Doherty*, 867 F.2d 47, 60-62 (1st Cir. 1989) (conspiracy ended when the defendants received the promotions they sought). And no aspect of Singer’s work in that first vignette could have carried any effect or advantage over into Singer’s work relating to Wilson’s daughters.

¹⁴ Motion to Dismiss Pursuant to Federal Rules of Criminal Procedure 8 and 12(b)(3)(B)(i), (iv), and (v) (to be filed by April 1, 2020); Motion to Sever Pursuant to Federal Rules of Criminal Procedure 12(B)(3)(D) and 14 (same).

By the fall of 2018, Singer and Wilson had not even decided whether Singer would provide assistance with the applications of the Wilson daughters. *See* Indictment ¶ 238 (in September 2018, WILSON *asked Singer about* ‘side door’ opportunities . . .” (emphasis added)); Ex. 13, at 2-3 (discussing two tiers of consulting services Singer offered to his clients). This fact alone refutes the notion that both episodes of work with Singer were aspects of the same conspiracy. *See United States v. Siebricht*, 59 F.2d 976, 978 (2d Cir. 1932) (reversing conviction on a single conspiracy count where “the second scheme was not designed until three weeks after the first had actually ended”).

These were not two acts of a single play; they were two discrete plays, four and a half years apart and joined by no factual or strategic links.

At the time of his first relevant discussion with Wilson about Wilson’s daughters, Singer was cooperating with the government. *See* Indictment ¶ 238. Wilson and Singer reached no decision or agreement regarding their strategy for the daughters’ applications until several weeks later. Indictment ¶¶ 239-41. By then, that agreement was “between one individual and a government agent,” *Rivera-Ruperto*, 884 F.3d at 32.¹⁵ As such, it does not support a conspiracy charge. The Court should strike the allegations regarding the 2018 Conduct as surplusage.

VI. CONCLUSION

For the foregoing reasons, in conjunction with the separate motions Wilson is joining, the Court should sever Wilson’s trial from those of his codefendants, and try Wilson alone; should dismiss Counts Six, Eight, Nine, Eleven, and Twelve; and should strike paragraphs 238-44 from the Indictment.

¹⁵ Other parent defendants made no agreements relating to Wilson, and had completed their work with Singer by the time of the 2018 Conduct.

Respectfully submitted,

John Wilson,

By his Counsel,

/s/ Michael Kendall

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CERTIFICATE OF SERVICE

I hereby certify that the above document is being filed on the date appearing in the header through the ECF system, which will send true copies to the attorneys of record.

/s/ Michael Kendall

Michael Kendall

EXHIBIT 3



U.S. Department of Justice

Andrew E. Lelling
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

January 27, 2020

VIA E-MAIL

Counsel of Record

Re: *United States v. David Sidoo, et al.*
Case No. 19-cr-10080-NMG

Dear Counsel:

We write to supplement our earlier correspondence based on our continued review of FBI 302 interview reports.

- [REDACTED]
- [REDACTED], the water polo coach at Menlo School, has advised the government, in sum and in substance, that Menlo School's water polo team has a strong program, plays top teams in California, and is one of the top 20 high school teams in the country. John Wilson's son played water polo in middle school and was a fast swimmer. He was the first to come off the bench his sophomore year, started his junior year and never came out of the game, and ranked 7th in minutes played his senior year. Wilson's son was recruited by various colleges, and [REDACTED] talked to coaches at USC about Wilson's son. Wilson's son received a Central Coast Section (CCS) Honorable Mention and 2nd Team Award his senior year. [REDACTED] was surprised but not shocked that Wilson's son was admitted to USC through water polo. [REDACTED] estimates that 10-15% of coaches trust his recommendations without watching players.
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

- █ [REDACTED]

- [REDACTED]

- Steven Masera reviewed invoices he sent in 2014 to Hyannis Port Capital, and thereafter advised the government, in sum and in substance, that Masera dealt with John Wilson's

assistant, Debbie Rogers, and does not remember talking to Wilson directly. [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED] has advised the government, in sum and in substance, that he worked almost exclusively with Debbie Rogers, that he did not discuss the consulting expenses with Wilson, but rather discussed the consulting expenses with Rogers. Typically, Rogers provided information needed to complete the Hyannis Port Capital return to Nahmens

- [REDACTED] has advised the government, in sum and in substance, that in preparing Wilson's personal tax returns, he, and other Ayco employees, would have mostly been in contact with Debbie Rogers, but would also have had some form of contact with Wilson as well. [REDACTED] does not recall Wilson asking many questions after his tax returns are prepared, and [REDACTED] does not walk through every item on the prepared return with Wilson. [REDACTED] also introduced Rick Singer to Wilson.

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED], a high school teammate of John Wilson’s son on the Menlo School water polo team, has advised the government, in sum and in substance, that Wilson’s son was a solid water polo player. Wilson’s son’s online bio was not extensively misrepresented, although [REDACTED] did not know if some of the details—including whether Wilson’s son was ever first or second team on CCS or participated in the Pacific Zone Water Polo Qualifier—were true. [REDACTED] was not surprised that Wilson’s son was recruited to USC’s water polo team because USC takes on big numbers for recruiting because half the students quit. [REDACTED] also thought that Wilson’s family made an “over the table” financial contribution to USC.

We are aware of the continuing nature of our discovery obligations, and we will continue to make additional disclosures as required. We reiterate our request for reciprocal Rule 16 discovery.

Sincerely,

ANDREW E. LELLING
United States Attorney

By: /s Justin D. O'Connell
Eric S. Rosen
Justin D. O'Connell
Kirsten A. Kearney
Leslie A. Wright
Assistant U.S. Attorneys

EXHIBIT 11

MEN'S WATER POLO
 Sun., Nov 24 | **FINAL**
 UCLA

MEN'S WATER POLO
 Thu., Dec 5 | **LIVE**
 Bucknell

MEN'S WATER POLO
 Sat., Dec 7 **5:00 PM PT**
 NCAA Semifinals

Hide Calendar ⊗

All Sports ⌵



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[Roster](#)
[Schedule](#)
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- [SHOP](#) ⌵

2014 Men's Water Polo Roster

Wilson, Johnny ⌵



WILSON

HEIGHT: 6-0

CLASS: Freshman

HOMETOWN: Atherton, Calif.

HIGH SCHOOL: Menlo School

[BIO](#)
 [RELATED](#)
 [STATS](#)

THIS SEASON: Wilson enters his first season at USC. **HIGH SCHOOL:** Willson was an all-league first team selection as a senior out of Menlo School in Atherton, Calif.... Also named to the 2013 All-Central Coast Section Division II second team... As a junior, earned All-Daily News and All-CCS honorable mention... A member of Menlo's CCS championship team as a freshman... Played club for SoPen and Stanford WPC. **PERSONAL:** Wilson has not decided on a major but hopes to pursue a career in international business... Parents are John and [REDACTED].. Has two sisters, [REDACTED].. His father John played football at RPI... Enjoys hanging out with friends, playing video games, going to the beach and sailing in his free time... Lists David Ortiz as his biggest sports hero... Has always wanted to try heliskiing... Hopes to travel to Australia, Thailand and the Maldives... Born [REDACTED].

TROJAN TICKER

🔍

Rakocevic Named To Oscar Robertson Trophy Watch List

Trojans Travel to Utah for Diving Invitational

USC To Face TCU Friday In Dickies Arena Opener



EXHIBIT 14

Notes (185)

#	Time	Note	Deleted
1	<p>Created: 10/4/2018 23:56(UTC-4)</p> <p>Modified: 10/4/2018 23:56(UTC-4)</p>	<p>Title: New Note Source: Notes Body:</p>	Yes
2	<p>Created: 10/1/2018 12:27(UTC-4)</p> <p>Modified: 10/4/2018 22:29(UTC-4)</p>	<p>Title: Sept 29 Summary: Call with John Wilson about the side door plus intro to his friend about helping at Brown for 2019 Source: Notes Body: Sept 29</p> <p>Call with John Wilson about the side door plus intro to his friend about helping at Brown for 2019</p> <p>Oct 1</p> <p>Called Laura - update on weekend text and call with John Wilson on side door</p> <p>Called Michelle Janavs confirmed Isabel going through subco and 50k payment made once she gets her initial letter of acceptance and the rest of the process</p> <p>Requested expenses from Oct 1 till Oct 4 for Eric Rosen and went to get a copy of cashier check to Niki Williams</p> <p>Called ██████████ - explained USC acceptance and 50k payment once conditional Letter sent</p> <p>Oct 2</p> <p>Loud and abrasive call with agents. They continue to ask me to tell a fib and not restate what I told my clients as to where there money was going -to the program not the coach and that it was a donation and they want it to be a payment. I asked for a script if they want me to ask questions and retrieve responses that are not accurate to the way I should be asking the questions. Essentially they are asking me to bend the truth which is what they asked me not to do when working with the agents and Eric Rosen.</p> <p>Liz raised her voice to me like she did in the hotel room about agreeing with her that everyone Bribed the schools. This time about asking each person to agree to a lie I was telling them.</p> <p>Spoke to ██████████ which is a referral from Gordon Caplon. They want to nail Gordon at all costs. ██████████ told me his daughter is a good runner 19 minute 3 mile good enough for recruited walk on or walk on to Wash U and Cornell. Explained the side door but very late and I probably could not do it at this stage.</p> <p>The agents told me to get him to take another school I had a relationship just to entrap him despite him never asking for any other school.</p> <p>When I told them Gordon texted me that ██████████ did not get extended time and the reasons why they still wanted me to ask him for a payment to take the SAT through WHCP even when he was not approved just to nail him. I said that is ludicrous as he will not entertain because she was not approved.</p> <p>Spoke with John Vandemoor Stanford Sailing- explained ██████████'s out but I would provide 100-200k to him as requested by the agents instead of the program as I would say normally and reiterated that I have him 500k for ██████████.</p> <p>Spoke to Igor and confirmed receipt of Subject Tests and followed agents request to confirm Mark's time to show up- where he finishes the test- where Igor would be and the 10k payment to Igor and addressed to WHCP</p> <p>Spoke to Agustin- he wanted to know I was backing ██████████ as hard as anyone else. I confirmed I spoke to Donna Heinel and ██████████ will be admitted ██████████ 2nd week of Nov- spoke about the fake photo I put on her profile.</p> <p>Spoke to Donna Heinel about ██████████ and ██████████ going through Subco on Thursday which is now tomorrow- asked about ██████████ and she said by 2nd week of Nov. also as requested by agents asked her to put detail on her 20k invoices being sent to the foundation</p> <p>Oct 3</p> <p>Call with ██████████ and ██████████ - told not to call Donna Heinel till Friday. Asked to wire 300k to Bank America in Boston so I can pay John Vandemoor 100k on Friday and Igor and WHCP 10k based on my calls from Oct 2.</p> <p>They want me to call Gordon again but I rebuffed that since he and his daughter ██████████ is out of the testing scam.</p> <p>Told ██████████ and ██████████ - ██████████ would call me at 3:10. FBI wants me to offer other schools if he asks despite there not being a chance at this time</p> <p>Spoke to ██████████ - either Cornell or Wash U are top choices- I explained what I can do at this point including side door and maybe other schools</p> <p>Oct 4</p> <p>Call with the agents. Discussed my in person wire with ██████████'s.</p> <p>Went to the bank to wire 300k - routing number wrong but called agents to get the right one.</p> <p>Recorded ██████████'s or I hope it recorded - dad ██████████ and I spoke after volatile session with ██████████. Went back over process with SC and paying 50k to Donna and Women's Athletic sand other200 for the Program after final letter.</p> <p>He balked and is going to go forward with schools ██████████ can start at or play for right now- TCU, SMU, Santa Clara LMU USD etc... dad ██████████ thinks ██████████ may get in on his own to USC since parents legacy and new test score if he gets 33+</p> <p>Asked for start time of 9:30-10 since I am flying overnight to work out since I am taking the last flight to SFO. But. O they balked</p>	

11	<p>Created: 1/30/2019 22:26(UTC-5) Modified: 1/30/2019 22:39(UTC-5)</p>	<p>Title: Peter Sartorio In 2014total 15k did not work with them in 2014 - shows... Summary: up twice Source: Notes Body: Peter Sartorio In 2014total 15k did not work with them in 2014 - shows up twice Manuel Henriquez 15k twice why [REDACTED] paid for help guidance off waitlist [REDACTED] just help with younger daughter pulling out of regular school Laurel Springs Sidoo investment 99,990 twice [REDACTED] 75 in and 72,350 taken out?? John Wilson 20k nothing to do with USC plus donation to USC program for real polo player Joey chen twice on list [REDACTED] 50k never went or got into Gtown - why 50 should be 300k [REDACTED] 50k no testing or college bribe [REDACTED] water polo player to USC polo [REDACTED] 250k Gtown manager great grades scores 2.5 years manageraaaw</p>	
12	<p>Created: 1/30/2019 18:30(UTC-5) Modified: 1/30/2019 18:30(UTC-5)</p>	<p>Title: New Note Source: Notes Body:</p>	Yes
13	<p>Created: 1/30/2019 10:58(UTC-5) Modified: 1/30/2019 18:31(UTC-5)</p>	<p>Title: North Shore Aquatic 901 north shore dr NE St Petersburg 727-893-7727... Summary: M—F 9-4pm Sat 10-4 Sun 1-4 Source: Notes Body: North Shore Aquatic 901 north shore dr NE St Petersburg 727-893-7727 M—F 9-4pm Sat 10-4 Sun 1-4 Palm Harbor - sawgrass trails at Lowe's city</p>	
14	<p>Created: 1/30/2019 10:19(UTC-5) Modified: 1/30/2019 10:20(UTC-5)</p>	<p>Title: [REDACTED] Summary: [REDACTED] Source: Notes Body: [REDACTED]</p>	
15	<p>Created: 1/29/2019 14:47(UTC-5) Modified: 1/29/2019 14:49(UTC-5)</p>	<p>Title: Clearwater Summary: St Petersburg Source: Notes Body: Clearwater St Petersburg [REDACTED]-close to downtown</p>	
16	<p>Created: 1/29/2019 14:45(UTC-5) Modified: 1/29/2019 15:01(UTC-5)</p>	<p>Title: Grafton hotel Summary: Delta in at 9:15am from Tampa Source: Notes Body: Grafton hotel Delta in at 9:15am from Tampa Monday 10:30yuy</p>	
17	<p>Created: 1/27/2019 23:44(UTC-5) Modified: 1/27/2019 23:59(UTC-5)</p>	<p>Title: Episcopal Amber Jax - 27 min 202 west to 95 Summary: Jacksonville Country Day 22 minutes 202 west to 295 south Source: Notes Body: Episcopal Amber Jax - 27 min 202 west to 95 Jacksonville Country Day 22 minutes 202 west to 295 south Cecil Field Aquatic Center- 13611 Normandy blvd 904-255-4272 Episcopal School Jacksonville - Semmes Aquatic Center</p>	
18	<p>Created: 1/23/2019 01:06(UTC-5) Modified: 1/23/2019 01:07(UTC-5)</p>	<p>Title: Bio Tech Pro Source: Notes Body: Bio Tech Pro</p>	
19	<p>Created: 1/22/2019 00:17(UTC-5) Modified: 1/22/2019 00:17(UTC-5)</p>	<p>Title: Netflix Same Kind of Difference Source: Notes Body: Netflix Same Kind of Difference</p>	
20	<p>Created: 1/17/2019 12:39(UTC-5) Modified: 1/17/2019 12:41(UTC-5)</p>	<p>Title: 1400 east 6th street Body: 1400 east 6th street</p>	
21	<p>Created: 1/16/2019 23:45(UTC-5) Modified: 1/16/2019 23:52(UTC-5)</p>	<p>Title: You found the light in me I could not find Body: You found the light in me I could not find It is buried in my soul</p>	

Exhibit D

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

v.

DAVID SIDOO, et al.,

Defendants.

Case No. 19-cr-10080-NMG

*Leave to File 35-Page Brief
Granted on 3/19/20*

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO DISMISS INDICTMENT WITH PREJUDICE OR, IN THE
ALTERNATIVE, FOR SUPPRESSION OF EVIDENCE BASED ON GOVERNMENTAL
MISCONDUCT AND FOR DISCOVERY AND AN EVIDENTIARY HEARING**

ORAL ARGUMENT REQUESTED

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INTRODUCTION

From day one, a centerpiece of the Government's case against Defendants has been a series of recordings of Rick Singer talking to his clients between September 2018 and March 2019 about payments they allegedly made to help their children gain admission to various universities. The Government has trumpeted those recordings in every iteration of the indictment, and has repeatedly cited them in opposing Defendants' motions for various forms of pre-trial relief.

Yet last month, the Government belatedly disclosed Singer's contemporaneous written notes revealing that those recordings were a sham carefully engineered by government agents in an effort to "entrap" Defendants and "nail" them "at all costs." 10/2/18 Singer Note, Ex. A at 1. The notes state that agents browbeat Singer and instructed him to lie in order to elicit misleading evidence that was inconsistent with the actual facts that Singer had explained to agents. As detailed in the notes, agents directed Singer *not* to mention on the calls that he had previously told the clients their payments would be "donation[s]" that would go "to the [university] program [and] not the coach," *id.*—in other words, that their payments were *not* unlawful bribes.

At least two members of the prosecution team viewed Singer's notes 16 months ago, back in October 2018. Yet instead of investigating Singer's assertions—or disclosing the information—the prosecution buried this evidence and repeatedly misrepresented to Defendants and the Court that it had fully complied with its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). Meanwhile, the Government allowed Singer to delete thousands of potentially exculpatory text messages from his cellphone. And it then mounted an aggressive (and highly successful) pressure campaign against other defendants to secure guilty pleas and lengthy sentences—all while hiding key exculpatory information from defense counsel, the Probation Office, and this Court.

The Government's extraordinary misconduct warrants extraordinary relief. The facts known so far justify dismissal of the indictment. At a minimum, the Court should order

suppression of the tainted recordings. Suppression is essential because the recordings are highly inflammatory, prejudicial, and deliberately misleading—especially in light of Singer’s other statements to Defendants and the Government that the payments were *not* bribes. The Court should also order an evidentiary hearing to uncover the full truth about the recordings and the Government’s efforts to fabricate and conceal evidence. These measures are essential to preserve the integrity of this proceeding and to deter future prosecutorial misconduct.

BACKGROUND

Last March, the Government charged Defendants with conspiring with Singer to secure the admission of their children to various colleges through bribery, testing fraud, and other means. The initial complaint and superseding indictments highlight Singer’s recorded calls to Defendants as the evidentiary centerpiece of the Government’s case. *See, e.g.*, ECF Nos. 3-3 to 3-5 ¶¶ 192-93, 219-20, 285-86, 445-49; ECF No. 732 ¶¶ 122, 132-33, 163-64.

The Government must prove that Defendants knowingly bribed employees of the schools or testing services. *See United States v. Berroa*, 856 F.3d 141, 154, 157 (1st Cir. 2017). Defendants have thus repeatedly asked the Government to disclose exculpatory evidence, including evidence that Singer told them the payments were *donations* to benefit the schools, rather than *bribes* to benefit corrupt school officials. In response, the Government has repeatedly denied such evidence existed. Those denials were false: We now know the Government was aware of Singer’s notes showing he told his clients their payments would be donations—not bribes—and that federal agents pressured him to lie to create false inculpatory evidence on the calls. And we now know the Government had, and failed to disclose, numerous interview reports that reflect similar exculpatory admissions by Singer about the nature of the donations made by his clients.

I. THE DENIALS

On May 30, 2019, the Government told Defendants that it knew of “no information or

materials” constituting “exculpatory evidence” under Local Rule 116.2(b)(1). 5/30/19 Letter, Ex. B at 7. At the initial status conference, defense counsel challenged the Government’s narrow view of its *Brady* obligations—specifically as relating to Singer’s representations to clients. Counsel explained that “[i]f Rick Singer was telling other parents that the money that they were giving to Key Worldwide was going to go to the athletic programs, we think that’s exculpatory.” ECF No. 396 at 10. When the Government disagreed, defense counsel emphasized the “chasm[]” between the parties, noting that “[i]f money went to a school, whatever the discussions, it’s not a bribe, at least not a bribe within the ambit of the Government’s allegations in this case.” *Id.* at 13. Magistrate Judge Kelley then “urge[d] the Government” to turn over information if Defendants provided “any arguable reason” why it was exculpatory. *Id.* at 14.

Over the following months, the Government obtained guilty pleas from multiple defendants. Meanwhile, the remaining Defendants asked the Government to produce specific categories of evidence bearing on their lack of intent, including evidence that Singer (1) told his clients their payments would fund school-related programs, and (2) did not describe their payments as “bribes” or otherwise use language suggesting impropriety. 9/27/19 Letter, Ex. C at 2. Defendants also requested all statements the Government made to Singer about what he should say to his clients in consensually recorded conversations, as well as any criticisms or comments the Government made to him about those conversations. *Id.* at 5.

The Government rejected Defendants’ requests as a “fishing expedition” seeking “evidence that is quintessentially *not Brady*.” 10/31/19 Letter, Ex. D at 1-2. The Government later noted, however, that it had “re-reviewed” its FBI 302 Reports and decided to produce written summaries of evidence to individual Defendants—though it still maintained that “[none] of the information . . . constitutes *Brady* material.” 11/27/19 O’Connell Letter, Ex. E at 1. The Government then

provided individual Defendants with cursory “in sum and in substance” summaries of what Singer allegedly said during his FBI interviews, including that he had told certain clients that their “money would be directed to a USC program.” *E.g.*, 11/27/19 Kearney Letter, Ex. F at 1.

Ultimately, the Government’s recalcitrance prompted Defendants to file multiple motions to compel between November 2019 and February 2020. *See* ECF Nos. 648, 693, 699, 703, 865. In response, the Government doubled down and asserted that it “has scrupulously adhered to its discovery obligations in this case, and gone well beyond those requirements.” ECF No. 736 at 1. It also represented that “virtually all the evidence the defendants seek either *does not exist* or *has already been produced*.” *Id.* at 4 (emphasis added).

But then on January 28, 2020—the day Defendants were originally supposed to file their *Brady* replies—the Government suddenly handed over new information. *See* 1/27/20 Letter, Ex. G (pre-dated). These disclosures contained statements by multiple FBI interviewees, including statements by Singer that various Defendants thought their payments “went directly to USC’s program” and that his clients “typically do not know that [former USC official Donna] Heinel is involved until the time of the[ir] first payment.” *Id.* at 3. These statements are exculpatory because they help show that Defendants thought their payments were legitimate and went to *USC*—for the school’s benefit—not to a corrupt official for her own personal benefit.

The Government offered no explanation for its delay in producing the exculpatory information, though its sur-reply revealed that the information had been in its possession for at least two months. *See id.*; ECF No 834 at 1. And the Government once again reiterated that it was “*not* withholding exculpatory evidence.” ECF No. 834 at 2.

II. THE REVELATION

On February 19, 2020, while their motions to compel remained pending, Defendants sent the Government a letter about major deficiencies in its production of materials from Singer’s cell

phone. *See* 2/19/20 Letter, Ex. H. One week later, the Government produced the materials precipitating this motion: contemporaneous notes that Singer kept on his iPhone describing his interactions with the Government. *See* 2/26/20 Letter, Ex. I. The notes memorialize Singer's interactions with agents on October 2, 2018, about recorded calls that they directed him to make to his clients in order to induce inculpatory statements to be used against them in this case.

Singer's notes state that investigators (1) intimidated him into lying on recorded calls with clients to fabricate inculpatory evidence; (2) directed him to omit exculpatory information he had previously told his clients; and (3) wanted to "nail" Defendant Gordon Caplan—who later pleaded guilty and was sentenced to prison—"at all costs." In Singer's own words:

Loud and abrasive call with agents. **They continue to ask me to tell a fib and not restate what I told my clients as to where there money was going -to the program not the coach and that it was a donation and they want it to be a payment.**

I asked for a script if they want me to ask questions and retrieve responses that are not accurate to the way I should be asking the questions. **Essentially they are asking me to bend the truth** which is what they asked me not to do when working with the agents and Eric Rosen.

Liz raised her voice to me like she did in the hotel room about agreeing with her that everyone Bribed the schools. This time about asking each person to agree to a lie I was telling them.

Spoke to [Parent A] which is a referral from Gordon Caplon [sic]. They want to **nail Gordon at all costs**. [Parent A] told me his daughter is a good runner 19 minute 3 mile good enough for recruited walk on or walk on to Wash U and Cornell. Explained the side door but very late and I probably could not do it at this stage.

The agents told me to get him to take another school I had a relationship **just to entrap him** despite him never asking for any other school.

When I told them Gordon texted me that [REDACTED] did not get extended time and the reasons why they still wanted me to ask him for a payment to take the SAT through WHCP even when he was not approved **just to nail him**. I said that is ludicrous as he will not entertain because she was not approved.

Ex. A at 1 (emphasis added).

Other evidence reveals what prompted the agents' "loud and abrasive" instructions that Singer to "bend the truth" and "not restate" to parents that he had told them the payments would

be donations. On October 2, Singer had a recorded call with a prospective client to explain the “side door” arrangement. On that call, Singer repeatedly referred to donations to *coaches*. 10/02/18 Tr., Ex. J at 7-8. But when the client interrupted Singer and asked him to clarify (“what did you mean by donation to the coach?”), Singer responded that the donation would actually go “to the program.” *Id.* at 12-13 (confirming that the donation would be “specific to the program” and would pay for “training facilities or what have you”). This sort of exculpatory exchange—in which Singer confirmed that the payments were *not* bribes—is exactly what the agents did not want showing up on the recorded calls. And so they ordered Singer to “bend the truth” to avoid “restat[ing]” his exculpatory characterization of the payments in subsequent calls. Ex. A at 1.

In its February 26 transmittal letter, the Government admitted it had possessed Singer’s notes since October 2018 and that prosecutors “saw all or part of” the paragraphs quoted above “on or about October 28, 2018.” Ex. I at 1. But the Government claimed that at that time it “believed the notes were privileged and did not review them further,” and that it “initiated a privilege review process” *a full year later*, in August 2019. *Id.* The Government asserted that it was finally producing the notes because “Singer’s counsel agreed to waive privilege.” *Id.* The Government did not deny that the notes accurately describe Singer’s interactions with the agents.

Given the gravity of the misconduct reflected in the notes—and the Government’s failure to disclose them—Defendants immediately brought these issues to the Court in various filings and at the February 27, 2020 status conference. *See* ECF Nos. 875, 881, 882, 886; 2/27/20 Conf. Tr., Ex. K at 9. Defendants also sought clarification from the Government about the substance of the notes and its decision to withhold them. *See* 2/28/20 Letter, Ex. L; 3/13/20 Letter, Ex. M.

III. THE EXCUSES

The Government addressed the notes at the February 27 status conference and in a March 9 letter. *See* Ex. K at 15-20; 3/9/20 Letter, Ex. N. Once again, the Government did not deny

Singer's core assertion that federal agents pressured him to lie on the recorded calls and instructed him not to mention the truthful exculpatory statements he had previously made to his clients.

The Government's March 9 letter admits that two prosecutors saw the notes in October 2018. Ex. N at 2. It explains that Singer consented to the Government searching the phone with the notes on October 5, 2018, and that Singer's attorney separately agreed "that the [G]overnment could search the . . . phone without a taint protocol" on October 11, 2018. *Id.* at 1. Then, around October 28, AUSA Justin O'Connell—who later derided Defendants' *Brady* requests as a "fishing expedition"—reviewed "part of" the October 2 note. *Id.* at 2. He emailed an "excerpt[]" of the note to AUSA Eric Rosen and the FBI agents handling the investigation. *Id.* The Government's letter claims that Rosen and O'Connell "did not further review" the notes because they believed the notes "were written by Singer at the behest of his attorney and may be privileged." *Id.* at 2.

The Government's letter also says that on "October 9, 2018," the prosecution team was "assigned . . . a taint AUSA," *id.* at 1, presumably to handle privilege determinations. But neither Rosen nor O'Connell sent the notes to this taint AUSA in October 2018 or otherwise ensured their review. *See id.* at 1-2. Instead, they waited until October 2019 and then sent the notes to Singer's attorney so *he* could review the notes for privilege. *Id.* at 2. Singer's attorney did not review those notes—and the Government did not follow up with him—until February 2020. *Id.* The Government's taint AUSA only "reviewed the Singer Notes *for the first time*" on February 19, 2020, the same day Defendants sent their letter about Singer's phone. *Id.* at 2-3 (emphasis added).

Subsequent communications between defense counsel and Singer's counsel indicate that in late February 2020, AUSA Amanda Strachan (a member of the taint team) concluded the notes should be shared with Defendants. According to Singer's counsel, Strachan told him that "portions of . . . the October 2, 2018 [note], *on its face* appeared to be potential *Brady* or *Giglio* material and

should be disclosed to the defense.” 3/11/20 Email, Ex. O at 1 (emphasis added).

IV. THE FRUITS OF THE MISCONDUCT

Singer’s notes reveal the Government’s efforts to fabricate inculpatory evidence against Defendants, including by drafting scripts to guide Singer during calls. And other evidence in the case shows that Singer followed the Government’s directions and further undermines the substance of the recordings. Consider the following examples:

John Wilson. Before and during his cooperation with the Government, Singer portrayed his methods as legitimate to Wilson and his family. *See* Wilson Affidavit, Ex. QQ. On a September 28, 2018 FaceTime videocall with the Wilsons (*see* 10/5/18 iPhone Report, Ex. P)—after Singer’s cooperation began—Singer made highly exculpatory statements that continued to reassure Wilson of the propriety of the side-door program. Singer told them side-door donations, like Wilson’s 2014 contribution to USC’s water-polo program (and *not* its coach), were a legitimate and prevalent aspect of college admissions that allowed schools to fund their programs. Ex. QQ at 1-2. He explained that schools can admit applicants with the necessary academic credentials even if they lack the athletic abilities necessary to compete on the schools’ varsity teams, and simply require those students to work as assistant managers or in other support roles. *Id.* at 2-3. The Government made no record of this FaceTime call, even though Singer made the call from an FBI office building during a break in a multi-day interview conducted by half a dozen Boston agents and prosecutors. *See* 11/24/20 Emails, Ex. RR at 1-2.

Starting September 29, 2018, and continuing for weeks after the Government’s “loud and abrasive” instructions to “bend the truth,” Ex. A at 1, Singer began interjecting incriminating phrases on calls that the Government *did* record. An October 15, 2018 call included this exchange:

SINGER: So I know when . . . we get the girls in, it’s a done deal and you’re gonna take care of your part of it, you’re gonna make the payments *to the schools* and the -- *to the coaches*. And that’s what I need . . .

so I'm not worried about that.

WILSON: Uh, uh, help me understand the logistics? I thought I make the payment to you and you made the payment *to the school*.

SINGER: Correct. That's correct.

WILSON: Oh you said that *I* make the payments *to the schools*.

10/15/18 Wilson Tr., Ex. Q at 9 (emphasis added); *see* 9/29/18 Wilson Tr., Ex. SS at 6-7. Singer's references to payments going "to the coaches" are misleading and paint a false picture given his earlier statements to Wilson that, as before, his payments would go to the university. That is precisely what Government agents wanted when they told Singer to "bend the truth" and get "each person to agree to a lie." Ex. A at 1.¹

Gamal Abdelaziz. On October 25, 2018, Singer called Abdelaziz and tried to get him to agree that "\$300,000, um, was paid to . . . Donna Heinel at USC to get [Abdelaziz's daughter] into school." 10/25/18 Abdelaziz Tr., Ex. R at 4. But that same week, Singer *told* the Government that "ABDELAZIZ did not know about HEINEL" and "knew the money was going to the school." 10/31/18 FD-1023, Ex. S at 2. Indeed, FBI notes describe Singer as saying: "Donna diverted some of the money. *Gamal didn't know about Donna.*" 10/31/18 Notes, Ex. UU at 9 (emphasis added). Singer's comments on the call were simply a trap to generate fake evidence.²

¹ Singer also strategically intermingled comments confirming to Wilson that the funds were intended for school *programs*—not school officials. On a November 5, 2018 call, Singer explained that "women's lacrosse is always looking for help," and that "[w]omen's fencing, [is] looking for help," and that these programs' need for donations enabled Singer to facilitate admissions. 11/5/18 Wilson Tr., Ex. TT at 7. At the same time, however—and consistent with the Government's instructions—Singer also interjected seemingly incriminating comments about paying a "coach." *Id.* at 3 ("I have to pay the coach"); *id.* ("we'll pay the coach"); *id.* at 7 ("we pay the coach, we get it done"). Wilson, who had previously given to a school only for the benefit of a program and not to a coach, remained oblivious to this misdirection, continuing to understand "the coach" as a shorthand for the coach's *program*. *See id.* at 8 ("Does [the coach] care about budget this year versus next year?"); *cf. id.* at 6 ("And if I pull the trigger, that means I have to commit to him and *pay* (inaudible) *Stanford?*" (emphasis added)). No doubt the Government will portray its orchestrated recording as evidence of Wilson somehow acknowledging guilt.

² Similar facts and a similar scenario underlie Singer's calls with Diane and Todd Blake.

Lori Loughlin. On November 29, 2018, Singer called Loughlin and similarly used language to make it seem she knew the donations were bribes. Singer fabricated an IRS audit and stressed that he “ha[d] not told [the IRS] anything about [Loughlin’s daughters] going through the side door, through crew, even though they didn’t do crew to get into USC . . . all [he] told them was that you guys made a donation to our foundation to help underserved kids.” 11/29/18 Loughlin Tr., Ex. T at 2-3. Loughlin answered “[u]m-hmm”—and that she was “confused.” *Id.* The Government has repeatedly characterized Loughlin’s response as an admission of wrongdoing. *See, e.g.*, ECF No. 736 at 8. But in a recorded call that Loughlin made to Singer three months later—after her daughters’ high school received a grand jury subpoena for their academic records, and that was not directed by agents seeking to fabricate evidence—Loughlin made clear she did *not* know the payments were bribes or have any idea that Singer had engaged in wrongdoing: “Yeah, no, no, I—I had questions about [U]SC. I was like, ‘Well, maybe the way they got in you’re not supposed to get in like that, I don’t know, like can you,’ but Moss was like, ‘*No, you can make a donation, it’s OK, like I don’t know.*’ Uh, yeah I don’t know. But it’s all on the up-and-up (inaudible) right?” 3/4/19 Loughlin Tr., Ex. U at 5 (emphasis added).

Robert Zangrillo. In September 2018, Singer told the Government that his insider contact at New York University “did not take any money personally for getting a student into NYU. Instead, [she] wanted help with fundraisers she had for athletics or help paying bills related to NYU athletics.” 9/26/18 FD-1023, Ex. V at 5.³ Singer also insisted that his contact “did not get money for helping the ZANGRILLO kid get into NYU.” Ex. V at 5. But after the Government’s “loud and abrasive” directions on October 2, Singer tried to bait Zangrillo into agreeing to the

³ *See also* 11/29/18 FD-1023, Ex. VV at 3 (“The payments to NYU were not a quid pro quo for getting students into NYU. . . . The money goes to her program and fundraising.”)

exact opposite, telling him: “I’m just going to say [to the IRS] that . . . [Zangrillo’s daughter] didn’t get in[to] NYU and no payment was made to my contact at NYU . . . [w]hich we know it was.” 10/25/18 Zangrillo Tr., Ex. W at 3. Singer also said that he would not tell the IRS that they “essentially paid Donna Heinel . . . at USC to help [the daughter] get in.” *Id.* Both assertions squarely contradict what Singer had told the Government about the payments.

Bill McGlashan. On October 24, 2018, Singer placed a recorded call to McGlashan in which he tried to get McGlashan to agree to the following:

[a]As you know, when families pay for . . . either takin’ the test or goin’ through the side door, all the money goes through my foundation, *and then I pay it out to whoever needs to get paid*, like I did for, you know [McGlashan’s son] when he took the [ACT test] . . . So I paid half of it to Mark [Riddell] and half of it to West Hollywood College Prep through my foundation, so that the family essentially has no connection back to what has happened.

10/24/18 McGlashan Tr., Ex. X at 4 (emphasis added). In fact, McGlashan knew nothing about any diversion of money from Singer’s foundation to pay bribes. As Singer told the Government, he “did not go into detail about the testing” with McGlashan. 11/9/18 FD-1023, Ex. Y at 2. And as to the side door, which McGlashan decided not to pursue, Singer told him in a recorded call that payments would be made to “[USC] Women’s Athletics,” not to Singer’s foundation, much less to a corrupt university official. 7/30/18 McGlashan Tr., Ex. Z at 9.

Singer’s false statements in the October 24 call were carefully scripted by AUSA Rosen. In Singer’s notes of the “[l]oud and abrasive” discussion with agents three weeks earlier, he wrote that he “asked for *a script* if they want me to ask questions and retrieve responses that are not accurate.” Ex. A at 1 (emphasis added). Rosen then wrote an e-mail with a “McGlashan script” that Singer followed closely during the October 24 call. McGlashan Script, Ex. AA. Singer parroted Rosen’s scripted statements about the payments nearly verbatim:

As you know, when families pay me for either the testing like you did or this side-door, it goes into my Foundation, and then I pay out to whoever needs to be paid

like I did with you, right? – I wrote checks to Mark and Igor after the exam, that way there is no connection between you and them, RIGHT????

Id. This false suggestion—that McGlashan knew things that Singer had carefully hidden from him—plainly sought to manufacture evidence of knowledge where none existed.

V. THE FURTHER DISCLOSURES

In the wake of the disclosure of Singer’s notes, the Government has indicated it will produce some of the exculpatory materials requested by Defendants. *See* ECF No. 918. The extent of the Government’s newfound willingness to abide by *Brady* remains to be seen. But the additional disclosures reviewed so far only broaden the scope of the Government’s misconduct.

For one, recently produced witness reports confirm that Singer repeatedly told the Government that he misled his clients about his scheme—and that the Government has improperly been withholding this information all this time. Consider the following representative examples of clearly exculpatory information the Government withheld for almost a year after it was obligated to produce all *Brady* material: On September 21, 2018, Singer told the Government that “[i]nitially all the payments to USC went to the programs.” 9/21/18 FD-1023, Ex. BB at 3. A week later, he told the Government that specific parents “think they are going through [Singer’s] relationships but . . . do not know exactly where the money is going.” 9/27/18 FD-1023, Ex. CC at 3. On October 31, 2018, Singer told the Government another parent “did not know the money was going to [Georgetown’s coach]; he believed it was going to the Georgetown tennis program,” Ex. S at 2, and that a parent “did not review . . . [Singer’s fake] athletic profile”—Singer “just sent it to USC.,” *id.* at 3. On November 1, 2018, Singer told the Government another “family thought they were making a donation to the Georgetown tennis program.” 11/1/18 FD-1023, Ex. DD at 4, and that he told another client “that the money was going to USC,” *id.* at 5. And when the Government finally asked—in *December 2019*—about what Singer told Defendants Giannulli and Loughlin,

Singer said that they “thought their payment of \$50,000 went directly to USC’s program” and that “their \$200,000 payment went to [Singer’s] [f]oundation.” 12/6/19 FD-1023, Ex. EE at 2.

The recent disclosures also show that the Government knowingly allowed Singer to destroy potentially exculpatory evidence. For over a year, the Government knew Singer was actively deleting relevant iMessages throughout his cooperation—but it failed to stop him, recover the messages, or secure the phones. *See* 3/13/20 Letter, Ex. GG at 3-4; Gardner Decl., Ex. PP at 3. 3/11/19 Excerpt, Ex. FF; Ex. H at 2-3. And although Singer used at least four phones while working as an informant, the Government recorded calls on only *one* of them—even though it knew Singer was using the others to call alleged co-conspirators. *See* 10/23/18 FD-1023, Ex. HH; Ex. GG at 3-4.

The disclosures also reveal the lengths to which the Government went to micromanage the substance of Singer’s recorded consensual calls to generate incriminating evidence—and to hide those efforts from Defendants. As discussed, AUSA Rosen literally drafted a “script” for Singer to use to entrap Defendant McGlashan. *Supra* at 11-12. And the Government recently produced an inadvertently recorded conversation among Singer, his attorney, Rosen, and other members of the prosecution team on October 1, 2018, in which Rosen provided detailed instructions for what Singer should say—and *not* say—on future recorded calls with Heinel. *See* 10/1/18 Call Tr., Ex. II. Among other things, Rosen instructed Singer to “tone . . . down” mention of admission candidates’ athletic abilities on recorded calls because “all of these people aren’t getting recruited by USC” and “*that’s the message that we sort of want to get across.*” *Id.* at 2 (emphasis added). In other words—just as with the events recounted in the October 2 note—the Government was coaching Singer to avoid mention of accurate but exculpatory material that would muddy the black-and-white picture of wrongdoing it sought to create through Singer’s calls.

The October 1 recording also shows the Government's efforts to shield its fabrication of evidence from Defendants. Mid-way through the call, AUSA Rosen realized that Singer used his personal phone (which was being recorded by the investigators and would thus be discoverable) instead of his government-supplied "burner" phone (which was not being recorded). *Id.* at 3. Clearly flustered, Rosen insisted that Singer immediately end the call and re-join on an unmonitored line: "Rick, you hang up *right now.*" *Id.* at 3 (emphasis added).

ARGUMENT

I. THIS COURT HAS INHERENT AUTHORITY TO IMPOSE SANCTIONS AND REMEDY GOVERNMENT MISCONDUCT

Federal courts possess inherent supervisory authority to formulate remedies to address the "violation of a recognized right, preserve judicial integrity, and deter illegal conduct." *United States v. Osorio*, 929 F.2d 753, 763 (1st Cir. 1991). The First Circuit has made clear that it will "consider unleashing the supervisory power in criminal cases '[w]hen confronted with extreme misconduct and prejudice,' in order 'to secure enforcement of "better prosecutorial practice and reprimand of those who fail to observe it.'"" *United States v. Horn*, 29 F.3d 754, 760 (1st Cir. 1994). These powers include broad discretion to impose sanctions and formulate remedies, including "suppression of tainted documents." *Id.* at 766; *see also United States v. Monteiro*, 2005 WL 8162990, at *5 (D. Mass. Oct. 31, 2005) (ordering disclosure of "all [relevant] materials"). And in "rare and extreme circumstances," the court may "dismiss criminal charges as a sanction for government misconduct." *United States v. Guzman*, 282 F.3d 56, 59 (1st Cir. 2002).

II. THE GOVERNMENT'S RECENT DISCLOSURES REVEAL SERIOUS MISCONDUCT

A. The Government's Disclosures Include Credible Contemporaneous Proof That Federal Agents Coerced Singer Into Fabricating Evidence

"[I]f any concept is fundamental to our American system of justice, it is that those charged

with upholding the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit.” *Limone v. Condon*, 372 F.3d 39, 44-45 (1st Cir. 2004). Such conduct violates due process and obscures the truth. *See, e.g., id.; cf.* 18 U.S.C. §§ 1512, 1519. For government agents to coerce an informant into lying on recorded calls to generate *false* inculpatory evidence against investigative targets—and to then knowingly prosecute those targets using that false evidence—is governmental malfeasance of the worst kind.

Here, Singer’s contemporaneous memorialization of his meetings and discussions with agents demonstrate precisely such misconduct. In the October 2 note, Singer describes how agents (1) yelled at him, (2) told him to lie on recorded calls when describing his interactions with clients to secure seemingly incriminating statements from the clients, (3) told him to *not* mention on the recorded calls the exculpatory information he had previously told his clients, and (4) wanted to entrap a parent (and presumably the other Defendants subject to the calls) at all costs. *See* Ex. A at 1.

Moreover, the allegations in the note are credible. Singer wrote the note within two days of the interactions it memorializes, when those events were still fresh. *See* 10/2/18 Singer Note, Ex. JJ (“Created: 10/1/2018 12:27(UTC-4)” “Modified: 10/4/2018 22:29(UTC-4)”). And the note is corroborated by Singer’s conversation that same day with the prospective client in which Singer triggered the agents’ displeasure by confirming to the client that the payments would go to the “program” for legitimate purposes, and not to any “coach” for personal use. Ex. J at 7-8, 12. Also, Singer began cooperating on or shortly after “September 21, 2018,” Ex. N at 1, so the October 2 note was written quite early during his cooperation—when his incentive to cooperate with the Government and curry favor was at its peak. Singer had no reason to fabricate allegations of misconduct against government agents. Nor is there any indication from the note that Singer

drafted the note for anyone other than himself. Indeed, Singer's iPhone revealed that he often made notes as reminders and for his own reference. Moreover, the fact that Singer told his clients the payments were donations and not bribes is corroborated by numerous admissions Singer made in witness interviews that the Government has had in its possession since Singer began cooperating but failed to turn over until just this month, in violation of *Brady*.

Singer's note reveals extraordinary government misconduct. Singer does not merely allege that agents directed him to lie to obtain inculpatory statements from targets (though that would be bad enough). Rather, his October 2 note describes an orchestrated frame-up. Even though Singer told the Government that he had told his clients their money was going to universities as donations—and not to individual officials—the agents instructed Singer to call his clients and lie about the payments and describe them as bribes. *See* Ex. A at 1 (describing instruction to “ask[] each person to agree to a lie [Singer] was telling them”). The agents sought to orchestrate recorded conversations in which Singer would trick his clients into *falsely* agreeing (or not overtly challenging) that any payments made were bribes. And the agents' insistence that Singer *omit* the accurate description of what he had previously told his clients about the payments shows that *the agents* recognized that those prior explanations of the payments were exculpatory.

Government investigators sometimes have cooperating witnesses tell lies to obtain inculpatory statements from criminal defendants. That tactic is permissible. But here, the inculpatory statement *is* the lie. The agents did not direct Singer to have his clients incriminate themselves by acknowledging *truthful* historical facts—they had Singer lie or misleadingly characterize historical facts to make the conversation appear inculpatory. That is not investigating evidence; it is fabricating evidence.

The consensual recordings are perhaps the Government's most important evidence. The

allegation that the parents understood their payments were illegitimate bribes and not legitimate donations has been central to the Government's case from the beginning.⁴ The Government's tactics were designed to support that allegation, and to prevent Defendants from discovering that the recordings were fabricated at the Government's direction.

“[A]ny reasonable officer would . . . recognize[] that falsifying witness statements and excluding potentially exculpatory evidence to establish probable cause violates an individual's constitutional right to be free from unreasonable arrest and prosecution.” *Lucien-Calixte v. David*, 405 F. Supp. 3d 171, 178 (D. Mass. 2019) (Gorton, J.). Yet the October 2 note indicates that agents fabricated inculpatory evidence—and intentionally excluded exculpatory evidence—to bolster the chances of a conviction. And although the Government has had ample opportunity to deny Singer's account of the agents' unlawful conduct, it has not done so.

B. The Government Apparently Failed To Investigate These Serious Allegations

Upon learning of Singer's October 2 note, Defendants immediately asked the Government what—if anything—it had done to investigate the alleged misconduct. *See* Ex. L. The Government refused to respond. Its apparent decision to turn a blind eye to what happened is deeply troubling. The prosecutor has a “special role . . . in the search for truth in criminal trials.” *Strickler v. Greene*, 527 U.S. 263, 281 (1999). His interest “is not that [he] shall win a case, but that justice shall be done.” *Berger v. United States*, 295 U.S. 78, 88 (1935). Prosecutors thus have an affirmative obligation to seek the truth, and to avoid relying on evidence that they have reason to believe was tainted or fabricated. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (“[T]he

⁴ *See, e.g.*, ECF Nos. 3-3 to 3-5 ¶¶ 192-93 (quoting consensual recording where Singer tells Defendant Abdelaziz the payments went to Heinel); *id.* ¶¶ 219-20 (similar for Defendants Giannulli and Loughlin); *id.* ¶¶ 285-86 (similar for Defendant Zangrillo); *id.* ¶¶ 376-77 (similar for Defendant Elisabeth Kimmel); *id.* ¶¶ 445-49 (similar for Defendants Diane and Todd Blake); *id.* ¶ 151 (similar for Defendant McGlashan); ECF No. 732 ¶¶ 122, 132-33, 163-64.

individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case."); *Osorio*, 929 F.2d at 761 ("The prosecutor charged with discovery obligations cannot avoid finding out what 'the government' knows, simply by declining to make reasonable inquiry of those in a position to have relevant knowledge.").

Once AUSAs Rosen and O'Connell reviewed the October 2 note, both knew of credible allegations of serious misconduct by government agents. Yet neither Rosen nor O'Connell—nor anyone else on the prosecution team—appears to have taken any steps to investigate Singer's allegations. It even appears Rosen and O'Connell circumvented the established process when they decided to do *nothing* further with the notes based on a purported privilege. Although a taint AUSA had been assigned to the case earlier that month, Rosen and O'Connell did not involve the taint AUSA when they decided to ignore Singer's notes. Ex. N at 2. And the Government admits it did *nothing* with the notes for 10 months, and then it was O'Connell—not the taint AUSA or team—who dictated the next steps on the privilege analysis. *Id.*

The Government has an affirmative duty to ensure that the evidence it relies on is accurate. *See, e.g., Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Limone*, 372 F.3d at 45-46. Here, that means the prosecutors should have investigated Singer's allegations—immediately after learning about them—to ensure the evidence generated by his calls was accurate and untainted by coercion. *Cf.* 28 C.F.R. § 45.11. More generally, they should have investigated and ensured that *all* the evidence generated by Singer under direction of the agents was trustworthy and accurate. To the extent the prosecutors conducted no investigation after reviewing the note—and as best we know, they did not—that failure disregards Defendants' constitutional rights and violates their duty to do justice.

C. The Government Failed To Disclose This Evidence To Defendants

The Government's failure to produce the notes or the information within them until now is just as problematic. Because of the Government's "enduring difficulty in discharging its duty to

disclose material exculpatory information to defendants in a timely manner,” this Court has promulgated Local Rules to serve as a “road map” for complying with *Brady*. *United States v. Jones*, 620 F. Supp. 2d 163, 168-70 (D. Mass. 2009). Local Rule 116.2(b) requires the Government to disclose to Defendants any “information that would tend directly to negate the defendant’s guilt concerning any count in the indictment or information” and any “information that would cast doubt on the admissibility of” certain Government evidence. *See also* Mass R. Prof’l Conduct 3.8(d) (similar). And Local Rule 116.1(c) requires that the Government also provide all information specified in Federal Rule of Criminal Procedure 16(a)(1), which includes “papers, documents, data, photographs, [or] tangible objects” if the item is in the government’s control and is “material to preparing the defense.” Here, the Government was required to disclose these categories of information by May 30, 2019. *See* L.R. 116.2(b)(1); ECF No. 373 at 23:25-24:1.⁵

Singer’s notes, and the underlying facts those notes reveal, are plainly exculpatory and should have been disclosed by that date. To prevail at trial, the Government must prove that Defendants knowingly bribed the schools. *See Skilling v. United States*, 561 U.S. 358, 412-13 (2010). The notes confirm that Singer told his clients “the[ir] money was going []to the program not the coach and that it was a donation.” Ex. A at 1. The fact that Singer described the payments as *donations* that would benefit the schools—and not *bribes* that would benefit corrupt officials—is material, relevant, and exculpatory. It undermines the notion that Defendants intended to commit fraud. The information thus tends to directly negate Defendants’ “guilt concerning a[] count in the indictment.” L.R. 116.2(b). And because the notes indicate that the Government coerced Singer into fabricating evidence, they also “cast doubt on the admissibility” of the

⁵ For defendants who plead guilty, L.R. 116.2(b)(4) also requires the Government to disclose a summary of any information that “tends to diminish the degree of [their] culpability.”

Government's consensual records. *Id.*

There is no doubt that the notes should have been turned over by May 30, 2019. Indeed, the Government's taint AUSA Strachan, to her credit, had little difficulty concluding that the October 2 note "*on its face* appear[s] to be potential *Brady* or *Giglio* material and should be disclosed to the defense" as soon as she reviewed the note. Ex. O at 1 (emphasis added).⁶ That concession completely undermines the Government's longstanding position that evidence about what Singer told his clients about their payments is not *Brady* material. *See, e.g.*, ECF No. 693 at 3-4; *supra* at 3-4. Similarly, at the February 27 status conference, AUSA Rosen appeared to concede that the October 2 note is exculpatory and should have been disclosed earlier. *See* Ex. K at 19:20 ("MR. ROSEN: What I'm saying is that as soon as we completed the tape [sic] review, we turned it over. Should we have done that earlier? *Absolutely.*" (emphasis added)).

The Government's conduct is particularly troubling because Defendants could not learn this information on their own. Singer, as a cooperating witness, has been under government control and is thus unavailable to Defendants. And the Government's serial misrepresentations about the completeness of its disclosures—to the Defendants, this Court, and in other related proceedings—further exacerbate its misconduct. "Prosecutors," as all attorneys, "have a duty of candor to the court." *United States v. Casas*, 425 F.3d 23, 40 (1st Cir. 2005); *see also* Mass R. Prof'l Conduct 3.3, 3.4(c), 4.1. Here, at least two prosecutors—AUSAs Rosen and O'Connell—were aware of the note's exculpatory contents and knew it was being withheld. Yet they repeatedly told

⁶ Singer's notes also include an October 5, 2018 note stating that Defendant McGlashan is "no longer" pursuing the side door. Ex. A at 2-3. Considering the Government charged McGlashan with conspiracy to engage in the alleged side-door scheme, this statement by the Government's main cooperating witness is plainly exculpatory. Similarly, Singer's January 30 note about Defendant Wilson says "donation to USC program for real polo player," 1/30/19 Note, Ex. WW—exculpatory information the Government did not disclose and that it repeatedly misrepresented in public statements.

Defendants and the Court that they “ha[d] not withheld any such evidence based on [their] disagreement about the merits of the defendants’ requests,” that “the [G]overnment is not withholding any exculpatory evidence,” and that they had “scrupulously adhered to [their] discovery obligations.” ECF No. 736 at 2, 3, ECF No. 834 at 2.⁷ At no point did the prosecutors reveal or even suggest that they were withholding exculpatory evidence based on a third party’s privilege. The prosecutors violated their duty of candor.

The Government has tried to justify its belated disclosure because AUSAs Rosen and O’Connell allegedly believed Singer’s notes were privileged. That excuse is a total red herring: The Government had an obligation to relay the *substance* of these conversations it had with Singer *independent* of the fact that he memorialized those conversations in written notes. The Supreme Court has made clear that the attorney-client privilege “extends only to communications and not to facts.” *Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (1981). At a very minimum, the Government had an obligation to disclose the *facts*—and it failed to do so.

Nor would attorney-client privilege shield even the *notes* from disclosure. “Standing alone, the attorney-client privilege is merely a rule of evidence; it has not yet been held a constitutional right.” *Clutchette v. Rushen*, 770 F.2d 1469, 1471 (9th Cir. 1985) (citing *Maness v. Meyers*, 419 U.S. 449, 466 n.15 (1975)). A criminal defendant’s right to material exculpatory evidence, however, *is* rooted in the Constitution. For that reason, as the Supreme Court has held in the context of the Government’s informant’s privilege, “[w]here the disclosure . . . is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, *the privilege must give way.*” *Roviaro v. United States*, 353 U.S. 53, 60-61 (1957) (emphasis added); *see also*,

⁷ *See also* 11/17/19 Letter, Ex. KK at 1 (“The government is familiar with its *Brady* obligations, and has complied with them, and will continue to do so as this case progresses.”); Ex. D at 1 (same); Ex. F at 2 (same); 11/27/19 Letter to S. Berkowitz, Ex. LL at 2 (same).

e.g., *United States v. Hanna*, 661 F.3d 271, 295 (6th Cir. 2011); *United States v. W.R. Grace*, 439 F. Supp. 2d 1125, 1142-47 (D. Mt. 2006). AUSA Strachan was therefore absolutely correct: The notes are clear-cut *Brady* material and “should be disclosed to the defense,” Ex. O at 1—*regardless* of any privilege assertion.

In any event, it is hard to believe the Government actually thought the notes were privileged. The Government obtained consent to search Singer’s phone *both* from Singer *and* his attorney in October 2018. Ex. N 1. The Government never flagged the October 2 note to the taint team presumably responsible for conducting the privilege review. *Id.* at 2 The Government took a year to even ask Singer’s attorney whether he was asserting privilege. *Id.* And then it failed to follow up with Singer’s attorney and get a response to that question until *last month*, when Defendants sent their discovery letter about Singer’s iPhone. *See id.* at 3; Ex. O.

Moreover, the notes are clearly *not* privileged. The attorney-client privilege applies when “(1) . . . legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, [and] (3) the communications relat[e] to that purpose.” *United States v. MIT*, 129 F.3d 681, 684 (1st Cir. 1997). Nowhere do the notes suggest they relate to Singer seeking legal advice from counsel. To be sure, the Government and Singer’s counsel have now asserted that Singer later “sent these notes to his lawyer,” but that does not make them privileged. “It goes without saying that documents do not become cloaked with the lawyer-client privilege merely by the fact of their being passed from client to lawyer.” *United States v. Robinson*, 121 F.3d 971, 975 (5th Cir. 1997).

The attorney-client privilege also requires “[a]n intent to maintain confidentiality.” *MIT*, 129 F.3d at 684. That is lacking here too. Singer wrote the notes on the phone that he allowed the Government to monitor. Moreover, *both Singer and his attorney provided their unqualified consent for the Government to search the phone.* Ex. N at 1. Singer even allowed the Government

to extract the phone's full contents on at least *nine* occasions, and he provided his unqualified consent to a "complete search" every time. *See* Consent Forms, Ex. MM. The notes were not kept confidential.⁸

The Government has asserted that despite all this, it "did not treat" Singer's consent "as a waiver of Singer's attorney-client privilege." Ex. N at 1. But that makes no difference. "[U]nder traditional waiver doctrine a voluntary disclosure to a third party waives the attorney-client privilege even if the third party agrees not to disclose the communications to anyone else." *Westinghouse Elec. Corp. v. Rep. of Phil.*, 951 F.2d 1414, 1427 (3d Cir. 1991); *see also* *MIT*, 129 F.3d at 687. The Government cannot unilaterally assert privilege on behalf of a cooperating witness in order to avoid turning over exculpatory evidence to the defense.

Finally, this Court's Local Rules and the Federal Rules of Criminal Procedure confirm that the Government's secret and unilateral decision to withhold exculpatory evidence in this case was improper. Local Rule 116.6 establishes this Court's procedural mechanism for withholding *Brady* material for any reason. If a party determines that "it would be detrimental to the interests of justice" to make a required disclosure, "such disclosures may be declined" by advising the other side "in writing, with a copy filed with the clerk, of the specific matters on which disclosure is declined and the reasons for declining." L.R. 116.6(a). This mechanism allows the opposing party "to challenge the declination" with the court if it thinks it is appropriate. *Id.*; *see also* Fed. R. Crim. P. 16(d)(1) (providing similar mechanism).⁹ The Government has invoked Local Rule 116.6's

⁸ Even if the notes were privileged, they would likely be subject to disclosure under the crime-fraud exception because—if Singer did send the notes to his attorney for the purpose of obtaining "advice"—Singer would have been seeking advice about fabricating evidence in violation of the obstruction-of-justice statutes. *See United States v. Gorski*, 807 F.3d 451, 460 (1st Cir. 2015) (explaining elements of crime-fraud exception).

⁹ DOJ policies adopt the same approach. Prosecutors should "seek a protective order from the court addressing the scope, timing, and form of disclosures" in circumstances "[w]hen the

mechanism in the past. *See United States v. Ramos*, 210 F. Supp. 2d 1, 2 (D. Mass. 2002) (noting Government’s use of this mechanism). Inexplicably, however, it failed to do so here. Instead, the Government chose to withhold the evidence on its own say-so.

To sum up: Everyone now agrees that Singer’s notes—and the facts those notes reveal—are exculpatory. Yet the Government hid them for 16 months based on a unilateral (and frivolous) assertion of privilege on behalf of a cooperating witness who had repeatedly *consented* to sharing the evidence with the Government. All the while, the Government misled *these* Defendants and the Court about its compliance with *Brady* and pressured *other* defendants to plead guilty. This is not how the criminal justice system—or our Government—is supposed to work.

D. The Government Failed To Preserve Relevant Evidence On Singer’s Phones

The Government also recently revealed additional troubling details about its supervision of Singer. As noted above, it is now apparent that the Government failed to preserve patently relevant evidence from Singer’s phones, failed to secure those phones, repeatedly let Singer delete relevant and potentially exculpatory information from his iPhone—and took no efforts to retrieve this information until Defendants inquired about the missing materials. *See supra* at 5-6, 13.

“By adopting a ‘what we don’t create can’t come back to haunt us’ approach, prosecutors demean their primary mission: to see that justice is done.” *United States v. Houlihan*, 92 F.3d 1271, 1289 (1st Cir. 1996). The prosecution adopted that approach here. The Government chose to record only the calls that Singer made on his iPhone 7+. It did so pursuant to a Title III wiretap between June 5, 2018, and September 29, 2018, and with his consent between September 27, 2018

disclosure obligations are not clear” or the need to “protect[] privileged information” “conflict[s] with the discovery obligations.” DOJ, *Guidance for Prosecutors Regarding Criminal Discovery*, <https://www.justice.gov/archives/dag/memorandum-department-prosecutors>; *see also* DOJ, Justice Manual § 9-5.001, *Policy Regarding Disclosure of Exculpatory and Impeachment Information*, <https://www.justice.gov/jm/jm-9-5000-issues-related-trials-and-other-court-proceedings#9-5.001> (last updated Jan. 2020) (similar).

and March 11, 2019. Ex. GG at 3. But recently produced extraction reports of Singer's iPhone 7+ show that the Government failed to prevent Singer from deleting hundreds of iMessages, including iMessages to clients and alleged co-conspirators, while he was cooperating with the Government.¹⁰ See Ex. FF; Ex. H at 2-3. Materials produced by the Government on March 6, 2020, confirm that all but 18 of Singer's iMessages before September 27, 2018 (six days after he was approached by the Government) were deleted. See Ex. PP at 1-2. Singer deleted at least **2,244** iMessages from before September 27, 2018—and that likely understates the real number of deleted iMessages because of limitations in identifying deleted data. *Id.* at 2-3.¹¹

Given this timing, it seems almost certain that Singer deleted all of his iMessages because he learned about the Government's investigation. This would be a serious act of obstruction of justice, *see* 18 U.S.C. §§ 1512(c), 1519, and would be readily apparent to any investigator or prosecutor reviewing the extraction reports. Yet by all accounts the Government has not charged Singer with obstruction based on his deletion of these messages.

Singer's destruction of evidence was not limited to his initial iMessage wipe either. He *continued* to delete iMessages throughout his time as a Government agent. Between September 27, 2018, and March 10, 2019, Singer deleted at least 559 iMessages. Ex. PP at 2. During that time, the Government seized Singer's iPhone and extracted its contents nine times. Ex. GG at 3. Even a cursory review of those extractions would have shown that Singer was deleting his iMessages. But as best we can tell, the Government neither told Singer to stop destroying evidence nor tried to recover the iMessages—as it likely could have at that time. See Ex. PP at 2. Indeed,

¹⁰ iMessages are end-to-end encrypted text messages between iPhone users that cannot be intercepted by wiretap, but can be extracted from the phone using forensic hardware and software.

¹¹ This tally is based on the incomplete information Defendants currently have. The Government did not produce the full extraction *reports* until March 6, 2020, and it has yet to produce some of the full extractions themselves.

it seems the Government made no efforts to recover Singer's iMessages until this month. *See* Ex. GG at 3. And rather than retain Singer's iPhone 7+ at the end of his informant work, the Government let him keep the device—which he then traded in for a newer model in May 2019, meaning the 7+ is now lost. *Id.* Combined with the passage of time, the loss of the physical device all but ensures that most (if not all) the deleted iMessages are irrecoverable.

The Government has never explained why it allowed Singer to destroy thousands of iMessages and did nothing to try to recover them. It is possible (though highly unlikely) that the Government's failure to preserve this key evidence was merely an oversight. But it is also possible that the Government knew Singer spoke to alleged co-conspirators by iMessage—and that Singer was deleting those iMessages—but simply did not care. After all, the Government had no need for Singer's iMessages as a source of evidence because it was fabricating its own evidence using scripted calls. And allowing Singer to communicate with alleged co-conspirators by unmonitored iMessage facilitated his ability to shape their responses on recorded calls.

The ABA's Standards for Criminal Justice warn precisely about this sort of conduct:

A faithless cooperator may attempt to inculcate another through selective recording of conversations or attempt to falsely exonerate an ally by tipping him or her off before the taping. Either of these tactics can then be amplified if the cooperator later dishonestly interprets a cryptic or ambiguous conversation for investigators.

ABA Standards for Criminal Justice § 26-2.11; *see generally* *United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993) (noting that “criminal informants are cut from untrustworthy cloth” and must be “carefully watched by the government” to prevent them from “manufacturing evidence against those under suspicion of crime”). The Government's failure to monitor Singer's communications further undermines the reliability of his recorded conversations.

Other examples of the Government's reckless disregard for Singer's unmonitored communications abound. On October 23, 2018, the Government learned that Singer had purchased

an unauthorized “burner” phone and told six families about the investigation because he “had loyalty to all of them.” Ex. HH at 1-2. Singer specifically warned them that he would “eventually . . . call them and ask questions [*i.e.*, on a recorded call].” *Id.* at 1. But the Government waited *eight* days upon learning about the unauthorized phone (and the obstruction) to seize this phone, Ex. GG at 4, thereby giving Singer plenty of time to delete information from this phone as well. The Government let Singer use yet *another* phone in October 2018, an iPhone 8+, which was not monitored and to be used for calls with agents and his attorney. *Id.* But other than installing a pen register—which logs the numbers for incoming/outgoing calls and ordinary texts but does not capture iMessages or FaceTime Calls—the Government apparently took no measures to ensure this phone was not used improperly and that relevant evidence was not destroyed either. Nor did the Government seize this phone when Singer’s informant role was over; it remains in his possession, *see id.* at 3-4, meaning any relevant evidence is almost certainly lost.

We do not know why the Government allowed Singer to avoid monitoring and detection on his various devices—or why it appears to have made no serious effort to recover information that was deleted when it had the opportunity to do so. But we do know that these failings are almost certainly prejudicial: It is now impossible for Defendants, the Court, and the jury to ascertain the full context in which Singer’s recorded conversations with his clients took place.

E. The Government’s Misconduct Is Especially Egregious Given Its Overzealous Tactics Generally Throughout This Case

Fabricating evidence, failing to investigate allegations of fabricated evidence, withholding exculpatory evidence, looking the other way when Singer spoliated evidence, and deceiving Defendants and the Court are bad enough. But here, this misconduct is all the worse in light of the Government’s other overzealous and improper tactics throughout this case.

First, while withholding the notes and many other examples of material exculpatory

information, the Government attempted to coerce defendants into pleading guilty by threatening that if they did not, they would face additional charges—even though the factual basis for the charges has remained the same since the outset of this case. When the Defendants now bringing this motion failed to cave, the Government followed through on its threats.¹² The Government had the opportunity to address these curious charging decisions when Judge Woodlock asked about them at Bizzack’s sentencing hearing, but it offered no meaningful explanation. *See* ECF No. 34 at 42-45, *United States v. Bizzack*, No. 19-cr-10222 (Oct. 30, 2019) (refusing to answer and resting on prosecutorial discretion). These charging decisions further demonstrate that this case is being handled improperly. After all, DOJ’s policies explain that “[c]harges should not be filed simply to exert leverage to induce a plea.” Justice Manual § 9-27.400, *Plea Agreements Generally* <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.400>. In addition, U.S. Attorney Andrew Lelling has personally flouted this Court’s Rules, the Rules of Professional Responsibility, and DOJ regulations and policies by going on television to threaten defendants who refused to plead with “a substantial[]” sentence.¹³

Second, the Government leveraged the apparently tainted consensual recordings to rapidly extract pleas from numerous other defendants, using take-it-or-leave-it offers. *See, e.g.*, ECF No.

¹² *See* ECF No. 314 (adding money-laundering conspiracy charges); ECF No. 610 (adding federal-programs-bribery conspiracy and various aiding-and-abetting charges); ECF No. 732 (adding tax charges); *see also* ECF No. 272, *United States v. Ernst*, 19-cr-10081 (adding 22 additional counts against non-pleading defendants).

¹³ *See Actress Lori Loughlin Likely to Face ‘Higher Sentence’ in College Admissions Scandal, US Attorney Says*, WCVB5 (Oct. 8, 2019), <https://www.wcvb.com/article/actress-lori-loughlin-likely-to-face-higher-sentence-in-college-admissions-scandal-us-attorney-says/29402556>; L.R. 83.2.2 (prohibiting prosecutors from making “extrajudicial statements” that interfere with a defendant’s right to a “fair trial” and the “due administration of justice”); Mass. R. Prof’l Conduct 3.8(f) (similar); 28 C.F.R. § 50.2(b) (DOJ’s statement of policy articulating same principles); DOJ, Justice Manual § 1-7.500, .600, .610, .700, <https://www.justice.gov/jm/jm-1-7000-media-relations> (last updated Apr. 2018) (similar).

25 at 4, *Bizzack*, No. 19-cr-10222; ECF No. 34 at 72, *Bizzack*, 19-cr-10222. It is now clear the Government made these offers and extracted pleas (and substantial sentences) while knowingly withholding *Brady* material from defense counsel and the Court, and made material misrepresentations in the process. The Government thus relied on tainted evidence to put the screws to defendants while simultaneously withholding information that undermined the evidence's reliability.

Consider Gordon Caplan, who pled guilty and was sentenced last year. The October 2 note indicates that the recordings the Government relied on at Caplan's sentencing contained fabricated inculpatory evidence and that agents wanted to "nail" him "at all costs." Ex. A at 1. Yet the Government did not produce the notes to Caplan before securing his guilty plea.

Similarly, the Government obtained a plea from Jeffrey Bizzack without ever disclosing Singer's notes or interview reports. At Bizzack's sentencing, Judge Woodlock questioned the Government—extensively—about what evidence showed that Bizzack thought the payments were "going to Ms. Heinel as a faithless employee as opposed to [USC] itself." ECF No. 34 at 24, *Bizzack*, 19-cr-10222. And the prosecutor repeatedly argued that Bizzack knew the payments were going to Heinel "for her own personal use." *Id.* at 22, 25. Yet a recently produced interview report (summarizing an interview with Singer that the same prosecutor attended) says that "JEFF BIZZAK [sic] believed the money paid was going to the program or to USC." 12/12/18 FD-1023, Ex. NN at 1; *see also* ECF No. 25 at 11, *Bizzack*, 19-cr-10222 (Government repeatedly stating that Bizzack "made payments that he knew would be used to pay bribes").

In the wake of the Government's disclosure of the October 2 note, the defendants who pled guilty and were sentenced without being informed of the improperly withheld exculpatory evidence have written to the Government and Court to challenge the Government's misconduct

and to request discovery allowing them to evaluate the effect of the withheld evidence on their pleas. *See* ECF No. 41, *Bizzack*, 19-cr-10222. And several defendants undergoing sentencing have requested extensions to process the implications of the Government’s malfeasance. *See* ECF Nos. 924, 939, 941. Rightly so: Even “good faith” “[p]rosecutorial misrepresentations . . . are not acceptable” in plea bargaining—and the bad faith tactics used here are far worse. *Correale v. United States*, 479 F.2d 944, 947 (1st Cir. 1973) (emphasis added); *see also Ferrara v. United States*, 456 F.3d 278, 291 (1st Cir. 2006) (outrageous government misconduct involving failure to disclose exculpatory evidence in violation of due process renders a guilty plea involuntary).

Third, while the Government was itself improperly withholding exculpatory evidence, it did its best to ensure Defendants did not obtain exculpatory evidence from other sources either. When Defendant Zangrillo sought such evidence from USC, the Government supported USC’s efforts to quash Zangrillo’s requests. The Government argued his requests had “absolutely nothing to do with this case,” labeled them “ridiculous” and “a complete side show, completely unrelated to the issues at hand,” and even said it would move to exclude the as-of-yet-unproduced evidence at trial if it were produced. ECF No. 572 at 70, 72.

Magistrate Judge Kelley rejected those arguments out of hand. As she explained, the materials Zangrillo sought “are [*h*]ighly [*r*]elevant to the [*d*]efense,” and “[*t*]here is *no question* that [*t*he] materials . . . must be produced.” *United States v. Zangrillo*, No. 19-cr-10080, 2020 WL 1027815, at *7 (D. Mass. Mar. 3, 2020) (emphasis added). The unredacted USC evidence Zangrillo sought “strongly refute[s] the inference the [*G*]overnment hopes to draw,” namely that monetary donations and admissions are not tightly intertwined at USC. *Id.* at *8; *see also id.* at *4 n.8 (further noting that Government’s fraud theory rests on “*open question*” of “[*w*]hether a donation to the school that does not directly enrich the employee can even constitute a bribe under

an honest services theory” (emphasis added)). The Government’s refusal to conduct itself fairly thus extends well beyond the misconduct that is the focus of this motion.

III. THE GOVERNMENT’S MISCONDUCT WARRANTS SERIOUS SANCTIONS

The purpose of a criminal trial is to “ascertain[] the *truth* about criminal accusations.” *Kyles*, 514 U.S. at 439-40 (emphasis added). The Government’s conduct and tactics suggest it has lost sight of that purpose. In Defendants’ view, the un rebutted misconduct detailed above is serious enough to warrant dismissal of the indictment. Defendants nonetheless recognize that significant questions about the scope and extent of the Government’s misconduct remain unanswered. Given those factual uncertainties, if the Court is not inclined to dismiss the indictment at this time, Defendants ask this Court to order (1) suppression of all the tainted consensual recordings, and (2) discovery and an evidentiary hearing so that all the relevant facts can come to light.

A. The Indictment Should Be Dismissed

Dismissal for governmental misconduct is an extreme sanction “reserved for the most appalling and egregious situations.” *Guzman*, 282 F.3d at 59. It requires the defendant to show that “the challenged conduct violates commonly accepted norms of fundamental fairness and is shocking to the universal sense of justice.” *Id.* Although prejudice to the defense is part of the inquiry, it is not a strict requirement if the Government’s misconduct is sufficiently “outrageous.” *United States v. Therrien*, 847 F.3d 9, 15 n.8 (1st Cir. 2017); *see also United States v. Rossetti*, 768 F.2d 12, 15 (1st Cir. 1985) (stating that prejudice “could” be required “[d]epending on the seriousness of the government’s misconduct”).

Here, the un rebutted record developed shows outrageous Government conduct warranting dismissal. For the entire year this case has been pending, the Government knowingly withheld evidence that Defendants repeatedly requested and that supported Defendants’ innocence and

undermined the consensual recordings—one of the Government’s most valued pieces of evidence. At the same time, the Government repeatedly told Defendants and this Court that no such evidence existed and that no exculpatory evidence was being withheld. The recently disclosed evidence also indicates that government agents knowingly fabricated incriminating evidence (and selectively excluded exculpatory evidence) by coercing their principal informant into lying on recorded phone calls, and conveniently failed to preserve obviously relevant forms of evidence.

Crucially, despite numerous opportunities (and requests by Defendants) to address these allegations, the Government has not denied their accuracy. The Government has refused to provide anything more than a chronology to its production of the notes—and that chronology only raises more questions. *See* 3/19/20 Letter, Ex. OO; Ex. N. The Government has not even said it investigated the allegations, either upon learning of them 16 months ago or in response to Defendants’ prodding. And in light of its tactics throughout this case, the Government’s misconduct appears to have been part of a concerted effort to coax Defendants into pleading guilty and prevent them from mounting an effective defense.

To be sure, there may be time for Defendants to incorporate the recently disclosed evidence into their trial strategies. But the Government’s all-too-convenient failure to monitor all of Singer’s communications with Defendants ensures that cross-examination cannot cure the taint caused by its misconduct. And this case has been pending for *a year*. Discovery should be winding down, yet the Government is only now producing evidence that should have been disclosed 10 months ago. Its obstinacy and misconduct forced Defendants and their counsel to expend large amounts of time and expense solely to have the Government comply with its obligations.

Based on the extent of the Government’s misconduct—and because the evidence shows “willful misrepresentations or bad faith,” *United States v. Richman*, 600 F.2d 286, 291-92 (1st Cir.

1979)—dismissal is warranted. *See United States v. Pollock*, 417 F. Supp. 1332, 1349 (D. Mass. 1976) (dismissing indictment because “bad faith attempts to destroy or tamper with evidence material to a defendant’s guilt or innocence . . . passes beyond the line of tolerable human imperfection and falls into the realm of fundamental unfairness”); *United States v. Diabate*, 90 F. Supp. 2d 140 (D. Mass. 2000) (pattern of misconduct justified dismissal).

B. At A Minimum, The Court Should Suppress The Consensual Recordings And Order An Evidentiary Hearing To Examine The Misconduct

If the Court concludes that the current record does not warrant dismissal, it should nonetheless suppress all of the tainted consensual recordings involving Singer and his clients. The First Circuit has acknowledged that courts’ supervisory powers authorize them to suppress tainted evidence. *See Horn*, 29 F.3d at 766-67. And on the current record, it is more likely than not that the consensual recordings the Government has relied on throughout this prosecution contain fabricated inculpatory evidence. *See supra* at 15-17. Use of the consensual recordings thus violates Defendants’ due-process rights. *See Limone*, 372 F.3d at 44-45; *United States v. Marshank*, 777 F. Supp. 1507, 1522 (N.D. Cal. 1991) (“Suppression is an appropriate remedy where the court can identify and isolate the evidence obtained in violation of the defendant’s Fifth Amendment due process rights.”).

If that were not enough, the record illustrates a pattern of deliberate Government misconduct that spans back to before this case was even charged: failing to investigate allegations of fabricated evidence, allowing Singer to destroy evidence, withholding exculpatory evidence, knowingly deceiving Defendants and the Court—all coupled with the scorched-earth prosecutorial tactics described above. Application of the Court’s supervisory powers is thus urgently needed to preserve the integrity of this proceeding and “secure enforcement of ‘better prosecutorial practice[s],’” both here and in the future. *Horn*, 29 F.3d at 760. And suppression is particularly

suites for that purpose. That remedy “is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.” *Elkins v. United States*, 364 U.S. 206, 217 (1960); *cf.* Fed. R. Evid. 403 (exclusion of relevant evidence is appropriate if its “probative value is substantially outweighed by a danger of . . . unfair prejudice . . . [or] misleading the jury”).

The Court should also order an evidentiary hearing directed at the significant questions about the scope and extent of the Government’s misconduct that remain unanswered. These include questions about (1) the specifics of Singer’s interactions with the agents as described in the October 2 note; (2) whether the agents acted inappropriately in other parts of the investigation; (3) what steps (if any) were taken to investigate or address the conduct Singer described in the note; (4) who else on the prosecution team was aware of or involved in the withholding of Singer’s notes; (5) on what basis the prosecution formed its asserted belief that the notes were privileged; and (6) what other evidence the Government is unilaterally withholding on the basis of a privilege. To facilitate that hearing, the Court should allow Defendants to obtain tailored discovery into these and other relevant topics.

The First Circuit has explained that an evidentiary hearing is appropriate “if the movant makes a sufficient threshold showing that material facts are in doubt or dispute, and that such facts cannot reliably be resolved on a paper record.” *United States v. Staula*, 80 F.3d 596, 603 (1st Cir. 1996). “Most importantly, the defendant must show that there are factual disputes which, if resolved in his favor, would entitle him to the requested relief.” *Id.*; *see also LaFrance v. Bohlinger*, 499 F.2d 29, 35 (1st Cir. 1974) (courts must “protect[] the accused against pretrial illegality by denying to the government the fruits of its exploitation of any deliberate and unnecessary lawlessness on its part” and conduct necessary inquiry when presented with

substantial claim of such conduct); *United States v. Merlino*, 2000 WL 294880, at *2 (D. Mass. Mar. 10, 2000) (granting hearing where defendant identified material disputes).

Here, the factual questions outlined above satisfy this standard. Even if the Court believes that dismissal or suppression is not yet warranted, resolution of these questions would directly inform its consideration of that issue. Further evidence that the consensual recordings were orchestrated to entrap defendants by having them acquiesce to false inculpatory statements would confirm that dismissal or suppression is warranted. If the evidentiary hearing revealed that additional prosecution members were involved in the withholding of the notes, that too could justify dismissal or other evidentiary sanctions. And the Court is also authorized to order discovery to assist in resolving these questions. *See Fed. R. Crim. P. 16(d)(2)(D)* (court may “enter any other order that is just under the circumstances” for violations of Rule 16’s disclosure obligations); L.R. 83.6.5(g) (in matters of alleged attorney misconduct, “[t]he presiding judge shall order such discovery as may be reasonably necessary to ensure that the proceeding is fair to all parties”).

CONCLUSION

Undersigned counsel are committed to the criminal justice system and have proudly served as prosecutors and defense lawyers for many years. It brings no joy to file a motion of this nature. But the extraordinary Government misconduct presented in this case threatens grave harm to Defendants and the integrity of this proceeding. That misconduct cannot be ignored.

Defendants respectfully ask the Court to dismiss the Fourth Superseding Indictment with prejudice or, in the alternative, to suppress the Government’s consensual recordings and order discovery and an evidentiary hearing on the matters raised herein.

Dated: March 25, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, which was filed with the Court through the CM/ECF system, will be sent electronically to all registered participants as identified on the Notice of Electronic Filing and that paper copies will be sent to those identified as non-registered participants.

/s/ William J. Trach
William J. Trach

EXHIBIT A

17	Created: 10/6/2018 02:03(UTC+0)	
18	Created: 10/1/2018 16:27(UTC+0) Modified: 10/11/2018 23:41(UTC+0)	 <p>Oct 2</p> <p>Loud and abrasive call with agents. They continue to ask me to tell a fib and not restate what I told my clients as to where there money was going -to the program not the coach and that it was a donation and they want it to be a payment. I asked for a script if they want me to ask questions and retrieve responses that are not accurate to the way I should be asking the ques ions. Essentially they are asking me to bend the truth which is what they asked me not to do when working with the agents and Eric Rosen.</p> <p>Liz raised her voice to me like she did in the hotel room about agreeing with her that everyone Bribed the schools. This time about asking each person to agree to a lie I was telling them.</p> <p>Spoke to ██████████ which is a referral from Gordon Caplon. They want to nail Gordon at all costs. ██████████ told me his daughter is a good runner 19 minute 3 mile good enough for recruited walk on or walk on to Wash U and Cornell. Explained the side door but very late and I probably could not do it at this stage.</p> <p>The agents told me to get him to take another school I had a relationship just to entrap him despite him never asking for any other school.</p> <p>When I told them Gordon texted me that ██████████ did not get extended time and the reasons why they s ill wanted me to ask him for a payment to take the SAT through WHCP even when he was not approved just to nail him. I said that is ludicrous as he will not entertain because she was not approved.</p> 

[REDACTED]

Oct 5

[REDACTED]

Bill McGlashan

Spoke about the SAT but want [REDACTED] the son for side door which I explained is no longer as Bill's friends are helping not only to get [REDACTED] into the Dr Dri program but now helping get into USC. So nothing her but SAT.

[REDACTED]

EXHIBIT Q

1 **Call Date:** 2018-10-15

2 **Call Duration:** 11:18

3 **Call Begin [] Call End []**

4 **Call Participants:**

5 Rick Singer

6 John Wilson

7 **File Name:** ██████████ 8802 2018-10-15 17-45-46 10126-001

8 **Bates No.:**

9

10 SINGER: [00:00] John. How are ya?

11 WILSON: Hey, Rick. Doin' well. And yourself?

12 SINGER: It's ki-- you're goin' in and out. Sorry.

13 WILSON: I got a -- I got a bad, uh, (inaudible). It's just a

14 --

15 SINGER: Where is tha--?

16 WILSON: -- (inaudible) they got a big thunderstorm goin'

17 through. Can you hear me better here?

18 SINGER: Yeah, I can hear you better.

19 WILSON: Uh...

20 SINGER: That's much better.

21 WILSON: Uh, you're pr-- busy these days, huh?

22 SINGER: Yeah. We got early decision comin' up.

23 WILSON: Sh--

1 SINGER: Uh, you're gonna be goin' through the same thing,
2 so...

3 WILSON: Oh, I know, next year, exactly. So, hey, uh, there
4 were a couple topics. One was, ya kno-- my
5 daughter's, and, uh, making some donations now,
6 whatever -- how that can work. And then, second, I do
7 want to give some time, uh, to, uh, talk a bit about
8 your overall, uh, pricing strategy and your economic
9 model, if you want.

10 __: Uh...

11 WILSON: I don't want to force it on you. But I just think --

12 SINGER: No, no. Uh, yeah. So le--

13 WILSON: -- could be helpful.

14 SINGER: -- well, let's -- let's start with number one. So
15 what would be great is... You know, w-- I have a
16 bunch of schools that we work with directly. And, you
17 know, it's kind of a first serve-- firs-first come,
18 first [01:00] served. Right? So like I have
19 opportunity with Stanford in sailing. And I can do
20 other Stanford sports potentially too. And we have
21 Yale and we have Harvard. And then I can go after all
22 these other schools too. But, of course, I don't know
23 what the girls want.

1 WILSON: Right. Well, help me understand where you have first
2 come, first serve and, uh... So, uh, you have, as you
3 said, Stanford, sailing.

4 SINGER: Stanford, sailing. Got Yale, soccer, um, Harvard...

5 WILSON: They probably wouldn't want Yale. Harvard? What, uh
6 -- what do you have at Harvard?

7 SINGER: Harvard, we could do multiple sports. I just need to
8 go to them. I could actually even go to Y-- uh, you
9 don't want Yale, because you thought that they were
10 too what? Too conservative or they were too liberal?

11 WILSON: Too liberal.

12 SINGER: OK. I don't know which -- I don't know which side of
13 the room, uh, you know, you -- you come from. So.
14 Uh, you know, we could do Stanford. We can do,
15 obviousl-- USC with anything. Right? So that's an
16 easy one.

17 WILSON: How about UCLA?

18 SINGER: UCLA, I could do the same thing.

19 WILSON: And [02:00] what about, uh...? Got, uh, multiple
20 there. And what about the, um -- uh, Georgetown?

21 SINGER: Uh, for where?

22 WILSON: Georgetown?

23 SINGER: Georgetown, we could do the same thing. Yeah.

24 WILSON: Lots of mul--ple options.

1 SINGER: Yeah.

2 WILSON: So Stanford only has 1 or 2. Just sailing? Is that
3 about it?

4 SINGER: Um, so, uh, usually I can go t-- sailing, I can go to
5 the crew coach, 'cause I'm friendly with her, um, and
6 we can, you know, d-- always do women's lacrosse. And
7 again, ya know, they don't have to play. They just --
8 I j-- that's the path I'm gonna get 'em in on.

9 WILSON: Gotcha. And what about Harvard? Crew, sailing.
10 Anything else?

11 SINGER: Um, sailing, crew, sometimes tennis. The key to here
12 is that, if I were to get a deposit, l-- you know,
13 like, uh, uh, half a million dollars in the bank, then
14 it's --

15 WILSON: Uh...

16 SINGER: -- ya know, we can figure out where they wanna go. So
17 what I'd like to do is... I'm gonna be in town on
18 November 1st and 2nd. If you can start probin' with
19 the girls as [03:00] to potentially their -- what
20 they're thinking, then we -- you and I could -- if
21 you're -- if you can be in town one of those days -- I
22 think it's a Thursday, Friday -- and we could talk
23 face-to-face, then we could figure out, OK, what are
24 we gonna go after. So if anybody asks me for like a

1 Stanford spot and we're not sure yet, then I can call
2 you and say, "Hey, somebody wants that spot and I only
3 have 1," or "I'm gonna get a second one," or whatever.
4 But having the money already, in advance, makes it
5 much easier. Because I gotta go with whoever's gonna
6 ante up.

7 WILSON: Yeah. And who do we make these, uh, checks out to?
8 And, uh, what's, uh -- uh, what's your foundation? Do
9 you have a whole wiring -- send me an email with all
10 your wiring and all, uh...?

11 SINGER: Yeah. I can send ya a email with all the wiring
12 instructions. And then g-- uh, uh, your check will be
13 -- to into our foundation's account.

14 WILSON: Ri-- goes to your foundation, right.

15 SINGER: Yeah.

16 WILSON: Uh, uh, do you have mul--? So you have multiples, uh,
17 at Harvard and Stanford and, uh...

18 SINGER: Correct.

19 WILSON: You have mul--ples everywhere, it sounds like.

20 SINGER: Correct.

21 WILSON: And they don't actually have to do that sport, you're
22 saying. They could just go in and --

23 SINGER: Correct.

24 WILSON: -- be like the, uh -- the [04:00] scorekeeper or --

1 SINGER: Corre--

2 WILSON: -- water boy, water girl.

3 SINGER: Manager or whatever you want to call 'em. Yeah.

4 WILSON: Uh, manager, those things. OK. And you can do 2 at 1
5 school, as well. You could do 2 at, uh...?

6 SINGER: It's more difficult to do.

7 WILSON: Uh...

8 SINGER: That's why it depends on where it is. And the earlier
9 I know, then that gives me a chance to go after it.

10 'Cause I'll have to solicit, uh...

11 WILSON: Uh, let's say it's 2 at either Stanford or Harvard.

12 SINGER: So then, uh...

13 WILSON: Are those impossible or...?

14 SINGER: No, it's not impossible, absolutely not. It's just a
15 matter of I just need to know that I go-- I gotta
16 start doin' my work now on that. So by you makin' the
17 deposit, it makes it easier for me, because I know I
18 g-- uh, because what they're gonna first say to me...
19 If I go to them... And let's say we're doin' 2 girls
20 in 1 place. Then they're gonna say to me, uh, "We're
21 gonna give up a spot for you. Are you --"

22 WILSON: Uh...

23 SINGER: "-- are you guaranteeing me that's she's comin'? And
24 is the family guaranteeing me that they're gonna ante

1 up and they're gonna make a payment?" Because they
2 don't want to give up a spot. And the earlier I do
3 it, the better.

4 WILSON: Gotcha. So, uh, what about Princeton? They have
5 multiples [05:00] too?

6 SINGER: 1. Usually, I could try to get a second, but it's
7 more difficul--

8 WILSON: Only 1 at Princeton. OK.

9 SINGER: Yeah.

10 WILSON: And same kinda deal, any spor--? You don't have to
11 really play the sport?

12 SINGER: That's correct.

13 WILSON: And you can do that -- you can also get some kinda
14 chair things too, if you don't do the sport?

15 SINGER: Uh...

16 WILSON: Or, uh, sport mostly is your...?

17 SINGER: Um, yeah, the... It jus-- well, like it depends on
18 the school. To go after a dean is a little more
19 difficult. With your girls, because they're athletic
20 and they're big and all of that, I can sell to anybody
21 that they're athletic enough to be able to take 'em
22 and there'll be no question.

23 WILSON: Yeah. Their size and, uh... So they... Yeah.

24 SINGER: Correct.

1 WILSON: Even though they wouldn't play. OK.

2 SINGER: R--

3 WILSON: And Brown? Is, uh, Brown also 2? Or wh--?

4 SINGER: Brown's an option too. Yeah, sure.

5 WILSON: A couple of 'em. OK.

6 SINGER: Yeah.

7 WILSON: Uh, and those are all -- except for like UCLA and

8 USC...? Those are like the 350 and the other ones are

9 gonna be like 1,000,000, whatever?

10 SINGER: Yeah. The -- the big boys are gonna cost you over

11 1,000,000. And, uh, probably -- if I know early

12 enough, I could probably get it done at 1.5 for both

13 girls. Uh, I just need to -- [06:00] I need to push

14 now.

15 WILSON: OK. So, yeah, I can get ya more now, if that helps

16 you and makes everything certain. Uh, yeah. So I'll

17 give you at least half. Maybe I can get ya $\frac{3}{4}$ of a

18 million now, if that makes it like, you know, more

19 certain and you're gonna say --

20 SINGER: OK.

21 WILSON: -- (inaudible) done, that's a better way to do it, for

22 you.

23 SINGER: Uh...

1 WILSON: It makes it better -- you're saying better with the
2 schools, everything, it's much better to get it --

3 SINGER: We-- uh, th-the --

4 WILSON: -- as a guarantee.

5 SINGER: -- the amount, uh, that doesn't ma-matter right now.

6 It matters you're committed. And you putting down

7 some money, th-that I know... John, I kn-- known you

8 for years. So I know, when, uh, we get the girls in,

9 it's a done deal and you're gonna take care of your

10 part of it, you're gonna make the payments to the

11 schools and the -- to the coaches. And that's what I

12 need -- that's -- tha-- so I'm not worried about that.

13 WILSON: Uh, uh, help me understand the logistics? I thought I

14 make the payment to you and you make the payment to

15 the school.

16 SINGER: Correct. That's correct.

17 WILSON: Oh, you said *I* make the payment to the schools.

18 SINGER: Well, no, no.

19 WILSON: You're (inaudible)...

20 SINGER: Uh, essentially, uh, it's gonna come to my

21 foundation... That's correct.

22 WILSON: And you pay. Uh, r-- OK.

23 SINGER: That's correct.

1 WILSON: Now, um, uh, how does that actually wor--? What if
2 they don't actually get in? Uh, it's not a b-- uh...

3 SINGER: Oh, no, no, no. Y-you don't have to [07:00] worry
4 about it. They're -- it's g-- it's a done deal. And
5 I'll know beforehand if it's gonna be done or not.

6 WILSON: Uh...

7 SINGER: But, uh --

8 WILSON: When will you know --

9 SINGER: -- see, uh --

10 WILSON: -- in the summer of next year?

11 SINGER: -- I need a score. See? That's why I need their
12 grades and scores. And that's wh--

13 WILSON: Yeah. They get PSATs. And they just took the PSATs.

14 SINGER: Correct. And then I need the real scores. That would
15 be -- that's gonna -- that's gonna be able to tell me
16 how easy it is to -- to flow it through or no-- and
17 I'm hopefu-- both girls get the same or something
18 similar to each other.

19 WILSON: They've gotten pretty similar scores all along, plus
20 and minus math and English, that kinda stuff.

21 SINGER: Right.

22 WILSON: Yeah.

23 SINGER: Right.

1 WILSON: As long as, you know, like you can -- 1300 or so, is

2 that OK --

3 SINGER: Correct.

4 WILSON: -- is it --

5 SINGER: Yes. Yeah.

6 WILSON: -- 1300 plus? OK.

7 SINGER: Yeah.

8 WILSON: Now, do you ha-- when you say you need to know, we

9 have to actually have picked a school by when too,

10 that it's -- OK, it's 2 to Stanford, 2 at Harvard, or

11 1 in each --

12 SINGER: Well, uh, late --

13 WILSON: -- 1 in USC, or...?

14 SINGER: -- so I need that late spring.

15 WILSON: So late spring only. OK.

16 SINGER: Right. And you guys are gonna visit the schools by

17 then. You'll have so much fun, uh.

18 WILSON: Yeah, yeah. They're g-- they haven't gone to these

19 place-- they've been to some of them.

20 SINGER: Correct.

21 WILSON: But they didn't go to them, look at 'em. Uh, does it

22 matter if they go to them and look at the -- an-and

23 have this whole tour, with the [08:00] school knowing,

24 or just go and look at themselves?

1 SINGER: No, uh. It's a --

2 WILSON: Want to suck up to the dean?

3 SINGER: -- uh, a regular tour -- regular -- regular tour.

4 WILSON: OK. Do those have to be done durin' the week too?

5 They can't do 'em --

6 SINGER: Yeah.

7 WILSON: -- on a weekend really?

8 SINGER: Yeah. The weekends -- you know, because they don't

9 have the same energy.

10 WILSON: No, no. I understand that. But I meant for the

11 school, to meet with the whatever, faculty -- or not

12 the facu-- but the...

13 SINGER: Well, they d-- they're just gonna go on a regular

14 tour. They're not gonna meet, uh, faculty anyways.

15 WILSON: I mean, see the class, I mean-- not meet the faculty

16 but see the classrooms.

17 SINGER: Well, if we have kids that go there. We can set it up

18 with 'em. If I don't kids that go, they don't go see

19 classes. People do--

20 WILSON: Oh, they do not. They just go on a tour --

21 SINGER: No. People are worried --

22 WILSON: -- of campus by --

23 SINGER: -- about all that. Yes.

1 WILSON: -- admissions? OK. So it's admissions tour, not like
2 a classroom tour.

3 SINGER: Correct.

4 WILSON: OK. Uh...

5 SINGER: Correct. Unless I have kids there.

6 WILSON: Uh, gotcha. OK. So if I do it early on, you might
7 even get, you said, 2 -- uh, 2 (inaudible) the top
8 ones (inaudible) 1 (inaudible).

9 SINGER: Correct.

10 WILSON: And does it really matter, though, if it's 2 at 1 or,
11 uh, not?

12 SINGER: It d--

13 WILSON: Ho-how much did you...?

14 SINGER: It makes it ea-- it makes it easier, if it isn't, but
15 it can be done.

16 WILSON: It could be done. OK. And you're pretty confident
17 right now, a-and all those top schools, you could get
18 something done, as long as they get --

19 SINGER: Yeah.

20 WILSON: -- a test score of [09:00] 1300.

21 SINGER: Because I'm -- I'm usin' up my spot now. And then you
22 have the ne-- you're early.

23 WILSON: OK. Great. And then, uh... You only have like 1 or
24 2 spots in each of these place, though, you're saying.

1 SINGER: Correct.

2 WILSON: Or, y-- uh, you have several, depending on the sport,
3 you were s-- uh, 'cause like --

4 SINGER: Well, it depends.

5 WILSON: -- Harvard, you can a couple --

6 SINGER: Uh, uh...

7 WILSON: -- both crew and saili--

8 SINGER: Well, John, it, uh -- it depends on boy or girl, all
9 of that, right? Because --

10 WILSON: But I'm saying 2 girls.

11 SINGER: -- (inaudible). Yeah, usually 2 girls.

12 WILSON: So my t-- you can get a couple girls in each year, to
13 these places. And they may --

14 SINGER: Correct.

15 WILSON: -- take both of those spots.

16 SINGER: Correct.

17 WILSON: OK. Sound like you got 20 spots. You may only have
18 2.

19 SINGER: No. Uh, right. You're crazy.

20 WILSON: No. It's why you need to charge a bigger premium, my
21 friend.

22 SINGER: I got it. Well, we'll have that discussion in --

23 WILSON: Uh...

24 SINGER: -- in, uh, November. How's that?

1 WILSON: OK. And that sounds great. So I w-- I will get
2 you... Send me an email with where you need to send
3 these funds. And so you don't care. Half a million,
4 whatever, is good, $\frac{3}{4}$ of a million, doesn't really
5 matter, you're saying, just send something to you.

6 SINGER: Correct.

7 WILSON: And then, uh -- uh, then you know we're locked in for
8 2. We don't know where yet.

9 SINGER: R--

10 WILSON: We'll determine that a little bit later in the year,
11 maybe November. [10:00] So you have your dates? Is
12 it 1 and 2, for sure? What is your schedule?

13 SINGER: Excuse me?

14 WILSON: The dates (inaudible) --

15 SINGER: Yeah. November --

16 WILSON: -- come back to Boston, uh.

17 SINGER: -- 1st and 2nd. Yeah. November 1st and 2nd -- it's a
18 Thursday, Friday -- I'll be...

19 WILSON: OK. Yeah. Right now we were plannin' on being out of
20 town, damn it. We're gonna be in Europe. Uh, when's
21 the next time you're in, uh, Boston, uh?

22 SINGER: Uh, I'll have to figure that out. I'll let you know,
23 though.

1 WILSON: OK. My girls'll be in town. But w-- Leslie and I
2 will be out, yeah.

3 SINGER: OK. Gotcha.

4 WILSON: All right. Oh, by the way, you should mark your
5 calendar for next Ju-July, if you want, in, uh, Paris.
6 Got a big birthday, July, uh, 19.

7 SINGER: OK.

8 WILSON: I rented out Versailles.

9 SINGER: Oh, my God. You're crazy.

10 WILSON: I know. A black-tie party there. So you'll have to
11 come.

12 SINGER: Uh...

13 WILSON: Anyway. Uh, I will -- I'll get you -- uh, I'll parti-
14 -

15 SINGER: I'll send you the -- I'll send you the w-- uh,
16 information about the bank and the wiring stuff, uh,
17 probably in the next day or so.

18 WILSON: OK. That's great. It's good to hear that earlier is
19 better.

20 SINGER: Yeah.

21 WILSON: I'm glad we had this conversation. And then I'll have
22 the girls run a filter, over the next few weeks. Uh,
23 they could meet with you in November without us. Is
24 that [11:00] OK? Or would you --

1 SINGER: Sure.

2 WILSON: -- want (inaudible) with us?

3 SINGER: Absolutely.

4 WILSON: OK.

5 SINGER: Absol--

6 WILSON: So I'll have the girls plan on meeting you sometime

7 November 1 and 2. Let me know the next time you're on

8 (inaudible).

9 SINGER: Will do.

10 WILSON: Yeah. I'd be happy to help you with your business

11 model. So I think you're leaving a lotta money on the

12 table.

13 SINGER: I know y-- I know that. We'll have that discussion.

14 WILSON: OK. So the g--

15 SINGER: All right, John.

16 WILSON: Uh...

17 SINGER: Thanks.

18 WILSON: Take, uh...

19 SINGER: OK. Buh-bye. [11:18]

20

21

END OF AUDIO FILE

EXHIBIT QQ

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

v.

DAVID SIDOO, et al.,

Defendants.

Case No. 19-cr-10080-NMG

**AFFIDAVIT OF JOHN B. WILSON IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS INDICTMENT WITH PREJUDICE
OR, IN THE ALTERNATIVE, FOR SUPPRESSION OF EVIDENCE
BASED ON GOVERNMENTAL MISCONDUCT**

I, John B. Wilson, declare the following:

1. I am a defendant in this action. I make this affidavit pursuant to *Simmons v. United States*, 390 U.S. 377 (1968), and in support of Defendants' Motion to Dismiss Indictment with Prejudice or, in the Alternative, for Suppression of Evidence Based on Governmental Misconduct.

2. Almost a decade ago, I hired William "Rick" Singer to provide college counseling for my son. Mr. Singer provided typical college-counseling services, such as tutoring for standardized tests, and advice on essay-writing and selecting appropriate colleges.

3. As part of this process, Mr. Singer told me that the University of Southern California was one of several schools that had a sports program that welcomed donations from parents of student-athlete applicants, and that the donations could be considered in admissions. Mr. Singer used the term "side door" to describe this program, and said that it was a legitimate and common practice. He said that doing this was similar to donating a building or endowing a chair, but involved smaller donations. He also said that many of the school's athletic teams—including water polo, which Mr. Singer knew my son played—depended on such side-door donations.

4. Mr. Singer told me that my donation would go to the school and to support the USC water polo team. He never said that any part of my donation would be a bribe or illegal payment to any individual or school.

5. In September 2018, I had several conversations with Mr. Singer about him providing college-advising services to my two daughters. In one of the conversations, consistent with his prior descriptions of side-door donations as proper (and common), he told me that, because he had recently facilitated several side-door donations to Harvard University, he would be negotiating side-door donations directly with the President of Harvard. To start his counseling of my daughters, Mr. Singer agreed to conduct a Skype video/audio meeting with my family on September 28, 2018.

6. On the afternoon of September 28, 2018, Mr. Singer was texting about our meeting and sent a text asking to move the conversation from Skype to FaceTime. I understand that FaceTime is an audio/video application offered on iPhones.

7. My family conducted this FaceTime meeting with Mr. Singer on September 28, 2018. I participated in some but not all of the FaceTime conversation with Mr. Singer. To the best of my memory, during this call and in other conversations, among the things Mr. Singer said were:

- a. The side-door program was more popular and widespread than it had been in 2013-2014, and was occurring at many more schools and with more students.
- b. Schools knew and accepted that applicants utilizing the side-door program did not have to be athletes capable of competing on the school's varsity sports team, and did not need to be accomplished athletes. They could be team

assistant managers or have similar nonplaying roles. Thus, the side-door would be appropriate for my daughters.

- c. Mr. Singer did not say this program involved bribery of coaches, administrators, or schools. He described it as a legitimate and common fundraising method.

9. I have reviewed the transcripts produced by the government of recorded conversations I had with Mr. Singer from September 29, 2018 through 2019. In some of these conversations, Mr. Singer used words that are ambiguous, misleading, or inconsistent with how he described the side-door program in the September 28, 2018 conversation and in prior conversations.

10. I have not seen a transcript of this September 28, 2018 FaceTime conversation in the materials produced by the government.

11. Mr. Singer sent numerous texts to me and my family from 2010 to 2019. I have reviewed text messages from Mr. Singer that the government has produced in this case. Text messages my family and I exchanged with Mr. Singer are missing from the government productions that I have reviewed, including texts between iPhones during September 20-30, 2018. For example, I did not see in the government productions a September 28, 2018 text message asking to switch the call from Skype to FaceTime, or other texts about this meeting.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 25, 2020.

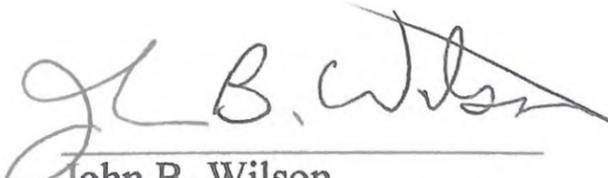

John B. Wilson

EXHIBIT RR

From: Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>
Sent: Tuesday, March 24, 2020 8:55 PM
To: Kendall, Michael <michael.kendall@whitecase.com>
Cc: Bell, Karin (USAMA)3 <Karin.Bell@usdoj.gov>; O'Connell, Justin (USAMA) <Justin.O'Connell@usdoj.gov>; Wright, Leslie (USAMA) <Leslie.Wright@usdoj.gov>; Kearney, Kristen (USAMA) <Kristen.Kearney@usdoj.gov>; Tomback, Andrew <andrew.tomback@whitecase.com>; Malkiel, Yakov <yakov.malkiel@whitecase.com>; Frank, Stephen (USAMA) 1 <Stephen.Frank@usdoj.gov>
Subject: RE: US v. Siddoo, Follow up on discovery

Mike –

In response to your further inquiry, Singer did inform the government that he had scheduled a FaceTime call prior to the call, and the government directed Singer to maintain his regular college counseling contacts with students during the period in which he was cooperating with investigators.

We believe we have now provided you with all the factual information we have about the call.

Eric

From: Kendall, Michael <michael.kendall@whitecase.com>
Sent: Tuesday, March 24, 2020 12:38 PM
To: Rosen, Eric (USAMA) <erosen2@usa.doj.gov>
Cc: Bell, Karin (USAMA)3 <KBell3@usa.doj.gov>; O'Connell, Justin (USAMA) <JOconnell@usa.doj.gov>; Wright, Leslie (USAMA) <LWright4@usa.doj.gov>; Kearney, Kristen (USAMA) <KKearney@usa.doj.gov>; Tomback, Andrew <andrew.tomback@whitecase.com>; Malkiel, Yakov <yakov.malkiel@whitecase.com>
Subject: US v. Siddoo, Follow up on discovery

Eric,

Thanks for your prompt reply. It was very helpful. We need to clarify a few details:

What is the reason that the Government did not monitor the call?
Did Singer fail to tell the Government about the call before it occurred?
When and how did the Government first learn about the call—from our inquiries?

Mike

Michael Kendall | Partner
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White & Case LLP | 75 State Street | Boston, MA 02109-1814

From: Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>
Sent: Tuesday, March 24, 2020 11:23 AM
To: Malkiel, Yakov <yakov.malkiel@whitecase.com>; Bell, Karin (USAMA)3 <Karin.Bell@usdoj.gov>
Cc: O'Connell, Justin (USAMA) <Justin.O'Connell@usdoj.gov>; Wright, Leslie (USAMA)

<Leslie.Wright@usdoj.gov>; Kearney, Kristen (USAMA) <Kristen.Kearney@usdoj.gov>; Kendall, Michael <michael.kendall@whitecase.com>; Tomback, Andrew <andrew.tomback@whitecase.com>
Subject: RE: US v. Siddoo, Follow up on discovery

Yakov –

We are responding to your emails of March 21, 23 and 24, 2020.

First, as we indicated in our reply on March 19, 2020, we do not believe we have any additional information responsive to your request about the note. As we have previously indicated, we are reviewing our productions to ensure that that is the case. To the extent Singer drafted the note “in response” to anything, we do not believe it was a request from the government. It may have been a request from his own counsel. To the extent we find any information responsive to your request, we will produce it promptly.

Second, we do not believe we have additional agent reports or notes of the September 28, 2018 meeting in California. As you note, the call occurred during a break in the meeting and the government did not play a “role” in the call or monitor it. To the extent we find any information responsive to your request, we will produce it promptly.

Eric

From: Malkiel, Yakov <yakov.malkiel@whitecase.com>
Sent: Tuesday, March 24, 2020 11:15 AM
To: Bell, Karin (USAMA)3 <KBell3@usa.doj.gov>
Cc: Rosen, Eric (USAMA) <erosen2@usa.doj.gov>; O'Connell, Justin (USAMA) <JOconnell@usa.doj.gov>; Wright, Leslie (USAMA) <LWright4@usa.doj.gov>; Kearney, Kristen (USAMA) <KKearney@usa.doj.gov>; Kendall, Michael <michael.kendall@whitecase.com>; Tomback, Andrew <andrew.tomback@whitecase.com>
Subject: RE: US v. Siddoo, Follow up on discovery

Dear Karin,

We are writing to ask that you resolve a discovery problem that is impeding our efforts to meet Judge Gorton's Order that we file by tomorrow all motion practice relevant to sanctions over the delayed production of Singer's iPhone notes. We have made repeated requests to the USAO for discovery related to two issues directly relevant to this motion practice:

1. All information and documents in the government's possession relating to a FaceTime call Singer had with the Wilson family on September 28, 2018, apparently while he was in the Sacramento FBI office with two prosecutors and four agents from the prosecution team. It appears that the team took a break from its debriefing to allow Mr. Singer to conduct this call. The Government did not record this call, nor did it reference it in the FBI-1023 of the September 28 interview.
2. All information and documents that describe the circumstances that lead to the creation of Singer's note on January 30, 2019 referencing John Wilson and USC.

We request that the government produce the requested information today, and respond forthwith and tell us what it intends to do. If the government is going to refuse to provide complete disclosure, we will need to move for expedited discovery before Magistrate Judge Kelley.

We look forward to your response. We are also available to discuss this today by telephone.

Mike, Andy, and Yakov

Yakov Malkiel | Associate

T +1 617 979 9322 **M** +1 617 407 0117 **E** yakov.malkiel@whitecase.com

White & Case LLP | 75 State Street | Boston, MA 02109-1814

From: Kendall, Michael <michael.kendall@whitecase.com>

Sent: Monday, March 23, 2020 12:45 PM

To: Wright, Leslie (USAMA) <Leslie.Wright@usdoj.gov>; O'Connell, Justin (USAMA) <Justin.O'Connell@usdoj.gov>; Kearney, Kristen (USAMA) <Kristen.Kearney@usdoj.gov>; Frank, Stephen (USAMA) 1 <Stephen.Frank@usdoj.gov>; Bell, Karin (USAMA)3 <Karin.Bell@usdoj.gov>; Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>

Subject: US v. Siddoo, Follow up on discovery

Leslie,

Thank you for your March 18, 2020 response to our questions. We are writing to follow-up on item 4. According to a recently produced FD-1023 report with a Date of Contact September 28, 2018, Mr. Singer was at the FBI's Sacramento office on September 28, 2018. Six agents and prosecutors had flown out from Boston to conduct the interview. Mr. Singer apparently made the 33-minute FaceTime call you mention during a break that took place "at approximately 13:15 pst" (according to the FD-1023, at page 3 of 4). There is no mention of the FaceTime conversation in the FD-1023 or the agents' handwritten notes. Does the USAO – including all agents and AUSAs present -- have any documents or information describing this FaceTime call, including participants, contents, etc. and the agents' and AUSAs' role in it? If so, could you please provide the relevant documents and reduce the participants' memories to a narrative summary and produce that to us today?

Mike

Michael Kendall | Partner

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White & Case LLP | 75 State Street | Boston, MA 02109-1814

From: Wright, Leslie (USAMA) <Leslie.Wright@usdoj.gov>

Sent: Wednesday, March 18, 2020 10:30 AM

To: Kendall, Michael <michael.kendall@whitecase.com>; O'Connell, Justin (USAMA) <Justin.O'Connell@usdoj.gov>; Kearney, Kristen (USAMA) <Kristen.Kearney@usdoj.gov>; Frank, Stephen (USAMA) 1 <Stephen.Frank@usdoj.gov>; Bell, Karin (USAMA)3 <Karin.Bell@usdoj.gov>; Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>

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Subject: RE: US v. Siddoo, Follow up on discovery

Counsel,

Please see attached in response to your email below.

Thanks,
Leslie

Leslie Wright

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From: Kendall, Michael <michael.kendall@whitecase.com>

Sent: Sunday, March 15, 2020 11:55 AM

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Subject: US v. Siddoo, Follow up on discovery

Dear Counsel,

In your email of March 12, you invited us to follow up on outstanding discovery requests after reviewing your next production. We write now to raise a limited, preliminary set of issues given that (a) your production will not be delivered to us until March 16, (b) processing and reviewing the production will take time, (c) we are required to meet a March 20 filing deadline, and (d) your March 13 discovery cover letter already discloses basic information about the contents of the production.

1. We have asked you to produce the attachments/exhibits referenced in the Singer and USC FBI memoranda. The discovery cover letter does not indicate that we will be receiving those documents.
2. We have asked whether the government has obtained information from USC's attorneys regarding USC persons and USC conduct. We requested that you disclose any such information, if so. It does not appear from the discovery cover letter that you are addressing this request.
3. We have requested information about whether the Government has made any promises, rewards or inducements to Mr. Singer or his relatives about possible criminal conduct by Singer and his relatives that is uncharged and unrelated to the parents charged in this case. Further, we asked whether Mr. Singer has made any statements under oath or otherwise about his assets, whether the government has permitted Singer to keep any assets, and if so which ones. It does not appear that your production will be addressing this request.
4. We are unable to tell from the discovery cover letter, but need to know urgently, whether your production provides detailed information about the following:
 - a. An unrecorded conversation between Rick Singer and the Wilson family reflected by or immediately following interception session 9193.
 - b. The list in Singer's iPhone note of January 30, 2019, 22:26 (at SINGER-PHONE-000664), which states, "John Wilson 20k nothing to do with USC plus donation to USC program for real polo player."
5. Finally, we have made various specific Brady requests to you, including in our letters of September 27, 2019 and January 28, 2020. To date, you have declined to inform us whether you are withholding evidence responsive to those requests.

Given the pressing discovery and motion timelines, we request a teleconference to discuss these requests. On Monday-Tuesday we are available beginning at 4:30 pm (earlier those days we are unavailable because of a trial at Middlesex Superior Court).

Thank you,

Mike

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EXHIBIT SS

1 **Call Date:** 2018-09-29

2 **Call Duration:** 13:40

3 **Call Begin [] Call End []**

4 **Call Participants:**

5 Rick Singer

6 John Wilson

7 **File Name:** ██████████ 8802 2018-09-29 15-24-23 09249-001

8 **Bates No.:**

9

10 [00:00:00]

11 WILSON: Hey, Rick. How ya doin'?

12 SINGER: Hey, John. How are ya?

13 WILSON: Good. You feelin' better?

14 SINGER: Lot better.

15 WILSON: Oh, (overlapping dialogue; inaudible).

16 SINGER: You good? You been out of town?

17 WILSON: Yeah, I've been out of town. Been traveling. I'm

18 goin' to Europe next week, so it'll be easier to connect

19 this week, so...

20 SINGER: OK, cool. So the girls --

21 WILSON: So, yeah --

22 SINGER: -- were great.

23 WILSON: Cool. I, I still didn't get a c-- a f-- a full

24 debrief from 'em, but talked to Leslie (sp?). They, um,

1 they have any clarity on, on where they want to go, what
2 majors, or still (overlapping dialogue; inaudible)?

3 SINGER: Yeah. Yeah, well, I mean, you have done a great job
4 of, uh -- (laughs) it's so funny -- influencing 'em on
5 what is the appropriate path to go down. What do you
6 think they both said? (overlapping dialogue; inaudible)
7 --

8 WILSON: What, all the Ivy League schools?

9 SINGER: No, no, I mean --

10 WILSON: (overlapping dialogue; inaudible).

11 SINGER: -- uh, uh, uh, they want to be business and
12 engineering. (laughter) I said, "So do..." I said,
13 "Does that come from your dad?" And, of course, "Well,
14 my dad -- they pr-- my dad's programmed us," right?
15 (laughter) [00:01:00] So I said, "That's cool. So we can
16 make all that happen." I said, "You think you might like
17 that?" They said, "Well, my dad (inaudible), so..."

18 WILSON: (laughter) Come on! I thought they actually liked
19 science and engineering. They (overlapping dialogue;
20 inaudible) --

21 SINGER: No, I'm sure they --

22 WILSON: -- science.

23 SINGER: -- I -- but you're -- you've influenced them, right?
24 (overlapping dialogue; inaudible) --

1 WILSON: Yeah, I've influenced 'em, but I want 'em to pick
2 what they like.

3 SINGER: No, definitely they get it, they get it, right? And
4 it's just --

5 WILSON: OK.

6 SINGER: -- it's just funny, 'cause then when Leslie kinda
7 interjected they're like, "Mom, stay out of it. Mom,
8 stay out of it." Right? It was funny. Um, but they're
9 both obviously great girls. They want -- in a lot of
10 ways, they want to have kind of the same kinds of things
11 from the school. We, um -- I have a huge list of schools
12 for them. Um, you know, and, and I said, "You guys gotta
13 send me dates, because you both go to 2 separate schools,
14 and Lynnfield and then -- and Andover, different dates of
15 days off. So Leslie's gonna be runnin' all over the
16 place tryin' to figure out [00:02:00] how to get 1 over
17 here for a day, and over here."

18 WILSON: Yeah.

19 SINGER: But, uh, that's why I need to know your dates, so I
20 can figure out where to go visit that would be best
21 suited.

22 WILSON: Right. Now, would they go on weekends, or gotta go
23 during school days (overlapping dialogue; inaudible)?

1 SINGER: You gotta go on a school day, or, or a day when it's
2 a school day but they're off of school.

3 WILSON: Yeah, OK.

4 SINGER: That's the ideal situation, 'cause --

5 WILSON: That's gonna be tougher, yeah. But the ideal isn't
6 just seeing the campus on a weekend?

7 SINGER: Yeah, 'cause I gotta get to a point where we know if
8 we're applyin' ED or where we're goin', what we want,
9 'cause you're gonna want to know first choice, second
10 choice, all that stuff.

11 WILSON: Yeah, no, exactly. And just so I'm, I'm clear on
12 the, the kinda pecking order schools, and UCLAs and all
13 that stuff versus -- uh, I think you said UCLAs mostly
14 are in the, the bracket of, um, like, uh, Stanford -- or
15 not Stanford, but like, uh, USC and so forth. And what
16 were the schools in that, if you did the side door? And
17 I'm interested about the side door and that stuff, um --

18 SINGER: So the side door is gonna be -- gonna happen where
19 you want 'em to happen. (overlapping dialogue;
20 inaudible) --

21 WILSON: It can happen anywhere? Does it have to be
22 [00:03:00] a sports side door? I wasn't clear on that.

23 SINGER: Well, so that's the -- that's the easiest way to
24 approach it, right --

1 WILSON: Yeah.

2 SINGER: -- because all of the coaches have... You know,
3 they have guaranteed spots, and you've done a good job,
4 you got athletic girls who got great size, they're in the
5 right sports, so, you know, potentially there's a sailing
6 option, and potentially there's a crew option. I mean, I
7 don't know how good of athletes they are. They may be
8 good enough to be able to compete at some of these
9 schools, and then who knows what we have to do, depending
10 on where, where the spots (inaudible).

11 WILSON: Mm-hmm. Yeah, so they --

12 SINGER: So you have --

13 WILSON: -- have to get that sports. Uh, what if they're not
14 really that good? I mean, they can do some crew, but I
15 don't know they're gonna be good. ██████████ (sp?) not
16 even that good competitively at sailing. She just taught
17 sailing and did sailing in, you know, (overlapping
18 dialogue; inaudible) --

19 SINGER: Right, so --

20 WILSON: -- Yacht Club.

21 SINGER: But at the end of the day, by the side door, I may
22 be able to go to the sailing coach and say, "Hey, this
23 family's willing to make the contributions. She could be
24 on your team. She is a sailor. She may not be up to the

1 level you are, but she can con-- you know, you're gonna
2 get a benefit, [00:04:00] and the family's gonna get
3 benefit. So are you will-- are you interested in doing
4 that?"

5 WILSON: Yeah. OK. And just -- but -- and what's the other
6 side? If it's not a sport, what is it? Is there any
7 other side doors in --

8 SINGER: Then I have to go to -- then I have to go to
9 department chairs, and, and, and get... Some schools
10 have a VIP list at the department chair level, so we
11 could go that route, and then you can help their
12 (inaudible) -- their, their program. It just depends on
13 which school you want to go to.

14 WILSON: OK, you know, I have this friend -- you know, one of
15 the things I wanted to talk to you about, too, is I -- I
16 don't know how -- I remember last time I did this, you
17 didn't really make any money on this, on the side, this
18 stuff. You just charge, and then you make a donation to
19 the school, and that's it?

20 SINGER: Well, uh, so it depends in different ways. So
21 what's happened in the grown-up world of my world now,
22 compared to when, you know, we did ██████████ was that
23 essentially now the money goes into my foundation, as a
24 donation, (overlapping dialogue; inaudible) --

1 WILSON: Oh, to your foundation, not to the schools.

2 SINGER: Yeah, then that way the kids don't know it happens,
3 right?

4 WILSON: Yeah.

5 SINGER: So -- and then the other part [00:05:00] of that is
6 they don't chase you all the time for money. 'Cause once
7 you -- you know, once you're -- they know you gave money,
8 that's a different story. And then what I can -- what
9 I'll do is I'll split the money potentially to the coach
10 or other pl-- parties that are out that school that need
11 the money, right?

12 WILSON: Mm-hmm.

13 SINGER: So... Or it may go right to the coach, um, that's
14 helping us. It ju-- it just depends on the school.

15 WILSON: Right. OK, so you don't actually get credit for a
16 donation to the school, or get hounded for that. You
17 get, uh --

18 SINGER: (overlapping dialogue; inaudible)

19 WILSON: -- your donation to you, or your foundation, the Key
20 or whatever --

21 SINGER: Right, and you get --

22 WILSON: -- that, uh -- and --

23 SINGER: -- your write-off, and then you do your thing.

24 WILSON: OK.

1 SINGER: And then the kids get in the school.

2 WILSON: So my colleagues -- so, so you c-- you, you

3 (inaudible) I assume take a share of that or something.

4 If it's all going to your foundation, you can't take a

5 share if it goes to your foundation. You don't get a fee

6 on that, then?

7 SINGER: Um, I just do my fee for what I take when I do your

8 normal applications.

9 WILSON: Yeah, that's, like, terrible. I, I think, from a

10 business model point of view, again, I advised you last

11 time, (laughter) I still advise you, this is worth a lot

12 to people, and so, you know, to the extent you [00:06:00]

13 want to make more money, I would think you would have

14 some kind of fee for that. (inaudible) it's 350 to the

15 foundation, plus another 20% for me for using my leverage

16 and my relationships --

17 SINGER: Yeah.

18 WILSON: -- or something, no?

19 SINGER: Well, I'm, I'm gonna use your business model going

20 forward.

21 WILSON: I think you should. I, I really would advise you...

22 But anyway, I -- so then I have this, uh, close friend of

23 mine here who works at, uh, McKinsey with me, and he's

24 very well off. He's the head of, uh, one of these big

1 areas in McKinsey for a lot of years. And his daughter's
2 -- wants to go to Brown next year. His concern -- I
3 said, "Well, have you thought about...?" It may be too
4 late, 1. I don't know. Um, she's going through her
5 senior year right now.

6 SINGER: Well, what's the relationship that that person would
7 have...? I mean, is that g-- is that person big enough
8 in McKinsey that people would know who that person is?

9 WILSON: Uh, yeah, probably.

10 SINGER: OK, so then here would be my suggestion, to be frank
11 with you --

12 WILSON: OK.

13 SINGER: -- and I'd love to help -- you know, it is late and
14 all of that. The president takes meetings all the time
15 from influential people. She's a good gal. And she--

16 WILSON: Of Brown? Yeah, I don't know.

17 SINGER: Yeah, at Brown. So what I would suggest is that,
18 [00:07:00] um, he calls up her office -- they have a
19 scheduling person for the president -- and he sets up a
20 meeting for he and his daughter to go meet, and she kinda
21 meets with them, and then she'll give an indication, and
22 he'll get an idea of what it's gonna need -- what's gonna
23 need to be done to, to have her to go to Brown. That's -
24 -

1 WILSON: (overlapping dialogue; inaudible) the front door --

2 SINGER: -- that's the path I would go.

3 WILSON: -- like, like, \$10,000,000 kind of thing? Or that'd

4 be the (overlapping dialogue; inaudible) --

5 SINGER: No, no, no, I think it's a lot less than that. I

6 think it's a lot less than that. But, um, but it's first

7 getting the meeting with the president, and just talkin'

8 about -- and then also what he could do for the

9 university, not only financially but, you know, just in -

10 - he could be a, a guest lecturer. He could do, you

11 know, lots of different things.

12 WILSON: Uh-huh.

13 SINGER: That would be my suggestion. (overlapping dialogue;

14 inaudible) --

15 WILSON: He wanted to do it -- so the, the other thing he had

16 a concern was he wanted to do it in a way his daughter

17 wouldn't know. His daughter's already said, "Dad, don't

18 help me with this, don't help me with that." She's very

19 kind of, uh --

20 SINGER: Well, then that's a different path, and then -- then

21 I may have to get involved in that. Um --

22 WILSON: Right, so that's --

23 SINGER: -- but, but it's really --

24 WILSON: -- the only thing he's sensitive to.

1 SINGER: -- it's --

2 WILSON: [00:08:00] His daughter's, like, really independent
3 that way.

4 SINGER: Right.

5 WILSON: And she's very smart. She got a 35 or 31 below
6 perfect --

7 SINGER: But, but --

8 WILSON: -- on the ACTs --

9 SINGER: -- I --

10 WILSON: -- and all that, but...

11 SINGER: No, I get it, but it -- what I would do is I would
12 still -- because him goin' to meet the president isn't --
13 doesn't mean that she's gonna help him, but that's a good
14 starting point.

15 WILSON: Mm-hmm. Well, maybe I'll just connect you 2 by an
16 email, and (inaudible) somethin' like that?

17 SINGER: So --

18 WILSON: Does that make sense?

19 SINGER: So I can make the -- I can call the office, and then
20 what they normally... So I just had a family do that,
21 and essentially what they told me to do was just, um,
22 have, have my family call the scheduling coordinator for
23 a time --

24 WILSON: Mm-hmm.

1 SINGER: -- and, and -- with the background of the
2 candidates, and then they'll, they'll usually set up the
3 meeting. Sounds like this person's well -- high enough
4 up that it makes sense for (overlapping dialogue;
5 inaudible) --

6 WILSON: Yeah, he's one of the top, let's say, 12 people.
7 He's on the Executive Board and all that stuff like that,
8 so...

9 SINGER: Yeah, yeah, so then that makes sense.

10 WILSON: Now, he's, um... [00:09:00] Let's see, what else?
11 Uh, that's her f-- uh, what do you call it, early
12 decision school, I think, and all that stuff?

13 SINGER: Yeah.

14 WILSON: So she's got all that --

15 SINGER: Yeah.

16 WILSON: -- stuff goin' for her. She really loves it, wants
17 to get there and all that stuff, and he's willin' to pay
18 a million, 2 million. He didn't care. Um, so it's that
19 -- it's his last daughter, and he's, you know, pretty
20 well off that way. I don't know what -- um, is Brown one
21 of those 350 or million...?

22 SINGER: Oh, it's in the millions. Yeah, yeah, yeah. No,
23 there's no --

24 WILSON: 2 million (overlapping dialogue; inaudible)?

1 SINGER: -- 350 (inaudible)... Yeah, there's no -- there's
2 no (laughs) 350... I'll -- I would have a (overlapping
3 dialogue; inaudible) --

4 WILSON: I thought that Stanford -- not Stanford -- I thought
5 that UCLA and USC and stuff like that was (overlapping
6 dialogue; inaudible) --

7 SINGER: Yeah, that's a different story. They're not Brown.

8 WILSON: No, no, that's what I meant. The, the -- there's
9 the 350 schools, or... (laughter)

10 SINGER: Yeah. Yeah, exactly.

11 WILSON: And everybody else jumps up to the million
12 (inaudible), yeah?

13 SINGER: Yeah, you gotta ante way up. Yeah, absolutely.

14 WILSON: There's not much, uh -- not much in between. Uh,
15 because (inaudible), too, like, (inaudible) is just -- a,
16 a bunch of them are 350s, the second tier or whatever you
17 want to call 'em, and then everything else just jumped
18 immediately to --

19 SINGER: That's correct.

20 WILSON: -- (inaudible) 1, 2.

21 SINGER: W-- yeah.

22 WILSON: There's no, like, 500 or 700 (overlapping dialogue;
23 inaudible) --

24 SINGER: No, no.

1 WILSON: -- or...?

2 SINGER: No. No, because it makes no sense for them to get
3 involved at those schools unless they're gonna really get
4 after. But in [00:10:00] your case, with the girls, I
5 may be able to negotiate, knock it down so that, you
6 know, (inaudible) for 2 and figure it out.

7 WILSON: L-let's say, let's say they both wanted to go to a
8 Harvard or a Stanford, right? Obviously -- is it much
9 more difficult in Stanford versus Harvard, or Princeton?

10 SINGER: No, same -- no, but it's the same --

11 WILSON: Are they all the same?

12 SINGER: They're all the same.

13 WILSON: Yeah. If you wanted to do 2 at Harvard or 2 at
14 Stanford...? Now, I'm an alumni at Harvard. I've given
15 some money, but not a lot. I've given, you know, a few
16 hundred grand or (overlapping dialogue; inaudible).

17 SINGER: Uh, well, uh, so we just need to strategize on how
18 we're gonna -- where we're gonna go, where we wanna go,
19 right? 'Cause I don't think the girls have any, any idea
20 right now.

21 WILSON: Yeah, no, I don't think... They would love to go to
22 Stanford or Harvard. (inaudible) --

23 SINGER: Sure.

1 WILSON: -- she loves the school there, and loves the thought
2 of it. Uh, ██████████ loves Harvard, just from the thought
3 of it. I know she's said to her friends... Uh, I just
4 listen to 'em talkin' to their friends, you know?

5 SINGER: Right.

6 WILSON: "Where would you like to go?" You hear that stuff.
7 It doesn't have my influence... It has my influence
8 indirectly, and, of course, they have these big, you know
9 -- oh, that's a great school, just the, the brand name in
10 their minds, you know.

11 SINGER: Well, and, again, most people don't think they can
12 get into Stanford so they don't even [00:11:00] bring up
13 that name.

14 WILSON: Yeah, but they lived out there and they went --

15 SINGER: I know.

16 WILSON: -- swimming in the waterfalls.

17 SINGER: Right.

18 WILSON: They know that --

19 SINGER: No, no, I totally get it. (laughs) I totally get
20 it. No, I get it.

21 WILSON: (inaudible) lived there.

22 SINGER: Yeah.

1 WILSON: So those are the 2 that are on the top. I-it's,
2 it's the strategy to try to get into those 2. Um, is
3 Harvard easier 'cause I'm --

4 SINGER: No, it's not that.

5 WILSON: -- legacy?

6 SINGER: But --

7 WILSON: That doesn't mean shit?

8 SINGER: Your legacy means 0, because... (laughter)

9 WILSON: (inaudible) my life, you know.

10 SINGER: John, (overlapping dialogue; inaudible) --

11 WILSON: Unless you're donating a building, huh?

12 SINGER: You've done quite well for yourself, so for a guy
13 that has no legacy, you're OK. (laughter)

14 WILSON: Oh, shit. So legacy doesn't help at all, huh?

15 SINGER: Unless you're a big legacy, but you --

16 WILSON: Especially a big donor legacy, huh? OK.

17 SINGER: -- you haven't -- you haven't done that yet.

18 WILSON: OK, I see. That's interesting. So that doesn't
19 matter. Um --

20 SINGER: Like, what's your -- like, how much do you give to
21 Harvard?

22 WILSON: Nothing. Like, a couple hundred grand over the
23 years, so...

24 SINGER: OK. (laughter)

1 WILSON: So they have too much money. It pisses me off every
2 time they ask for money. I say, sure, I'll give you 10
3 grand, you know. Stop botherin' me.

4 SINGER: No, I get it. I get it.

5 WILSON: [00:12:00] The fuckin' endowment's \$30,000,000,000.
6 Like, are you shitting me? (laughter)

7 SINGER: I know. I know, I know, I know. I know, I get it.
8 I get it.

9 WILSON: (inaudible) give to, you know, other charities. But
10 anyway, that's a -- that's a whole different story. But
11 i-is it --

12 SINGER: So --

13 WILSON: -- a better strategy to try and split 'em across the
14 2 --

15 SINGER: Oh, yeah, I got (inaudible) strategies --

16 WILSON: -- try to get 'em to go to 1.

17 SINGER: -- I'm gonna... No, I'm gonna use athletics to help
18 you, because that's the easiest way.

19 WILSON: 'Cause they're pretty tall and strong, and I think
20 they could actually... I mean, when I saw ██████████
21 rowing --

22 SINGER: No, they're good athletes.

23 WILSON: When I saw ██████████ (sp?) --

24 SINGER: Yeah.

1 WILSON: -- row on fuckin' that crew machine, I thought she
2 was gonna break the machine, she was goin' so hard.

3 SINGER: No, she -- no, th-they en-- they, they may end up
4 gettin' in without even a donation, but, but you --
5 you'll know at least this route, we got an --

6 WILSON: They gotta get (overlapping dialogue; inaudible) --

7 SINGER: -- we got the side door route, too.

8 WILSON: -- though, right?

9 SINGER: Yeah, yeah.

10 WILSON: But they're not really playing crew much. They're
11 not doing crew, running crew.

12 SINGER: Right.

13 WILSON: So you gotta (overlapping dialogue; inaudible).

14 SINGER: So we'll, we'll, we'll figure it out. So --

15 WILSON: But what would it be, if they wanted to go to one...
16 Uh, is that -- it's gonna be 2 and a half (overlapping
17 dialogue; inaudible) --

18 SINGER: It's gonna be 1 -- it -- normally it's 1, 2 each,
19 right? So I would have to make a deal if you wanted 'em
20 both at the same school, and if they could even take 'em
21 at the same school, and it would cost you -- it'd cost
22 you a couple million dollars. Big guy like you,
23 [00:13:00] (laughs) that's easy.

1 WILSON: Yeah. Not so easy on liquidity, but yeah,
2 (laughter) (inaudible). You got the installment plan?
3 (inaudible).

4 SINGER: (inaudible). Listen, I gotta go to an a-- another
5 appointment. I just wanted to make sure I got back to
6 you. I'm gonna be spending some time in Boston, because
7 I'm gonna be reading in Harvard this year, so I'll be
8 able to get together with you.

9 WILSON: Oh, I'd love that. That'd be great. And I'm gonna
10 connect you -- I'll just (inaudible) -- I'll send an
11 email to you, and the guy's name is ██████████, and --

12 SINGER: OK.

13 WILSON: -- he could become a client and do whatever, and
14 I'll let the 2 of you kinda email back and forth and
15 stuff. He'd love to do something not known to his
16 daughter at Brown.

17 SINGER: Got it.

18 WILSON: (laughs) And he's got money.

19 SINGER: I gotcha. I gotcha.

20 WILSON: OK.

21 SINGER: All right. Take care.

22 WILSON: All right, take care. Bye.

23 SINGER: OK, bye-bye.

24 [00:13:40]

██████████ 8802 2018-09-29 15-24-23 09249-001

1

2

END OF AUDIO FILE

Exhibit E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DAVID SIDOO et al.,

Defendants.

No. 1:19-cr-10080-NMG

**DEFENDANT JOHN WILSON'S PARTIALLY ASSENTED-TO MOTION
FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF HIS MOTION
FOR RELIEF BASED ON THE GOVERNMENT'S IMPROPER
SEARCH AND SEIZURE OF EMAILS**

Defendant John Wilson has moved for suppression, prosecutor and witness disqualification, and severance based on several severe improprieties in the government's application for, and execution of, a warrant to search Wilson's email account. ECF No. 1437. Wilson submitted a sealed supporting memorandum and affidavits on September 16, 2020. The government responded with a publicly filed Opposition brief and 359 pages of exhibits. ECF Nos. 1510, 1510-1.

The government's Opposition relies on immaterial facts, obscures the timeline of relevant events, and describes cited authorities imprecisely. Wilson hereby moves for leave to file a focused reply brief, which addresses the government's arguments but does not repeat Wilson's opening brief. A copy of the proposed reply brief is attached to this Motion.

The government has informed Wilson's counsel that it assents to a reply brief, but only of five pages. Given the volume of factual data and cases that the government cites in its Opposition, on top of those discussed in Wilson's motion, a five-page limit is not adequate to address the new issues. Wilson respectfully submits that his longer proposed brief is necessary to present the issues adequately for the Court's consideration.

Wilson does not seek to file his reply brief under seal, given that the private facts discussed in the brief are largely confined to matters already disclosed in the government's publicly filed Opposition.

Respectfully submitted,

John Wilson,

By his Counsel,

/s/ Michael Kendall

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 7.1 AND 112.1

I hereby certify that, before filing this motion, defense counsel attempted in good faith to confer with the government to resolve or narrow the issues.

/s/ Michael Kendall
Michael Kendall

CERTIFICATE OF SERVICE

I hereby certify that the above document is being filed on the date appearing in the header through the ECF system, which will send true copies to the attorneys of record.

/s/ Michael Kendall
Michael Kendall

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

GREGORY COLBURN et al.,

Defendants.

No. 1:19-cr-10080-NMG

**DEFENDANT JOHN WILSON'S [PROPOSED] REPLY BRIEF
IN SUPPORT OF HIS MOTION FOR RELIEF BASED ON THE
GOVERNMENT'S IMPROPER SEARCH AND SEIZURE OF EMAILS**

Seeking access to defendant John Wilson's emails, the government submitted a search warrant affidavit (the "Affidavit") falsely swearing to the existence of critical evidence that the government did not possess. The government then ignored bright-line limits imposed by the warrant, the Fourth Amendment, and the common law to review, retain, and widely distribute thousands of Wilson's emails.

To defend the Affidavit's constitutionality, the government's Opposition relies on factually irrelevant evidence, and on evidence that was not before the magistrate (and is therefore *legally* irrelevant). To defend its excessive search, the government misinterprets the warrant, ignores constitutional limits, and distorts both the facts and the law relating to Wilson's communications with his wife. The Court should grant the Motion.

I. THE WARRANT APPLICATION WAS MATERIALLY FALSE

Wilson explained in his September 16, 2020 Memorandum of Law ("Wilson Mem.") that the government's warrant application made two separate false statements, both essential to the Affidavit's showing of probable cause. The Opposition confirms the falseness of these statements by offering no factual basis for them.

A. The Affidavit stated falsely that Wilson intended to mislead USC. The government concedes that, to show any crime, it must prove that “Wilson knew . . . that [Singer’s] approach required the falsification of [Wilson’s] son’s credentials.” Opp’n 1. The only assertion in the Affidavit suggesting that Wilson knew about Singer’s plan to falsify any credentials was the assertion that “Singer has explained to investigators that . . . *Wilson agreed that Singer would provide fabricated information to USC about his son’s water polo abilities.*” Wilson Mem. Ex. 1 ¶ 55(a) (emphasis added). But voluminous discovery materials show that Singer had never made such a statement to the government prior to the July 1, 2019 Affidavit.

The government could have dispelled Wilson’s argument by stating simply that Singer in fact had told agents that Wilson had agreed to the credential-fabricating plan. The government does not say this, however, confirming that the conversation reported in the Affidavit did not occur, and thus corroborating the FBI interview memoranda (which indicate that Singer never said this in his debriefings prior to July 1, 2019).

To distract from the alarming admission that its Affidavit included a fundamental falsehood, the government offers three red herrings:

- (1) The government asserts that—according to Singer—Wilson agreed to donate to USC, saw the donation as an “exchange for” his son’s admission, and did not believe that his son would have been “recruited” to USC but for the donation. Opp’n 9-10. But even if all of these facts were true (which Wilson disputes), none of them would supply the critical missing ingredient—namely Wilson’s agreement *to give USC false information* about his son. Even in the government’s view, a donation that candidly nudges a university to accept an athlete is not a crime. In fact, USC documents reveal this to have been routine practice.
- (2) The government states that, in a “series of interviews . . . Singer described how his scheme worked,” and identified Wilson as “one of the parents who was complicit in the scheme.” Opp’n 10. This argument deliberately muddles the facts surrounding Singer’s operations. As the government’s charges reveal, there was no single “scheme” Singer operated. He had hundreds of clients. Some made donations to schools, yet were not indicted. Some were charged with behaviors, such as test-cheating, that the government concedes did not occur in Wilson’s case. The fact that Singer told the government that *some* of his clients

knew about falsities submitted to universities—about their own children—says nothing about *Wilson's* knowledge concerning *his* son's application. Thus, notwithstanding anything Singer said about *other* parents, the Affidavit was indisputably false in stating that "Singer [had] explained to investigators that . . . *Wilson* agreed that Singer would provide fabricated information to USC." *Wilson* Mem. Ex. 1 ¶ 55(a).

- (3) Lastly, the government identifies what it calls a "falsified profile Singer provided to *Wilson* before submitting it to USC." *Opp'n* 10. Setting aside the question of which inferences can reasonably be drawn from this document—which the government misunderstands—the document is legally irrelevant to the analysis, because *it was not presented or described to the magistrate* (either in the Affidavit or in the criminal complaint).

The government in its Affidavit thus stated falsely that, as of July 1, 2019, it had learned from Singer that *Wilson* had agreed to mislead USC. The falsity of this fundamental allegation requires a *Franks* hearing.

B. The Affidavit stated falsely that Wilson agreed to pay a bribe. The Affidavit's second material falsehood was its statement that *Wilson* "used [his email] account to communicate with Singer and others about . . . *bribe payments.*" *Wilson* Mem. Ex. 1 ¶ 57 (emphasis added). The government concedes that none of *Wilson's* money was a bribe (to an individual); it is uncontested that *Wilson* intended his contribution to go to USC, and that none of *Wilson's* money went to any individual USC employee. *See Opp'n* 10-11.

To defend the truth of its Affidavit, the government resorts to the theory that *Wilson's* donation payments were "bribes because they were secretly exchanged as a quid pro quo for the admission of *Wilson's* son." *Opp'n* 10. But the novel theory that a donation to a "victim" university may be prosecuted as a bribe—a theory reflected in no prior case—appeared neither in the Affidavit nor in the criminal complaint; the government created this theory only in its January 14, 2020 Fourth Superseding Indictment, where it first alleged that "bribes" consisted of donations to "university accounts over which [individuals charged with receiving bribes] exercised discretion." ECF No. 732, ¶¶ 65, 280. When the criminal complaint and the Affidavit

spoke of parents “paying bribes,” a reasonable magistrate would have applied a plain-language, commonsense reading to that phrase, to denote a private payment to the faithless employee.

The government further defends the truth of the Affidavit’s representations by stating that the Affidavit disclosed that “Singer forwarded \$100,000 [of Wilson’s money] to ‘USC Men’s Water Polo.’” Opp’n 10. But this half-disclosure is the heart of the problem: the Affidavit withheld from the magistrate that Wilson’s complete \$200,000 payment was supposed to be delivered to USC. The plain text of the Affidavit thus indicated—falsely—that the balance of Wilson’s payment *was* the “bribe” the Affidavit alleged (when, in fact, Singer stole that money).

C. *The falsehoods were necessary to the Affidavit’s probable cause.* The government cites a kitchen-sink of documents in its Opposition, attempting to obscure both the significance of those documents and whether they were presented to the magistrate. For instance, the government cites “seven *pages* of facts” in the criminal complaint about “Wilson’s involvement in the side door.” Opp’n 11. But Singer used the term “side door” in discussions with Wilson and other parents differently than the government now interprets the term. Not a *word* in the Affidavit or complaint suggests that the “side door” discussed *with Wilson* involved either the submission of false information (i.e., fraud) or any private payment to any individual (i.e., bribery). Indeed, extensive evidence establishes that Singer regularly—and in conversations with Wilson—used the phrase “side door” to denote permissible donations to university programs. *See, e.g.*, Ex. A (Singer telling a parent that “[t]here is a side door in most schools . . . which means you support the school at a lot lesser cost than through institutional advancement”); Ex. B (Singer telling a parent that “side door is not improper nor is back door[,], both are how all schools fund their special programs or needs”); Ex. C (Singer telling a public audience of Starbucks employees that “[t]he back door is through institutional advancement . . . and the side

door is figuring out how I can do that for one tenth of the money” (reproduced from ECF No. 1145-9)); Ex. D (Singer telling Wilson that the President of Harvard “wants to do a deal with [Singer], because he found out that [Singer] already got four [side-door applicants] in”).

Excising the warrant’s falsehoods would have left the magistrate without a single piece of evidence even remotely suggesting that Wilson (a) agreed to submit false information to USC, or (b) agreed to commit bribery, within the ordinary, customary meaning of that term.

The government offers two last-ditch arguments to fend off the critical importance of its falsehoods to the Affidavit’s showing of probable cause, but neither is persuasive:

- (1) The government suggests that, *even if Wilson was unaware of any scheme to commit bribery or fraud*, the Affidavit nevertheless showed probable cause that “evidence of the Target Offenses—whether incriminating as to Singer, Vavic, or Wilson—would be found in Wilson’s email account.” Opp’n 10-11. This argument makes no sense: If Singer communicated no fraud or bribery plan to Wilson, then Wilson’s emails would contain no evidence of those plans. Moreover, nothing in the Affidavit claims that *Vavic, either*, knew of any incorrect information in Wilson’s son’s application materials or received a bribe. *See Wilson Mem. Ex. 1, at 11-14.*
- (2) In a footnote, the government asserts that the Affidavit “set forth evidence of tax fraud.” Opp’n 12 n.7. The government’s tax case rests on the rickety premise that Wilson did not intend his donation payment to be a true donation. But more critically for present purposes, even the Affidavit itself did not suggest that it showed probable cause concerning a tax offense. The Affidavit stated that “there is probable cause to believe that the Target Subjects conspired with Singer and others to facilitate: (a) cheating on the ACT or SAT exams for their children . . . and/or (b) bribery of athletic coaches and university administrators” *Wilson Mem. Ex. 1, at 10.* The “tax fraud” theory of probable cause thus was not before the magistrate.

Absent its two false statements, the Affidavit lacked probable cause. The Court should hold a *Franks* hearing and, thereafter, should suppress the fruits of the warrant.

II. THE GOVERNMENT EXECUTED THE WARRANT IMPROPERLY

The Opposition confirms that the government had no legally valid reason for exceeding the warrant’s scope, violating the Fourth Amendment, and disregarding the marital-communications privilege.

A. The Scope of the Warrant. The government contends that it adhered to the warrant, but its arguments ignore the warrant’s explicit terms. The warrant distinguished between two phases of the search-and-seizure process: Section II described a comprehensive universe of “Accounts and Files” to be copied by the email provider. Wilson Mem. Ex. 1, at 25. Section III described a narrower list of “Records and Data to be Searched and Seized by Law Enforcement Personnel.” Wilson Mem. Ex. 1, at 27 (warrant § III). Those records consisted of eight enumerated categories of “evidence, fruits, or instrumentalities” of specific crimes. *Id.* at 27-28. The Motion challenges the government’s failure to comply with Section III’s limitations:

- (1) The government reviewed, retained, and widely disseminated thousands of documents that were not “evidence, fruits, or instrumentalities” of any criminal offense. Wilson Mem. Ex. 1, at 27-28. It is entirely irrelevant whether, as the government claims, the government refrained—as it was required to do—from searching and seizing *additional* documents unresponsive to the warrant. *See* Opp’n 12 (professing that the government “marked as responsive just 7% of the emails” of which it took possession). Wilson will not burden the Court with a submission collecting the thousands of emails that the government reviewed, retained, and produced despite the absence of any connection to the charges. And he has identified, in an *ex parte* affidavit of counsel, some of the irrelevant emails most damaging to his privacy and his defense. Nevertheless, this brief attaches several exemplars illustrating the government’s complete disregard for the warrant’s (and Fourth Amendment’s) requirement that the seizure must be limited to evidence, fruits, and instrumentalities of specified crimes. *See* Exs. E-J.
- (2) Among the eight specific categories of “evidence, fruits, or instrumentalities” that Section III enumerated, *only one* permitted the government to search and seize “communications.” Wilson Mem. Ex. 1, at 27-28.¹ That category was limited to

¹ Some of the other categories in concerned III sought technical data that could be available to the email provider, such as “[t]he identity of the person(s) who has owned or operated the target account(s),” and “[t]he identity . . . of any computers used to access the[] e-mail

“communications between or among Rick Singer and others” about specified topics. *Id.* It is therefore *critical* that nearly none of the email communications the government retained, reviewed, and produced involved Rick Singer, because *all* of those communications exceeded the warrant’s scope.

The government appears to believe that documents can be “responsive to the warrant,” Opp’n 13, even if they fit into *none* of the document categories that the warrant describes. But this approach is foreclosed by *United States v. Kuc*, 737 F.3d 129 (1st Cir. 2013). In *Kuc*, as here, the warrant’s description of items to be seized included a heading (“evidence, fruits, and instrumentalities of [specified offenses]”) followed by enumerated “categories of items.” *Id.* at 131-32. In *Kuc*—but not here—the warrant stated that the heading “includ[ed], without limitation” the ensuing list of categories. *Id.* *Even so*, the First Circuit interpreted the list of categories as providing “more specific search constraints” that delimited the government’s search. *Id.* at 133-34 (citing *United States v. Bucuvalas*, 970 F.2d 937 (1st Cir. 1992)). Here, where the warrant eschewed the language “including, without limitation” (replacing it with a colon), it is impossible to interpret the warrant as allowing the government to exceed the warrant’s itemized categories.²

Finally, the government is too glib in asserting that “similar arguments” to Wilson’s were rejected in *United States v. Aboshady*, 951 F.3d 1 (1st Cir. 2020). The differences between the cases are decisive: In *Aboshady*, the language of the warrant’s Section III *allowed* law enforcement to search and seize every one of the defendant’s emails. 951 F.3d at 4, 6 (Section III encompassed “[a]ll communications between or among . . . six [email] accounts,” one of

account[.]” Wilson Mem. Ex. 1, at 28. Additional categories are not readily comprehensible, may have been copied from a government template without careful analysis, but clearly do not encompass “communications.” *Id.*

² In any event, such an interpretation would render the warrant impermissibly “general.” *See Kuc*, 737 F.3d at 133-34.

which was the defendant's). By contrast, here the warrant *on its face* restricts the government's review to communications involving Rick Singer (and certain non-communications); and *on its face* the warrant limits the government's review to "evidence, fruits, or instrumentalities" of specified criminal offenses. The government flagrantly ignored these restrictions.³

B. The Marital-Communications Privilege. The government disregarded the marital-communications privilege even though: Wilson's communications with his wife were private; those communications did not concern any crime; and no precedent permits the government to unilaterally ignore the privilege.

(i) *The emails were private communications.* The government contends that Wilson's email communications were not confidential because Wilson gave his assistants "access to his workplace email account." Opp'n 14. The government bases this argument entirely on emails that the government acquired through the very search warrant at issue; indeed, disturbingly, the prosecutors returned to Wilson's mailbox *while preparing their Opposition* in search of evidence to justify their actions. *See* Gov't Exs. EE, GG (reflecting documents produced to the defense two days after the government filed its Opposition). The government thus continues to violate the warrant's scope, misunderstanding the warrant as an all-purpose license to rummage through Wilson's emails. It is not: the warrant placed unmistakable constraints on the types of documents that the government was permitted to "Search[]" and "Seize[]" (Wilson Mem. Ex. 1, at 27). It did not authorize the government to search for emails to justify its violation of the marital-communications privilege. And documents of which the government was unaware at the

³ The other arguments that the First Circuit addressed in *Aboshady* concerned the length of the period during which the government retained the comprehensive dataset delivered by the email provider (under the warrant's Section II), and the government's delays in performing certain searches in that dataset. 951 F.3d at 6-7. Those are not the arguments at issue here.

time of its decision to ignore the privilege cannot logically justify that decision. *See United States v. Di Re*, 332 U.S. 581, 595 (1948) (“[A] search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from its success.”).

In any event, the government is wrong on the merits, because the emails between Wilson and his wife were confidential even according to the authorities on which the government relies.

“[E]mails today, ‘in common experience,’ are confidential.” *United States v. Hamilton*, 701 F.3d 404, 408 (4th Cir. 2012). It is also now commonplace for third parties to possess the capacity to access a person’s emails. But the case law makes clear that the existence of such third-party access does not eliminate the reasonable expectation that emails will remain confidential; that expectation of privacy becomes unreasonable only when a person is informed that he or she should expect their emails to be accessed without their consent. *See Hamilton*, 701 F.3d at 408 (workplace policy instructed the employee that “[a]ll information . . . is subject to inspection and monitoring at any time”); *United States v. Simons*, 206 F.3d 392, 398 (4th Cir. 2000) (workplace policy “clearly stated that [the workplace] would ‘audit, inspect, and/or monitor’ employees’ . . . e-mail messages”); *Rissetto v. Clinton Essex Warren Wash. Bd. of Coop. Educ. Servs.*, No. 15-cv-720, 2018 U.S. Dist. LEXIS 124214, at *18 (N.D.N.Y. June 25, 2018) (in general, courts find expectation of privacy unreasonable “where the employer has in place a clear policy which . . . reserves the right to search and/or monitor the computer and its usage, and informs the employee that she has no expectation of privacy in its use”).

By contrast, where workplace policies and norms convey to a person that the privacy of his or her email account will be respected, the expectation of privacy remains reasonable *regardless* of third parties’ ability to access that account. *See United States v. Slanina*, 283 F.3d 670, 676 (5th Cir. 2002) (expectation of privacy was reasonable where an employer “did not

disseminate any policy that prevented the storage of personal information on [workplace] computers and also did not inform its employees that computer usage and internet access would be monitored”); *Leventhal v. Knappek*, 266 F.3d 64, 74 (2d Cir. 2001) (expectation of privacy was reasonable absent evidence that the employer “had a general practice of routinely conducting searches of office computers” and absent evidence that the employee was notified “that he should have no expectation of privacy in the contents of his office computer”); *Haynes v. Office of the AG*, 298 F. Supp. 2d 1154, 1161-62 (D. Kan. 2003) (expectation of privacy was reasonable despite a warning to the employee that “[t]here shall be no expectation of privacy using this system,” where, among other things, “employees [were] allowed to use their work computers for private communications”); *Sprenger v. Rector & Bd. of Visitors of Va. Tech*, No. 07-cv-502, 2008 U.S. Dist. LEXIS 47115, at *13 (W.D. Va. June 17, 2008) (expectation of privacy was reasonable where “no affidavit or other evidence was offered as to [the spouses’] knowledge, implementation, or enforcement of [an applicable internet-use] Policy”); *United States v. Long*, 64 M.J. 57, 64 (C.A.A.F. 2006) (expectation of privacy was reasonable where a military headquarters’ policy “describe[d] very limited conditions under which [an administrator] would monitor the network for unauthorized use”).

Here, the government’s argument concerning Wilson’s expectation of privacy relies on the norms and practices that Wilson himself dictated in his working relationships with his assistants. Even the emails that the government adduces reflect the expectation that Wilson’s assistants would access his account only specifically in accordance with his requests. *See, e.g.*, ECF No. 1510-1, at 347 (“can u pls search my emails . . .”); ECF No. 1510-1, at 349 (“Pls check jet blue Acct . . .”). No evidence suggests—because it is obviously not true—that Wilson should have expected his assistants to peruse his private emails at their discretion.

In any event, Wilson’s primary assistant is providing an affidavit, attached to this brief, stating that: when she began working for Wilson, he instructed her to respect the privacy of the Wilson family’s records, including their email correspondence; she has understood from the start that she was not permitted to read Wilson’s and the family’s documents, including emails, except when specifically requested to do so; these instructions have remained constant throughout her employment with Wilson; and she has obeyed them. *See* Ex. K ¶¶ 3-5.

In short, it was reasonable for Wilson and his wife to expect their email communications to remain private because Wilson had established and enforced the rules so prescribing. By communicating via email—as nearly all couples now do—the Wilsons did not waive their marital-communications privilege. *See Hamilton*, 701 F.3d at 408 (stating that, “[i]n an era in which email plays a ubiquitous role in daily communications, [policy] arguments caution against lightly finding waiver of marital privilege by email usage”).

(ii) *The “joint participant” exception is inapplicable.* The government argues next that it was permitted to ignore the marital-communications privilege under the “joint-participant exception,” on the basis that—according to the government—Wilson’s wife was an unindicted coconspirator. *Opp’n* 15-16. This argument fails on both the facts and the law.

On the factual level, *none* of the evidence the government presents (nor any other evidence) remotely suggests criminal activity by Wilson’s wife. The emails on which the government relies indicate, at most, that Wilson’s wife was aware of “financial discussions” with USC relating to a “spot” at the university. *See* ECF No. 1050-1, at 353 (“Is this spot still available for USC . . .”); *id.* at 357 (the Wilsons’ friends “do not know about our financial discussions regarding . . . USC”). *No* evidence supports any inference that Wilson’s wife agreed to any misrepresentation or bribery. *See United States v. Bey*, 188 F.3d 1, 6 (1st Cir. 1999)

(ambiguous conduct did not support the joint-participant exception because “[p]roof of a criminal conspiracy requires an act ‘in furtherance of the conspiracy,’ which is distinct from an act in furtherance of a working marriage”); *United States v. Guyton*, No. 11-cr-271, 2013 U.S. Dist. LEXIS 8984, at *7-8 (E.D. La. Jan. 22, 2013) (conversations that “suggest” one spouse “may have been assisting” in another’s crime were “conjecture” insufficient to establish the joint-participant exception).

On the doctrinal level, the overwhelming weight of authority limits the joint-participant exception to communications “concerning crimes in which the spouses are jointly participating,” i.e., “conversations . . . made in furtherance of the conspiracy.” *United States v. Picciandra*, 788 F.2d 39, 43 (1st Cir. 1986); *see also Bey*, 188 F.3d at 4 (“Communications concerning crimes in which the spouses are jointly participating”); 3 *Weinstein’s Federal Evidence* § 505.11 & n.5 (2d ed. 2020) (collecting cases from the First, Second, Third, Fourth, Fifth, Seventh, and Ninth Circuits tying the joint-participant exceptions to statements “about present or ongoing criminal activity”).⁴ Even the government does not suggest that more than a handful of emails between Wilson and his wife related in any way to the charged scheme. *See* Opp’n 15 n.9 (listing three emails). The government’s reliance on the marital-communications privilege to excuse its review of *more than three thousand* confidential marital communications is therefore inapt.⁵

⁴ Even *Bey*, on which the government relies, limits the joint-participant exception to “*relevant* confidential marital communications that take place after the spouse has become a joint participant in the criminal activity.” 188 F.3d at 6 (emphasis added). The thousands of communications the government reviewed here were plainly not “relevant” (and Wilson’s wife was never a participant in criminal activity).

⁵ In addition, the government again seeks to confuse the timeline, citing—as support for its review of marital communications in a July 2019 warrant return—facts discussed in the January 2020 Fourth Superseding Indictment, as well as emails that the government obtained only through the warrant. But the government is not permitted to “act[] with the benefit of hindsight”

(iii) *The case law does not permit the government to disregard the marital-communications privilege.* The Opposition attempts to disguise a startling concession: that there is *no precedent* for these prosecutors’ complete disregard for the privilege attached to marital communications they seized. Every one of the cases the parties have identified concerning prosecutors’ reviews of seized marital communications appears in footnote 9 of Wilson’s opening brief. In every one of those cases, the court protected the privilege by ensuring that marital communications were withheld from the prosecuting team.⁶ These decisions respect both the common-law privilege for marital communications and the essential nature of a warrant.

The privilege for marital communications protects “the confidence of the marital relationship—once described by [the Supreme] Court as ‘the best solace of human existence.’” *Trammel v. United States*, 445 U.S. 40, 51 (1980) (quoting *Stein v. Bowman*, 13 Pet. 209, 223 (1839)). The privilege’s purpose is to give married couples “assur[ance] that their statements will never be subjected to forced disclosure.” *United States v. Byrd*, 750 F.2d 585, 591 (7th Cir. 1984) (citation omitted). The benefit of that assurance would evaporate if prosecutors could access marital communications at their whim. *See United States v. Neal*, 532 F. Supp. 942, 949 (D. Colo. 1982), *aff’d*, 743 F.2d 1441 (10th Cir. 1984) (“One who bares his soul in privacy to his

by relying on evidence it lacked “at the time of the [warrant execution].” *United States v. DePalma*, 461 F. Supp. 800, 822 n.26. (S.D.N.Y. 1978).

⁶ Those cases do *not*, as the government suggests (Opp’n 17 n.11), reflect voluntary government solicitousness for the privacy interests of married defendants. Court orders *required* the government to use a taint team in *United States v. Nejad*, No. 18-cr-224, slip op. at 2 (S.D.N.Y. Oct. 16, 2018), and *In re Seacoast Sleep Solutions, LLC*, No. 10-mj-111 (D. Me. Sept. 22, 2010) (as well as *In re Search of Info. Associated with “staceypomrenke@gmail.com,”* No. 16-mj-73, 2016 U.S. Dist. LEXIS 80881, at *12 (W.D. Va. June 21, 2016)). And in *United States v. Ventrella*, No. 19-cr-80030, slip op. at 3 (S.D. Fla. Mar. 17, 2020), the government’s use of a taint team was the reason supporting the court’s denial of a motion to suppress.

wife should not have to fear that . . . his words spoken to his wife are being heard and recorded by the police for later use . . .”).

And a *search warrant* permits the government to intrude on individuals’ privacy for a circumscribed purpose, namely collecting *evidence* of a crime (as well as fruits and instrumentalities thereof). See *Warden v. Hayden*, 387 U.S. 294 (1967); *United States v. Gilbert*, 94 F. Supp. 2d 163, 168 (D. Mass. 2000); Fed. R. Crim. P. 41(c). “Because privileged marital communications . . . cannot be introduced as evidence at trial, [they] do not serve the purpose of a [warrant].” *State v. Mazzone*, 648 A.2d 978, 983 (Md. 1994) (citing *United States v. Harrelson*, 754 F.2d 1153, 1168 (5th Cir. 1985)). Otherwise stated, it is “unreasonable”—within the meaning of the Fourth Amendment—for the government to rummage through documents that are unusable for the warrant’s stated purpose.

Cases discussing Title III intercepts, such as *Mazzone* and *Harrelson*, illustrate the wrongheadedness of the government’s approach. The government maintains that the marital-communications privilege is “testimonial” in nature, and that it therefore lacks all consequences unless trial testimony is at stake. Opp’n 17-18. But if the government’s view were correct, then agents conducting wiretaps could freely and fully monitor privileged spouse-to-spouse conversations, so long as those conversations were not introduced as evidence at trial. Courts have denied the government this freedom, instead compelling the government to respect the privilege by minimizing marital communications as soon as they are identified as such. See *Harrelson*, 754 F.2d at 1169 (the government must “minimize the interception of privileged communications” between spouses); *DePalma*, 461 F. Supp. at 821-23 (the government acted unreasonably and committed “serious transgressions” by failing to minimize three conversations between the defendant and his wife); *United States v. Goffer*, 756 F. Supp. 2d 588, 595

(S.D.N.Y. 2011) (it was “nothing short of ‘disgraceful’” that the government failed to minimize conversations between spouses where “it should have been apparent within seconds that the conversation was privileged”).

In short, none of the nuances of the marital-communications privilege permits prosecutors to disregard the privilege at will.⁷ The government’s complete disregard for the privilege was grossly improper, and calls for correspondingly severe remedies.

C. *The Fourth Amendment.* The government reviewed, retained, and produced to twenty-two defense teams thousands of emails that (a) do not relate to its case, but (b) disclose private, intimate details of Wilson’s family’s life. The government does not even attempt to explain how this conduct could have satisfied the Fourth Amendment’s touchstone of reasonableness. No such explanation could hold water: the government maximized its intrusion upon the Wilson family’s privacy, instead of minimizing that intrusion as the Constitution requires. *See Andresen v. Maryland*, 427 U.S. 463, 482 n.11 (1976) (“[R]easonableness requires that searches and seizures by the government be ‘conducted in a manner that minimizes unwarranted intrusions upon privacy.’”). Suppression is warranted for this reason alone. *See*

⁷ The cases the government cites do not suggest otherwise. The government first makes the fundamental error of conflating the marital-communications privilege with the spousal testimonial privilege (which relieves a witness from the obligation to testify against his or her spouse). It is the cases concerning the latter privilege that have limited the doctrine to testimony “in the courtroom,” as opposed to statements given to police. *See Trammel v. United States*, 445 U.S. 40, 55 n.12 (1980); *United States v. Chapman*, 866 F.2d 1326, 1333 (11th Cir. 1989). Other cases the government cites hold only that the marital-communication privilege is limited to “communications,” as opposed to non-communicative facts. *See United States v. Giavasis*, 805 F.2d 1037 (6th Cir. 1986) (the privilege did not apply where a spouse turned over physical evidence to the police); *United States v. Harper*, 450 F.2d 1032, 1042 (5th Cir. 1971) (the privilege did not apply where a wife told police about her husband’s “illegal manufacture of methadone”). The government cites *no* case in which the government decided *unilaterally* to access private marital communications without either spouse’s consent.

Aboshady, 951 F.3d at 5 (“[Suppression of evidence] . . . is permitted . . . when the government’s conduct in searching or seizing the evidence in question reflects a ‘deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights’” (quoting *Davis v. United States*, 564 U.S. 229, 238 (2011))).

III. THE REMEDIES WILSON SEEKS ARE WARRANTED

“Courts have sought to preserve inviolable some small island of privacy as a refuge for the human spirit where government may not intrude. Here the question is whether one such sanctuary, protected by the common law for centuries, shall be breached, rendering the secrets told to wives by husbands fair game for government investigators.” *Neal*, 532 F. Supp. at 946. The government in this case ran roughshod over Wilson’s private emails, including thousands between Wilson and his wife, while flagrantly ignoring the limits imposed by the warrant, the Fourth Amendment, and the marital-communications privilege. For these reasons, and those described in Wilson’s September 16, 2020 Memorandum of Law, the Court should hold the necessary hearings and suppress the fruits of the warrant, disqualify prosecutors and witnesses, and sever Wilson’s trial.

Respectfully submitted:

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/s/ Michael Kendall

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Exhibit A

From: Rick Singer <rwsinger@gmail.com>
Sent: Thursday, June 8, 2017 8:11 PM
To: [REDACTED]
Subject: Re: Thx and TPG Re: Confidential Re: Confirming 1:15pm Meeting Today

Thx

Sent from my iPhone

> On Jun 8, 2017, at 5:08 PM, [REDACTED]:

>
> Ok and great to hear regarding Bill and Bono!

>
>
> Sent from my iPhone

> On Jun 8, 2017, at 5:07 PM, Rick Singer <rwsinger@gmail.com> wrote:

>>
>> Thank you. Btw we had a great meeting with Bill McGlashan today- cleared things up - thx
>>
>> Sent from my iPhone

>>> On Jun 8, 2017, at 4:54 PM, [REDACTED]:

>>> We want this summer but will be discussing this weekend more of the specifics so let me get back to you early next week.
>>> Thx!

>>> Sent from my iPhone
>>>
>>> On Jun 8, 2017, at 8:54 AM, Rick Singer <rwsinger@gmail.com> wrote:

>>>> When do you want us to get started with [REDACTED]?

>>>> Sent from my iPhone

>>>> On Jun 8, 2017, at 7:54 AM, [REDACTED] wrote:

>>>> I am happy to help - you are on my most important team of my family!

>>>> Sent from my iPhone

>>>> On Jun 7, 2017, at 3:49 PM, Rick Singer <rwsinger@gmail.com<<mailto:rwsinger@gmail.com>>> wrote:

>>>> Thank you for your nice comments and willingness to help me professionally. Let me spend more time with Bill and his RISE team and I will let you know if I could use your expertise.

>>>> It is very much appreciated to know you are on my side.

>>>> On Wed, Jun 7, 2017 at 2:41 PM, [REDACTED] wrote:

>>>> Rick - 3 quick things:

>>>> 1. Thank you very very much. [REDACTED] really liked you and what you said (so did [REDACTED]).

>>>> 2. I loved watching and listening to you do what you do! I could visualize you doing it through the years with thousands of students, athletes and your team!!

>>>> 3. Regarding TPG and other prospective investors you have, I would be happy to have a call to learn more about what you are doing and brainstorm on potential alternatives. Bill McG is s real pro, but \$200 mm of equity capital sounds potentially like a square peg in a round hole for you at this stage. However, I really don't know what you are trying to do, so I could be very wrong.

>>>> Let me know if you want to squeeze in a call on your business alternatives.

>>>> Otherwise, I will reach back next week about this summer and [REDACTED]

>>>>

>>>>> Many thanks!

>>>>> [REDACTED]

>>>>

>>>>> Sent from my iPhone

>>>>

>>>>>> On Jun 7, 2017, at 1:11 PM, [REDACTED]

wrote:

>>>>>>

>>>>>>> Understood Rick and yes it could be.

>>>>>>> Thankfully it is her ninth grade year.

>>>>>>> My main goal for he attending Sacred Heart Prep is to be in a smaller environment that has a supportive counseling environment and proactively pushing community services.

>>>>>>> I just want her to be happy while getting a good high schooling educations and have appropriate college choices.

>>>>>>

>>>>>>> Sent from my iPhone

>>>>>>

>>>>>>> On Jun 7, 2017, at 11:34 AM, Rick Singer <rwsinger@gmail.com<mailto:rwsinger@gmail.com>> wrote:

>>>>>>>

>>>>>>>> [REDACTED] there is a side door in most schools as I did 490 of them last year- which means you support the school at a lot lesser cost than through institutional advancement. Is this an option because the Brown's of the world are not achievable with any B's

>>>>>>>

>>>>>>>> Sent from my iPhone

>>>>>>>

>>>>>>>> On Jun 7, 2017, at 10:58 AM, [REDACTED]

[REDACTED] wrote:

>>>>>>>>

>>>>>>>>> Rick -

>>>>>>>>>> Heading into our meeting, I want you to know that [REDACTED] is emotionally struggling at times from the divorce and that she is feeling she is going to get more Bs than As this semester, as she completes her finals today and tomorrow.

>>>>>>>>>> In addition, she has been doing only the minimum required for soccer and eating unhealthily, so she has gained some weight (she is relatively big and strong by nature).

>>>>>>>>>> Consequently, I think a focus today on getting into schools like Brown or Santa Clara is more appropriate than her BHAG schools academically.

>>>>>>>>>> [REDACTED] also appears to be going through a difficult time, as evidenced by not wanting to meet at my house - lots of unneeded drama in my family two daughters and an Ex-wife.

>>>>>>>>>> I hope you find this email constructive.

>>>>>>>>>> Thanks,

>>>>>>>>>> [REDACTED]

>>>>>>>>>>

>>>>>>>>>>> Sent from my iPhone

>>>>>>>>>>

>>>>>>>>>>>> On Jun 7, 2017, at 10:38 AM, Rick Singer <rwsinger@gmail.com<mailto:rwsinger@gmail.com>> wrote:

>>>>>>>>>>>>

>>>>>>>>>>>>> Thx

>>>>>>>>>>>>

>>>>>>>>>>>>>> Sent from my iPhone

>>>>>>>>>>>>

>>>>>>>>>>>>>>> On Jun 7, 2017, at 10:35 AM, [REDACTED] <mailto:[REDACTED]>

>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>> Okay. Thanks for heads up I will get there at 1 pm ish to save get a table

>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>> Sent from my iPhone

>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>> On Jun 7, 2017, at 10:34 AM, Rick Singer <rwsinger@gmail.com<mailto:rwsinger@gmail.com>> wrote:

>>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>>>> Confirmed but [REDACTED] sent an email that she did not want to meet at your house so we were meeting at Peet's?

>>>>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>>>>>> Sent from my iPhone

>>>>>>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>>>>>>>> On Jun 7, 2017, at 8:58 AM, [REDACTED] <mailto:[REDACTED]>

>>>>>>>>>>>>>>>>>>>>>>>>>

>>>>>>>>>>>>>>>>>>>>>>>>>>>>> Hi Rick -

>>>>>>>>>> I know you are juggling a busy schedule so I am writing to confirm that you will still be meeting with [REDACTED] and me at 1:15pm today at my house in [REDACTED].

>>>>>>>>>> The address for ease of reference is:

>>>>>>>>>> [REDACTED]

>>>>>>>>>> Please confirm and thank you again for offering to work with Grace

>>>>>>>>>> [REDACTED]

>>>>>>>>>> Sent from my iPhone

>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

>>>>>>>>>> _____

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>>>>>>>>>> _____

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>>>>>>>>>> _____

>>>>>>>>>> Rick Singer
>>>>>>>>>> (916) 384-8802

>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

>>>>>>>>>> _____

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>>>>>>>>>> _____

>>>>>>>>>> This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by replying to this message and delete this e-mail immediately.

Exhibit B

From: [REDACTED]
Sent: Wednesday, February 5, 2014 9:50 PM
To: Rick Singer <rwsinger@gmail.com>
Subject: Re: Hello Rick/college visits

ok, but should we mention it to him?

On Feb 6, 2014, at 4:49 AM, Rick Singer <rwsinger@gmail.com> wrote:

Ok side door is not improper nor is back door both are how all schools fund their special programs or needs. Nevertheless we can apply to some of his top choices that are above his qualifications but the chances of getting in would be limited.

Sent from my iPhone

On Feb 5, 2014, at 5:44 PM, [REDACTED] wrote:

Thanks. If a " backdoor" is a donation to the school or something like that I do not want to do anything improper and I am ambivalent whether we should tell [REDACTED] or not. I do not want to ruin his motivation or make him feel he did not accomplish on his own merit. On the other hand I do not want it keep stuff from him. Any thoughts?
Sent from my iPhone

On Feb 6, 2014, at 3:30 AM, Rick Singer <rwsinger@gmail.com> wrote:

Weekdays. I can set up whatever we decide.

On Wed, Feb 5, 2014 at 5:25 PM, [REDACTED] wrote:

Are college visits typically during the weekend or weekdays?

Sent from my iPhone

On Feb 6, 2014, at 12:55 AM, Rick Singer <rwsinger@gmail.com> wrote:

For Our discussion

School choices -- ***** schools with that notation will need to be done through the side door as [REDACTED] is not close with his grades and scores.

Boston

Northeastern
Boston U
Babson

NY

Fordham
NYU*****

Philly

Drexel
Villanova

DC

Georgetown*****
GW
American
U Maryland College Park

Miami

U Miami

New Orleans

Tulane

Chicago

Loyola U
DePaul

Colorado

Denver U
CU Boulder

Midwest

Indiana U
U Michigan*****
U Wisconsin

LA

USC*****
UCLA*****
UCSB

Bay Area

Santa Clara
Cal Poly
USF
UC Davis

On Wed, Feb 5, 2014 at 12:39 AM, 

██████████ wrote:

Hi Rick,
greetings from south africa..i am here for a quick
business trip, and will be back sunday. so i look forward
seeing you on monday for our usual get together with
██████████

One thing i would like to resolve is the choice of which
colleges to visit in the spring break for ██████████

1. which colleges should we visit?
2. When? ██████████ is on spring break from March 8 th the
23rd. I will be in brussell on wed12-thrusday13, so I
could visit colleges on the east coast (or west coast) the
weekend and monday (8-11), or when i am back sat15
all week until the 23. what do you suggest?

Once we decide where and when, we can contact the
colleges for logistics and also i can get going with
airplane tickets and all that ♦.

let me know what you think and thank you for all your
help!

██████████

--

Rick Singer
(916) 384-8802

--

Rick Singer
(916) 384-8802

Exhibit C

CTRL_GOV-01264870

[01:14:10]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RICK SINGER:

[REDACTED]

CTRL_GOV-01264870

[01:18:11]

[REDACTED]

The back door is through institutional advancement is all the people writing major big checks, and the side door is figuring out how I can do that for one-tenth of the money to get in the same school that is there, and you're fighting that.

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit D

1 **Call date:** 9/15/18

2 **Duration:** 18:00

3 **Call Begin:** [] **Call End** []

4 **Call Participants:**

5 Rick Singer

6 John LNU

7 **File Name:** 9163848802 2018-09-15 13-04-26 08137-001

8 **Bates No.:**

9

10 _: [00:00] Good morning.

11 SINGER: Good morning (inaudible).

12 LNU: Hello, Rick.

13 SINGER: Hey, John.

14 _: (inaudible) how you doing?

15 LNU: How you doing?

16 SINGER: Good. How you doing?

17 LNU: Hey, you at a game?

18 SINGER: No, no. I'm just leaving somewhere.

19 LNU: OK. [laughter] Hey, what's the best way for us to put
20 together a structured relationship for the girls and, uh,
21 you know, get some -- you know, let's say regular advice
22 or at least some periodic advice for them as they go
23 through the search process and they're trying to identify
24 majors --

1 LNU: Right.

2 SINGER: If you said -- and you know that -- that if you said
3 you wanted to go somewhere like Stanford or Harvard or
4 Yale and go through a different door, you can do that.
5 But to go in directly you've got to be -- just to play
6 you've got to be 35, 36 plus essentially perfect grades
7 and then you've got to have subject test scores in the
8 mid-700s.

9 LNU: Right. OK. Well, that's good, uh, good general
10 direction. And then on the, um -- the other doors, you
11 have certainly things like crew. Can they try that? Is
12 that still your -- your number one differentiator? If
13 they had a really good time, they could work on that and
14 get a time of X, that might be a second door. Or you
15 have the other door, where, you know, you can, you know,
16 make a contribution kind of thing.

17 SINGER: Yeah. So we -- we're -- that's why I'm going to
18 Harvard next Friday, because the president wants to do a
19 deal with me [07:00] because he found out that I've
20 already got 4 already in without his help. So he's like,
21 "How about -- why would you go to somebody else if you
22 could come to me?" I said, "Well, I didn't know I could
23 come to you." Huh.

Exhibit F

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

v.

DAVID SIDOO, et al.,

Defendants.

Case No. 19-cr-10080-NMG

Leave to File Granted on 4/17/20
Leave to File 7-Page Brief
Granted on 4/30/20

**DEFENDANTS' RESPONSE TO THE GOVERNMENT'S SUR-REPLY IN
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS INDICTMENT WITH
PREJUDICE OR, IN THE ALTERNATIVE, FOR SUPPRESSION OF EVIDENCE
BASED ON GOVERNMENTAL MISCONDUCT AND FOR DISCOVERY AND AN
EVIDENTIARY HEARING (ECF NO. 971)**

ORAL ARGUMENT REQUESTED

The Government denies any wrongdoing, but its admissions show the opposite. Agents fabricated evidence of Defendants' criminal intent. AUSAs learned about the misconduct but did nothing. And ever since Singer's notes came to light, the Government has offered only shifting excuses and conclusory denials—not candor. The Court should not stand for this.

1. Until its sur-reply, the Government conspicuously avoided addressing the substance of Singer's misconduct allegations. Now we know why: The Government does not dispute Singer's allegations in any relevant respect. Specifically:

- The Government concedes Singer repeatedly characterized Defendants' payments as lawful *donations* to university *programs*, because that is what he had always believed and told his clients. *See* Sur-Reply at 3, Exs. A at 2-3, B at 2, C at 2, D at 1-2.¹
- The Government concedes it instructed Singer to recharacterize those payments as bribes going to insiders—instead of as donations to university programs—on recorded calls designed to create evidence of wrongdoing. *See id.*
- The Government concedes its agents were “loud and abrasive” with Singer on numerous occasions when he “pushed back . . . and said to the agents that is not what he said to parents.” Sur-Reply at 3 & n.3 (agent “raised her voice ‘somewhat’”), Exs. A at 3 (“stern conversations”), B at 3 (“tense conversations”).
- The Government concedes the goal of this recharacterization was to “make sure” that the consensual phone calls would be inculpatory and show Defendants “understood” their payments would induce insiders to betray their fiduciary duties. Sur-Reply at 3, Ex. C at 2.

All this is consistent with what Singer wrote in his personal notes and what Defendants have said all along: The Government browbeat Singer into recharacterizing the nature of the payments on recorded calls, and in doing so manufactured evidence of criminal intent.

2. The Government's primary defense is that directing Singer to change his description of the donations was permissible because *any* “quid pro quo” payment is a bribe, whether made to a university or into a coach's pocket. Sur-Reply at 3. According to the Government, because there is no “legal distinction” between quid pro quo donations to a university program and quid pro quo payments to a corrupt insider, it was acceptable for agents to force Singer to adopt the latter

¹ Indeed, the Government now discloses *new* exculpatory evidence: Singer “never considered what he was doing was a bribe” and “didn't think it was a crime.” *Id.*, Ex. D at 1-2.

characterization on the recorded calls so that his clients would not dispute that description—even though they had never heard it before and even though Singer had previously told them the donations were legitimate. *See id.*

That argument is wrong on the law and the facts. On the law, it is incorrect that there is no distinction between *donations to universities* and *payments to coaches*. As Magistrate Judge Kelley has written, it is an “open question” whether “a donation to the school that does not directly enrich the employee *can even constitute a bribe.*” *United States v. Zangrillo*, 2020 WL 1027815, at *4 n.8 (D. Mass. Mar. 3, 2020) (emphasis added). And a quid pro quo exchange does not automatically turn every donation into a bribe. U.S. Attorney Lelling has himself acknowledged that “donating a building so that a school is more likely to take your son or daughter” does *not* constitute fraud.² Indeed, it is undisputed that USC regularly solicits donations in exchange for benefits and special treatment—including in the admissions context.³ The distinction between lawful donations and unlawful bribes is *not* whether they involve a quid pro quo exchange for special benefits. Rather, it is whether the donor understood the exchange to be either (1) part of a university-sanctioned fundraising scheme, *or* (2) a rogue effort to induce corrupt insiders to betray their universities. It was false and improper for agents to tell Singer that “a quid pro quo . . . is the same as bribery.” Sur-Reply, Ex. D at 2.⁴

² Editorial Board, *Turns Out There’s a Proper Way to Buy Your Kid a College Slot*, N.Y. TIMES, (Mar. 12, 2019), <https://www.nytimes.com/2019/03/12/opinion/editorials/college-bribery-scandal-admissions.html>.

³ *See, e.g.*, Defs’ Reply, ECF No. 807 at 14-15; 2/28/20 Hr’g Tr., Ex. 1 at 14 (Judge Kelley: “I’ll just tell you from other material I’ve seen ex parte in the case, it is a viable assertion that U.S.C. had a practice of its admissions, of its athletics department admitting kids in exchange for donations who were—as athletic walk-ons.”); 9/18/19 Hr’g Tr., Ex. 2 at 42 (counsel for USC stating there would be “nothing improper” with a parent “str[iking] a deal with Singer and Heinel to pay \$50,000 to put his daughter through [admissions] as a VIP candidate”).

⁴ The Government made these misrepresentations while it was trying to get Singer to cooperate and plead guilty. But plea bargaining process requires “meticulous standards” by the Government, and obligates the Government to “avoid misrepresentations.” *Correale v. United States*, 479 F.2d 944, 947 (1st Cir. 1973); *see also Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Here, Singer’s insistent characterization of the payments as donations to university programs is strong evidence of the former—and thus highly exculpatory. That description informed Defendants that their money would benefit university programs as part of a sanctioned fundraising initiative—just like the other ways USC intertwines fundraising and admissions.

Remarkably, the Government itself acknowledges that Singer’s characterization undermines its case that Defendants made the payments with criminal intent. The Government admits it pressured Singer to adopt the inculpatory payment-to-an-insider formulation to “*make sure*” the consensual phone calls would show that his clients “*understood* that their money would be used to induce a university insider to commit fraud.” Sur-Reply at 3-4 (emphasis added). In other words, Singer’s original description of the payments as *donations* did not establish (“make sure”) that the client actually knew (“understood”) that the payments were bribes.

The Government’s explanation makes no sense. If the donation/bribe distinction is irrelevant, then there would have been no reason to pressure Singer to change his characterization to something he considered a lie. If the distinction does matter, then the Government’s efforts to trick the parents into going along with the inculpatory characterization constitute fabricating evidence. The Government’s concessions reveal that what really happened here was an effort to create “facts” to backfill its erroneous legal theory of bribery.⁵

3. The Government then attempts to argue that Singer’s allegations of improper pressure relate only to Singer’s clients who had not yet made a payment to a university, and thus that the notes are unrelated to calls he made to Defendants just a few weeks later. The Government asserts

⁵ The Government also misleadingly downplays the donation/bribe distinction by arguing it has “not alleged” that “the parents understood Heinel to be personally pocketing money.” *Id.* at 7. In fact, the indictments expressly allege that the relevant conspiracies included “enriching Singer *and the recipients of the bribes.*” ECF No. 732 ¶ 65 (emphasis added); *id.* ¶ 280 (similar); ECF No. 610 ¶ 58 (similar); *id.* ¶ 246 (“enriching Singer and *the recipients of the bribes personally*” (emphasis added)). The Government carefully omits that key allegation in its recap of the charges. Sur-Reply at 2-3.

that while the *earlier* calls may have been manufactured (albeit for permissible purposes), the *later* calls had “nothing to do” with its instruction that Singer stop characterizing the payments as legitimate donations. Sur-Reply at 5-7.

That distinction is absurd. Singer’s allegations of government misconduct were written *entirely* in the past tense—he wrote that the agents were pressuring him to “tell a fib and not restate what I *told* my clients as to where there [sic] money *was* going -to the program not the coach and that *it was a donation* and they want it to be a payment.” 10/2/18 Singer Note, Ex. 3 (emphasis added). It is undisputed that *before* the improper government pressure, Singer characterized the payments to Defendants as donations to university programs, but *after* that he alluded to them as payments to university insiders. *See* Defs’ Br. at 8-12 (citing calls with Defendants Wilson, Abdelaziz, Loughlin, Zangrillo, and McGlashan). Clearly his notes are referencing the government’s pressure to get him to change “what [he] told” his past clients, the Defendants in this case.

Relatedly, the Government claims it had evidence that Defendants knew their payments were going to corrupt insiders before the consensual recordings. *See* Sur-Reply at 6. Not so. At most, the Government’s cited evidence shows Defendants knew their payments were going to universities. But Singer had told them the payments were legitimate donations that would bolster their children’s chances of admission. To support its contention that it had a “good faith belief” that Defendants *knew* their payments to USC were benefitting a corrupt insider, the Government cites emails to Defendants Giannulli and Zangrillo in which Singer (1) directs Defendants to send their checks, made payable to legitimate USC accounts, to Heinel’s attention, and (2) forwards emails from Heinel confirming USC’s admission of their children. But the Government provides no evidence that Defendants actually knew that Heinel (or anyone else) was betraying USC, let alone evidence of Defendants’ knowledge that their donations would somehow benefit her personally. The Government’s argument here is also a deliberate attempt to mislead the Court: the

Government insinuates that the “audit” calls Singer made to Defendants were about the donations they had made to USC or its programs; in fact, those calls never mentioned those donations, and instead only referenced donations made to Singer’s Key Worldwide Foundation (“KWF”), which had no connection to any of the cited evidence regarding Donna Heinel. Moreover, Singer *specifically told* the Government that Defendants did not know that KWF donations would go to USC. *See, e.g.*, 12/6/19 FD-1023, Ex. 4 at 2 (stating that Singer “did not specifically discuss the money going to USC out of the \$200,000” with Loughlin or Giannulli). Accordingly, the Government had no basis, certainly not a “good faith basis,” to force Singer to say the deliberately untrue statements he made on the tainted consensual phone calls.

4. The Government’s sur-reply is inadequate in other respects too. For example, the Government again offers no credible explanation for withholding Singer’s notes. Although it previously said AUSAs Rosen and O’Connell believed the notes were privileged, Rosen’s sworn statement ignores that assertion and provides a brand-new explanation (and O’Connell is nowhere to be found). *See* Sur-Reply, Ex. C ¶ 9. Moreover, the Government has now oddly recanted its admission and *denies* violating *Brady*, even though (1) its own taint AUSA concluded that the notes were undisclosed *Brady* material, *see* 3/11/20 Email, Ex. 5 at 1; (2) AUSA Rosen told the Court that the Government “absolutely” should have disclosed the notes earlier, 2/27/20 Conf. Tr., Ex. 6 at 19; and (3) the Government’s opposition confessed error on this issue, *see* Opp. at 1, 21, 32. The Government also fails to address (let alone justify) the Government’s prior misrepresentations to the Court about its *Brady* compliance. *See* Defs’ Reply at 8.

The Government also fails to explain its improper conduct as to Defendant Wilson. The Government concedes that Singer originally told Wilson that his “side door” payment “would go to an athletic program, not a coach,” Sur-Reply at 3, 5 (and his donation went to a USC team). As late as September 28, 2018, the Government let Singer make an unrecorded video call from an FBI office—during which he reassured Wilson that “side door” donations were university approved,

even for applicants who would not be college athletes. Defs' Br. at 8. From that day forward, however, Singer succumbed to Government pressure and injected his calls to Wilson with ambiguous and deceitful references to actual bribery—*i.e.*, paying a “coach.” *See id.* at 8-9 & n.1; Sur-Reply at 3, 5. The Government's sur-reply ignores the un rebutted sworn evidence that Singer was actively reassuring Wilson that his payments were legitimate on the September 28 *unrecorded* call (made from FBI premises) at the same time the Government was instructing him to use alternative, misleading language on *recorded* calls. *See* Defs' Br. at 8-9. It also ignores the Government's omission of the September 28 call from its interview reports, which euphemistically refer to a “break” when Singer made the call, and Singer's free reign to delete texts related to that call. The Government fails to explain this chain of events, which was perfectly designed to generate false inculpatory recordings for trial.

5. The Court should hold the Government to account for its misconduct. The conceded facts establish that the Government fabricated evidence by pressuring Singer to generate false inculpatory statements in order to establish evidence of criminal intent. The Government then lied about it to Defendants and the Court. This outrageous conduct “passes beyond the line of tolerable human imperfection and falls into the realm of fundamental unfairness.” *United States v. Pollock*, 417 F. Supp. 1332, 1349 (D. Mass. 1976); *see also Limone v. Condon*, 372 F.3d 39, 44-45 (1st Cir. 2004) (“[I]f any concept is fundamental to our American system of justice, it is that those charged with upholding the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit.”). That warrants dismissal.

At a very minimum, the Court should suppress the consensual recordings and order discovery and an evidentiary hearing. The Government has now conceded that, before his cooperation, Singer told Defendants their payments were lawful donations going to the universities. *See* Sur-Reply at 2-3. And it has abandoned its theory “that the parents understood Heinel to be personally pocketing the money.” *Id.* at 7. The consensual calls where Singer

describes payments going to Heinel or coaches thus have no place in a fair trial. The Government can try its case with whatever untainted evidence it possesses.

An evidentiary hearing is essential to get to the bottom of what happened and to obtain Singer's unvarnished account of the facts. Although the Government submitted sworn statements from its prosecutors and agents, it provided Singer's story through a hearsay report drafted by an agent on April 23, 2020—without a declaration from Singer himself. And although the report confirms the key facts in his October 2 note, it embeds those facts within carefully worded denials and disclaimers that suspiciously echo the Government's self-serving spin. *See, e.g., id.*, Ex. D at 3 (“SINGER noted that the agents didn't do anything wrong.”).

At a hearing, the Court can hear sworn testimony from Singer himself—not filtered through a report—about the events underlying his October 2 notes, the Government's theory that its pressure tactics did not influence his calls with Defendants, and whether the Government spoke to him about the notes on other occasions not memorialized in last week's 302 Report. The Court can explore the circumstances of Singer's unrecorded September 28 call to Wilson—in which Singer reaffirmed the legitimacy of the payments to USC—and its relationship to the Government's insistence that Singer characterize those same payments in deceptive and falsely inculpatory terms on the *recorded* calls it now wants to use with the jury. The Court can also hear directly from the agents, who claim they “do not recall” the October 2 call, yet somehow are certain that Singer's description of that call is different from what occurred. *See id.*, Exs. A at 2-3, B at 2-4. A hearing would also help the Court get to the bottom of the Government's other misconduct, including AUSA Rosen and O'Connell's repeated misrepresentations to the Court and Defendants about their unawareness of any exculpatory evidence.

CONCLUSION

For the foregoing reasons, the Court should either dismiss the indictment or suppress the consensual recordings and order an evidentiary hearing into Singer's allegations of misconduct.

Dated: May 1, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed with the Court through the CM/ECF system, that notice will be sent electronically to all registered participants as identified on the notice of electronic filing, and that paper copies will be sent to those identified as non-registered participants.

/s/ William J. Trach

William J. Trach

Exhibit G

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

DAVID SIDOO et al.,

Defendants.

No. 1:19-cr-10080-NMG

**MOTION FOR RECONSIDERATION REGARDING THE
APPLICABILITY OF THE COURT'S MAY 8, 2020 ORDER TO
DEFENDANT JOHN WILSON**

In its May 8, 2020 Order (the "Order"), the Court denied the defendants' motion to dismiss the indictment based on government misconduct (ECF No. 971). The motion was jointly filed and denied as to all defendants. Defendant John Wilson respectfully moves the Court to reconsider the denial of the motion with respect to the suppression of evidence concerning Wilson, because the undisputed facts show that:

- a. The Singer-Wilson consensual tapes misrepresent facts concerning Wilson;
- b. An unrecorded FaceTime call between Singer and Wilson on September 28, 2018 provided highly exculpatory context for the subsequent, misleading recordings, and Singer and the Government have taken steps to remove all traces of this call from text messages, reports, and notes; and
- c. Wilson will not be able to adequately address these issues at trial, because Singer is unlikely to be candid about the events, and the government may well seek to offer the tapes without calling him to testify.

The Court has stated that "[a]n evidentiary hearing is required if . . . not only are there material facts in doubt but also . . . those facts cannot be resolved on the papers." Order 10. The facts concerning Singer's deceptive calls to Wilson are not in doubt, because the Government

has chosen not to dispute Wilson's affidavit and related evidence. The undisputed facts establish that any use at trial of the Singer-Wilson calls, and the evidence they generated, would reward government misconduct, impede the jury's ability to find the facts, and cause injustice. Wilson therefore moves the Court to reconsider whether the Order should apply to the evidence concerning Wilson.

I. BACKGROUND

Prior briefs have described the facts concerning Wilson's prosecution. *See* ECF Nos. 699, 972, 995. The following paragraphs highlight the facts central to the instant Motion.

A. Historical Context: USC Application in 2013

Wilson's son applied to the University of Southern California in 2013. Wilson's son was a gifted water polo player: a starter on several nationally competitive teams, a regional all-star, and a member of the United States Olympic Development Program. USC accepted Wilson's son, and he participated on the school's water polo team as planned. Wilson made a donation to USC's water polo team, for which USC sent him a thank-you letter. Singer told Wilson at all times that this donation—and Singer's strategies in general—were honest, above-board, and approved by the university. *See* ECF No. 972-43 ¶¶ 3-4 ("Wilson Aff.").¹

B. Immediate Context: First Two Substantive Calls of September 2018

In early September 2018, Wilson and Singer began discussing the 2020 college applications of Wilson's daughters, who had just begun their junior year of high school. The first conversation about this occurred on September 15, several days before Singer learned of the investigation's existence. On that call, captured by the government's wiretap, Singer

¹ Singer, who was planning to steal \$100,000 of Wilson's gift, had a significant interest in seeing Wilson's son accepted; he apparently decided to send USC an exaggerated description of Wilson's son's already impressive accomplishments.

emphasized the legitimacy of his program: he stated that he planned “730 of these side doors this year” at “50 or 60” universities; and he asserted that, because he had already arranged four such donations at Harvard, the President of Harvard University himself wanted “to do a deal with [Singer].” ECF No. 995-13, at 9, 11. Consistent with his descriptions of Wilson’s donations to the water polo team five years earlier, Singer did not tell Wilson that his donations would go to “a coach” personally, would corrupt any university personnel, or were in any way improper.

The second discussion about the Wilson daughters was a 33-minute video call on the Apple FaceTime application. The call took place on September 28, by which time Singer was cooperating. Singer made the call from the FBI’s offices in the middle of a proffer session, with the government’s advance knowledge, and with six prosecution team members present.

Exs. 1-2.

During that call, Singer again underscored the permissibility of “side door” donations, which he said universities used as a “common fundraising method.” Wilson Aff. ¶ 8(c). Singer added, moreover, that “[s]chools knew and accepted that applicants utilizing the side-door program did not have to be athletes capable of competing on the school’s varsity sports team, and did not need to be accomplished athletes. They could be team assistant managers or have similar nonplaying roles.” *Id.* ¶ 8(b).

Even though Singer had at least one telephone that automatically recorded all calls, he used an unrecorded technology for the September 28 call. The prosecution team made this call disappear. They refrained from recording, transcribing, or otherwise memorializing the call. They did not mention it in their interview memoranda or notes, other than to say inscrutably that, at the time Singer made the call, “[a] break was taken” in the interview. Ex. 1; ECF No. 1141, at 7. They also allowed Singer to delete text messages relating to the call. Wilson Aff. ¶ 11; Order

3. More recently, the government evaded defense counsel's repeated requests for an explanation of this conduct. Ex. 2. And although the three affiants in support of the government's Sur-Reply were present at the September 28 proffer session, and all participated in the "break" to allow Singer to call Wilson, their affidavits do not even mention the Singer-Wilson video call; nor does the 302 report of Singer's April 2020 interview.

C. The Government's Interference with Singer's Narrative

By late September, government agents were well-acquainted with Singer's pitches to parents, such as those he made in his first two substantive calls with Wilson that month. The agents knew that Singer told parents that they would be making legitimate donations to university programs. The government was therefore concerned that Singer's unscripted conversations did *not* show that parents such as Wilson "understood that their money would be used to induce a university insider to commit fraud." ECF No. 1104, at 3-4 ("Sur-Reply"). From the prior recordings—the government admits—it was *not* "obvious that that the money would be a quid pro quo for fraud." *Id.* at 5.

The agents wanted Singer to say "that the money went 'to the coach.'" *Id.* at 3. Singer "pushed back." Singer 302 (ECF No. 1104-4) 1. He was "particularly resistant" to the government's instructions with regard to parents, such as Wilson, whom "he had already told . . . that their money would go to an athletic program, not a coach." Sur-Reply 5.

But the government instructed Singer that "quid pro quo and bribe were the same," and there is no "legal distinction between a 'donation' to a 'program' and a 'payment' to a 'coach.'" Sur-Reply 3; Singer 302, at 2. They held "tense calls," during which Special Agent Keating "raised her voice somewhat" (in the government's retelling). Sur-Reply 3. Singer's real-time understanding was that agents were requiring him "to tell a fib and not restate what I told my

clients as to where [their] money was going[—]to the program not the coach[—]and that it was a donation and they want it to be a payment.” ECF No. 972-1, at 2.

D. Ensuing Evidence Concerning Wilson

The government asserts that, in the telephone calls Singer complained about in his iPhone notes, he “was discussing *future* or *ongoing* conduct.” Sur-Reply 5. According to the government, those calls concerned “only one . . . remaining defendant in this case,” namely Wilson. *Id.* at 3; Order 2, 7.

The “fib” that Singer described the government forcing into his mouth is apparent in transcripts of Singer’s subsequent calls with Wilson. But not because those calls made any crime “obvious” (as the government says, Sur-Reply at 5). For instance, Singer did not say to Wilson, as he told another parent, that a “coach . . . wants [Singer] to wire him the \$100,000 bribe.” ECF No. 699-11, at 2. He did not say that any payment would personally benefit a university employee. He never characterized *anything* he advised Wilson to do as wrong.

Instead, Singer scattered his calls to Wilson with ambiguous comments about “payment” to “the coach,” creating a record of sinister overtones—especially without the context, namely Singer’s prior descriptions of his plan as lawful and university-approved. Thus, in a recorded call one day after the September 28 unrecorded video call, Singer interspersed references to “the coach,” even as Wilson repeatedly indicated that he intended donations to universities:

WILSON: . . . I remember last time I did this, you didn’t really make any money . . . [Y]ou make *a donation to the school*, and that’s it? . . .

SINGER: . . . [W]hat I’ll do is I’ll split the money potentially *to the coach* or other . . . parties that are [at] that school that need the money . . . Or it may go right *to the coach* . . .

WILSON: . . . [S]o you [i.e., a donor] don’t actually get credit for *a donation to the school*, or get hounded for that.

ECF No. 972-45, at 7-8 (emphasis added). Likewise, an October 15, 2018 call included the following exchange:

SINGER: . . . You're gonna make the payments *to the schools* and the—to *the coaches*. And that's what I need . . .

WILSON: Uh, uh, help me understand the logistics? I thought I make the payment to you and you made the payment *to the school*.

SINGER: Correct. That's correct.

WILSON: Oh you said that *I* make the payments *to the schools*.

ECF No. 995-16, at 3 (first, second, third, and fifth emphases added). Finally, on a November 5, 2018 call, Singer made short, ambiguous comments about paying a “coach,” ECF No. 972-46, at 4, 8 (“I have to pay the coach”; “we’ll pay the coach”; “we pay the coach”); while simultaneously implying that the plan continued to be a legitimate donation, *id.* at 4 (“women’s lacrosse is always looking for help. Women’s fencing, looking for help”). Wilson remained oblivious, inquiring about the “budget” (which a program would have, but not an individual). *Id.* at 5.²

II. ARGUMENT

“When faced with a motion for reconsideration, district courts should apply an interests-of-justice test.” *United States v. Siciliano*, 578 F.3d 61, 72 (1st Cir. 2009) (citing *Greene v. Union Mut. Life Ins. Co. of Am.*, 764 F.2d 19, 23 (1st Cir. 1985)). The interests of justice support

² In subsequent conversations, Singer urged Wilson to make a “deposit” on his donations, to which Wilson agreed. This Motion applies to any other such evidence that is a fruit of the Singer-Wilson consensual calls, such as the deposit payments, all of which resulted from the same government-orchestrated manipulations.

reconsideration of the Order's applicability to Wilson, because the briefing has made clear that reasons unique to Wilson warrant bespoke treatment of the evidence concerning him.³

The heart of the problem is that interlocking government tactics have created evidence that would mislead the jury and impair the justice-seeking mission of the courts:

- Through intimidation and misstatements of law, government agents caused Singer to insert misleading statements—designed for the jury's ears—into recorded calls with Wilson.
- The unrecorded September 28 exculpatory call served as a “set-up” call for the subsequent misleading conversations. Purposefully, recklessly, or both, the government caused Singer to provide Wilson with unrecorded and unmemorialized exculpatory context to subsequent calls. That context included (a) assurances that the plan for the Wilson girls, like the prior plan for Wilson's son, included legitimate, university-approved donations; and (b) a further assurance that “side door” programs would now welcome the Wilson daughters, without deception, because “[t]hey could be team assistant managers or have similar nonplaying roles.” Wilson Aff. ¶ 8(b).⁴

The interplay of these actions means that Singer's consensually recorded calls with Wilson could only mislead the jury regarding Wilson's intent.

³ Although this brief focuses on suppression, Wilson stands on the defendants' collective argument for dismissal with prejudice.

⁴ There is little probative significance to Singer's isolated comment to Wilson, in a later conversation, that Stanford's sailing coach does not want “Stanford [to] catch on to what he is doing.” ECF No. 1066-1, at 176. This remark was contrary not only to Wilson's conduct in connection with the application of his son, but also to the explicit reassurances that Singer offered Wilson on the September 28 FaceTime call. Wilson Aff. ¶ 7.

The government claims that it shifted Singer’s rhetoric away from “donation to a program” and toward “payment to a coach” in order “to ensure that the crime would be obvious.” Sur-Reply 3, 8. In the context of the calls between Singer and Wilson, this assertion makes no sense. To most parents, the phrase “payment to a coach” would be ambiguous, denoting either a donation to a program or an improper bribe. *See* Sur-Reply 4 (discussing Parent A). But Wilson had already spoken to Singer at length about lawful plans for legitimate donations; he had already donated to USC, with USC’s knowledge; and Singer had already told Wilson, in their first two substantive calls of September 2018, that he planned for Wilson to make additional above-board donations (such as those approved by the President of Harvard). This context ensured that oblique references to a “coach” would *not* alert Wilson to any potential wrongdoing; such comments would only mislead a jury into imagining improper intent. Suppressing the Singer-Wilson calls would therefore serve twin goals—both discouraging destructive prosecutorial behaviors and sparing the jury from unfairly prejudicial evidence lacking real probative value. *See* Fed. R. Evid. 403.

The thrust of the reasoning described in the Order does not apply to Singer’s calls with Wilson. The Court found that Singer’s iPhone note concerned “primarily” a sting operation targeting future or ongoing conduct, Order 7; but Wilson was one of the parents that the operation targeted (according to the government). Sur-Reply 3. The Court also noted that relevant facts were “addressed on the record by the proffered affidavits of federal agents and an AUSA which unequivocally deny the investigatorial misconduct,” Order 10; but the agents, the AUSA, Singer, and the government’s briefs all refuse to address the government’s misconduct in connection with the September 28 FaceTime call and the deletion of Singer-Wilson Family texts—ignoring, but not denying, the facts surrounding that call and its content.

Lastly, the Court wrote that the defendants “will have ample opportunity to cross examine [Singer] if and when he testifies at trial.” Order 7. Realistically, however, if the jury hears out-of-context discussions about “paying a coach,” it will be difficult to unring that bell. Moreover, the qualification “*if* and when [Singer] testifies” looms large where the government has indicated that it may not call Singer to testify at trial (but may try to offer recordings through another witness); that scenario in particular would imperil Wilson’s constitutional right to remain silent, because testifying will be his only way to address the critical context—the set-up call—of which the government made no record, which it has concealed, and for which it offers no explanation.

III. CONCLUSION

For the foregoing reasons, Wilson moves the Court to reconsider the applicability of the Order to Wilson, and exclude from trial all consensually recorded calls between Singer and Wilson, as well as related evidence relating to or arising from those calls.

Respectfully submitted,

John Wilson,

By his Counsel,

/s/ Michael Kendall

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 7.1 AND 112.1

I hereby certify that, before filing this motion, defense counsel attempted in good faith to confer with the government to resolve or narrow the issues.

/s/ Michael Kendall
Michael Kendall

CERTIFICATE OF SERVICE

I hereby certify that the above document is being filed on the date appearing in the header through the ECF system, which will send true copies to the attorneys of record.

/s/ Michael Kendall
Michael Kendall

Exhibit H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal Action
)	No. 19-10222-DPW
v.)	
)	
JEFFREY BIZZACK,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

SENTENCING

October 30, 2019

John J. Moakley United States Courthouse
Courtroom No. 1
One Courthouse Way
Boston, Massachusetts 02210

Kelly Mortellite, RMR, CRR
Official Court Reporter
One Courthouse Way, Room 5200
Boston, Massachusetts 02210
mortellite@gmail.com

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P R O C E E D I N G S

1
2 (The following proceedings were held in open court
3 before the Honorable Douglas P. Woodlock, United States
4 District Judge, United States District Court, District of
5 Massachusetts, at the John J. Moakley United States Courthouse,
6 One Courthouse Way, Courtroom 1, Boston, Massachusetts, on
7 October 30, 2019.)

8 (Case called to order.)

9 THE COURT: Well, let me be sure that I have all the
10 materials that the parties want me to be looking at here. I
11 have the Presentence Report that's revised as of October 23rd.
12 I have the government's sentencing memorandum and associated
13 appendix. I have the defendant's sentencing memorandum, and I
14 have a memorandum purported to be filed under seal regarding
15 the victim impact statement and motion to seal in the case.

16 Are there any other written materials I should have?

17 MS. KEARNEY: No, Your Honor.

18 MS. CORRIGAN: No, Your Honor.

19 THE COURT: So what this appears to turn on now in my
20 review of the Presentence Report, and you'll refine my
21 understanding, is how we characterize the conduct here and as
22 that may be framed. That really turns on the question of
23 whether there are identifiable victims and how to characterize
24 the impact on them. The victim statement is, at least the
25 government's position now, is that it should remain sealed, I

1 guess; perhaps it's not. But I think I want to approach that
2 first by dealing with questions that of procedure. If I
3 understand correctly, the victim's statement was submitted to
4 the government in August, addressed to government counsel. And
5 then it was attached to the Presentence Report here.

6 Now, in the ex parte or I should say in camera
7 submission, the government notes that victim statements can be
8 kept under seal or heard in camera, but it's under Rule 32 upon
9 a party's motion or for good cause.

10 Was there any motion made by the victim with respect
11 to this?

12 MS. KEARNEY: Your Honor, the victim has not filed a
13 motion but has requested that the government assert --

14 THE COURT: Did the government file a motion?

15 MS. KEARNEY: The government did not realize it needed
16 to file a motion because --

17 THE COURT: Why would you not realize that you need to
18 file a motion?

19 MS. KEARNEY: Because the letter at this point was
20 attached to the PSR, which the government understood was a
21 nonpublic document.

22 THE COURT: No. It says that under Rule 32(i)(4)(C),
23 I may receive such things for good cause. And, you know, I
24 looked at what is purported to be an in camera under seal
25 filing that you made yesterday. There was no motion for that,

1 was there?

2 MS. KEARNEY: The filing that we made, I believe it
3 was this morning --

4 THE COURT: I'm sorry. It was this morning.

5 MS. KEARNEY: -- was at the Court's direction, but
6 that does include in it a motion to both seal the filing as
7 well as for the court to keep the victim impact statement under
8 seal.

9 THE COURT: Where does it say that?

10 MS. KEARNEY: In the conclusion.

11 THE COURT: The motion is styled, in the beginning,
12 Memorandum Regarding Victim Impact Statement, and it recites
13 the government's understanding of this. And then in the
14 conclusion it says, "For the same reasons and because
15 disclosure of this filing would defeat the purpose of sealing
16 the victim impact statement, the government respectfully
17 requests that this brief likewise be filed."

18 MS. KEARNEY: Correct. And right before that, Your
19 Honor, it says, "For the reasons stated herein, the government
20 respectfully requests that the court maintain USC's victim
21 impact statement under seal."

22 THE COURT: Okay. So now we look at local rules.
23 Local Rule 7.2(d) requires that motions for impoundment must be
24 filed and ruled upon prior to the submission of the actual
25 materials sought to be impounded, unless the court directs

1 otherwise, orders otherwise. You didn't file a motion for
2 impoundment, did you, ahead of time?

3 MS. KEARNEY: That's correct, Your Honor.

4 THE COURT: Now, the argument that you make with
5 respect to the victim here is, as I understand it, that the
6 statement is not obviously private.

7 MS. KEARNEY: That's correct.

8 THE COURT: All right. But you say there are privacy
9 interests that are real. They're obvious but not real.

10 MS. KEARNEY: Your Honor, the victim here has asserted
11 a right to privacy.

12 THE COURT: Well, but are you speaking for the
13 government or are you speaking for the victim? And I want to
14 be clear about what your position is and the government's
15 position is on the privacy involved in this. Are you simply
16 passing on what the victim wants you to pass on, or is this the
17 government's position?

18 MS. KEARNEY: Your Honor, the government reads the
19 Crime Victims' Rights Act as requiring the government to pass
20 on the victim's position in this case and that the government
21 has to make best efforts to protect the rights the victims
22 are --

23 THE COURT: So this is simply passing on, making an
24 argument that somebody else wants you to make. Is that it?

25 MS. KEARNEY: We are making our best effort to protect

1 the victim's right to privacy under the Crime Victims' Rights
2 Act.

3 THE COURT: Now, the victim in this case was
4 identified in the indictment.

5 MS. KEARNEY: That's correct, Your Honor.

6 THE COURT: By name.

7 MS. KEARNEY: Because it would have been obvious,
8 given that we were charging employees of the victim.

9 THE COURT: So not only is this not obvious, it is
10 obvious, who the victim is. The government files a complaint
11 in which it identifies the victim and then says that it's
12 protecting the victim's privacy rights?

13 MS. KEARNEY: We're protecting the victim's privacy
14 right in its victim impact statement, the effect that this case
15 has had on the victim.

16 THE COURT: But, you know, you've already disclosed
17 everything about the victim.

18 MS. KEARNEY: We --

19 THE COURT: Just a moment. You did it in the
20 indictment. You did it in the submission to Judge Talwani.
21 You did it in your list of potential harms. You did it in
22 connection with the submission of the sentencing memorandum.
23 The sentencing memorandum itself includes it. Right? It
24 identifies the victim and what the victim's harm was, right?

25 MS. KEARNEY: It's identified what the government

1 views is the victim's harm. It does not identify what the
2 victim itself says about the impact of this case on it.

3 THE COURT: Well, I'm not sure I understand that. The
4 government in every step of the way undermines the privacy of
5 the victim's position by disclosing the name of the victim, and
6 the particulars of what the victim's harm could be. I mean,
7 there's a long list of harms. We'll go through them here. But
8 you're telling me that in the final analysis, having done all
9 of that, the government can stand before the court and say,
10 while not obviously private, these privacy interests -- not
11 obviously private, the privacy interests are real. Is that the
12 government's position?

13 MS. KEARNEY: The government acknowledges that it was
14 obvious who the victim was, and so the government did not keep
15 the victim's identity secret. The government has also looked
16 at public sources of information to analyze what the victim's
17 harm was. However, the government has not disclosed what the
18 victim itself has said about the harm it experienced.

19 THE COURT: I don't think that's true. The underlying
20 documentation does disclose it to the degree that it be
21 identified, it does disclose it. This just seems to me to be a
22 kind of odd formality that the government has gone through here
23 to defend the victim's position or at least recently asserted
24 position because the victim is aware that you've identified all
25 of this. The victim is aware, after August, that you've

1 identified all of this material. So I really don't find
2 anything here, that's, A, private and, B, that hasn't been
3 disclosed. And I take it the victim doesn't want to appear?

4 MS. KEARNEY: Correct, Your Honor. My understanding
5 is that the victim is not intending to appear. I would note
6 that there is at least one part of the letter that I obviously
7 don't want to disclose in open court that has not been put into
8 the public record.

9 THE COURT: I don't see anything here that justifies
10 not being part of the public record. What the obligation of
11 the statute is is to treat the victim with fairness and with
12 respect to the victim's dignity and privacy, and I'm not aware
13 of anything that violates that in the disclosure of what the
14 victim thinks the harm is.

15 MS. KEARNEY: Well, Your Honor, I would just go back
16 to the fact that the government is asserting the victim's
17 position as it feels it has an obligation to do. The court can
18 obviously decide what it wishes with respect to the --

19 THE COURT: Yes, I think that's right, and I will. I
20 don't find it properly to be the subject of sealing, and so it
21 becomes public in its entirety.

22 Now, becoming public in its entirety will disclose to
23 the world how innocuous this is, how little the victim says
24 about the harm and how, frankly, at odds with various positions
25 the government has made, in the sense that they don't assert

1 things that the government has asserted in this area. But it
2 seems to me that in the interests of transparency, there should
3 be disclosure of everything submitted to the court that's
4 supposed to influence the court in some way. So for all of
5 those reasons, I decline to treat this with a sealing or in
6 camera or anything like that.

7 But there's a larger issue that I guess I do want to
8 understand, and maybe it's a Probation issue as well as a
9 government issue. The government has victim advocates rights
10 people who work with victims or those persons who claim to be
11 victims. Am I correct about that?

12 MS. KEARNEY: Correct.

13 THE COURT: And so they help to gather whatever
14 materials the victims want to have and marshal them, whatever
15 the victim wants to provide, and then the government passes it
16 on to Probation?

17 MS. KEARNEY: Correct.

18 THE COURT: The government does not and has not in the
19 past made application for treatment as confidential of those
20 materials?

21 MS. KEARNEY: Your Honor, the government has
22 understood in particular --

23 THE COURT: Just answer my question. You can tell me
24 why later, but is the answer no, you don't?

25 MS. KEARNEY: I'm sorry, can you repeat the question?

1 THE COURT: Yes. Does the government submit the kind
2 of motions that are required under Rule 7.2 to maintain
3 impounded materials?

4 MS. KEARNEY: No. The government does not, at least
5 in this case, make a separate motion.

6 THE COURT: In this case or any?

7 MS. KEARNEY: I cannot speak to what is done in every
8 case.

9 THE COURT: Okay. So in some cases they do, and in
10 some cases they don't. Is that it? Or you just don't know
11 what the government does.

12 MS. KEARNEY: I do not know what is the practice of
13 every single Assistant U.S. Attorney.

14 THE COURT: You don't know what the policy is with
15 respect to that?

16 MS. KEARNEY: I apologize, Your Honor, I do not.

17 THE COURT: Okay. Well, I think I'd like to have some
18 statement from someone who does know what the policy is who can
19 answer that question because what appears to be going on is
20 that the government submits to the Probation Office for
21 attachment to the Presentence Report and thereby providing a
22 kind of immunity bath for submissions by victims without any
23 analysis as is required by Rule 7.2.

24 So perhaps by, say, a week, is that enough time to get
25 an answer to that question? Because this is a procedural

1 question that's an important one.

2 MS. KEARNEY: Yes, Your Honor.

3 THE COURT: Now, turning then to the larger issues
4 presented here. That is, how do you characterize the victim.
5 There is one victim that's alleged here, am I correct, USC?

6 MS. KEARNEY: So the victim with respect to this
7 particular defendant is USC. However, this case has been
8 charged as a single conspiracy.

9 THE COURT: I understand that. And I guess I'm not --
10 so we're clear, I'm not exploring questions of charging
11 decisions in a larger sense of whether or not this is much too
12 unwieldy a conspiracy or it involves hub and spoke but no rim.
13 Those are issues for other people. The defendant has pled
14 guilty to the conspiracy at least as it exists between him and
15 Mr. Singer.

16 MS. KEARNEY: Well, the information charges the larger
17 conspiracy.

18 THE COURT: It does, but I'm trying to -- maybe you
19 want to argue about this. Perhaps we could have a discussion
20 of the charging decision that's been made by the government and
21 whether or not that's a charging decision that, if challenged,
22 could suffice, but I don't think I have to deal with that,
23 unless you're inviting me to do that.

24 MS. KEARNEY: No, Your Honor.

25 THE COURT: Okay. So we're just dealing with the

1 question of Mr. Singer's -- Mr. Bizzack's, if I pronounce it
2 correctly, involvement in the conspiracy with Mr. Singer. Am I
3 correct? I mean, that's the core of what his involvement is,
4 right?

5 MS. KEARNEY: Yes, Your Honor.

6 THE COURT: All right. So now I want to get to this
7 question of, you know, what's the harm?

8 The government now has kind of settled, I guess --
9 maybe it's not fair to say "now." The government has this
10 theory that this is bribery, that is the proper way to
11 characterize what's going on. It's a mail fraud for bribery.
12 Now, I understand it's charged as a conspiracy, but the core
13 charging event is mail fraud.

14 MS. KEARNEY: Is honest services fraud, mail fraud.

15 THE COURT: Honest services, the statute is simply a
16 definitional statute. It's not the charging statute. You can
17 not charge it alone.

18 MS. KEARNEY: Correct.

19 THE COURT: Okay. So we're talking about mail fraud
20 as being the underlying crime, right?

21 MS. KEARNEY: Yes.

22 THE COURT: Okay. So this is supposed to be bribery.

23 MS. KEARNEY: Yes.

24 THE COURT: Who is being bribed?

25 MS. KEARNEY: Here it was Donna Heinel.

1 THE COURT: So how much did Ms. Heinel make from this
2 bribery? What was the bribe that was paid to her?

3 MS. KEARNEY: Personally she received approximately
4 \$160,000.

5 THE COURT: From this defendant in connection with
6 this matter?

7 MS. KEARNEY: A portion of that was in connection with
8 this defendant.

9 THE COURT: What portion?

10 MS. KEARNEY: That is not specified.

11 THE COURT: It certainly isn't. Now, what portion is
12 it? Does the government have a position on what portion it is?
13 Because I have to find what that is. You want to talk about it
14 as bribery, and I understand that. And that's a theory that is
15 at large I suppose in some fashion. But what is the bribe
16 amount?

17 MS. KEARNEY: Well, the bribe amount here was the
18 \$250,000.

19 THE COURT: No. What is the bribe amount with respect
20 to this defendant? It has to be reasonably foreseeable by this
21 defendant. So first we're going to talk about what the amount
22 is that Ms. Heinel -- do I pronounce that correctly -- Ms.
23 Heinel received for purposes of this transaction?

24 MS. KEARNEY: So the defendant, our understanding is
25 that he understood, and he's acknowledged this in his plea,

1 that the \$250,000 amount that he agreed with Singer was going
2 to be used to bribe officials at USC to get his son admitted.

3 THE COURT: So the amount is what he perceives would
4 be used even if it isn't used, even if that isn't the scheme
5 that Mr. Singer had?

6 MS. KEARNEY: The government acknowledges that there
7 is some disagreement among the case law about whether --

8 THE COURT: It's not just the case law. I'm just
9 talking about the facts now.

10 MS. KEARNEY: Yes, Your Honor.

11 THE COURT: If this were tried as a mail fraud bribery
12 case, okay, honest services as a commercial bribe. Put to one
13 side whether it fits easily into commercial bribery. But let's
14 just say it's a commercial bribery, and the government was
15 taking this to me for an evaluation on sentencing, what's the
16 dollar amount that we're talking about here?

17 MS. KEARNEY: So --

18 THE COURT: You said it was \$160,000, as I understand
19 it.

20 MS. KEARNEY: Personally. In addition there were
21 payments directly to USC but to accounts that she controlled
22 and benefited from.

23 THE COURT: That's not a bribe, is it? It's received
24 by USC. Then we've got a faithless employee. That's a
25 different issue from bribery, right?

1 MS. KEARNEY: No, Your Honor, because in light of
2 Skilling, there has to be a bribe or kickback.

3 THE COURT: Yes, there does, I agree. And this is a
4 case in search of a bribe or kickback, and now I'd like to find
5 it and find it with specificity because you've got to be able
6 -- if you want to make a request for an enhanced guideline
7 range, you've got to identify it.

8 So now we're back to this question of what was the
9 bribe that she received? Because it has to be to her, not some
10 account that she controlled, unless you say it was reasonably
11 foreseeable to him that she was going to toy with that account.

12 MS. KEARNEY: It was reasonably foreseeable to this
13 defendant because he sent a check directly to her --

14 THE COURT: To whom --

15 MS. KEARNEY: -- to be deposited into a USC account.

16 THE COURT: To whom was the check made out?

17 MS. KEARNEY: It was made out to the Galen Center.

18 THE COURT: Was it deposited to the Galen Center?

19 MS. KEARNEY: It was, and that's an account that Ms.
20 Heinel oversaw.

21 THE COURT: Right. And now, the Galen Center, was
22 that a 501(c)(3)?

23 MS. KEARNEY: This is a facility at USC.

24 THE COURT: Right. But would a payment to the Galen
25 Center, apart from machinations that she could undertake, would

1 that be a charitable contribution?

2 MS. KEARNEY: My understanding is yes.

3 THE COURT: Okay. So we've got \$50,000 going to the
4 Galen Center that I gather you say is, at least that's
5 identifiable bribery?

6 MS. KEARNEY: Yes, Your Honor.

7 THE COURT: Okay. Anything else?

8 MS. KEARNEY: There are also payments that Mr. Singer
9 made directly to Ms. Heinel beginning in the summer of 2018.
10 He agreed with her, given the number of students she was
11 helping him admit, including the defendant's son, to pay
12 \$20,000 a month. She would provide invoices to Mr. Singer.
13 One such invoice --

14 THE COURT: But how do we particularize that to
15 Mr. Singer?

16 MS. KEARNEY: To Mr. Bizzack.

17 THE COURT: I mean Mr. Bizzack, sorry.

18 MS. KEARNEY: She provided invoices to Mr. Singer.

19 THE COURT: Right, but how do we --

20 MS. KEARNEY: And one of those invoices identified the
21 defendant's son.

22 THE COURT: How much money?

23 MS. KEARNEY: That would have been a \$20,000 invoice.

24 THE COURT: Every time there's an invoice, it's
25 \$20,000?

1 MS. KEARNEY: Correct.

2 THE COURT: So now we're at 70, giving the government
3 the benefit of the doubt on this. Anything else?

4 MS. KEARNEY: No, Your Honor.

5 THE COURT: Okay. So we've got a \$70,000 bribe that
6 the government contends here. Not \$250,000. \$70,000. That's
7 reasonably foreseeable by anybody in this, unless you take the
8 position that some speculation on the part of Mr. Bizzack --
9 sorry if I keep using the wrong pronunciation -- Bizzack, is
10 that the proper --

11 THE DEFENDANT: Bizzack.

12 THE COURT: Bizzack. Okay. We've got \$70,000, right?

13 MS. KEARNEY: So there was \$70,000 actually received
14 by the bribe recipients.

15 THE COURT: But that was the whole scope, isn't it,
16 from Mr. Singer's point of view?

17 MS. KEARNEY: Well, the way Mr. Singer worked, the
18 scheme he never disclosed to parents that he was taking a --

19 THE COURT: He was the hub on this. And analyzing
20 this as a bribery scheme, it has to be whatever Mr. Singer was
21 prepared to pay to a faithless employee of USC.

22 MS. KEARNEY: Well, it also involves what the
23 defendant believed his bribe was going to.

24 THE COURT: So if the defendant believes that somebody
25 says I could get your child into USC for a million dollars,

1 doesn't tell him how; it doesn't tell him that it provides
2 Photoshop services, for example, it's a million-dollar bribe?

3 MS. KEARNEY: If the defendant then paid the
4 million-dollar bribe with the expectation --

5 THE COURT: Is there any case law that says something
6 like that?

7 MS. KEARNEY: I believe there is, Your Honor. I don't
8 have it at hand. I can submit something to the court.

9 THE COURT: That is reasonably foreseeable by the
10 defendant in a case like this?

11 MS. KEARNEY: Yes, Your Honor.

12 THE COURT: For purposes of sentencing, is that it?

13 MS. KEARNEY: I would --

14 THE COURT: You don't want to mix up a substantive
15 liability conspiracy with the liability that's identified for
16 purposes of the sentencing guidelines.

17 MS. KEARNEY: Your Honor, I would have to go back and
18 look at the cases to confirm.

19 THE COURT: So you're not familiar with any case law
20 that does it. Another way of saying it is you're not familiar
21 with the case law in this area; is that right?

22 MS. KEARNEY: Your Honor, I am aware that there are
23 cases. I have not looked at them recently. I apologize.

24 THE COURT: Did you think that that might be important
25 for purposes of sentencing? That is, the government bears the

1 burden of proving this, doesn't it?

2 MS. KEARNEY: Yes, Your Honor.

3 THE COURT: Okay. But you're not familiar with the
4 cases or at least you can't call them up right now?

5 MS. KEARNEY: Not off the top of my head, Your Honor.

6 THE COURT: So we have \$50,000 and \$70,000, and that's
7 reasonably foreseeable -- that certainly is reasonably
8 foreseeable from your point of view as to the defendant here?

9 MS. KEARNEY: Correct.

10 THE COURT: Okay. What's the basis for saying that
11 it's reasonably foreseeable that this defendant would have
12 known that that was the amount of money that would go to a
13 faithless employee?

14 MS. KEARNEY: Well, the government's position is that
15 it was reasonably foreseeable that \$250,000 would be going to
16 the faithless employee.

17 THE COURT: This is not meant to be exegesis by
18 assertion. Give me the evidence.

19 MS. KEARNEY: That the defendant understood that
20 \$70,000 was --

21 THE, COURT: Yes, at least \$70,000 would go.

22 MS. KEARNEY: So again, Your Honor, our understanding
23 of the evidence is that the defendant believed \$250,000 --

24 THE COURT: What's the basis for believing that?
25 Mr. Singer apparently extracted from the defendant \$250,000.

1 Did he tell him all \$250,000 is going to go to Ms. Galen? Did
2 he tell him \$50,000 was going to Ms. Galen? Did he tell him
3 \$70,000 was going to Ms. Galen? What did he tell him that
4 would give him some reasonable foreseeability with respect to
5 this amount?

6 MS. KEARNEY: So what Mr. Singer told the defendant
7 and how it worked with the scheme at USC generally was that --

8 THE COURT: I want to know about this defendant. The
9 scheme generally is something to be taken up case by case and
10 has been taken up case by case. I want to understand it with
11 respect to this defendant.

12 MS. KEARNEY: So with respect to this defendant, this
13 defendant agreed that upon receipt of the conditional
14 acceptance to USC, he would send a \$50,000 check directly to an
15 account designated by Donna Heinel; and then upon receipt of
16 his son's formal acceptance to USC, he would have to make a
17 \$200,000 payment to Rick Singer's charity, the Key Worldwide
18 Foundation, and from that Mr. Singer would transmit the bribe
19 to USC or to the coaches that he was bribing at USC.
20 Mr. Singer did not share with the defendant that he was taking
21 a middleman fee.

22 THE COURT: That's not in the Presentence Report as
23 such, is it?

24 MS. KEARNEY: So in paragraph 33, it identifies that
25 the defendant participated in a scheme and conspired to pay

1 \$250,000.

2 THE COURT: Right. As I said, that's a kind of
3 summary of it. I want to get the specifics of the facts here.

4 MS. KEARNEY: So then -- sorry, Your Honor. In
5 paragraph 43 it indicates that the defendant at Mr. Singer's
6 direction issued a \$50,000 check to USC's Galen Center.

7 THE COURT: So the Galen Center, yeah. Does it say to
8 Ms. Heinel?

9 MS. KEARNEY: Yes, it does, because the voicemail that
10 the defendant left for Mr. Singer before sending the check
11 indicated, "Sending this check off to Donna, and I just put a
12 note in the letter just saying, you know, it's a donation."

13 THE COURT: So I'm supposed to draw from that that he
14 knew that this was going to Ms. Heinel for her own personal
15 use?

16 MS. KEARNEY: Yes, because he understood that Ms.
17 Heinel was the one directing him to send the money to this
18 particular account as opposed to USC's general fund or another
19 account within USC.

20 THE COURT: Okay. So let's go to the next part of it,
21 which is the \$20,000. Where do I see that?

22 MS. KEARNEY: Again, the \$20,000 is specified in
23 paragraphs 49 and 50.

24 THE COURT: No. That says that he's making the
25 payments to Heinel. The question is where do I see that

1 Mr. Bizzack was aware of that.

2 MS. KEARNEY: Well, Mr. Bizzack was aware, if we look
3 at paragraph 47 that and 48, that he was paying another
4 \$200,000 upon his son's formal acceptance.

5 THE COURT: Right, right. But where does it say that
6 it's to be used for a bribe?

7 MS. KEARNEY: Well, in paragraph 48, one of the
8 payments, the \$100,000 check that he sent, he included a note
9 tying the payment to his son's admission.

10 THE COURT: Right. But the question is payment as a
11 bribe to someone, and the someone being Ms. Heinel. So for
12 example, one of the problems, of course, is that people,
13 particularly people whose children are awaiting admission,
14 sometimes make large payments to institutions.

15 MS. KEARNEY: That's correct.

16 THE COURT: They're not bribes if they're not matters
17 of concealment, are they?

18 MS. KEARNEY: Correct, Your Honor.

19 THE COURT: As a matter of fact, you say that in the
20 previously sealed document that the deprivations here are
21 property in the form of admissions spots. That is, it's
22 property of USC that's been misappropriated in the form of
23 admissions spots. So if USC decides to take money, say
24 \$100,000 or \$200,000, and says, "By the way, we're going to let
25 this kid in," that's not any criminal violation; is that right?

1 MS. KEARNEY: It might be a violation of their
2 tax-exempt status. But no, I don't believe that to be a
3 criminal violation.

4 THE COURT: Okay. So we're drawing the line between
5 how USC, for whatever reason, decides to deploy its property in
6 the form of admissions spots, right?

7 MS. KEARNEY: Correct.

8 THE COURT: Okay. And so what do we know about Ms.
9 Heinel being the person who intercepts that ability in a way
10 that's knowledgeable to this defendant?

11 MS. KEARNEY: Well, Your Honor, the defendant
12 understood that his son was being admitted as a fake athlete
13 and that there had to be someone at USC, which he also knew was
14 Donna Heinel, who was arranging that in exchange for his
15 payment.

16 THE COURT: Well, we settled on Ms. Heinel for \$50,000
17 for present purposes. Now I'm talking about the other
18 \$200,000. Because you're wanting to use the guidelines to pile
19 on the amount of time that could be spent according to the
20 amount of money involved. So looking at \$200,000 more, where
21 do we have that he thought that this was or believed that this
22 was money going to Ms. Heinel as a faithless employee as
23 opposed to the institution itself or whatever it was that
24 Mr. Singer offered by way of services apart from facilitating
25 bribes?

1 MS. KEARNEY: So we have the defendant's agreement
2 with Mr. Singer that the defendant's son was being admitted as
3 a fake athlete and that the defendant understood that all
4 \$250,000 was going to be used as a bribe payment. He did not
5 understand that Mr. Singer was taking any kind of middleman
6 fee.

7 THE COURT: Okay. So Mr. Singer, as I understand it,
8 is cooperating; is that right?

9 MS. KEARNEY: That's correct.

10 THE COURT: What does Mr. Singer say?

11 MS. KEARNEY: Mr. Singer has told the government that
12 he did not disclose his middleman fee.

13 THE COURT: He did not disclose his middleman fee.
14 What did he disclose?

15 MS. KEARNEY: That --

16 THE COURT: Did he tell Mr. Bizzack that all \$200,000
17 was going to go to Ms. Heinel?

18 MS. KEARNEY: I'm not exactly sure, Your Honor. I
19 believe that he generally would tell parents to pay the bribe
20 amount, the full bribe amount and that it was --

21 THE COURT: Well, you've characterized a bribe amount.
22 That's *petitio principii*. We're begging the question by saying
23 it's the full bribe amount. I'm trying to figure out how it's
24 a bribe. So you say he told them to pay me \$200,000, and
25 that's a bribe. Did he tell him that's a bribe that's going to

1 go to Donna Heinel?

2 MS. KEARNEY: Mr. Singer was not as explicit, but it
3 was understood, given the fabrications to the student's
4 application such as --

5 THE COURT: Just assuming it was understood, which is
6 the passive voice way of expressing that there was nobody
7 saying anything, is there something that Mr. Singer said? For
8 instance, did he say, "I'm doing this for free for you. I'm
9 not taking a finder's fee out of this. I'm not taking any fee
10 for doing things like Photoshopping a kid"?

11 MS. KEARNEY: As Your Honor might be aware, with
12 criminal conspiracies like this, the co-conspirators --

13 THE COURT: I am aware --

14 MS. KEARNEY: -- don't generally lay out every single
15 detail.

16 THE COURT: Trust me, I am aware of that. Now, you
17 still have a responsibility of meeting your burden of proving
18 something like this, and I'm trying to understand what it is
19 that you're relying on for this theory.

20 MS. KEARNEY: So we're relying on the fact that the
21 defendant had an agreement with Mr. Singer to pay \$250,000 to
22 get his son admitted as a fake athlete; that the nature of the
23 payment connected to his son's admission as well as the fact
24 that his son had to be admitted as a fake athlete all in total
25 allowed the defendant to understand that the total amount was

1 being conveyed as a bribe payment.

2 THE COURT: Okay. So Ms. Corrigan, is it?

3 MS. CORRIGAN: Yes, Your Honor.

4 THE COURT: What's the defendant's position? I
5 understand you've stipulated to all of this, or you've
6 stipulated to an amount. Maybe the first question is why did
7 you do that?

8 MS. CORRIGAN: Well, Your Honor, as the court is
9 aware, Mr. Bizzack and counsel had conversations with the
10 government prior to entering into a plea agreement.

11 THE COURT: So it's an artifact of the plea agreement.

12 MS. CORRIGAN: I'm sorry?

13 THE COURT: It's an artifact of the plea agreement.

14 MS. CORRIGAN: Well, it essentially -- well, what I'd
15 like to say is that what we have here --

16 THE COURT: I tried to make clear to your sister, I'll
17 make clear to you, first answer the question I put to you. If
18 you've got something more that you want to say, of course I'll
19 listen to it. But it's a fairly simple question. Is it
20 because you wanted to facilitate a plea agreement?

21 MS. CORRIGAN: Yes.

22 THE COURT: Okay. What is the evidence as you
23 understand it that your client knew that \$250,000 was going to
24 be paid for a bribe?

25 MS. CORRIGAN: We don't have that information. And in

1 listening to the government today, we don't have the
2 information that I've heard about Mr. Singer. But what I will
3 tell the court is there's no question that \$250,000 was paid.
4 The evidence of the checks and the wiring from Eco-Pivot, one
5 of the companies, is --

6 THE COURT: But you see what I'm -- the parties can
7 agree to whatever they want. And the parties apparently have
8 -- not the parties, but the government in particular has been a
9 little upset that the Probation Office actually looked at this
10 carefully. As if this case begins and ends over the question
11 of what agreements was the government able to extract from
12 those who are vulnerable. But the court makes the decision
13 about sentencing --

14 MS. CORRIGAN: Understood.

15 THE COURT: -- issues, and this is something that I'd
16 like to get to the bottom of rather than just process through.
17 Did your client know that \$50,000 was going to be paid as a
18 bribe to Donna Heinel?

19 MS. CORRIGAN: No. He knew -- if I might, if we look
20 at the checks, the check was to the Galen Center, and he knew
21 that the check was going to -- that there was someone named
22 Donna that was associated with it. But beyond that, there was
23 no indication and no conversation that I'm aware of between
24 Mr. Singer and my client that indicates at any time that my
25 client knew that the \$50,000 or any amount was going to a

1 person named Donna, whether it's Donna Heinel or not, but let's
2 assume it is --

3 THE COURT: Why did your client pay \$50,000?

4 MS. CORRIGAN: Your Honor, this case is about getting
5 admission for his son to USC. There's no question about that.

6 THE COURT: Right. So there's an amount that's
7 figured out.

8 MS. CORRIGAN: Correct.

9 THE COURT: Is it simply, Mr. Singer says, "I can do
10 it through the side door, and it's, for you, \$250,000"? Is
11 that what it comes to?

12 MS. CORRIGAN: Yes, it's very simple. And if I might
13 just address -- I think the court -- I understand the court's
14 -- if I might move a little bit outside of the court's
15 question.

16 THE COURT: We'll see, we'll see.

17 MS. CORRIGAN: Okay. The court has, I understand the
18 tension between what's in the PSR and what's in the plea
19 agreement. And as the court has noted in our position, we're
20 in a little bit of a difficult position because I don't want to
21 put my client in a position of breach. However, what I would
22 note to the court is I've read through Judge Talwani's rulings.
23 I've seen what Judge Zobel has done. And I've read obviously
24 in very great detail what Ms. Victoria and her office has
25 produced in this case. I think it's very well thought out.

1 THE COURT: Wait. You are going beyond, because I do
2 want to move through this in an orderly fashion. It's not that
3 I'm not interested in all of that.

4 MS. CORRIGAN: Sure.

5 THE COURT: So what I'm faced with is the suggestion
6 that the defendant does not agree that he knew that there was
7 money to be paid to Ms. Heinel --

8 MS. CORRIGAN: He knew that --

9 THE COURT: -- as a bribe.

10 MS. CORRIGAN: Correct. The payments --

11 THE COURT: Go ahead. I'm sorry.

12 MS. CORRIGAN: Sorry. The payments --

13 THE COURT: I'm stretching. Not expressing nonverbal
14 communication about what I think.

15 MS. CORRIGAN: Thank you. The payments -- the bulk of
16 the payments go to the Key Foundation, KWF, which the court is
17 well aware of. And that's a foundation that Mr. Singer put out
18 there, and it's been described in various pleadings and in the
19 PSR as a sham charity. That's where the bulk of the money
20 went. There was no idea, no direction that I'm aware of by
21 Mr. Singer or any information given to anyone of where exactly
22 that money was going to go. He had some ideas about different
23 centers and that sort of thing, and that's all the information
24 that's before the court.

25 The \$50,000 check that goes to the Galen Center, I am

1 not aware of any communications or writings between Mr. Singer
2 and my client that indicate, Oh, this particular amount is
3 going to Donna Heinel, or this particular amount is going to
4 Ms. Janke or anybody else.

5 THE COURT: Well, Ms. Janke could not be a recipient
6 of a commercial bribe because she was not an employee. The
7 only person who could be the recipient of a commercial bribe
8 would be Ms. Heinel, unless the government disagrees with me
9 about that.

10 MS. KEARNEY: Right. No, Your Honor.

11 MS. CORRIGAN: And the only reason I bring that up is
12 because she is mentioned throughout the papers.

13 THE COURT: So let me just go back to this question.
14 What did he think when he wrote "Donation," question mark? Why
15 was it that, that he was concerned that his accountant would
16 get full information about the payments that he was making?

17 MS. CORRIGAN: No, Your Honor. In fact, he did not
18 submit this as some of the other parents did, he did not submit
19 this as a tax deduction.

20 THE COURT: Why did he say "Donation," question mark?

21 MS. CORRIGAN: I'm sorry?

22 THE COURT: Why did he say, "Donation" question mark?

23 MS. CORRIGAN: I believe that was directed by
24 Mr. Singer to write into the check.

25 THE COURT: Okay. So is that the state of the record,

1 that we have a dispute over whether or not there was a full
2 knowledge on the part of Mr. Bizzack?

3 MS. KEARNEY: Your Honor, I would just note back at
4 the change of plea hearing that the defendant did agree with
5 the government's representation that his participation in the
6 scheme, he agreed --

7 THE COURT: Could you tell me the page number.

8 MS. KEARNEY: At page 16, lines 5 through 12 of the
9 change of plea hearing indicate that he agreed and did pay a
10 total of \$250,000 to facilitate the admission of his son to USC
11 as a purported athletic recruit.

12 THE COURT: To use a scheme to use bribery and other
13 forms of fraud to facilitate it?

14 MS. KEARNEY: Correct.

15 THE COURT: But of course that's not really factual.
16 He agreed to plead to that, plead guilty to the information.
17 Now we're talking about facts. What are the underlying facts?

18 MS. KEARNEY: Right. And it goes on, Your Honor, on
19 that same page that he agreed to pay Singer an amount
20 ultimately totaling \$250,000 to facilitate the admission of his
21 son.

22 THE COURT: Where does it say "bribery to facilitate"?

23 MS. KEARNEY: I'm sorry?

24 THE COURT: Where does it say "bribery to facilitate"?

25 It's different from the language of the charge. This is the

1 specific language of facts that you have here, and it doesn't
2 seem to say bribery.

3 MS. KEARNEY: Well, Your Honor, while it doesn't say
4 the word "bribery," it does.

5 THE COURT: Well, words are important, you know.

6 MS. KEARNEY: It talks, though, about an exchange of
7 one thing for another, so it talks about that --

8 THE COURT: But this exchange could be with
9 Mr. Singer. If he did nothing but paid Mr. Singer \$250,000 and
10 there wasn't bribery involved, then we wouldn't have a bribery
11 guideline, right?

12 MS. KEARNEY: I'm sorry, Your Honor. Can you say that
13 again?

14 THE COURT: If he simply paid Mr. Singer to work his
15 magic and there was no evidence of bribery involved, then we
16 wouldn't be dealing with the bribery count, right?

17 MS. KEARNEY: If there's no evidence of bribery, then
18 we wouldn't be dealing with bribery.

19 THE COURT: Okay. So now I'm looking for the places
20 where there's evidence of bribery. You told me about the
21 clearing of the throat that the government did at the outset of
22 its recitation of the factual basis, simply to tell me first
23 what the charge was here. Then you said then the next thing
24 that they did is the defendant agreed to pay Singer, it
25 ultimately totaled \$250,000 to facilitate the admission of his

1 son.

2 MS. KEARNEY: Correct.

3 THE COURT: Doesn't say bribery.

4 MS. KEARNEY: It does not, but it goes on to talk
5 about payments to Donna Heinel from the Key Worldwide
6 Foundation in the amount of \$20,000 each month.

7 THE COURT: But where does it say that the defendant
8 is aware that \$20,000 each month is going to be paid to Donna
9 Heinel?

10 MS. KEARNEY: It does not say that explicitly.

11 THE COURT: Okay. And if I understand the
12 government's theory, whether conveyed to the defendant or not,
13 it is that there was an invoice each month for a different
14 person, a different student. Is this a kind of retention
15 agreement for Ms. Heinel?

16 MS. KEARNEY: She would send invoices indicating she
17 evaluated certain students and that the total amount of her
18 time for those invoices was \$20,000 a month.

19 THE COURT: So a month in which she evaluated five
20 people, she'd get \$20,000, and a month in which she evaluated
21 two, she would get \$20,000?

22 MS. KEARNEY: Correct.

23 THE COURT: So they were not allocated to the
24 students?

25 MS. KEARNEY: She did not divvy it up, no.

1 THE COURT: There's no evidence as to how it's to be
2 divvied up?

3 MS. KEARNEY: Correct.

4 THE COURT: Okay. So now we come back to the question
5 of whether you've got enough evidence here to show bribery by
6 this defendant. I understand the parties agreed to bribery and
7 appears to be an artifact of plea negotiations; who's got
8 power, who doesn't have power, and who can extract what by way
9 of agreements. But now I'm looking for the underlying
10 evidence. And this is it?

11 MS. KEARNEY: Well, Your Honor, the defendant did
12 plead guilty to conspiring to commit honest services mail
13 fraud, which requires bribery or kickbacks.

14 THE COURT: No, it doesn't.

15 MS. KEARNEY: Under Skilling it does.

16 THE COURT: That's a theory that you have. You can
17 also have a form of payment that's illegal. And no, just to
18 the contrary. A kind of cheating that's involved -- the
19 government doesn't like this because it doesn't run up the
20 sentencing guidelines, but you can have a kind of cheating
21 misrepresentation with respect to the foundation for which this
22 student is brought in. As a matter of fact, the government
23 takes that position, included it in its list of theories of
24 harm here.

25 MS. KEARNEY: But without the bribe payments, Your

1 Honor, it would not be honest services fraud.

2 THE COURT: I understand that. But to say that it's
3 honest services fraud is simply the government's theory of why
4 there's a violation of 1346.

5 MS. KEARNEY: Correct, but --

6 THE COURT: That's all -- I mean, you have a lesser
7 included offense of violation of mail fraud, don't you?

8 MS. KEARNEY: Yes, Your Honor, but the defendant pled
9 guilty to conspiracy to commit mail fraud and honest services
10 mail fraud.

11 THE COURT: Specifically stated, he pled guilty to a
12 violation of 1346.

13 MS. KEARNEY: I believe it's 1349, Your Honor.

14 THE COURT: 1349. Excuse me. Right?

15 MS. KEARNEY: Right, but it was --

16 THE COURT: Does that require bribery?

17 MS. KEARNEY: I'm sorry?

18 THE COURT: Does that require bribery?

19 MS. KEARNEY: Where he was charged as mail fraud and
20 honest services mail fraud, yes.

21 THE COURT: The government cannot prove it any other
22 way?

23 MS. KEARNEY: The government has -- the way it was
24 charged included the honest services mail fraud.

25 THE COURT: I understand. The government can't prove

1 it any other way? So that if there is not proof of bribery
2 here, then the defendant pled to a -- would have been pleading
3 to an offense that he didn't commit?

4 MS. KEARNEY: Well, Your Honor, I think the issue is
5 that he did plead to an offense he committed.

6 THE COURT: At some point you will answer my question,
7 I assume, but go ahead and answer the question that you'd like
8 to answer before you answer mine.

9 MS. KEARNEY: Well, Your Honor, I'll just go back to
10 the fact that there was an agreement here to pay \$250,000 to
11 get his son admitted. He understood that that money was
12 somehow being conveyed to USC. I acknowledge, Your Honor, we
13 don't have anything explicit saying how much of that amount was
14 going to USC. We know at least 50,000 he understood was going
15 to USC, or to an individual at USC, excuse me.

16 THE COURT: The individual at USC was to receive a
17 check for USC.

18 MS. KEARNEY: For an account that she controlled and
19 designated.

20 THE COURT: All right. But it's going to USC.

21 MS. KEARNEY: Yes, but they had to get the son in as a
22 fake athlete, so he understood that it was not a legitimate
23 donation, that it was tied to his son's acceptance and that
24 they had to hide his son's true nature, who, his son was not a
25 division level 1 volleyball player, was not being recruited by

1 USC to play volleyball, but they had to put him in that way in
2 order to get his admission.

3 THE COURT: Right. I understand the government's
4 theory. The question is the proof of the theory. So let's
5 perhaps back away from the bribery issue for a moment and
6 analyze the memorandum that you submitted for the methodology
7 of calculating gain and loss to Judge Talwani.

8 You identified three forms of pecuniary loss. One is
9 the value of the salaries the universities paid to the
10 employees the defendants and their co-conspirators conspired to
11 bribe. Is that the theory? In listening to you, you were
12 saying it was actually money paid to Donna Heinel. It's not to
13 be calculated in terms of some evaluation of what they were
14 being paid in a kind of payroll analysis.

15 MS. KEARNEY: So separate from the payments that Donna
16 Heinel received personally, in addition, USC was paying her for
17 her honest services.

18 THE COURT: See, in that memo to Judge Talwani, you
19 identified three separate forms of harm, right?

20 MS. KEARNEY: Correct.

21 THE COURT: Those are the ones, at least as of
22 September 5, the government was offering as their theories.

23 MS. KEARNEY: Yes.

24 THE COURT: The first one is that the government --
25 that the universities, including USC, lost the value of their

1 corrupt employees' honest services, right?

2 MS. KEARNEY: Correct.

3 THE COURT: That's in theory the bribery, but it's
4 particularized. It's said that the way you calculate this is
5 by looking to the salaries the universities paid to the
6 employees, monies the universities would not have paid had they
7 known their employees were corrupt.

8 MS. KEARNEY: Correct.

9 THE COURT: What you just told me was it depends upon
10 the amount of money that Mr. Bizzack knew, not the amount that
11 the universities knew.

12 MS. KEARNEY: No, Your Honor.

13 THE COURT: That's what it says here. Now, maybe
14 you're reformulating it, and certainly you're entitled to do
15 whatever you want to refine and reframe the question, although
16 I will be asking some questions about the evolving explanation
17 of why it was that bribery is being charged in this case and
18 then charged much more explicitly in a statute that provides
19 specifically for bribery in the context of government
20 contracts. But I want to take this snapshot at September 5,
21 and at September 5 you weren't arguing it this way, the way you
22 have today, right?

23 MS. KEARNEY: I apologize, Your Honor. I'm not sure
24 how you've interpreted the way I'm arguing it today.

25 THE COURT: So let me give a dramatic reading and you

1 can tell me how I've misinterpreted it. "While it is difficult
2 to calculate the value precisely, the loss can be approximated
3 by looking to the salaries the universities paid to the
4 employees the defendants and their co-conspirators conspired to
5 bribe - monies the university would not have paid had they
6 known their employees were corrupt and that they stopped paying
7 as soon as they found out."

8 MS. KEARNEY: That's correct, Your Honor.

9 THE COURT: So it's the salaries that they received,
10 not the amount of money that the defendant anticipated. Is
11 that it?

12 MS. KEARNEY: Your Honor, I think that there's two
13 separate issues here. The first is that under the parties'
14 stipulation as well as the government's --

15 THE COURT: You keep relying -- I can't be clearer
16 about this. There is throughout the government's filings this
17 idea that because you can extract an agreement from a defendant
18 that I'm bound by it. This is not a C plea. And even in a C
19 plea, I can reject it.

20 One of the insidious aspects of all of this is the
21 suggestion that suffuses this set of discussions that the
22 government decides what the sentence is going to be. That's
23 not the case. It certainly wasn't the case before Judge
24 Talwani, and I assure you it's not the case before me. So the
25 fact of an agreement is, as I've indicated before, an artifact

1 of plea negotiations, the kind of sausage-making that goes on
2 in the criminal justice system, but it does not determine this
3 matter.

4 And so now I'm asking you to justify the positions
5 that you've taken, without respect to there's an agreement.
6 And furthermore, without -- well, you can talk about it if you
7 want, if you think that the guidelines bind me in some fashion
8 on this. I don't think you'll take that position. But I need
9 to have evidence of this. I'm trying to find out the evidence.
10 What I'm hearing is something that is approximated at best, and
11 the approximation that you were talking about was not the
12 approximation that you made here.

13 MS. KEARNEY: So here, the government looked at 2B4.1,
14 which, the base offense level is 8, and then it can be enhanced
15 based on the bribe amount.

16 THE COURT: Right.

17 MS. KEARNEY: Before Judge Talwani, the government was
18 looking at 2B1.1, which, the base offense level is 7 and can be
19 enhanced based on --

20 THE COURT: But didn't you have a plea agreement at
21 that time with respect to 2B1 -- the bribery one? Didn't you
22 have a plea agreement that extended to that before Judge
23 Talwani? Weren't those plea agreements? So they didn't
24 include this particular plea agreement?

25 MS. KEARNEY: That's correct, Your Honor.

1 THE COURT: Okay. I'm sorry. That helps me
2 understand this a little bit better.

3 Okay. So maybe we do go into the history of this,
4 which is, how is it that the government was taking the position
5 with respect to essentially the same case different guidelines
6 at different times were applicable. As I understand it, let's
7 take the Abbott case, the government did not take the position
8 that there was an agreement in the Abbott case. It didn't make
9 an argument with respect to bribery, but the bribery argument
10 was not the same as it was here.

11 Then here, I'll just use this as another point in the
12 case, here, the government took the position in the plea
13 agreement which was, whenever it was -- June was it -- I can't
14 remember when the plea agreement was. I'll pull it out -- took
15 the position in the plea agreement and the defendant agreed to
16 it that the bribery guideline would be the proper guideline to
17 apply, right?

18 MS. KEARNEY: Correct, Your Honor.

19 THE COURT: Okay. So that's that position. I
20 understand it. And then at some point, I see it in another
21 case I have, Sui, the government supersedes and says, by the
22 way, it's government fraud, 666 violation, bribery. Okay. How
23 did that evolving understanding take place? What led to that?
24 You know, it just doesn't get pulled out of the air. It's
25 something that the government chooses to do in its charging

1 decisions.

2 MS. KEARNEY: Your Honor, with respect to the Abbott
3 case and the plea agreements there, the government made the
4 same mistake that you see in the PSR here that this was not a
5 bribery case and that 2B1.1 applies.

6 THE COURT: This is not holding you to some admission
7 or something, but it was a mistake or misunderstanding and not
8 completely developed. Do I fairly say it?

9 MS. KEARNEY: Correct.

10 THE COURT: So then the mistake is clarified in this
11 case or in cases like this where you start to cite to the
12 bribery violation?

13 MS. KEARNEY: That's correct.

14 THE COURT: Okay. And then when you charge 666, what
15 was the new understanding there?

16 MS. KEARNEY: I wouldn't say it's a new understanding.
17 It's just that the charges we believed and the grand jury
18 believed were appropriate.

19 THE COURT: But why didn't you believe it before? I
20 mean, you know, 666 is not a new statute.

21 MS. KEARNEY: It is not, Your Honor, but this, even
22 after it was initially charged in March, was an ongoing
23 investigation.

24 THE COURT: Right. But was there some new information
25 that said, by the way, we didn't know it before but USC

1 contracts with the government in a way that makes a case like
2 this eligible to be charged explicitly as bribery?

3 MS. KEARNEY: Your Honor, the U.S. Attorney has
4 prosecutorial discretion to decide on charging decisions.

5 THE COURT: That's right. Absolutely. I'm asking why
6 it was exercised, and maybe you just say, "None of your
7 business, Your Honor. It's not before you." But I don't know.
8 Is that your position?

9 MS. KEARNEY: I would defer to the prosecutorial
10 discretion of the U.S. Attorney.

11 THE COURT: Pardon me?

12 MS. KEARNEY: I would defer to the prosecutorial
13 discretion of the U.S. Attorney.

14 THE COURT: You are the U.S. Attorney here in court.

15 MS. KEARNEY: Yes, Your Honor.

16 THE COURT: So on behalf of the U.S. Attorney, you
17 decline to answer the question?

18 MS. KEARNEY: Your Honor, as I mentioned, this was an
19 evolving investigation. Decisions were made not to charge 666
20 initially. Perhaps we didn't have all the information we
21 needed. It has been charged against some of the defendants
22 now, not this defendant.

23 THE COURT: What information did you not have that
24 made you make the change?

25 MS. KEARNEY: I don't believe I can disclose --

1 THE COURT: What do you mean you can't disclose it?

2 MS. KEARNEY: Under grand jury secrecy rules.

3 THE COURT: You changed the charge. You have made
4 charges of other people on the basis of 666, and that's public
5 of course.

6 MS. KEARNEY: Yes, Your Honor, the charges are public.

7 THE COURT: Right. And the disclosure will have to
8 be, right? Won't there be discovery disclosure?

9 MS. KEARNEY: Yes, Your Honor.

10 THE COURT: So I understand your position is you don't
11 have to answer these questions any further. Maybe you won't
12 answer this question either. But perhaps you're familiar with
13 Rule 83.3.1. It's our rule with respect to release of
14 information by attorneys.

15 MS. KEARNEY: Yes, Your Honor.

16 THE COURT: In it, it explicitly says that those
17 persons associated with the prosecution in this case shall not
18 release any information by extrajudicial statement which a
19 reasonable person would expect to be disseminated by means of
20 public communication relating to, and it lists a series of
21 things, but number 5 is the possibility of a plea of guilty to
22 the offense charged.

23 MS. KEARNEY: I am aware of that rule, Your Honor.

24 THE COURT: Right. Now, if someone associated with
25 the prosecution engaged in that public dissemination, that is,

1 a discussion of the possibilities of pleas of guilty to the
2 offense charged or the possibility, for example, of enhanced
3 sentences or enhanced charges, would that be a violation of
4 Rule 83.21?

5 MS. KEARNEY: Your Honor, I don't believe I can answer
6 that question. I do know in the statements with respect to
7 Mr. Bizzack that have been released by our office, I believe
8 those are in compliance with the rule.

9 THE COURT: We're talking about the evolving
10 understanding of the United States Attorney's Office, including
11 those kinds of charges that have been subsequently made of
12 other individuals here. And perhaps you don't want to respond
13 to that.

14 MS. KEARNEY: Your Honor, I'm happy to convey the
15 message to the office, but as you might imagine --

16 THE COURT: Then let's go back. What we have is the
17 government has this evolving understanding of what can be
18 charged and what will be charged, how it will be charged and
19 how this question will be teed up. In the Abbott case the
20 government made a mistake. It didn't want to make the mistake
21 again. It made it explicit and got the defendant to agree to
22 bribery here.

23 MS. KEARNEY: Correct.

24 THE COURT: That's where we are. And the bribery, as
25 I understand it, is variously expressed, including the way you

1 expressed it here today, and I'm asked to draw some conclusions
2 of inferences about what the defendant knew about who was going
3 to be paid because he certainly had to know that someone who
4 was a faithless employee was going to be paid a bribe, right?

5 MS. KEARNEY: Yes, Your Honor.

6 THE COURT: And so the inference I'm supposed to draw
7 from the direction of a check made payable to someone, to an
8 entity that could not be bribed, it was the entity that would
9 have been the victim of the bribe or the government contends
10 it's a victim of a bribe. Although that statement, by the way,
11 of USC doesn't say "Bribery," does it?

12 MS. KEARNEY: Your Honor, I don't believe the letter
13 addresses that question.

14 THE COURT: But the letter addresses how it was
15 harmed, right?

16 MS. KEARNEY: It discusses how it was harmed, yes.

17 THE COURT: Right. And it doesn't say it was harmed
18 by bribery, right?

19 MS. KEARNEY: It doesn't say how it was harmed. It
20 identifies the harms.

21 THE COURT: To the contrary. It says two ways. One
22 way is that it affected its reputational interest, and the
23 other way is they had to spend money in investigation. Doesn't
24 say anything else, does it?

25 MS. KEARNEY: Well, it says that the harm was by the

1 conduct alleged by the government.

2 THE COURT: But they're talking about -- you know, a
3 victim witness statement generally, particularly by a
4 sophisticated institution, tells us what the loss is that
5 they're claiming or identifies what the harm is. They don't
6 identify bribery as a harm, do they?

7 MS. KEARNEY: They identify the conduct alleged by the
8 government.

9 THE COURT: Right, again, this kind of general charge,
10 right? Are they asking for restitution?

11 MS. KEARNEY: No, Your Honor.

12 THE COURT: Restitution is payment for the harm,
13 right? Reimbursement for the harm, right?

14 MS. KEARNEY: Yes, but it's within their discretion
15 whether they want to request it.

16 THE COURT: No doubt it is, but it doesn't appear that
17 they view this or at least they're not asserting it, I should
18 say, as a bribery case, right?

19 MS. KEARNEY: They have asserted this based on the
20 conduct alleged by the government. They are not seeking
21 restitution. There are many reasons why they might not be
22 seeking restitution, including their potential publicity around
23 it, and so I don't think that we can read anything into that.

24 THE COURT: So we just have to deal with their actual
25 language, right?

1 MS. KEARNEY: Yes.

2 THE COURT: Okay. So let's read their actual
3 language, since it's now public. And I've found them -- I'm
4 not even sure they're victims, frankly, but that's a different
5 issue. I'll assume they're victims. I'm going hear from them.
6 They submitted it presumably for purposes of influencing me.
7 And, you know, I look at the information, and they say,
8 "Applications containing false information that misrepresent
9 the applicant undermine public confidence in the college
10 admission process," which USC relies upon, and they hired
11 outside counsel. Those are the harms that they refer to. They
12 don't refer to anything else, right?

13 MS. KEARNEY: There's a general statement, Your Honor,
14 about other resources. But yes, that's right.

15 THE COURT: Well, those other resources are basically
16 having to spend money in connection with cooperation with the
17 government's investigation.

18 MS. KEARNEY: Well, it doesn't indicate that's in
19 cooperation with the government's investigation. They say,
20 "USC has also dedicated valuable employee time and other
21 resources to this matter."

22 THE COURT: Right. But where does it say "bribery"?

23 MS. KEARNEY: Again, Your Honor, it does not say
24 bribery, but it does indicate that the harm was caused by the
25 conduct alleged by the government.

1 THE COURT: Okay. It says or indicates. Now, let's
2 look at that language. Where does it say that, that we could
3 say that they are incorporating by reference whatever the
4 government ultimately ends up alleging? Where does it say
5 that?

6 MS. KEARNEY: In the first sentence of the last
7 paragraph on the first page, it references the conduct alleged
8 by the government, and I'll note at the time of this letter in
9 August that was after the information here was filed.

10 THE COURT: But let me just see precisely the letter,
11 the language that you're alleging they've incorporated by
12 reference what the government said.

13 MS. KEARNEY: In that first sentence of the last
14 paragraph on the first page of their letter.

15 THE COURT: The government -- "USC's reputation has
16 been harmed by the conduct alleged."

17 MS. KEARNEY: Correct.

18 THE COURT: Not, "We've suffered commercial bribery,"
19 right?

20 MS. KEARNEY: No, they don't say that.

21 THE COURT: Okay. So what they've said is that it
22 undermined the integrity of their process, the selection
23 process. What you characterize as their property right in
24 admission slots. And they've suffered some harm to their
25 reputation. That's reputation, I suppose. And then they hired

1 outside people, and hiring outside people in connection with
2 the investigation is not recoverable, is it?

3 MS. KEARNEY: Not as loss, Your Honor.

4 THE COURT: Right. Well, that's what we're ultimately
5 talking about here. So now we're back to what do I make of the
6 bribery here, other than its factual support is somewhat thin
7 and attributing it to the defendant is somewhat difficult under
8 these circumstances. The short of it being I wonder how
9 reliable that is for purposes of establishing a guideline, even
10 under an evolving theory of what the case is in this case.

11 But let me be sure that I haven't missed something
12 that you've alleged here. So apart from -- I'm going to
13 Abbott, the submission to Judge Talwani in Abbott. The second
14 grounds is that they undertook costly internal investigations
15 separate and apart from the government's investigation, and
16 those costs were direct and foreseeable consequences of the
17 defendants. I think we're agreed that's not a loss.

18 MS. KEARNEY: Your Honor, I before was speaking to
19 their -- in any investigation related to helping the government
20 with its investigation. But we would argue that these losses
21 are in fact losses.

22 THE COURT: Is there case law that says that
23 investigations that are conducted by someone into this sort of
24 thing is a compensable loss that's taken into consideration for
25 purposes of the sentencing guidelines?

1 MS. KEARNEY: Yes, Your Honor. There is the Piggie
2 case, where the investigative costs into the coach's scheme to
3 deprive the university of its honest services was properly
4 included in calculating loss.

5 THE COURT: And?

6 MS. KEARNEY: Then the DeRosier case, where, if the
7 investigation was prompted there, it was a bank, but for the
8 university's own benefit.

9 THE COURT: Bank investigation here. And again, no
10 dollar figure provided by the university here?

11 MS. KEARNEY: No, we have not received that yet.

12 THE COURT: So here is the thrust of it, I guess, and
13 that is the guidelines attempt to monetize. It's an illusory
14 quest and particularly here without more evidence than the
15 government has adduced in this case to monetize in that
16 fashion. There's nothing here I can rely on to figure out what
17 the amounts are. You know, the arguments that the government
18 has made here, we've been through I think most of them, are not
19 fully supportable. I'm sorry. Go ahead.

20 MS. KEARNEY: I'm sorry, Your Honor. That's exactly
21 what our argument was to Judge Talwani, that the loss here is
22 difficult to calculate. And so that's why we looked to the
23 bribe amount as an alternate measure.

24 THE COURT: Right. But I look at the bribe amount and
25 say how much? So I get to the bribe amount, and it does make a

1 difference, if it's bribery. I guess we start with the base
2 offense level of 6, and then based on the discussion of
3 specificity at least from the government about the bribe
4 amount, the government would be contending it's more than
5 40,000 but less than 95,000?

6 MS. KEARNEY: I believe the base offense level would
7 be 7.

8 THE COURT: 7, okay. I'll take that.

9 MS. KEARNEY: Then if we are basing it on a \$50,000 or
10 \$70,000 bribe, then yes, we would want to add 6. Of course the
11 government's position has been that the bribe amount was
12 \$250,000.

13 THE COURT: I understand that, but I'm not asking you
14 to say uncle, but there hasn't been sufficient evidence about
15 anything over that. And in fact, the \$20,000 in addition to
16 the 50 is questionable but it's within the range here, so we're
17 talking about a guideline range of 13, right?

18 MS. KEARNEY: Correct.

19 THE COURT: Base offense level. Okay. And the
20 guideline range for the loss that you contended before Judge
21 Talwani, under the Judge Talwani analysis, that is basic fraud?

22 MS. KEARNEY: Judge Talwani calculated the guideline.

23 THE COURT: I know what she did. But the government's
24 position with respect to that was how much? What was the
25 guideline?

1 MS. KEARNEY: It varied depending on the amount.

2 THE COURT: Okay. If the amounts were the amounts
3 here, somewhere between 40 and 95, although I understand that
4 the numbers change a little bit.

5 MS. KEARNEY: So if it were the same amounts here,
6 then that would be the same calculation, Your Honor.

7 THE COURT: 13.

8 MS. KEARNEY: Yes.

9 THE COURT: Okay. So I think maybe a way of saying
10 this is I find myself more or less in the position of Judge
11 Talwani. We've gone through this in some ways, but it seems to
12 me that, you know, she's outlined a protocol for analyzing this
13 in the context of not just uncertainty but inability to
14 identify with the kind of specificity that loss or bribe or
15 whatever should be calculated.

16 Assume that I am coming to that opinion, that is, that
17 the characterization of this seems to be a result in search of
18 a justification, that is, a result of higher guidelines or
19 higher amounts in search of a justification that can't be found
20 in the guidelines themselves. Is there anything about Judge
21 Talwani's analysis, that is the general analysis that she gave
22 in her preliminary memorandum -- I think it was September
23 5th -- 13th.

24 MS. CORRIGAN: 13th, Your Honor.

25 THE COURT: 13th, that the government disagrees with,

1 just the way in which she's dealt with that? That is, if you
2 can't specify the amounts here, then you're left to look at the
3 guideline that's provided with specificity, that's 1349 or
4 1341, the underlying one if you go to 2X. And that's to say
5 it's 0 to 6 as a guideline. Now, I'm no slave to guidelines,
6 but I just have to make the determination accurately. But
7 that's where I'd be, right? With the assumption that I've just
8 built in. I understand you don't accept the assumption, but
9 with the assumption I've built in.

10 MS. KEARNEY: With that assumption built in, I would
11 also point out, though, that Judge Talwani did find that the
12 colleges were victims, and she did appear to acknowledge that
13 there was a loss. It just was not calculable. And so she left
14 it as no loss rather than looking to the gain.

15 THE COURT: But what's the gain here?

16 MS. KEARNEY: The gain here is --

17 THE COURT: Monies received by Singer?

18 MS. KEARNEY: Is both monies received by Singer as
19 well --

20 THE COURT: But that has to be a bribe of some sort,
21 doesn't it? Let's assume that somebody pays somebody who tells
22 him they're going to give him a terrific benefit, but you can't
23 identify that as a bribe or identify it specifically as a
24 bribe. That's the same situation. It's calculable against
25 Singer but not against a defendant like the defendant here or

1 the defendants in Abbott.

2 MS. KEARNEY: Well, not where it's a conspiracy,
3 though.

4 THE COURT: Whether it's a conspiracy or not, the
5 question of what the intent was of the conspiracy, that is, to
6 extract money from unwitting or witting victims to receive
7 money for some service that has not been established to involve
8 a bribe of a specific amount amounts to the same thing under
9 this analysis.

10 MS. KEARNEY: No, Your Honor. The amounts paid by the
11 defendant to both USC's account at the Galen Center as well as
12 to Mr. Singer would be gains to the conspiracy as a whole. In
13 addition, the --

14 THE COURT: No, but the conspiracy has to be one
15 that's violative of federal law, and what you've said is or the
16 assumption that I've dealt with -- I'm not sure you said
17 this -- but essentially, it's not a bribery that can be
18 recognized under the sentencing guidelines because it's too
19 speculative, at best too speculative. So then we're left with
20 what do we say? There's money sloshing around, and we should
21 use the sloshing around money as the basis for calculating a
22 guideline.

23 MS. KEARNEY: That's one basis. In addition, the
24 other gain here is the admission spot itself --

25 THE COURT: What's the value of that?

1 MS. KEARNEY: -- which is not easily valuable --

2 THE COURT: Right. So I can't calculate that. See,
3 the point I'm getting to is these are -- they're not
4 comprehended by the guidelines. These are outside of the
5 guidelines. The guidelines, we're talking about fraud
6 guidelines which have their own problems generally, simply
7 because of the versatility of fraud. There's so many ways that
8 people can commit fraud, and every time there's a new one, it
9 doesn't really fit into the guidelines themselves. What you
10 essentially have is a kind of Procrustean bed. Procrustes was
11 a Greek mythological figure who took slaves and cut them to the
12 size of the bed that he had, not because that fit them, but
13 because it fit the structure that he was trying to deal with.
14 That's what the guidelines are on this, and on many things,
15 frankly.

16 So I do have to decide what the guidelines are. I'm
17 doing my best to do that. There's been a challenge to the
18 Probation Office. I'll put to one side whether or not that was
19 a hyperventilating challenge but a challenge. The U.S.
20 Attorney's Office says that the Probation Office disregarded
21 their views. There is no basis for saying that that happened.
22 They considered their views.

23 Now, the Probation Office has their point of view.
24 The reason I have them sitting over there is they are mere
25 witnesses in this court, which brings me to another point.

1 Maybe you can't answer it because you're not the person who can
2 answer these questions, but I noted in that submission with
3 respect to the difference of opinion with the Probation Office
4 that the U.S. Attorney's Office took the position that
5 recommendations made by the Probation Office should be public.
6 Is that the general position now, the new position of the
7 United States Attorney's Office?

8 MS. KEARNEY: Your Honor, the position of the U.S.
9 Attorney's Office is that private recommendations that neither
10 the government nor defense counsel or the defendant can respond
11 to do not further --

12 THE COURT: "Can respond to," I'm not sure I
13 understand that qualification. Is it the position of the
14 United States Attorney's Office now that the Probation Office
15 should not submit private recommendations to the judge?

16 MS. KEARNEY: Yes.

17 THE COURT: And that's consistent not just in cases in
18 which they have reason to believe that the Probation Office
19 doesn't agree with them but in every case?

20 MS. KEARNEY: Correct.

21 THE COURT: And will be taking that in every case --
22 perhaps you know for the last 20 years I've been taking that
23 position. Some of my colleagues have not. Most of them
24 haven't. But that is now the policy of the United States
25 Attorney's Office? I just want to be clear about that. And

1 that's something you can answer?

2 MS. KEARNEY: Yes, Your Honor, I can answer that, and
3 that is correct.

4 THE COURT: All right. So now we're back to this
5 issue of evaluating what Probation says, what the government
6 says and challenge to it. Put to one side the tone and also
7 the kind of defensiveness that was evidenced by the Probation
8 Office, which should understand that they're subject to
9 challenge like everybody else, and I make the decision or my
10 colleagues make the decision ultimately. That's what the
11 adversarial process is all about. But we're back down to this
12 question. We just can't figure a guideline without stretching
13 -- an amount with respect to the guideline without stretching
14 it in some fashion that is wholly speculative.

15 MS. KEARNEY: Well, going back to, we discussed
16 valuing the admission spot, and it's not wholly speculative in
17 the sense that we know what it was worth to the defendant, what
18 he was willing to pay for it.

19 THE COURT: But let's pause with that, too, because I
20 want to be sure that I understand for purposes of making an
21 evaluation that is applicable, generally applicable. Does the
22 culpability of a defendant depend upon the amount of money he
23 paid for the admission slot?

24 MS. KEARNEY: Yes.

25 THE COURT: How? So somebody drives a hard bargain

1 and they get say \$15,000 for the same service that Mr. Bizzack
2 spent \$250,000; that's a difference in culpability?

3 MS. KEARNEY: Yes, Your Honor.

4 THE COURT: How?

5 MS. KEARNEY: Because in every bribery case someone
6 sets the bribe amount. It's either the person demanding the
7 bribe or the person receiving the bribe.

8 THE COURT: But the same thing is being sold. That's
9 what we're talking about here. We're talking about a slot.
10 And so some people drive a hard bargain; some people don't.
11 But the same thing is being sold. The same value is being
12 provided. Once we start valuing in terms of slots, whether we
13 can figure out what the slot is worth in some reasonable way,
14 I'm not sure we can, but it amounts to the same thing.

15 Some victims spend more money. Some victims spend
16 less, although we can't really say in this case that we have
17 gullible victims. We have victims who know exactly what they
18 want and they pay for it, and they pay as much as they want or
19 as little as they want, but they pay it. But I don't
20 understand how culpability is shaped under these sets of
21 circumstances in the way it would be in the stealing from
22 widows and orphans, another form of fraud.

23 MS. KEARNEY: Well, here the amount represents what
24 the defendant valued that at. And so he was willing to spend
25 \$250,000 to get this guaranteed admissions spot.

1 THE COURT: But that doesn't establish the value. It
2 establishes how rich the defendant is or how good a bargainer
3 he is. It doesn't value the slot.

4 MS. KEARNEY: But that's the situation in every
5 bribery case.

6 THE COURT: Not necessarily.

7 MS. KEARNEY: In addition, here, Your Honor, the going
8 rate at USC was \$250,000. This is not the only defendant
9 who --

10 THE COURT: Were all the defendants in the USC
11 circumstances paying \$250,000?

12 MS. KEARNEY: The majority were.

13 THE COURT: So the minority were not, is another way
14 of saying that, which is to say it was not a consistent market?

15 MS. KEARNEY: There were one or two outliers.

16 THE COURT: Well, you can call them outliers, but the
17 point is there's no real market for this sort of thing.

18 MS. KEARNEY: That's correct, Your Honor, which is why
19 we have to look at the evidence that we do have.

20 THE COURT: We look at culpability. That's the point.
21 This is a rich person's crime. That's what it is. And so then
22 do we make the distinctions between how rich and how foolish
23 they are? Is that the way we do it?

24 MS. KEARNEY: No, Your Honor.

25 THE COURT: Okay. So we're back down to, you know,

1 how do we characterize this? I mean, that's what I've been
2 trying to wrestle with you about, and I appreciate your candor
3 to the degree that you're in a position to respond to the
4 questions I've raised, and I understand there are various
5 reasons why you can't answer some of the questions I raise.
6 But I have to tell you I just don't see this as a case that
7 lends itself to any meaningful analysis of gain or of loss, of
8 bribery amount calculated by means of how much money is spent,
9 even if I could, which I don't think I can in this case.

10 This is, as far as I can see, I mean, I've tried to
11 think of a way of characterizing this, but this is a kind of
12 crime of sneaky conspicuous consumption, the kind of thing that
13 rich people can do that poor people can't because they've got
14 the money to do it, to obtain a good -- let's call it a good --
15 that impresses their friends and satisfies the sense of
16 personal self-worth, but it doesn't monetize in that way or at
17 least there has not been -- maybe there will be in other cases.
18 It wasn't presented to Judge Talwani as near as I could find
19 out, and it isn't presented here.

20 So we're left with a guideline like the one that has
21 been offered here, which I adopt as the guideline in this case.
22 I, in short, reject the government's objection to the
23 guidelines. But I'll say further that on the basis of this,
24 even if we could calculate it in some fashion, it's meaningless
25 because of all the various unknowns and estimates and

1 speculations that are involved.

2 So I think I've dealt with that issue, that is to say
3 the issue of what the guideline is. I think that resolves any
4 outstanding questions here about objections, unless there's
5 some other specific objections that aren't tied directly into
6 the guideline calculation.

7 MS. KEARNEY: Not for the government.

8 THE COURT: Okay. All right.

9 MS. CORRIGAN: Not for the defense, Your Honor.

10 THE COURT: Okay. So after this long, perhaps painful
11 discussion of what the guidelines are and my view that
12 Probation has done as well as can be done in this area, and I
13 will add that, while I have an obligation to determine these
14 guidelines accurately, I don't believe that my decision on
15 sentencing is going to be, would be affected by the idea that
16 it's a bribe as opposed to a gain as opposed to a loss. It is
17 to try to capture what is the culpability of somebody who
18 engages in a cheat of the type that only rich people can do.
19 That's what I'm focusing on for myself to the degree that that
20 shapes the views of the parties in making their allocutions
21 apart from the memorandum that they've had.

22 Now let me turn to another dimension of this, because
23 as Judge Talwani said at the end of her memorandum, of course
24 it all depends on 3553. Even if the guidelines point in some
25 particular direction, it depends on 3553. And this is an area

1 in which 3553 makes all the difference in the world. But there
2 is one that I really do want to hear the parties address, and
3 again, it puts to some degree the government in an awkward
4 position, and I don't mean to do it, but I want to be sure that
5 I've had whatever conversation I can have and got the benefit
6 of whatever observations the government can make. I recognize
7 the government has made a particular position.

8 Now, let's assume this, and the way I'll assume it as
9 follows. Let's assume that I think it's very important that
10 there be consistency in the sentences that are imposed. That's
11 what unwarranted disparity is all about. I don't make my own
12 determinations about unwarranted disparity solely because one
13 of my colleagues has acted in a particular way.

14 On the other hand, as I've said, the protocol that she
15 set up seems to me to be a fairly intelligent one to deal with
16 this kind of matter, and I want to know where you would put in
17 level of culpability this defendant as compared to all of the
18 defendants that she has sentenced, parent defendants that she
19 has sentenced in similar kinds of cases, which I think you
20 would now characterize as bribery rather than a more general
21 kind of fraud. So that's something that I want you to speak
22 to.

23 But in any event, having framed the discussion to some
24 in some way and recognizing that you're not saying that those
25 were good or bad -- well, you're probably saying that was the

1 wrong decision on the part of Judge Talwani, but in any event
2 assuming that I use that as a kind of template for culpability
3 I'd like to hear you talk about the relative culpability of
4 this defendant under those circumstances as well as any other
5 factors that you want to address.

6 MS. KEARNEY: Thank you, Your Honor. I will start
7 right with that comparison. There were three defendants before
8 Judge Talwani who participated in the athletic recruitment
9 scheme, also called the side door. They were defendants
10 Sloane, Semprevivo and Huneeus. And just reviewing those with
11 you, for defendant Sloane, the government recommended a
12 sentence of 12 months based on its calculation of the
13 guidelines. Defendant Sloane paid the same amount as
14 Mr. Bizzack. He took additional steps, such as purchasing
15 water polo equipment and had his son pose for photographs that
16 this defendant did not do.

17 THE COURT: Just so I'm clear about that part of it,
18 the involvement of the son and the involvement in the staging,
19 specific involvement in the staging, the PSR has language that
20 may be subject to misunderstanding, but I want to be sure here.
21 That is to say the son didn't, at his father's direction, send
22 Mr. Singer his transcripts here and nothing else, is that
23 right, in his communication to Mr. Singer?

24 MS. KEARNEY: The defendant's son was also receiving
25 legitimate counseling services from Mr. Singer.

1 THE COURT: Were they valuable?

2 MS. KEARNEY: Were they valuable?

3 THE COURT: Mr. Singer got \$250,000. Presumably some
4 of that \$250,000 was for counseling services.

5 MS. KEARNEY: They were separate payments.

6 THE COURT: Separate payments. They were not part of
7 the \$250,000?

8 MS. KEARNEY: Correct.

9 THE COURT: Okay.

10 MS. KEARNEY: And getting back to that, we don't have
11 information that Mr. Bizzack's son was aware or had any
12 involvement beyond sending the transcript, which, even that,
13 it's not clear whether he understood why he was sending his
14 transcript.

15 THE COURT: Okay. But the government doesn't contend
16 that he does here, unlike Mr. Sloane's circumstance?

17 MS. KEARNEY: Correct.

18 THE COURT: One thing, Ms. Corrigan, for you is
19 paragraph 45 involves an email from Mr. Bizzack to Mr. Singer
20 saying that his son was pounding him to reach out to Mr. Singer
21 to make sure Mr. Singer had everything for the application.
22 The word "pounding" is put in quotation marks. What does that
23 mean?

24 MS. CORRIGAN: The "pounding" meant how his son was
25 feeling about the college admission process in general. He was

1 not just applying to USC. He applied to other schools.

2 THE COURT: But the pounding, Ms. Bizzack says the son
3 was pounding him to get in touch with Mr. Singer to make sure
4 he had done everything.

5 MS. CORRIGAN: Yes. So I'm sorry. I thought you said
6 a different word. On the pounding part, his son is a very
7 task-oriented person. I think he got it from his father. And
8 what I can tell the court, although I've never met his son, my
9 understanding from speaking to my client and to his wife is
10 that this young man is very focused, he's very goal-oriented,
11 and he's very much someone who likes to stay on top of his
12 assignments, likes to stay on top of his studies, and I think
13 that that really is what that comes from. I think perhaps
14 "pounding" is more, a little bit of a Southern California
15 expression, maybe not Northeastern but --

16 THE COURT: We have more or less the same dictionary,
17 perhaps different dialects.

18 MS. CORRIGAN: Right. Essentially it's saying, Hey,
19 we need to make sure we stay on task. This young man, from my
20 understanding, was very much on top of making sure that he was
21 getting everything done. He had a lot of obligations at high
22 school. He had his school, sporting events and other community
23 service that he was engaged in at the time along with this. I
24 think it's just his natural tendency to be someone who is very
25 much focused in making sure that he does not miss deadlines.

1 THE COURT: All right. So in any event, certainly not
2 the defendant, but the government doesn't contend that the son
3 was involved. That's a distinguishing feet. The other was
4 some direct involvement in actual fabrication of the
5 applications, is that right, between Mr. Sloane and Mr. Bizzack
6 and anything else to distinguish or show that they're more or
7 less the same.

8 MS. KEARNEY: Mr. Sloane also appeared to walk back
9 his acceptance of responsibility, and we have no indication
10 that Mr. Bizzack has done that. And in fact, he approached the
11 government.

12 THE COURT: Right. And I can pull it out quickly, but
13 you may be able to answer it more quickly. Judge Talwani
14 imposed what sentence?

15 MS. KEARNEY: I apologize, Your Honor. She imposed a
16 sentence of four months.

17 THE COURT: Okay.

18 MS. KEARNEY: Semprevivo also participated in the
19 athletic recruitment scheme. He did that at Georgetown, not
20 USC. He paid \$400,000, also involved his son, and Judge
21 Talwani also gave him four months.

22 THE COURT: And your recommendation?

23 MS. KEARNEY: Our recommendation for him was 13
24 months.

25 THE COURT: Okay.

1 MS. KEARNEY: And then the last parent who has been
2 sentenced who participated in the athletic recruitment scheme
3 was Mr. Huneeus. The government recommended 15 months. He
4 paid \$250,000 for the athletic recruitment scheme and then paid
5 an additional \$50,000 -- or agreed to pay I should say. He
6 agreed to pay an additional \$50,000 for his daughter to
7 participate in the testing scheme, which we haven't really
8 touched on here. So we considered him a repeat player in that
9 he participated in two schemes. His daughter was also
10 involved. And Judge Talwani sentenced him to five months.

11 THE COURT: Okay. But those are the only ones that
12 you can -- or I shouldn't say the only ones, but those are the
13 ones that you consider the comparators here?

14 MS. KEARNEY: The most comparable of the defendants
15 who have already been sentenced.

16 THE COURT: Okay.

17 MS. KEARNEY: This defendant, Your Honor, the harm he
18 caused exceeds the anonymous student who didn't get in because
19 his son had guaranteed admission, and it exceeds the loss of
20 that anonymous student, opportunities that he or she would get
21 from attending an elite, big-name university that his son is
22 now going to have. This case encompasses --

23 THE COURT: How does it exceed it? This was part of
24 the discussion that we were having earlier about, you know,
25 400,000, 250,000, 15,000 for this kind of access, illegal

1 access, but what difference does it -- what is the exceeding
2 part of this, apart from somebody spending more money to get
3 the same good?

4 MS. KEARNEY: Well, the issue is that for the
5 hardworking student who applied the legitimate way who was
6 denied acceptance, again -- because college admissions is a
7 zero sum game. For every student who is admitted, someone else
8 is getting denied because there's a finite number of spaces in
9 a class. So that student who was not admitted now doesn't have
10 the opportunities.

11 THE COURT: I was focusing -- maybe I misunderstood
12 you, but I was focusing on idea that the defendant's
13 culpability here exceeds responsibility for that circumstance.

14 MS. KEARNEY: Well --

15 THE COURT: How does it, is what I'm asking.

16 MS. KEARNEY: He also corrupted the college admissions
17 system generally and affected a system that millions of
18 Americans apply through every year.

19 THE COURT: Why isn't that redundant of the same thing
20 that was done by other people? That is to say, I'm sure you'd
21 say that Mr. Sloane or Mr. Semprevivo, if I've got it right,
22 did the same thing. They despoiled people's understandings of
23 what merit was or what a fair game would be, but that applies
24 to anybody who does this. I mean, I'm just trying to find out
25 how I calibrate this defendant's culpability for the actual

1 process of paying money to get something he wasn't entitled to.

2 MS. KEARNEY: It is the same across defendants who
3 have participated in the athletic recruitment scheme. I was
4 raising it because I wanted the court to understand the
5 magnitude of the harm here, particularly because the guidelines
6 don't capture that well, as the court acknowledged, and so
7 that's why I was going into it. Not to compare this defendant
8 to those other defendants who have already been sentenced.

9 THE COURT: Okay. Part of that, I assume, is that
10 this has become highly public and consequently exemplary. Is
11 that -- I mean, is that what you're saying? If it's not known
12 generally or it's not as extensive as this, then it doesn't
13 quite take away from people's understanding of the legitimacy
14 of the college admission process? Is that what you're trying
15 to say? Because what I keep coming back to is it's the same
16 thing whether it's \$15,000 or \$250,000; it's taking advantage
17 of a privilege that other people don't have, illegally.

18 MS. KEARNEY: It is, Your Honor. And, you know, I
19 think across all of these defendants we've seen that they could
20 afford every legitimate advantage, tutors, private schools,
21 private coaches, and they all took that one extra step to get
22 an illegal advantage for their children.

23 One thing that's unique about this defendant compared
24 to the defendants who have already been sentenced is that he
25 had barely known Mr. Singer when he agreed to do this side-door

1 scheme, whereas a lot of other defendants had been working with
2 Mr. Singer for quite a while. And as their defense counsel had
3 said at sentencing, they were slowly dragged across the line.
4 That doesn't appear to be the case here. The defendant had
5 only met Mr. Singer a couple of months before.

6 THE COURT: So what this means is he's more culpable
7 because he went for it like that?

8 MS. KEARNEY: Yes, Your Honor, that there wasn't a
9 slow wearing-away of where the moral line was. The defendant
10 essentially crossed it right away.

11 One of the pieces in the consensually recorded call in
12 October of 2018 between Mr. Singer and the defendant, his
13 response there was not to accept responsibility. His response
14 was that he was going to keep his head down. He was worried
15 about how it was going to come back on him, how it was going to
16 come back on his son. He acknowledged that if he went along
17 with the story-straight story that Mr. Singer had proposed --
18 so as a basis for the call, Mr. Singer indicated to a number of
19 the defendants that he was being audited by the IRS and that he
20 was not going to tell the IRS that the defendant's payment was
21 to get his son admitted by Donna Heinel to USC. And there in
22 that call, when the defendant essentially acknowledged that if
23 he went along with Mr. Singer's story-straight scheme, he would
24 be lying to the IRS. He in fact referred to it as perjury in
25 the call, and that didn't stop him. He again, like I said, was

1 going to keep his head down and go along with it.

2 THE COURT: So let me understand then how I compare
3 that to him coming forward when he wasn't part of the first
4 wave of people that were I guess complained against initially.
5 He was different in that regard. That is, he came forward
6 after there was public disclosure of Mr. Singer's involvement
7 with other people similarly situated, but during the time
8 period which it was clearly undercover, he made these remarks
9 indicating lack of remorse over what he had done.

10 MS. KEARNEY: Correct.

11 THE COURT: Is that it? But what do I make of his
12 coming forward immediately without, as I understand it, being
13 directly confronted by the government?

14 MS. KEARNEY: The government's perspective is that he
15 deserves some credit for that, and that's why our
16 recommendation was 50 percent below the low end of how we
17 calculated the guidelines.

18 At the same time, the credit can be tempered somewhat
19 by the fact that, before he knew it was public, he was willing
20 to just keep his head down and go along with it and that it was
21 only when he saw that 50 people were being arrested and he was
22 aware he was under investigation that he came forward.

23 THE COURT: How was he aware he was under
24 investigation at that point, at that precise point?

25 MS. KEARNEY: Your Honor, that I took from the

1 defendant's sentencing memo.

2 THE COURT: Okay. Then I'll ask them. But so far as
3 the government knows, he was not confronted at any point before
4 he came in; is that right or not?

5 MS. KEARNEY: That's correct.

6 THE COURT: Okay.

7 MS. KEARNEY: But he did have that story-straight call
8 and could have put it together based on that. I believe I've
9 summarized what makes this defendant comparable to the
10 defendants who have already been sentenced as well as what sets
11 him apart. I was going to go into other 3553(a) factors,
12 unless the court --

13 THE COURT: Well, you should, anything you don't think
14 has been touched on here. I'm not trying to cut off your
15 discussion. I had, as you saw, very focused issues that I
16 wanted to address, but if there are other aspects of it that
17 you think are salient here, I'd like to hear them.

18 MS. KEARNEY: There's just one other piece that I want
19 to address which is related to the request here for Probation
20 and the discussion in the defendant's sentencing memo that
21 there's no need for general deterrence here because other
22 defendants have already been sentenced to prison.

23 First, on Probation, that's not sufficient to satisfy
24 the 3553(a) factors here.

25 THE COURT: If I can cut you short by saying it's a

1 jail case for me. So talking about Probation isn't a winner.
2 I'll hear what they have to say, but this is a case in which
3 someone goes to jail. The question is how long.

4 MS. KEARNEY: Okay. And then I will, beyond that,
5 just rest on our papers.

6 THE COURT: All right. Thank you.

7 So Ms. Corrigan, so let me understand this issue of
8 his awareness. His awareness occurred when he saw the other
9 people getting arrested?

10 MS. CORRIGAN: That is correct, Your Honor.

11 THE COURT: Okay.

12 MS. CORRIGAN: And it's not until after, actually, the
13 initial phone call that was made by his California counsel to
14 the government that he learned subsequent to that that there
15 was a subpoena served on one of his entities.

16 THE COURT: But it was after the group of defendants
17 had been identified?

18 MS. CORRIGAN: That is correct, Your Honor. Once it
19 became public, he reached out to counsel in California.

20 THE COURT: Mm-hmm. Go ahead, on matters that you
21 want me to focus on. You've heard what I'm interested in.

22 MS. CORRIGAN: Yes. If I might, I'd like just to
23 address the categories that the court laid out. The cheating
24 part, this is what this is about. This case is about cheating,
25 and we're not trying to escape that, and my client has never

1 tried to escape that. In fact --

2 THE COURT: Well, he thought maybe it was perjury.

3 MS. CORRIGAN: Correct. And in that call there's that
4 statement, but when we look at what actually happens, he does
5 not commit perjury. He does not commit any kind of tax fraud
6 or evasion or false tax reporting.

7 THE COURT: But he's thinking about it, and that's the
8 -- and verbalizing that's what he wants to do. That's how he's
9 going to handle it. He's going to keep his head down. He's
10 going to -- perjury, he can do that standing on his head, I
11 guess. You know, his expressions of intent here of how he's
12 going to deal with it, not realized, but how he's going to deal
13 with it are insights into his sense of the seriousness of the
14 offense and how he's going to respond to it.

15 MS. CORRIGAN: Correct. And I think that the court
16 also -- that conversation was not very lengthy. It was several
17 minutes. There is not a discussion of that perjury, just so
18 the court is well aware of that. The word "perjury" is in that
19 call. I've heard it. It's there. But there is no extended
20 conversation on it, and there's no further conversation about
21 it.

22 But what I can tell the court is that the conduct that
23 my client has shown throughout, despite that word hanging in
24 that call, has been contrary to that. And I think the court
25 has also seen through all the letters that have been submitted

1 to the court that this is aberrational. And my guess is in
2 many of these parents' situations, this is aberrational
3 conduct. And so I'm not -- this is an area where everyone,
4 from what I can tell in the case, they're well off. My client
5 is well off because of his hard work.

6 THE COURT: By definition, you've got to pay somebody
7 a lot of money to get this service. That's why I say it's a
8 rich person's crime.

9 MS. CORRIGAN: Correct. And so I just want to make
10 sure the court is aware that we don't contest that issue. It's
11 there. It's part of the features of this case. But I think
12 that when the court looks at -- and I think the court also used
13 the word "sneaky," so I just wanted to address the words the
14 court used. Yes, this whole thing is sneaky, but part of what
15 he did which was also sneaky, he's completely kept his son out
16 of it. I intercepted that letter. He did things, we all agree
17 that's why we're here, that what he did was wrong. So I'm not
18 contesting that it's sneaky. But also I want to be very clear
19 the court is aware that my client took steps to make sure that
20 his son never became involved or aware of the initial letter.
21 I don't think that the court has questions on that.

22 On the staging issue and that sort of thing, the
23 government is correct. My client did not engage in the
24 additional conduct, or he was not, as Ms. Kearney has said, is
25 not a repeat player here. He is an isolated incident. It's

1 one child. It's one school. It's a payment that's broken up
2 into a series of payments, but essentially it's \$250,000.
3 There's nothing more; there's nothing less.

4 The cornerstones of why we're here and what my client
5 has done and which differentiates him from any other parent in
6 this case is his call to action and that he knew what he did
7 was wrong. He's owned it. He has owned it from the moment
8 that he met with Mr. Goldman and myself, initially with
9 Mr. Goldman. He owned it with Mr. Rosen and his colleagues.
10 Ms. Kearney was not present at that meeting for different
11 reasons, but there were a slew of agents and members of the
12 U.S. Attorney's Office who came out to Los Angeles and met with
13 us. He did not hesitate. He did not hedge. He did not at any
14 time sit there and think, "Hmm, maybe I won't tell them this."
15 He was completely transparent.

16 Now, mind you, we had not even heard that call at that
17 point. So we didn't know that there was a recording. We kind
18 of knew that there was probably something out there based on
19 some initial discussions with the government. But he did what
20 he needed to do. And luckily the government came out to us
21 because at the time, my client had had major back surgery, so
22 he had some issues of being able to travel easily. But that
23 being said, that meeting was scheduled very quickly.

24 Subsequent to that and in conjunction with that,
25 because we kind of had two different tracks going with similar

1 goals, we voluntarily met with the investigators at USC. That
2 sets us apart, sets him apart. He wanted to do that. He
3 wanted them to know what really happened. He saved the
4 resources --

5 THE COURT: Am I correct that USC had its own
6 investigation going independently of what the government was
7 doing at this time; they were aware of something going on in
8 their admissions process?

9 MS. CORRIGAN: Yes, Your Honor. And we met with two
10 -- a former detective from Costa Mesa Police Department. His
11 name is Mr. Manly, and his partner Mr. Perry. We met with them
12 for a very lengthy meeting. And in fact, they asked us for
13 some documents, which we ended up providing. Mr. Bizzack went
14 and found them and we provided them.

15 But in that meeting also, it was open questions. We
16 had the lawyers there, but it was a very transparent
17 discussion. He answered each and every question. There was a
18 lot of information that he was not aware of, for example, the
19 photo that was put into the profile. Never seen that before.
20 In fact, nobody had seen that before. That was of something
21 that Singer, Janke, it appears from our understanding those are
22 the two people that made that happen. That was a picture that
23 came out of the blue. It's not his son.

24 The information that was -- but I guess the bottom
25 line here is that what I think is very clear and very different

1 and what makes my client extremely different from everybody
2 here is his call to action. He didn't just use words. He came
3 and he stepped forward, and he was very direct with his counsel
4 about, "This is what I want to have happen. I am going
5 forward. I'm going to talk to the government. I'm going to
6 talk to USC." And USC has done a very thorough -- from what I
7 can tell, a very thorough investigation into each of the
8 children. Obviously we don't have any information of the other
9 children. But based on what we experienced with USC, they've
10 been extremely thorough in what they have done to weigh out
11 what happened here.

12 Luckily that investigation has borne positive fruit
13 for the Bizzack family. But what I can tell the court is this
14 is a man who he has failed here, right? That's why we're here.
15 Sentencing is a study of human failure, right? People are here
16 because they fail. This is a time in his life that he did
17 fail. He has owned that from the moment that he caught wind of
18 the other people being arrested. He could have easily have sat
19 back and said, "You know what? These guys seem pretty busy.
20 The government seems pretty busy. They have over 50 people
21 they're dealing with right now that we know about. Why don't
22 we sit back, see what happens, see if they knock on my door."
23 He didn't wait for that. He took the risk.

24 THE COURT: Well, I understand the argument. You'll
25 understand my response, which is to say it's not altogether

1 compelling that he did the right thing after he did the wrong
2 thing. Now, it may distinguish him from other people, but you
3 know, that's what he's supposed to do.

4 MS. CORRIGAN: Right, and he did it.

5 THE COURT: If he's demonstrating real remorse.

6 MS. CORRIGAN: Correct. And I think, obviously we
7 wouldn't be here if he hadn't done something wrong. I mean, we
8 just wouldn't be here. But what he has done is tried to reset,
9 tried to right this ship because this thing needs to be
10 righted. And he has lived with extreme shame over this. He
11 has caused a huge fracture within his family. They're
12 supporting him, but he understands that trust, that betrayal
13 has been very profound, not just to his son and his wife, his
14 daughter but to his extended family. His parents, you saw the
15 letter from them, his business colleagues. He voluntarily
16 resigned from all of his positions because he did not want the
17 collateral damage to hit other people. He wanted to do as much
18 as he could to make sure that he owned it. He knows he's going
19 to be punished by this court. He understands that there is
20 going to be a price to pay. There has already been a huge
21 price to pay in this for him.

22 But what I just -- I think that what the court has
23 heard from the government and has seen at the government's
24 first paragraphs in its sentencing position as well as our
25 sentencing position and information from the Probation Officer

1 that he is different in that he has come forward, and he came
2 forward in a very committed, very direct manner. It wasn't
3 piecemeal. It was all in, and it was all transparent.

4 THE COURT: So if you want to, maybe you are going to,
5 but I would find it helpful for you to make the direct
6 comparisons of other people who have been sentenced in this
7 case, both in light of the government's recommendations but
8 also in light of what Judge Talwani did. You provided a very
9 helpful list of the other sentences in this case.

10 MS. CORRIGAN: Correct.

11 THE COURT: But I want to get more focused on who is a
12 comparator. And the government has given me their sense of who
13 the comparators were that seems more or less consistent with my
14 reading of it, but I want to be sure I haven't missed somebody.

15 MS. CORRIGAN: So I would agree with the government
16 that -- well, as the court knows, there are I'll call it two
17 different types of schemes here. My client is involved with
18 the one that thus far we have seen the sentences come down on
19 Sloane, Semprevivo and Huneeus. And in those cases I think
20 that the government -- the PSR has a very good line item of the
21 aggravating factors that the other defendants have that my
22 client does not have, and Ms. Kearney went through those. I
23 don't know if the court wants me to repeat them.

24 THE COURT: If there's something that hasn't been
25 touched on as yet. I just want to be sure that I've got some

1 sense of what the related cases are that are not just related
2 in the sense they're indicted in this setting but actually
3 related cases.

4 MS. CORRIGAN: Correct. And the one thing I would
5 just point out just on Semprevivo, in case the court has not
6 noticed, one of the things they did which is different from
7 what my client did is they sued Georgetown. My client went to
8 USC. And essentially, we didn't literally knock on their door
9 but called them and said, "We want to come in," and they let us
10 in. So that is a distinguishing factor. I think ultimately
11 the other parts of it, like in the Sloane situation, we've got
12 the lies to the high school guidance counselor. We don't have
13 that here. We don't have doctored up pictures, as the court
14 knows, from my client or anyone in this family. They did not
15 -- my client did not -- there's nothing that would boastful at
16 all. Semprevivo, my understanding is that he did boast about
17 athletic credentials. And he, from what the government
18 indicated, also I think she used the phrase stepped back a
19 little bit on acceptance. We don't have that.

20 So in terms of those three defendants, we are very
21 different from them in the approach. The numbers, 250 is the
22 same. But the scheme in terms of the special factors, if you
23 want to call them that, the aggravating factors, we don't have
24 those features. In fact, we have the mitigating factor on the
25 other side, the cooperation, the assistance and the

1 transparency.

2 So when we look at the government's recommendations, I
3 don't know if you want me to go through those.

4 THE COURT: No. I'm just asking is there something
5 that you think is particularly telling and in comparison here
6 of both the government's recommendation and the sentence that
7 Judge Talwani imposed.

8 MS. CORRIGAN: I do. So if we look at those -- I
9 don't think there's a mathematical formula here that would take
10 the government's nine-month recommendation in this case, which
11 is obviously very much lower than the 12-month and 15-month
12 recommendations on defendants. But if we did just do the
13 simple math, then it would dictate a much lower sentence than
14 the four months.

15 THE COURT: If it isn't clear by now, my view about
16 the guidelines is they're a place to start.

17 MS. CORRIGAN: Right.

18 THE COURT: They're as good for whatever they're good
19 for, but I'm not a slave to them. And in fact, I view them as
20 not a very good mechanism for organizing sentencing, except
21 it's better than all the other ones, because it forces a judge
22 to think carefully and I think rigorously about what's really
23 at issue. But frequently, and this is one of those cases, they
24 don't give the direction that you'd want.

25 Similarly, doing a different kind of mathematics, not

1 additive mathematics, which is what the guidelines are, but
2 some sort of divisional or proportional, doesn't make any
3 difference to me. I'm really trying to figure out what's the
4 proper place to put this fellow. It's otherwise a fear of
5 judging is really what this is all about, and that's something
6 that I don't fear quite as much as others, I guess.

7 MS. CORRIGAN: Right. And I think that I agree with
8 the court's views on the guidelines. And so that's why we drop
9 down to the other 3553(a) factors. 3553(a) does direct the
10 court to calculate the guidelines, which, obviously that
11 discussion has been had. But then we start to look at the
12 general deterrence, which I think is one of the issues here,
13 right? Then we look at -- specific deterrence I don't think is
14 a big factor here. My client doesn't have any background. He
15 doesn't appear to be someone who is going to recidivate. He
16 doesn't have drug problems. He doesn't have substance abuse
17 problems. He doesn't have any of that stuff.

18 But when we look -- and here there's no restitution
19 being asked for, so we don't have that factor. So it's a
20 general deterrence and the unwarranted sentencing disparities
21 that might occur. And when we look at -- I think when we look
22 at the general deterrence issue, yes, we have a lot of people
23 that are, I'll call it financially fortunate, involved in this
24 case. But the general deterrence here -- and I think that the
25 -- I look back at our sentencing position. We are not taking

1 the position that because other people got sentences that our
2 client should get probation. That's not the argument. I'll
3 just move off of the probation issue because I know the court
4 is not moving in that direction but for a lower sentence than
5 any other defendant that's thus far been sentenced, and I'll
6 call them the three other people in our part of the scheme.

7 When we look at that, the general deterrence has
8 really been addressed here because what this should be doing is
9 sending a message out to other parents, other people who might
10 think about doing this that, if you do the right thing
11 ultimately, after you've made a mistake but do the right thing,
12 right, send the right message that you can, although you've
13 done wrong, you can do the right thing in the end. And that is
14 come forward, be transparent, accept responsibility, be
15 accountable and own it.

16 There is a lot of money out from what the government
17 -- in looking at the charges and all the media here, there's
18 about 26 million -- I think \$26 million or so. There's a lot
19 of money out there that's not accounted for which tells me --
20 and I'm not asking the government to tell me who the other
21 people are. There are a lot of other people there. I think
22 that what my client's actions do is perhaps encourage other
23 people who know they're in the same predicament who have done
24 wrong to come forward.

25 THE COURT: I understand that kind of argument in

1 general deterrence, but essentially it's that I should take
2 into consideration, which I do, will, I do in other cases, the
3 idea that a message is given, that's what general deterrence is
4 about, that there can be a discount if you do the right thing.
5 That's not to say what the level is that it should be. That's
6 the conundrum. I think I understand that.

7 MS. CORRIGAN: But even so, the general deterrence
8 here when we think about it in the scheme of things is that we
9 have a lot of adults here in this case, my client in particular
10 because we're here today, a gentleman who has done a lot of
11 good in his life. The letters --

12 THE COURT: But that's not why he's here.

13 MS. CORRIGAN: No. I understand that. But my point
14 being is that he is now a convicted felon. He's a convicted
15 felon.

16 THE COURT: That's true of every convicted felon. I
17 understand I think the argument that it falls more heavily on
18 people in white collar, but I have to tell you --

19 MS. CORRIGAN: Oh, no, I don't, that's not where I'm
20 going.

21 THE COURT: I'm glad you're not saying it because I
22 don't believe it.

23 MS. CORRIGAN: And I find actually -- if I had made
24 that, it's a completely inappropriate discussion. I'm a CJA
25 lawyer. I totally understand that argument because I make it

1 with regularity. But my point being is I think there are a lot
2 of people out there who would know that you're going to be a
3 convicted felon, and you're going to jail. You're going to
4 prison. You don't go to jail in Federal Court, but you're
5 going to prison. You're going to sit and think about what
6 you've done here. You're going to have a period of time where
7 you're going to be incarcerated. You're going to be like every
8 other person. You're going to wear the same clothes. You're
9 going to do everything because that's the way it should be,
10 right? There's no special place for people that have money.

11 But if we think about these kind of cases where it's
12 people of means, or however you want to couch it, privilege,
13 that once they see this case unfold, whether it's just my
14 client or anybody else, there is, I would like to think that
15 other people are going to be generally deterred from doing this
16 kind of conduct, whether it's in a high school setting or
17 whether it's in a college setting or anywhere else in their
18 business lives, that this kind of stuff is going to be --
19 they're going to be held accountable, and this is what we're
20 here for.

21 THE COURT: Not to -- it may go beyond what you've
22 been talking about, but the best general deterrence is
23 certainty and immediacy, but that's not what the criminal
24 justice system delivers. It takes a while. And so what we've
25 got left is time in jail.

1 MS. CORRIGAN: Right.

2 THE COURT: And the question is how much time in jail
3 is sufficient to dissuade those who might otherwise think about
4 it, to do it, proportionate to what the crime is. And so you
5 have identified the fishbone in my throat on this case. That
6 is the other people who think that life is a series of
7 encounters with maitre d's who, you give them a little bit of
8 money and you get in the side door. That's what I'm concerned
9 about here. That's the way of I think of this case, crudely
10 stated. And that doesn't lend itself to any -- I mean, the
11 guidelines try to provide some measure. The government has
12 done I think a creditable job and a consistent job in thinking
13 about what their recommendations are going to be in terms of
14 relative culpability, but it's a judgment call.

15 MS. CORRIGAN: Correct.

16 THE COURT: And that part of it, I'm not sure that it
17 can be fully articulated. I'm not trying to dissuade you from
18 trying to articulate it, but I just have to say that.

19 MS. CORRIGAN: Right. And I think it is difficult,
20 but nevertheless, I think that the signal of general
21 deterrence, signal out -- I'll just call it out to the streets,
22 right, whether we call it out to the streets or out in the
23 headlines tomorrow, the public is going to know about it,
24 whether it's a quiet message out to them or whoever it is.
25 This case obviously is different because there's loud messages

1 day in and day out on this case in the papers. But ultimately,
2 I think anybody after this case who thinks about entering into
3 a scheme like this, if they don't think twice about it based on
4 what they've seen come out of these cases out of these
5 courtrooms, whether it's your courtroom or Judge Talwani or
6 Judge Zobel, eventually Judge Gorton, I don't know what they're
7 thinking.

8 It should be general deterrence. This should stop
9 every single person who thinks that they're going to get some
10 kind of leverage or some kind of super duper benefit to get
11 into the side door. The timeout signal needs to be sent,
12 right? Everybody needs to just set pause and say, you know
13 what? No. We're just going to let kids go to college wherever
14 they deserve to go to college. They don't need to go to a
15 particular college. They don't need to do this whole side door
16 thing.

17 I think these cases have been sending that message,
18 and I do understand that the court is going to impose a
19 sentence that involves imprisonment on my client. What I would
20 ask the court to do, and I think the court has already figured
21 this out, that the court consider sentencing Mr. Bizzack to far
22 less time than Sloane, Semprevivo or Huneeus because their
23 actions have aggravating factors that his does not. They're
24 all the same in terms of the payment and what they did, but the
25 actions, post-offense conduct by Mr. Bizzack are starkly

1 different from those that you have or that Judge Talwani has
2 had before her, and Judge Zobel. The numbers bear it out. The
3 aggravating factors that are listed in the PSR bear that out.
4 And, you know, I don't want to just keep beating the same drum
5 but I think that's what this really boils down to is that he,
6 although he did wrong, he has done the right thing in the end
7 by stepping up to the plate, showing his son that you own it,
8 right?

9 This has been an incredible lesson for everyone
10 involved in his family, his community, his business community.
11 He has made it very clear to people. He has been transparent
12 with his employees, his business partners, his family, his
13 extended family. He has told them "I messed up. I made the
14 biggest, biggest error ever in my life, and I have involved my
15 son in it to his detriment." Luckily his son appears to be
16 quite a strong young man, to his credit. But he has done
17 something here that, his proactive approach, if he sat back and
18 just remained silent, his son would continue to suffer from
19 this, his community would continue to suffer from it. USC
20 probably would continue to suffer from it, right?

21 He stopped the bleeding when he could. Should he have
22 done this? No. Could he have stopped it at the phone call?
23 Perhaps. Could he have stopped it at an earlier stage? Okay.
24 But he didn't. I'm not trying to be flippant about it, but the
25 fact of the matter is he didn't. That's why we're here. He

1 didn't exit. He did not exit that conspiracy. He stuck with
2 it. Did he feel good about it? From what he tells me no, but
3 nevertheless, once it came time to step up, he stood up and he
4 owned it. And he is showing the court what his ultimate core
5 values are. He's showing the court that he is resetting his
6 life, reevaluating his life and going back to those core values
7 in that person that is described in every single one of those
8 letters that is in the court's record that's attached to our
9 sentencing brief.

10 Those letters are consistent. They're from people
11 from all different parts of his life. They didn't get together
12 and write them. There's an amazing consistency in those
13 letters and the stories they tell, and it tells of a person
14 who, from an early stage when he was -- you know, moved after
15 he -- I think the court is aware he left school and moved to
16 Hawaii. He had a tough time in Hawaii, yet he helped Vicky.
17 And I'm going to be sensitive, not using last names. Then he
18 moves back to California. He ends up helping these two elderly
19 people regularly. He didn't have to do that.

20 I think what that does is it shows the court the true
21 core of who this person is. Mind you, he's probably written a
22 ton of checks to charities but he's actually done things,
23 right, not just writing checks. He's doing things. He's doing
24 errands. He's fetching groceries, helping with appointments to
25 two elderly people who survived the Holocaust. He didn't need

1 to do that, but he did it for an extended period of time. He's
2 helped people all the way along.

3 And now what he's done as he's stepped away from work,
4 he's feeding people and distributing food at the local food
5 bank, and it's been, from talking to him, an extremely humbling
6 experience, an experience that has brought him back to his
7 roots. And he lost his way, whether we call -- I know some of
8 the letters call it moral compass, maybe a phrase a little bit
9 the government has used. But for whatever we want to call it,
10 he left his core, and he's gotten back there.

11 And I can tell the court, too, just in terms -- I'm
12 not trying to violate any privileges here or anything like that
13 but whether the court imposes some community service or not, I
14 want you to know that he's indicated that he intends to
15 continue to work at the local food bank because he's realized
16 that in his own backyard, there are people in need and he can
17 help, not just by writing a check but actually going to them
18 and seeing them eye to eye, giving these people a pat on the
19 back, a meal, a kind word. That's who this person is about.

20 And unfortunately, we have a period of time in his
21 life over the course of several months that he messed up. He
22 messed up. He did. He violated the law. He did wrong. And
23 the court -- I think in measuring his life, now in his late
24 50s, and we have a short period of time in his life where he
25 made disastrous decisions which have left him here. And the

1 court I think should know, and I think the court has picked up
2 from the PSR, that he's also been engaging in therapy to try to
3 figure out how he let himself get there, how he let himself
4 drop down to the level of committing a crime. Because he
5 grapples with that day in and day out. This thing doesn't
6 leave him. He thinks about it daily. Every time he looks in
7 the eyes of his son, he -- it's in the pit of his stomach, it's
8 in the pit of his heart.

9 So with that, I want to just ask the court to consider
10 -- I understand the court's going to impose a sentence here of
11 incarceration, but what I'd like to do is ask the court to
12 consider not by way of mathematical machinations here with the
13 other defendants, but because of the distinctions that we've
14 drawn out here, that he be sentenced to far less than the four
15 months that was imposed on Mr. Sloane, Mr. Semprevivo, I may be
16 mispronouncing that, and the five months imposed on Huneus
17 because he does stand here where he is very distinctly
18 different from those three people. He did wrong, but he's
19 distinctly different from them.

20 I think if we also look at the government's
21 recommendation, the recommendation for Mr. Bizzack is far lower
22 than what they originally recommended, and I'd ask the court to
23 consider sentencing him to no more than a month in custody. I
24 think a month, although that may seem short to some people, it
25 is a very significant period of time, and it will be a very

1 significant period of time of reflection and a complete loss of
2 liberty, and then release him on supervised release, and that
3 will also continue to limit his liberty. It will continue to
4 limit his ability to do what he wants and make sure that if he
5 messes up, he'll be right back here and we'll be here on a
6 supervised release violation. I don't think we'll have that.

7 But I think that what I'm asking the court to do here
8 comports with the dictates of 3553(a) and with the case law
9 that goes along with that. I know the court is well aware of
10 its duties. And I just, I think that the information that the
11 court has in the PSR is quite profound here. And I just want
12 to thank the court for its time and also, quite frankly, for
13 the government stepping up and being very transparent about my
14 client's transparency.

15 THE COURT: Thank you. So Mr. Bizzack, this is an
16 opportunity for you to speak to me directly if there's
17 something that you want to say.

18 THE DEFENDANT: Yes. Would you like me to stand?

19 THE COURT: Whatever you're comfortable with.

20 THE DEFENDANT: So thank you, Your Honor. And the
21 first thing I'd like to do is I'd like to thank the court. I'd
22 also like to thank the U.S. Attorney's Office as well as
23 Probation and Pretrial, who is not here, as well as the USC
24 investigating team. You know, through this incredibly
25 difficult situation that I've put myself in, this team of

1 individuals has been incredibly professional and have, you
2 know, treated my family and me with incredible dignity. So
3 thank you.

4 I'd like to apologize. And I'd like to apologize
5 first to all of the students at USC, The present, the past and
6 the future, and to the USC administration and to the teachers
7 and to the admissions office. I know my actions impacted all
8 of them, and it wasn't fair. I want to apologize to my
9 community, to my neighborhood, to my friends, and to all of my
10 business partners and colleagues and employees.

11 I disappointed a lot of people, and what I did did not
12 set the example of what our companies represent, friendships or
13 neighborhoods. It was wrong. I want to apologize to my
14 family, my extended family, my aunts, my uncles, nieces and
15 nephews and cousins, my brothers and sisters, my 84-year-old
16 parents, my in-laws, and what I put my wife and my daughter
17 through and of course my son. I spent my life guiding him,
18 protecting him and teaching him, and all this led to a reckless
19 act that I did that's had a profound impact on him. He's a
20 smart, honest young man who didn't want this, didn't deserve it
21 but has to live with it. So I apologize.

22 What I did was wrong. This is the worst set of
23 decisions that I've made in my entire life. I'm humiliated,
24 ashamed of my actions. Over the last six or seven months going
25 through this, I've have had incredible regret and sorrow and

1 understand the collateral damage that I've impacted so many
2 people, and it's been devastating for my family.

3 As you heard, my commitment from day one was to take
4 complete responsibility. That doesn't right the wrong, but I
5 wanted to make sure at least my son got another lesson that
6 when you do something as terrible as this, that you stand up as
7 a man and own it.

8 I didn't blame others. I won't blame others for my
9 actions, nor did I want to force the government to commit more
10 resources and spend more money on a prosecution but rather come
11 forward. I met with USC, and the goal was clearly to make sure
12 that they had every piece of information they needed to help
13 them understand this. And when I engaged with them and anyone
14 I talk to about this, it's with full transparency because at
15 the end of the day, that's the future for me.

16 As is stated, I resigned from all of my operating
17 roles and my executive board positions, and I'm going to make
18 sure that you know that I'm here in this court to take
19 responsibility for my actions. I understand that you will be
20 sentencing me today, and I accept it. That's a part of owning
21 this.

22 This has been a huge wake-up call for me, causing me
23 to have a complete timeout and reset on my life. As you can
24 imagine, I'm a very busy executive, flying all over the world,
25 running multiple companies and not grounded, not having my feet

1 on the ground. So I've really engaged in a lot of different
2 tools to help really go after this. And in a reflective way,
3 through, as you heard, therapy, but also really trying to
4 understand what the future is going to be and how to be
5 relevant, especially after making such a serious set of
6 decisions.

7 I want to make sure that I'm the not the man of 2018,
8 of that summer who made that terrible set of decisions. As you
9 heard, I've been volunteering, and I've done a lot with my
10 head, if you will, doing a lot of things to help our businesses
11 culturally drive really good things in the community but really
12 with my hands not as much. And it's been incredibly grounding
13 to know just miles from my house the basic needs of people.
14 And I'm not sure what's going to happen with other people
15 around this case. I can only tell you what's going to happen
16 with me. And that is, when I look eye to eye into people and
17 I'm handing them the most basic thing, food, it's pretty
18 powerful. And at 59, it's a new day for me on that. And I
19 didn't even understand it, didn't recognize it. And it's a
20 turning point. It's a turning point for my life to be so
21 fortunate to be married for 30-some years and to start with
22 literally nothing and to be in a place where we are today and
23 to understand full circle how important it is, the basic needs
24 for people.

25 So I just want to make sure that you know and that the

1 court, everyone here knows that I've owned this. I have made
2 this mistake. I own the responsibility of what has happened
3 here. It was completely reckless and wrong, and I continue
4 after this sentencing and after the other things that we'll be
5 going through to pivot my life. And it's just the way it's got
6 to be, and it's the way I want it to be. And I want it for my
7 son and my wife and for my community and for my employees,
8 everybody, especially for the university.

9 So again, I apologize, and I thank Your Honor for the
10 time today to talk to you and to the court. Thank you.

11 THE COURT: Thank you. So we've had an extended
12 discussion about a variety of things that arise in criminal
13 sentences but arise here because of the unique character of the
14 offense charged and series of offenses charged.

15 I've felt, as I tried to indicate it, a responsibility
16 to apply some intellectual rigor to the guidelines. It is
17 sometimes the case that cases that gather a lot of publicity
18 have a hydraulic pressure on judgment that's unrelated to a
19 careful analysis of the underlying violations. And the
20 guidelines, while I've indicated I'm not altogether satisfied
21 with them, but then I'm not altogether satisfied with much of
22 anything, the guidelines provide a mechanism to be sure that
23 you've tapped all the drums, but you've got to tap them right.
24 That's why I've spent some time trying to figure out how do you
25 monetize this case? There may be a mechanism. There may be

1 evidence that can be adduced, but it wasn't adduced here,
2 particularly related to bribery, which seems to me to be a way
3 of understanding this aspect of the sprawling set of violations
4 but forcing it into what I've described as a Procrustean bed,
5 searching for some mechanism to describe it. It doesn't do
6 that.

7 So I go back to the characterization that I made
8 before. It's a sneaky crime of conspicuous consumption. Now,
9 what does that mean? Well, it means something horizontally and
10 something vertically, and it has to do with class. It has to
11 do with divergence of opportunities, divergence of privilege, a
12 matter that is so critically important to our current discourse
13 in this country, the sense that some people are getting
14 benefits that other people aren't, and it's not on the basis of
15 merit or any system of merit that anybody can understand. And
16 the more it happens, the more serious it becomes.

17 So when I think of it vertically, I think of people
18 who couldn't even aspire to spend \$100 to get services to get
19 them in the back door, who don't have enough money to give to
20 the maitre d' to get in. And that's fundamentally corrosive to
21 our society. So, do I think this is a serious crime? You bet
22 I think this is a serious crime. Then that's got gets, or
23 tries to, and that's wrong, and it has to be dealt with in a
24 meaningful fashion directly.

25 Now, it may be clear but I'll make it clear that I

1 don't necessarily mean that the way to decide that is to say,
2 Well, if 14 days is tough, then 28 is better, and you keep
3 escalating. No, I don't think that. What I do think is that
4 looking at this as anything other than a serious crime is
5 blinking reality. But that's the horizontal level. When I say
6 conspicuous consumption, of course I'm referring to Thorstein
7 Veblen, and that focuses horizontal, that is, among rich
8 people, how do they spend their resources to obtain goods that
9 will impress each other, how do they socialize their kids to
10 think that there are only a couple of schools worth going to
11 when this country is filled with terrific colleges. But some
12 -- I'm not turning this into -- over on the government, but the
13 government referred to the branding problems that USC has now
14 as a result of this. Well, that frankly is a matter of
15 indifference to me. If branding is what this is about, then go
16 to the Federal Trade Commission. That's not what it's about.

17 What it's about is the idea that, even among rich
18 people, some people are going to get sneaky ways to get
19 benefits, and that may reflect the difference between old money
20 and arriviste money and a whole series of things that Veblen
21 talked about that are part of our culture and are corrosive
22 because it keeps us focused on the idea of class and its
23 privileges without thinking about we're all in it together and
24 everybody ought to get a fair shake. There was no fair shake
25 here. So do I think it's a serious offense? Yes, I do.

1 Then I will look at the nature and characteristics of
2 the defendant. You know, it's easy for me to say and of course
3 it's a way to tone down the language, not that it's been
4 overstated here, that it's not the good works that the
5 defendant did that brings him here. It's something else. But
6 I would be missing a significant aspect of this case if I
7 didn't recognize the good works, which suffuse the letters.
8 The letters are not made up or done from templates. They talk
9 about specific circumstances in which the defendant has reached
10 out and not just into his pocketbook to provide for other
11 people.

12 This is, it seems to me, a good man. I'm satisfied
13 about that part of it. And I recognize, as he's said, and
14 counsel, that once it was clear that he was in the crosshairs,
15 that he came forward and dealt directly with the people who
16 needed information and did so without engaging in the kinds of
17 prevarication and self-justification that are sometimes
18 understandable when people face having done something horrible
19 but chose to do the right thing as he could, having done the
20 wrong thing before.

21 The case lends itself to -- I shouldn't call them
22 hackneyed expressions, but they come out, owning it, moral
23 compass. They are bumper stickers, which tell us a little bit
24 but don't get to the bottom of it. And I've tried, as I've
25 indicated, to get to the bottom of this as best I can. And

1 coming to the bottom of it, I'm of the view that this is a
2 person who is a good person who has done a very bad thing that
3 affects society more generally but affects the kid who thought
4 that it was a fair set of circumstances in selection for a
5 college that that kid wants to go to.

6 Now, one can say that there are all kinds of
7 privileges and affirmative actions and selection processes and
8 stuff, legacies, that affect all of this, but those are at
9 least transparent. And while schools aren't necessarily so
10 candid about them or maybe even try not to be straightforward,
11 they exist. But what doesn't exist or shouldn't exist and
12 what's not acceptable is the idea that you can pay somebody off
13 to get in there, and that's what the defendant was doing.

14 Now, I look at this bumper sticker like moral compass
15 and stuff, and I think that the writer in me wants not to
16 embrace it, but there is a way of thinking about this. What is
17 it that happened here? You want to say lost moral compass?
18 Yeah. I think a better way to think about it is for a period
19 of time, but it was significant, the defendant's moral compass
20 was demagnetized, that in a misbegotten effort to assist his
21 son to get into what both of them believed to be prestigious
22 schools, he took the sneaky way. But from all that appears, it
23 is a contained period of time.

24 We've been talking about the idea that it was siloed
25 in themes and variations, and it was here as far as I can

1 figure out. He did it. He didn't engage anybody else in his
2 family in this exercise. No big surprise that other members of
3 his family with strong moral character are appalled by it. He
4 knows that he's got to do whatever he can to make it up to
5 them, including his son, his daughter and his wife and extended
6 family, because this is an individual whose goodness, I don't
7 hesitate to say, extended into his businesses as well.

8 But he did it. So then I turn to specific deterrence.
9 That's the concept of what does it take to keep this man from
10 doing something like this again. Well, I don't think he's
11 going to be doing this again. Not just that he's going to try
12 to get somebody into USC by cheating. I mean more generally
13 that he's going to keep himself involved in cheating or stay
14 involved in cheating or continue cheating. I don't think
15 that's going to happen here.

16 And then I turn to general deterrence. And as I said
17 to Ms. Corrigan, this is the fishbone in my throat among the
18 various factors of section 3553. Section 3553, as I am sure
19 with distressing frequency for lawyers who appear before me for
20 sentencing, I think of as a set of incommensurables. They
21 don't have the same weights and balances, or at least you can't
22 make comparisons. And so what I'm doing is attempting to find
23 a tolerable accommodation of incommensurables. Tolerable, that
24 is trying to find someplace to locate a sentence that serves
25 all the purposes of 3553.

1 I start with the seriousness of the offense. That's a
2 jail time case. How much jail, we'll get to in a minute.
3 Character of the defendant, still a jail time case but
4 substantially diminished because of the way in which he
5 responded. Specific deterrence, not jail. Don't need jail to
6 do that. And then general deterrence. Because overall, this
7 accommodation of incommensurables is meant to result in a
8 sentence that is sufficient but no greater than is necessary to
9 serve the larger purposes of sentencing. And on general
10 deterrence, it's this: The people who are involved in this
11 case, present company excepted, seem to me from afar to be
12 people who are quite capable of analysis of risk and return.
13 They're people who are out there, haven't been charged but may
14 well be dealing with this sort of thing. Certainly the
15 government's investigation uncovered a sprawling activity that
16 I think most people had no idea was out there in both sneaky
17 and privileged access to ways to get into colleges that they
18 want to and thereby deprive others equally worthy of getting
19 into a particular slot. But I have a feeling that there are
20 people out there who say, "Oh, they're not going to catch me.
21 I'll be a lot more careful about this. I'll vet the William
22 Singers -- Rick Singer -- excuse me -- of the world before I do
23 that."

24 Now, that's something that goes to something I said to
25 Ms. Corrigan, which is the best deterrence is swift and certain

1 punishment. Not length of punishment but swift and certain
2 punishment, but we don't have that. It's not just that we
3 don't have enough resources to do it. It's also that we have a
4 system that is absolutely appropriate that provides due process
5 but takes a while and imposes tremendous burdens on the
6 government of proof, all to the good, that's what it means to
7 be under our Constitution, but nevertheless we're left with
8 time in jail as a way of measuring it.

9 And now I keep thinking, and this applies particularly
10 to this case of the old New Yorker cartoon from the 1930s. Two
11 elderly gentlemen sitting in a men's club, and one turns to the
12 other and says, "You know, money is life's report card." And
13 that's the way the people who are involved in this thought of
14 it. "We got money. We'll buy what we want. We don't care
15 whether or not we're depriving somebody else equally worthy of
16 their opportunity to have a fair consideration."

17 But the flip side of it is, there could be two
18 gentlemen in the club saying, "You know, jail time, an amount
19 of jail time is life's report card," and it's not. It is a
20 method of ensuring that the various factors of 3553 are met.

21 So I look at this and say to myself, where do you put
22 this? What do you need to do? And it's not that I'm saying,
23 Well, you know, this is really very embarrassing for people of
24 substance, very embarrassing for people who made their lives
25 ones of example, or tried to, and they've paid enough. That is

1 not part of my consideration. But I use as a touchstone, you
2 know, what would I do in a similar case involving someone who
3 is disadvantaged. Of course there isn't a similar case
4 involving someone who is disadvantaged. This is a rich
5 person's crime by definition. But it's a way of thinking about
6 it. I hope that if there were a fair comparison with the crime
7 that I impose a similar sentence for this.

8 One thing I do believe and I share is the observation
9 that was made by Ms. Corrigan, that general deterrence is not
10 just amount of time in jail as the report card. It's also, the
11 report card can include you get a discount if you stand up,
12 accept responsibility, try to help out, irrespective of whether
13 under the guidelines there are things like acceptance of
14 responsibility or assistance or any of the pretexts that are
15 used to face the proposition that there are aspects of the
16 criminal justice system which I reject that are meant to
17 encourage people or perhaps more accurately discourage people
18 from exercising their constitutional rights, including the
19 constitutional right to go to trial.

20 But if somebody stands up, tells the story, doesn't
21 get substantial assistance, gets a form of acceptance of
22 responsibility, I think about it not in the guidelines way but
23 in a way of saying to other people, "You get caught, talk.
24 Tell the truth, because it's going to be better." This is for
25 people who are intensely involved in risk/benefit analysis.

1 So is there a matrix for general deterrence? No, of
2 course not. You do the best you can. You judge, you exercise
3 judgment. I look at jail, and I think -- not that I'd send
4 somebody to jail as I say for vocational training or to get
5 some more education. Certainly that's not applicable here.
6 But I look at jail to ask myself what does that do here in this
7 case involving this defendant for purposes of the defendant's
8 rehabilitation. I think it has a role. I think the way in
9 which Ms. Corrigan talked about it, that is, someone having to
10 sit down in circumstances in which they don't control
11 themselves and think more carefully than they have already, and
12 it's clear that the defendant has already thought about his
13 circumstances. It serves that purpose. How long? Not in this
14 case a long time, I don't think.

15 And then I look at comparisons. Now, what are
16 comparisons? It goes back to what are the sentencing
17 guidelines about? What is it that the Sentencing Reform Act of
18 1984, which few in the room were around for, but I was, both as
19 a defense counsel and as a prosecutor and as a judge. I was on
20 both sides of that. And as I frequently say, in the old
21 courthouse, it was not at all unusual to go into a courtroom,
22 let's just say courtroom 1, for a crime for which someone
23 receives a sentence of 20 years in prison and to go into
24 another courtroom, let's just say courtroom 2, and find that
25 you're getting a sentence of six months for the same thing for

1 someone who has got the same background. Profoundly corrosive.
2 Probably as corrosive as anything that can happen in the
3 criminal justice system to have disparate sentences. So the
4 Sentencing Reform Act, the sentencing guidelines were meant
5 address that. It's very hard, as this case indicates, to
6 develop guidelines that adequately capture some new form of
7 fraud. New form in the sense that it hasn't been focused in
8 some way.

9 I've looked at the cases that the government has
10 suggested as alternative ways. I don't think anybody has done
11 an evaluation of this case any better than Judge Talwani. I
12 believe that she's carefully considered all of the factors.
13 And so while I would act disparately if I thought that it was
14 important to act disparately I'm not going to act disparately
15 from her general structure, which seems to me to be carefully
16 thought out and exercised with principle.

17 Now, I said it before, I'll say it again. I also
18 think the government's recommendations are presented in a
19 principled way. They're not and haven't been knee-jerk.
20 They've attempted to deal with, as they think appropriate, the
21 differences among the defendants. It's simply that I think
22 it's in this defendant's case and in the cases that Judge
23 Talwani dealt with as I understand them, and I try to
24 understand them by reading carefully the docket in Abbott.
25 That seems to me to set the proper kind of range. And so I can

1 properly look to those cases to say, "Where does this belong in
2 that setting? What would be a case that's consistent with the
3 way in which that unfolded," which I hope I would have the
4 foresight to develop in the way she did.

5 Now, of course disparate sentences are supposed to be
6 national. You try to do the best you can to understand what it
7 is nationally. That's why you have the guidelines. But of
8 course the guidelines, as I've said, do not hold up on the
9 basis of the evidence that's presented to me here in any way
10 that I can find them to be reliable and in any event the
11 Sentencing Commission has not faced this. Other courts have
12 dealt with it, but they seem to have dealt with it in ways that
13 don't really meet this kind of case and are, with all respect,
14 unanalyzed at least in the public setting.

15 But analyzing this is as we've done or I've tried to
16 this afternoon with assistance of counsel, which I very much
17 appreciate, where I put this is two months' incarceration.
18 That seems to me to be the point at which this defendant falls
19 for the seriousness of the offense that he was involved in.

20 Now, I want to emphasize something that I believe very
21 strongly. I'm not really so influenced by how much money
22 people spent because that's not the core of this. The core of
23 it is the use of resources other people don't have to get a
24 place. And so if somebody was able to negotiate with
25 Mr. Singer to get a better deal, they got a better deal. If

1 somebody was ready to spend or throw money at it, they threw
2 money at it. But the core of it is, and the core of the
3 seriousness of the offense is this treatment disparately of
4 resources that people have generated by a misbegotten view of
5 what prestige means in colleges and the reinforcement of it
6 that is class-based among rich people and others.

7 I don't think that it's necessary under the
8 circumstances to impose the range of conditions that I might
9 otherwise impose here. The defendant does not have drug
10 problems that would generate drug testing, so I'm waiving the
11 drug testing requirements that might otherwise be applicable.
12 I am imposing a period of three years of supervised release.
13 I'm a member of the trust-and-verify generation. I trust the
14 defendant. On the other hand, if this turns out wrong, he's
15 going to be back before me and we're going to have another
16 discussion. And it's a discussion that doesn't provide quite
17 the approach that I've provided here.

18 I am of the view that I must impose a fine. I'm going
19 to go beyond the guidelines on this and impose a fine of
20 \$250,000. The defendant's financial circumstances of course
21 are shaped by assets that are a little difficult to value, but
22 they're substantial. And so you spend \$250,000 to cheat, ex
23 ante, the fine is \$250,000 for cheating ex post.

24 There is a special assessment that's mandatory of
25 \$100. Restitution hasn't been sought, in part I think because

1 of the view among the various participants who might think
2 about restitution that it's really hard to value this in a
3 meaningful way, so it's not part of the case.

4 It's too easy to say this is about money. It's about
5 status and class and a whole series of other things. But maybe
6 the elderly gentleman in the men's club had part of it right.
7 Money is life's report card, and that fine is meant to provide
8 a report card for the seriousness of the offense that the
9 defendant had, which the parties know, but I'll restate is well
10 above the guidelines because I'm varying from the guidelines.
11 I just don't think the guidelines capture this at all, not a
12 bit.

13 Now, what other conditions am I imposing under these
14 circumstances? Well, I'm going to require the defendant to
15 engage in some form of I'll call it broadly mental health
16 treatment. That doesn't really capture it. The defendant is
17 dealing with therapy now. It seems to be appropriate. I leave
18 it to the Probation Office to fashion that or refashion it or
19 reformulate it as they think necessary, but I think that the
20 therapy should continue, and I've put it under the general
21 rubric of mental health.

22 I'm always uncomfortable with imposing as a condition
23 that people do community service. That makes community service
24 sound like it's a penalty for most people, and I think for the
25 defendant here, it's not a penalty. It's something that has

1 been and will continue to be part of his life. Nevertheless,
2 to emphasize that this is a crime that involves people less
3 fortunate than he, I'm going to impose a period of 300 hours
4 per year of community service to be served with the
5 underprivileged, hands on, not in some executive position but
6 hands on with people whose lives have not been as privileged or
7 successful as the defendant has made his life.

8 The defendant is going to be paying the costs of these
9 programs, that is, what I call mental health treatment but
10 therapy. He'll continue to pay for it himself. He's got the
11 resources to do it that. And similarly he's going to be paying
12 for any additional programs that might be imposed under these
13 circumstances. But ultimately, he also has to face the IRS. I
14 have no idea how the IRS is going to treat this. I don't think
15 anybody really does. I see it, but it's through a looking
16 glass quite dim.

17 There are 501(c)(3) organizations to which somebody
18 contributes. They probably were not properly 501(c)(3)
19 organizations, at least in which the ways in which they were
20 dealt with, but that's for another day, except this, that
21 during the period of supervised release, the defendant must
22 cooperate fully with the examination and collection division of
23 the IRS, provide to the examination division all financial
24 information necessary to determine his financial -- prior tax
25 liabilities, provide that information on all financial

1 information to the collection division necessary to determine
2 his ability to pay, file accurate and complete tax returns for
3 all those years for which returns were not filed and for which
4 inaccurate returns were filed and to be filed during the period
5 of supervised release and make a good faith effort to pay all
6 delinquent and additional taxes and interest.

7 The balance of this, together with the balance of the
8 fine, must be paid before the completion of the period of
9 supervised release. It's due and owing now, and interest will
10 run from today. And to the degree it hasn't been paid or
11 there's some claim that it can't be paid, then it will be
12 imposed according to a schedule that I will ultimately sign off
13 on but Probation will develop the information for. In any
14 event, so long as it hasn't been paid, the defendant is
15 prohibited from incurring any new credit charges or opening any
16 additional lines of credit without the approval of the
17 Probation Office while any financial obligations remain
18 outstanding.

19 You must provide the Probation Office also with access
20 to any requested financial information with the understanding
21 that it must be, or will be, can be provided to the United
22 States Attorney's Office, their financial litigation unit, if
23 that's what they still call it, but in any event the people who
24 collect things, and they will presumably use that information
25 to collect until collection is completed.

1 I'm not going to impose home confinement or home
2 detention or monitoring, that sort of thing. That isn't
3 applicable here. In fact, the better thing is to get the
4 defendant out in the community as quickly as possible once he
5 has paid his incarcerative dimension to the sentence that I'm
6 imposing.

7 I believe I've touched all of the conditions that
8 might be considered here. If the parties have anything else
9 that you'd like me to speak to, I'd hear it. Ms. Victoria?

10 U.S. PROBATION: Your Honor, no other conditions. I'm
11 not sure if I heard you say the \$100 special assessment.

12 THE COURT: I think I did, but I sometimes think I say
13 things that I didn't say. But I'll say that now. There's a
14 \$100 special assessment that's due and owing.

15 Anything else? The question of surrender is a
16 different issue that I'll take up later, but I just want to
17 deal with the judgment and commitment order here. Anything
18 further?

19 MS. KEARNEY: No, Your Honor.

20 MS. CORRIGAN: The only comment I do have, Your Honor
21 -- excuse me. I know the court made a comment about not being
22 able to enter any credits in situations. I do want to make
23 sure that the court is aware that my client is intending to
24 return home this evening, and he will be flying, so there
25 probably will be some credit card charges. I'm sure that's not

1 what the court was meaning. I just want to be very transparent
2 on that so there isn't any issue.

3 THE COURT: I don't treat that, I don't think
4 Probation treats reasonable living expenses as being part of
5 that unless reasonable living expenses turn out to be something
6 that none of us could aspire to.

7 MS. CORRIGAN: Right. I just wanted to be sure that
8 you were okay with that. And then as to the fine, he will be,
9 as soon as we receive the J and C, we'll be making arrangements
10 to make that happen.

11 THE COURT: Okay. In any event, it's, as you can see,
12 part of this process.

13 Mr. Bizzack, this is about you, as you know. I've
14 tried to be as clear as I can about why I'm doing what I'm
15 doing, why I've imposed the sentence that I've imposed. It's
16 also to tell the parties and other people, because we are
17 talking about general deterrence, what's involved and how it is
18 that I get to the point that I get to.

19 We started with a discussion about the alleged victim
20 in the case not wanting to have its reasons known. An
21 institution, frankly, doesn't have the kind of privacy
22 interests that others do, and certainly no privacy interests
23 were shown here. And that's the touchstone, that people
24 understand why a judge does what the judge does, not because
25 it's dictated by some agreement the parties entered into, not

1 because it's dictated because we've got guidelines that don't
2 fit but everybody tries to stretch or strain or cut to make
3 them fit, but because there's an exercise of judgment. So
4 people have to understand what it is that the judge did, what
5 he was thinking about, and they can make their own
6 determinations. It is the reason why I took out of the plea
7 agreement here -- you noticed it -- the waiver of the right of
8 appeal. If I got it wrong, somebody can choose to appeal,
9 including you in this case. That's what the system is all
10 about, transparency in all of this.

11 But now, as I said, it really is up to you. You
12 indicated and I believe you, I told you I believed you, that
13 you are tending to the things that are important and they are
14 important. If you don't, of course you're back here. But that
15 seems unlikely. More likely is that you will attend to those
16 things in your way, in ways that serve the larger purposes of
17 your life both before and after this and in the ways that don't
18 necessarily include what you did that brought you here.

19 If you do, you're going to be better off, obviously.
20 Your family is going to be better off, all of that. And
21 society will be better off by someone acknowledging that it is
22 improper to accept the special privileges which you fought for.
23 I mean, it's not as if somebody gave you a silver spoon. You
24 worked hard. You developed businesses. You made a lot of
25 money. But you don't get to spend that money the way you did

1 here.

2 So for all of those reasons, I expect that I'm not
3 going to see you again. I expect that you're going to deal
4 with this as an adult in the way that you did after it was
5 clear that you were in the crosshairs and that we can all move
6 on with our lives not having to worry about you in particular
7 but also in a society that understands the seriousness of this
8 kind of activity even if it can't be monetized in some
9 particularized way. As I've indicated, I don't think it can,
10 at least on the record that's been presented to me in this
11 case. Maybe the government will develop their understanding
12 and refine it even more and develop the evidence even more in
13 other cases as they come up. Those are other cases. I'm just
14 dealing with you. And dealing with you, I'm hopeful. So good
15 luck.

16 THE DEFENDANT: Thank you, Your Honor.

17 THE COURT: If there's nothing further, we will be in
18 recess. I'm sorry. I did not deal with self-reporting.

19 MS. CORRIGAN: Thank you, Your Honor.

20 THE COURT: What are you asking for? I assume the
21 government doesn't object to it.

22 MS. CORRIGAN: We did speak with them earlier. We are
23 requesting the week of January 3. January 3, if that's
24 acceptable to the court.

25 THE COURT: Yes, it is.

1 MS. CORRIGAN: And also, I understand it would just be
2 a recommendation but that my client be housed by the Bureau of
3 Prisons in the California area and obviously to a very minimal
4 security --

5 THE COURT: Well, first I will make the -- delay the
6 reporting until January 3. With respect to the recommendation,
7 I'll make a recommendation. Everybody should understand it's a
8 recommendation. The Bureau of Prisons is an entity of its own,
9 and it does whatever it feels like doing. I will say that it
10 should be as close as possible -- that is in California -- as
11 close as possible to where he lives. They make their
12 determinations with respect to security. They make their
13 determinations of location having to do with a variety of
14 different factors that I'm not necessarily privy to.

15 MS. CORRIGAN: Understood.

16 THE COURT: I'm not always happy with their
17 recommendations. In fact, I think many times that their
18 recommendations are wrong-headed, bureaucratic, foolish, but
19 they're the ones who make the decision. I will simply make
20 that recommendation that he be housed in a facility that is as
21 close as possible to his home consistent with his security
22 needs.

23 MS. CORRIGAN: And one last thing, Your Honor. In the
24 absence of a designation by the Bureau of Prisons by January 3,
25 which I don't think will happen, but in the event that there's

1 an absence of designation, I request that my client be ordered
2 to appear at the United States District Court U.S. Marshals
3 Office which is located in Santa Ana, California. It's a
4 Central District of California --

5 THE COURT: Ronald Reagan Courthouse.

6 MS. CORRIGAN: Yes. At 411 West Fourth Street --

7 THE COURT: I'm not going to do that. I leave it to
8 the government or the parties to bring it up to my attention.
9 But the surrender I have in mind is the surrender as close as
10 possible to where he lives. And that, from what you say, is in
11 the Central District, not the Southern District.

12 MS. CORRIGAN: I'm sorry, maybe I misstated. What I'm
13 asking for in the event that there is no designation by the
14 surrender date, because he would then have to go to a marshals
15 office to surrender, that he could just do it at the Santa Ana
16 courthouse.

17 THE COURT: I'm not making that, except to say that he
18 can self-report, and to the degree that there's need to
19 self-report, someplace other than the facility would be the
20 United States Marshals Service as near as possible. I don't
21 think that's going to happen. Whatever the Bureau of Prisons
22 decides to do by designation will be done by January 3.

23 MS. CORRIGAN: I agree. I'm just cautious on that.

24 THE COURT: There's nothing wrong with that, except
25 that it's premature. If something happens, then the parties

1 will get back to me. Okay. Anything else?

2 MS. KEARNEY: No, Your Honor.

3 THE COURT: Thank you.

4 Okay. We'll be in recess.

5 (Adjourned, 5:37 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Kelly Mortellite, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing transcript is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter to the best of my skill and ability.

Dated this 4th day of November, 2019.

/s/ Kelly Mortellite

Kelly Mortellite, RMR, CRR
Official Court Reporter

Exhibit I

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if Wilson prior to 2019 read the athletic profile that Rick Singer prepared for his son in 2014.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: *No Deception Indicated* (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); *Deception Indicated* (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); *No Opinion* (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.



Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Wilson prior to 2019 read the athletic profile that Rick Singer prepared for his son in 2014.

Wilson was provided a polygraph examination utilizing the following relevant questions:

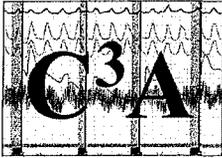
- A. Prior to 2019, did you ever read the athletic profile that Singer prepared for your son in 2014?
(Answer: No)

- B. Is it true that prior to 2019 you did not read the athletic profile that Singer prepared for your son in 2014?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether before 2019 Mr. Wilson had read his son's athletic profile prepared by Mr. William "Rick" Singer in 2014. The test issue was requested by Mr. Wilson and is related to his (Mr. Wilson's) indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) for using illegal means to gain admittance at prestigious universities for his children. Mr. Wilson has denied criminal involvement. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether Mr. Wilson had read prior to 2019 the 2014 athletic profile of his son prepared by Mr. Singer. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was adequate.

The test questions conformed to the rules of the You-Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You-Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were direct, clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- Prior to 2019 did you ever read the athletic profile that Singer prepared for your son in 2014? Answer: No¹
- Is it true that prior to 2019 you did not read the athletic profile that Singer prepared for you son in 2014? Answer: Yes

Reviewer Decisions on Polygraph Results

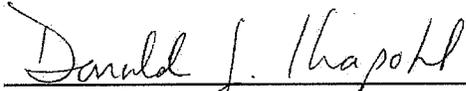
The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

¹ The polygraph chart notation suggests the examinee answered "yes" to the first relevant question. The reviewer contacted the testing examiner to verify the examinee's answer because it appeared incongruous with the test question. The examiner related the chart notation of "yes" had been carried over in the software template, and that the examinee had actually answered the first question "no."

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021


Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
 Description **p-value: 0.011 - Probability this result was produced by a deceptive person**
 Exam Type Event Specific/Single Issue (Zone)
 Scoring Method OSS-3 Two-stage (Senter 2003)
 Test of Proportions 0.102 - No significant differences in artifact distribution
 PF Name 2-19-21 Wilson, JB
 Report Date Wednesday, February 24, 2021
 Subject
 Examiner

ID	Spot Scores		Decision Alpha (1 tailed)		Components	
	p-value	Result	Setting	Value	Component	Weight
R5	0.037		NSR	0.050	Pneumo	0.19
R7	0.002		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Prior to 2019 did you ever read the athletic profile that Singer prepared for your son in 2014?	No
R7	Is it true that prior to 2019 you did not read the athletic profile that Singer prepared for you son in 2014?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/19/2021	5:21 PM	
1	2	2/19/2021	5:25 PM	
1	3	2/19/2021	5:29 PM	

Remarks

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if it is true that HPC has a multi-year history of making donations to various charities.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: *No Deception Indicated* (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); *Deception Indicated* (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); *No Opinion* (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.



Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if it is true that HPC has a multi-year history of making donations to various charities.

Wilson was provided a polygraph examination utilizing the following relevant questions:

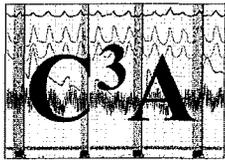
- A. Does HPC have a multi-year history of making donations to various charities?
(Answer: Yes)

- B. Is it true that HPC has a multi-year history of making donations to various charities?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether his company, HPC, has contributed to various charities over several years. The test issue was requested by Mr. Wilson and is related to his indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) for using illegal means to gain admittance at prestigious universities for his children. Mr. Wilson has denied criminal involvement. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether HPC has a history of donating to charities. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was adequate.

The test questions conformed to the rules of the You-Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You-Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its absence in the You-Phase Technique is inconsequential.

Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant questions:

- Does HPC have a multi-year history of making donations to various charities? Answer: Yes¹
- Is it true that HPC has a multi-year history of making donations to various charities? Answer: Yes¹

Reviewer Decisions on Polygraph Results

The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

¹ The polygraph chart notation suggests the examinee answered "no" to both relevant questions. The reviewer contacted the testing examiner to verify the examinee's answers because they appeared incongruous with the test questions. The examiner related the chart notation of "no" had been carried over in the software template, and that the examinee had actually answered the questions "yes"

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021



Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company Objective Scoring System - Version 3

By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
 Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
 Exam Type Event Specific/Single Issue (Zone)
 Scoring Method OSS-3 Two-stage (Senter 2003)
 Test of Proportions None - No significant differences in artifact distribution
 PF Name 2-19-21 John B Wilson
 Report Date Tuesday, February 23, 2021
 Subject
 Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components		
ID	p-value	Result	Setting	Value	Component	Weight
R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Does HPC have a multi year history of making donations to various charities?	Yes
R7	Is it true that HPC has a multi year history of making donations to various charities?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/19/2021	4:58 PM	
1	2	2/19/2021	5:01 PM	
1	3	2/19/2021	5:05 PM	

Remarks
<div style="border: 1px solid black; width: 100%; height: 100%;"></div>

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/18/2021
PURPOSE:	To determine if Wilson agreed for anyone to change results of any of his children's college entrance exams.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.



Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/18/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if he agreed for anyone to change the results of any of his children's college entrance exams.

Wilson was provided a polygraph examination utilizing the following relevant questions:

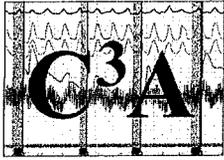
- A. Did you agree for anyone to change the results of any of your children's college entrance exams?
(Answer: No)

- B. Did you allow, cause or direct anyone to change the results of any of your children's college entrance exams?
(Answer: No)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether he colluded with anyone to change the results of his children's college entrance examinations as outlined in an indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG). Mr. Wilson has denied the allegation. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 18, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether he initiated a bribe of college officials in conjunction with the application process for his children. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was uniformly good.

The test questions conformed to the rules of the You Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous, though they were compound questions. Compound questions are not prohibited by either Federal standards or training. Indeed, they are a standard approach in a different technique used by more than a dozen Federal polygraph programs. Compound questions are rarely used in specific-incident examinations, however. Their use is not a critical error, and the foregoing is an observation only.

Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- Did you agree for anyone to change the results of any of your children's college entrance exams? Answer: No
- Did you allow, cause or direct anyone to change the results of any of your children's college entrance exams? Answer: No

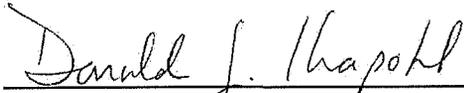
Reviewer Decisions on Polygraph Results

The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021

A handwritten signature in cursive script that reads "Donald J. Krapohl". The signature is written in black ink and is positioned above a horizontal line.

Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if HPC Inc. is Wilson's wholly owned Sub S corporation where all donations and income are 100% consolidated with his personal tax returns.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.


Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if HPC Inc. is Wilson's wholly owned Sub S corporation where all donations and income are 100% consolidated with his personal tax returns.

Wilson was provided a polygraph examination utilizing the following relevant questions:

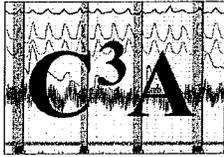
- A. Is HPC Inc. your wholly owned Sub S corporation where all donations and income are 100% consolidated with your personal tax returns?
(Answer: Yes)

- B. Is it true that HPC is your wholly owned Sub S corporation where all donations and income are 100% consolidated with your personal tax returns?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether his company, HPC, is a wholly owned sub-S corporation in which all charitable donations and income are consolidated with his personal tax returns. The test issue was requested by Mr. Wilson and is related to his indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) for using illegal means to gain admittance at prestigious universities for his children. Mr. Wilson has denied criminal involvement. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether HPC Inc is his wholly owned sub-S corporation where all donations and income are 100% consolidated with his personal tax returns. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000

version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was adequate.

The test questions conformed to the rules of the You-Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You-Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its absence in the You-Phase Technique is inconsequential.

The relevant questions were direct and clear. It was also noted that the relevant questions in this examination were compound questions. Compound questions are not prohibited by either Federal standards or training. Compound questions are routinely used in a different technique by most Federal polygraph programs in screening applicants and employees. They are rarely used in specific-incident examinations. The foregoing observation is included only for completeness.

Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant questions:

- Is HPC Inc your wholly owned sub-S corporation where all donations and income are 100% consolidated with your personal tax returns? Answer: Yes¹
- Is it true that HPC is your wholly owned sub-S corporation where all donations and income are 100% consolidated with your personal tax returns? Answer: Yes¹

¹ The polygraph chart notation suggests the examinee answered "no" to both relevant questions. The reviewer contacted the testing examiner to verify the examinee's answers because they appeared incongruous with the test questions. The examiner related the chart notation of "no" had been carried over in the software template, and that the examinee had actually answered the questions "yes"

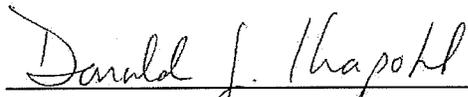
Reviewer Decisions on Polygraph Results

The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021


Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company Objective Scoring System - Version 3

By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**

Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**

Exam Type Event Specific/Single Issue (Zone)

Scoring Method OSS-3 Two-stage (Senter 2003)

Test of Proportions None - No significant differences in artifact distribution

PF Name 2-19-21 Wilson, John B

Report Date Tuesday, February 23, 2021

Subject

Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components		
ID	p-value	Result	Setting	Value	Component	Weight
R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Is HPC Inc your wholly owned sub S corporation where all donations and income are 100% consolidated with your personal tax returns?	Yes
R7	Is it true that HPC is your wholly owned sub S corporation where all donations and income are 100% consolidated with your personal tax returns?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/19/2021	4:24 PM	
1	2	2/19/2021	4:28 PM	
1	3	2/19/2021	4:32 PM	

Remarks

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/18/2021
PURPOSE:	To determine if Wilson paid money to Rick Singer knowing Singer's college application process was illegal.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: *No Deception Indicated* (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); *Deception Indicated* (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); *No Opinion* (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.


Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/18/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Wilson paid money to Rick Singer knowing Singer's college application process was illegal.

Wilson was provided a polygraph examination utilizing the following relevant questions:

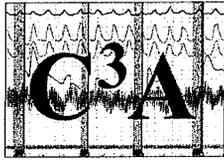
- A. At the time you paid money to Singer, did you know Singer's college application process was illegal?
(Answer: No)

- B. Did you know Singer's college application process was illegal when you paid money to him?
(Answer: No)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether Mr. Wilson knew at the time he donated money through Mr. William "Rick" Singer to the Key Worldwide Foundation that Mr. Wilson's contributions were furthering an illegal enterprise. The enterprise was allegedly involved in illegally securing acceptance of college applicants at certain prestigious universities, as outlined in an indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG). Mr. Wilson has denied criminal involvement. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 18, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether Mr. Wilson knew when he gave money to Mr. Singer that Singer's college application process was illegal. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000

version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was uniformly good.

The test questions conformed to the rules of the You Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were direct, clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- At the time you paid money to Singer, did you know Singer's college application process was illegal? Answer: No
- Did you know Singer's college application process was illegal when you paid money to him? Answer: No

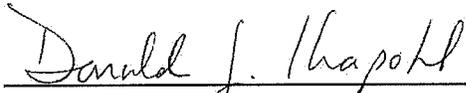
Reviewer Decisions on Polygraph Results

The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021

A handwritten signature in cursive script that reads "Donald J. Krapohl". The signature is written in black ink and is positioned above a horizontal line.

Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
Exam Type Event Specific/Single Issue (Zone)
Scoring Method OSS-3 Two-stage (Senter 2003)
Test of Proportions None - No significant differences in artifact distribution
PF Name Wilson, John
Report Date Monday, February 22, 2021
Subject John Wilson
Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Bariland 1985)</small>		Components		
ID	p-value	Result	Setting	Value	Component	Weight
R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	At the time you paid money to Singer, did you know Singer's college application process was illegal?	No
R7	Did you know Singer's college application process was illegal when you paid money to him?	No

Charts Scored				
Exam	Chart	Date	Time	
2	2	2/18/2021	11:10 AM	
2	3	2/18/2021	11:18 AM	
2	4	2/18/2021	11:23 AM	

Remarks

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if his son played water polo for top 10-20 nationally ranked teams before college.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: *No Deception Indicated* (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); *Deception Indicated* (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); *No Opinion* (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.



Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if his son played water polo for top 10-20 nationally ranked teams.

Wilson was provided a polygraph examination utilizing the following relevant questions:

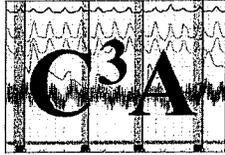
- A. Before college did your son play water polo for top 10-20 nationally ranked teams?
(Answer: Yes)

- B. Did your son play water polo before college for top 10-20 nationally ranked teams?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination regarded whether his son played for nationally ranked water polo teams prior to college. Mr. Wilson requested this test coverage. The issue of his son's athletic abilities was tangentially related to Mr. Wilson's defense after having been indicted by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) regarding Mr. Wilson's alleged involvement in illegal practices to gain his children's acceptance at prestigious universities. Mr. Wilson has denied the allegations. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. A decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether Mr. Wilson's son had played water polo for top 10 – 20 nationally ranked teams before entering college. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000

version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was uniformly good.

The test questions conformed to the rules of the You Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You-Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were direct, clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- Before college did your son play water polo for top 10 – 20 nationally ranked teams?
Answer: Yes

- Did your son play water polo before college for top 10 – 20 nationally ranked teams?
Answer: Yes

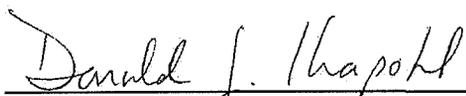
Reviewer Decisions on Polygraph Results

The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021

A handwritten signature in cursive script that reads "Donald J. Krapohl". The signature is written in black ink and is positioned above a horizontal line.

Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
Exam Type Event Specific/Single Issue (Zone)
Scoring Method OSS-3 Two-stage (Senter 2003)
Test of Proportions None - No significant differences in artifact distribution
PF Name John Wilson 2-19-21
Report Date Tuesday, February 23, 2021
Subject
Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components	
ID	p-value	Setting	Value	Component	Weight
R5	< 0.001	NSR	0.050	Pneumo	0.19
R7	< 0.001	SR	0.050	EDA	0.53
		Bonferroni corrected alpha	0.025	Cardio	0.28
		Test of Proportions (1 tailed)	0.050		

Relevant Questions		
Exam 1 Chart 1		
R5	Before college did your son play water polo for top 20 nationally ranked teams?	Yes
R7	Did your son play water polo before college for top 20 nationally ranked teams?	Yes
Exam 1 Chart 2		
R5	Before college did your son play water polo for top 10- 20 nationally ranked teams?	Yes
R7	Did your son play water polo before college for top 10-20 nationally ranked teams?	Yes
Exam 1 Chart 3		
R5	Before college did your son play water polo for top 10- 20 nationally ranked teams?	Yes
R7	Did your son play water polo before college for top 10-20 nationally ranked teams?	Yes

Charts Scored			
Exam	Chart	Date	Time
1	1	2/19/2021	10:42 AM
1	2	2/19/2021	10:47 AM
1	3	2/19/2021	10:51 AM

Remarks

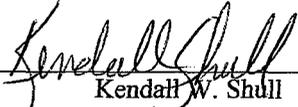
Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if Wilson verified with the USC coach, a separate USC administrator and his tax advisors that making donations through Rick Singer's organization was legitimate.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.



 Kendall W. Shull
 Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Wilson verified with the USC coach, a separate USC administrator and his tax advisors that making donations through Rick Singer's organization was legitimate.

Wilson was provided a polygraph examination utilizing the following relevant questions:

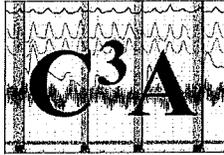
- A. Did you verify with the USC coach, a separate USC administrator and your tax advisors that making donations through Singer's organizations was legitimate?
(Answer: Yes)

- B. Is it true that you did verify with the USC coach, a USC administrator and tax advisors that making donations through Singer's organization was legitimate?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether he had verified from specific university and tax authorities whether his donations through Mr. William "Rick" Singer's organization were legitimate. The test issue was requested by Mr. Wilson and is related to his indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) for using illegal means to gain admittance at prestigious universities for his children. Mr. Wilson has denied criminal involvement. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether Mr. Wilson had confirmed through his tax advisors and two University of Southern California (USC) officials that Mr. Wilson's donations through an organization of Mr. "Rick" Singer were legitimate. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000

version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was adequate.

The test questions conformed to the rules of the You-Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You-Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its absence in the You-Phase Technique is inconsequential.

The relevant questions were direct and clear. It was also noted that the relevant questions in this examination were compound questions. Compound questions are not prohibited by either Federal standards or training. Compound questions are routinely used in a different technique by most Federal polygraph programs in screening applicants and employees. They are rarely used in specific-incident examinations. The foregoing observation is included only for completeness.

Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant questions:

- Did you verify with the USC coach, a separate USC administrator and your tax advisors that making donations through Singers organization was legitimate? Answer: Yes
- Is it true that you did verify with the USC coach, a USC administrator and tax advisors that making donations through Singers organization was legitimate? Answer: Yes

Reviewer Decisions on Polygraph Results

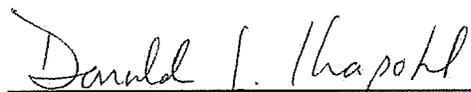
The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9).

The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021



Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company Objective Scoring System - Version 3

By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
 Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
 Exam Type Event Specific/Single Issue (Zone)
 Scoring Method OSS-3 Two-stage (Senter 2003)
 Test of Proportions None - No significant differences in artifact distribution
 PF Name 2-19-21 Wilson, John
 Report Date Tuesday, February 23, 2021
 Subject
 Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components		
ID	p-value	Result	Setting	Value	Component	Weight
R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
Exam 1 Chart 1		
R5	Did you verify with the USC coach, a separate USC administrator and your tax advisors that making donations through Singers organization was legitimate?	Yes
R7	Is it true that you did verify with the USC coach, a USC administrator and tax advisors that making donations through Singers organization was legitimate?	Yes
Exam 1 Chart 2		
R5	Did you verify with the USC coach, a separate USC administrator and your tax advisors that making donations through Singers organization was legitimate?	Yes
R7	Is it true that you did verify with the USC coach, a USC administrator and tax advisors that making donations through Singers organization was legitimate?	Yes
Exam 1 Chart 3		
R5	Did you verify with the USC coach, a separate USC administrator and your tax advisors that making donations through Singers organization was legitimate?	Yes
R7	Is it true that you did verify with the USC coach, a USC administrator and tax advisors that making donations through Singers organization was legitimate?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/19/2021	3:58 PM	
1	2	2/19/2021	4:04 PM	
1	3	2/19/2021	4:08 PM	

Remarks

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/18/2021
PURPOSE:	To determine if he is being truthful regarding a USC administrator telling him that his donations through Rick Singer's organization were appropriate.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.


Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/18/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if he is being truthful regarding a USC administrator telling him that his donations through Rick Singer's organization were appropriate.

Wilson was provided a polygraph examination utilizing the following relevant questions:

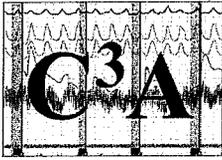
- A. Did a senior USC athletic administrator tell you that your donations through Singer's organizations were appropriate?
(Answer: Yes)

- B. Were you told by a senior USC athletic administrator that your donations through Singer's organization were appropriate?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether he had received information from an athletic director at the University of Southern California (USC) that Mr. Wilson's donations to an organization established by Mr. William "Rick" Singer were appropriate. Mr. Wilson had been indicted by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) for, among other charges, knowingly contributing funds to an organization that was involved in the illegal assistance to applicants to certain universities. Mr. Wilson has denied the allegations. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 18, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether he had been informed by a senior USC athletic administrator that Mr. Wilson's contributions to Mr. Singer's organization were proper. Because the focus on the examination was on what a second party had done, the polygraph test questions for Mr. Wilson were similar in approach to that used when polygraph testing confidential informants by police and government examiners. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was uniformly good.

The test questions conformed to the rules of the You Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- Did a senior USC athletic administrator tell you that your donations through Singer's organization were appropriate? Answer: Yes¹
- Were you told by a senior USC athletic administrator that your donations through Singer's organization were appropriate? Answer: Yes¹

¹ Note: The polygraph chart notation suggests the examinee answered "no" to the relevant questions on the first of the three polygraph charts. Due to the inconsistency in notation of the examinee's answers across the three test charts the reviewer contacted the examiner to verify the examinee's answers. The examiner related the chart notation of "no" had been carried over in the software template, and that the examinee had actually answered both questions "yes" on all three polygraph charts.

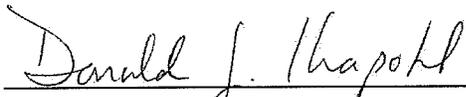
Reviewer Decisions on Polygraph Results

The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021


Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
Exam Type Event Specific/Single Issue (Zone)
Scoring Method OSS-3 Two-stage (Senter 2003)
Test of Proportions None - No significant differences in artifact distribution
PF Name Wilson 2-18-21
Report Date Tuesday, February 23, 2021
Subject John Wilson
Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components	
ID	p-value	Setting	Value	Component	Weight
R5	< 0.001	NSR	0.050	Pneumo	0.19
R7	< 0.001	SR	0.050	EDA	0.53
		Bonferroni corrected alpha	0.025	Cardio	0.28
		Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Did a senior USC athletic administrator tell you that your donations through Singer's organization were appropriate?	Yes
R7	Were you told by a senior USC athletic administrator that you donations through Singer's organization were appropriate?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/18/2021	1:48 PM	
1	2	2/18/2021	1:53 PM	
1	3	2/18/2021	1:58 PM	

Remarks

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if Wilson is telling the truth when he says one of his daughters got a perfect score on her college entrance exam.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.



Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Wilson is telling the truth when he says one of his daughters got a perfect score on her college entrance exam.

Wilson was provided a polygraph examination utilizing the following relevant questions:

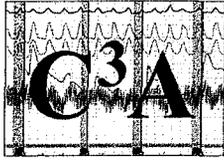
- A. Did one of your daughters get a perfect score on her college entrance exam?
(Answer: Yes)

- B. Is it true that one of your daughters got a perfect score on her college entrance exam?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether, as he asserted, his daughter once received a perfect score on her college entrance exam. Mr. Wilson requested this test coverage. The issue of his daughter's test score was somewhat related to Mr. Wilson's defense after having been indicted by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) regarding his alleged involvement in illegal practices to gain his children's acceptance at prestigious universities. Mr. Wilson has denied these allegations. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether his daughter received a perfect score on one of her college entrance examinations. Because the focus of the examination was on what he claimed to have observed rather than something he had done, the polygraph test questions for Mr. Wilson were similar in approach to that used when polygraph testing confidential informants by police and government examiners. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was acceptable.

The test questions conformed to the rules of the You-Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You-Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant questions:

- Did one of your daughters get a perfect score on her college entrance exam? Answer: Yes
- Is it true that one of your daughters got a perfect score on her college entrance exam? Answer: Yes

Reviewer Decisions on Polygraph Results

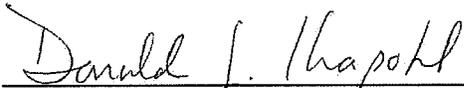
The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9).

The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021


Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company Objective Scoring System - Version 3

By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**

Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**

Exam Type Event Specific/Single Issue (Zone)

Scoring Method OSS-3 Two-stage (Senter 2003)

Test of Proportions None - No significant differences in artifact distribution

PF Name 2-19-21 J Wilson

Report Date Tuesday, February 23, 2021

Subject

Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components		
ID	p-value	Result	Setting	Value	Component	Weight
R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
Exam 1 Chart 1		
R5	Did one of your daughters get a perfect score on her college entrance exam?	Yes
R7	Is it true that one of your daughters got a perfect score on her college entrance exam?	Yes
Exam 1 Chart 2		
R5	Did one of your daughters get a perfect score on her college entrance exam?	Yes
R7	Is it true that one of your daughters got a perfect score on her college entrance exam?	Yes
Exam 1 Chart 3		
R5	Did one of your daughters get a perfect score on her college entrance exam?	Yes
R7	Is it true that one of your daughters got a perfect score on her college entrance exam?	Yes

Charts Scored			
Exam	Chart	Date	Time
1	1	2/19/2021	12:51 PM
1	2	2/19/2021	12:55 PM
1	3	2/19/2021	12:59 PM

Remarks

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if all of Wilson's children scored in the top 92 to 99% on their college entrance exams.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: *No Deception Indicated* (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); *Deception Indicated* (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); *No Opinion* (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.


Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if all of Wilson's children scored in the top 92-99% on their college entrance exams.

Wilson was provided a polygraph examination utilizing the following relevant questions:

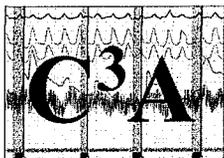
- A. Did all of your children score in the top 92-99% on their college entrance exams?
(Answer: Yes)

- B. Is it true that all of your children scored in the top 92-99% on their college entrance exams?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether, as he asserted, his children scored in the top 92% - 99% on their college entrance exams. Mr. Wilson requested this test coverage. The issue of his children's performance on college entrance examinations was somewhat related to Mr. Wilson's defense after having been indicted by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) regarding his alleged involvement in illegal practices to gain his children's acceptance at prestigious universities. He has denied these allegations. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether his children scored in the top 92% - 99% on their college entrance examinations, as he has claimed. Because the focus of the examination was on what he claimed to have observed in others rather than something he had done, the polygraph test questions for Mr. Wilson were similar in approach to that used when polygraph testing confidential informants by police and government examiners. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was acceptable.

The test questions conformed to the rules of the You-Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You-Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant questions:

- Did all of your children score in the top 92 – 99% on their college entrance exams?
Answer: Yes
- Is it true that all of your children scored in the top 92 – 99% on their college entrance exams? Answer: Yes

Reviewer Decisions on Polygraph Results

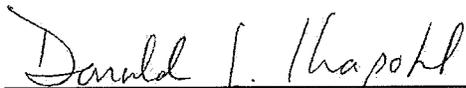
The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9).

The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021


Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
 Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
 Exam Type Event Specific/Single Issue (Zone)
 Scoring Method OSS-3 Two-stage (Senter 2003)
 Test of Proportions None - No significant differences in artifact distribution
 PF Name 2-19-21 Wilson
 Report Date Tuesday, February 23, 2021
 Subject
 Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Berland 1985)</small>		Components		
ID	p-value	Result	Setting	Value	Component	Weight
R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Did all of your children score in the top 92-99% on their college entrance exams?	Yes
R7	Is it true that all of your children scored in the top 92-99% on their college entrance exams?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/19/2021	12:29 PM	
1	2	2/19/2021	12:34 PM	
1	3	2/19/2021	12:38 PM	

Remarks
<div style="border: 1px solid black; width: 100%; height: 100%;"></div>

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if Wilson verified that each of his children's test scores put them in the middle 50% range or above for their targeted colleges..
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.


Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Wilson verified that each of his children's test scores put them in the middle 50% range or above for their targeted colleges.

Wilson was provided a polygraph examination utilizing the following relevant questions:

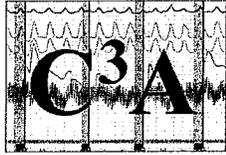
- A. Did you verify that each of your children's test scores put them in the middle 50% range or above for their targeted colleges?
(Answer: Yes)

- B. Is it true that you verified that each of your children's test scores put them in the middle 50% range or above for their targeted colleges?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether he performed a verification that his children's test scores placed them in the middle 50% range or higher for the universities to which they had applied. The test coverage was requested by Mr. Wilson. The issue is tangentially related to Mr. Wilson's indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) for participating in an illegal effort to gain acceptance of his children into prestigious universities. Mr. Wilson has denied the allegation. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether he confirmed that his children's test scores placed them in the middle 50% range or higher for the universities to which his children had applied. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000

version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was adequate.

The test questions conformed to the rules of the You-Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You-Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- Did you verify that each of your children's test scores put them in the middle 50% range or above for their targeted colleges? Answer: Yes
- Is it true that you verified that each of your children's test scores put them in the middle 50% range or above for their targeted colleges? Answer: Yes.

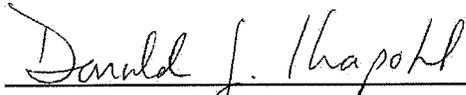
Reviewer Decisions on Polygraph Results

The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021

A handwritten signature in cursive script that reads "Donald J. Krapohl". The signature is written in black ink and is positioned above a horizontal line.

Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
 Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
 Exam Type Event Specific/Single Issue (Zone)
 Scoring Method OSS-3 Two-stage (Senter 2003)
 Test of Proportions None - No significant differences in artifact distribution
 PF Name 2-19-21 John Wilson
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 Subject
 Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components		
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R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Did you verify that each of your children's test scores put them in the middle 50% range or above for their targeted colleges?	Yes
R7	Is it true that you verified that each of your children's test scores put them in the middle 50% range or above for their targeted colleges?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/19/2021	1:07 PM	
1	2	2/19/2021	1:11 PM	
1	3	2/19/2021	1:17 PM	

Remarks	

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/19/2021
PURPOSE:	To determine if Wilson's tax experts told him that Key Worldwide Foundation was an IRS approved charitable organization
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.


Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/19/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Wilson's tax experts told him that the Key Worldwide Foundation was an IRS approved charitable organization.

Wilson was provided a polygraph examination utilizing the following relevant questions:

- A. Did your tax experts tell you the Key Worldwide Foundation was an IRS approved charitable organization?
(Answer: Yes)

- B. Were you told by your tax experts that the Key Worldwide Foundation was an IRS approved charitable organization?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether, as he claimed, his tax experts had confirmed that the Key Worldwide Foundation had been approved by the Internal Revenue Service (IRS) as a charitable organization. Mr. Wilson had been indicted by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) for, among other charges, knowingly contributing funds to an organization that was involved in the illegal assistance to applicants to certain universities. Mr. Wilson has denied the charges. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 19, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether tax experts informed Mr. Wilson the Key Worldwide Foundation was approved by the IRS as a charitable organization. Because the focus on the examination was on what a second party (tax experts) had done, the polygraph test questions for Mr. Wilson were similar in approach to that used when polygraph tests are conducted on confidential informants by police and government examiners. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was adequate. Some segments of the electrodermal tracing appear to have become erratic for reasons unknown and therefore were not used for analysis. The remaining electrodermal data as well as all the data from the other channels were suitable for analysis and for basing test results.

The test questions conformed to the rules of the You Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- Did your tax experts tell you the Key Worldwide Foundation was an IRS-approved charitable organization? Answer: Yes
- Were you told by your tax experts that the Key Worldwide Foundation was an IRS-approved charitable organization? Answer: Yes

Reviewer Decisions on Polygraph Results

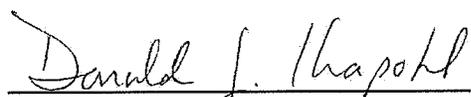
The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis

by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9). The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021


Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
 Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
 Exam Type Event Specific/Single Issue (Zone)
 Scoring Method OSS-3 Two-stage (Senter 2003)
 Test of Proportions 0.500 - No significant differences in artifact distribution
 PF Name Wilson 2-19-21
 Report Date Wednesday, February 24, 2021
 Subject John Wilson
 Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components	
ID	p-value	Setting	Value	Component	Weight
R5	< 0.001	NSR	0.050	Pneumo	0.19
R7	< 0.001	SR	0.050	EDA	0.53
		Bonferroni corrected alpha	0.025	Cardio	0.28
		Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Did your tax experts tell you the Key Worldwide Foundation was an IRS approved charitable organization?	Yes
R7	Were you told by your tax experts that the Key Worldwide Foundation was an IRS approved charitable organization?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/19/2021	10:14 AM	
1	2	2/19/2021	10:21 AM	
1	3	2/19/2021	10:28 AM	

Remarks	

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/18/2021
PURPOSE:	To determine if Wilson agreed with Rick Singer to put any fraudulent materials into any of Wilson's children's college application documents.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.



Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/18/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Wilson agreed with Rick Singer to put any fraudulent materials into any of Wilson's children's college application documents.

Wilson was provided a polygraph examination utilizing the following relevant questions:

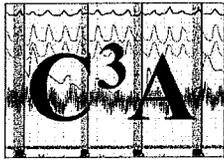
- A. Did you agree with Singer to put any fraudulent materials into any of your children's college application documents?
(Answer: No)

- B. Did you request or agree with Singer to put any fraudulent materials into any of your children's college application documents?
(Answer: No)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether he agreed or requested that fraudulent materials be added to his children's college application documents, as outlined in an indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG). The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 18, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether he requested or agreed with Mr. William "Rick" Singer to have fraudulent material added to the college application documents of Mr. Wilson's children. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000

version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was uniformly good.

The test questions conformed to the rules of the You Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous, though one of them was worded as a compound question. Compound questions are not prohibited by either Federal standards or training. They are a standard approach in a different technique used by more than a dozen Federal polygraph programs. Compound questions are rarely used in specific-incident examinations, however. Their use is not a critical error, and the foregoing is an observation only.

Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- Did you agree with Singer to put any fraudulent materials into any of your children's college application documents? Answer: No
- Did you request or agree with Singer to put any fraudulent materials into any of your children's college application documents? Answer: No

Reviewer Decisions on Polygraph Results

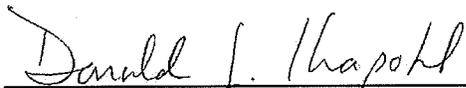
The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9).

The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021


Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
Exam Type Event Specific/Single Issue (Zone)
Scoring Method OSS-3 Two-stage (Senter 2003)
Test of Proportions None - No significant differences in artifact distribution
PF Name Wilson J
Report Date Tuesday, February 23, 2021
Subject John Wilson
Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components	
ID	p-value	Setting	Value	Component	Weight
R5	< 0.001	NSR	0.050	Pneumo	0.19
R7	< 0.001	SR	0.050	EDA	0.53
		Bonferroni corrected alpha	0.025	Cardio	0.28
		Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Did you agree with Singer to put any fraudulent materials into any of your children's college application documents?	No
R7	Did you request or agree with Singer to put any fraudulent materials into any of your children's college application documents?	No

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/18/2021	1:00 PM	
1	2	2/18/2021	1:09 PM	
1	3	2/18/2021	1:15 PM	

Remarks	

Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/18/2021
PURPOSE:	To determine if Rick Singer told Wilson that contributions to Singer's charitable foundation were totally pass through to the university programs.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.


Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/18/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Rick Singer told Wilson that contributions to Singer's charitable foundation were totally pass through to the university programs.

Wilson was provided a polygraph examination utilizing the following relevant questions:

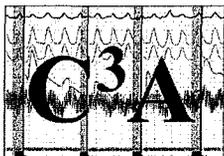
- A. Did Singer tell you that contributions to his charitable foundation were totally pass through to the university programs?
(Answer: Yes)

- B. Were you told by Singer that contributions to his charitable foundation were totally pass through to the university programs?
(Answer: Yes)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether Mr. William "Rick" Singer conveyed to Mr. Wilson that Mr. Wilson's contributions to Mr. Singer's foundation were completely pass-through to university programs. Mr. Wilson had been indicted by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG) for, among other charges, knowingly contributing funds to an organization that was involved in the illegal assistance to applicants to certain universities. Mr. Wilson has denied the allegations. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 18, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether Mr. Singer told Mr. Wilson that Mr. Wilson's financial donations would pass through Mr. Singer's organization to university programs. Because the focus on the examination was on what a second party had done, the polygraph test questions for Mr. Wilson were similar in approach to that used when polygraph tests are conducted on confidential informants by police and government examiners. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was uniformly good.

The test questions conformed to the rules of the You Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous. Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant questions:

- Did Singer tell you that contributions to his charitable foundation were totally pass through to the university programs? Answer: Yes
- Were you told by Singer that contributions to his charitable foundation were totally pass through to the university programs? Answer: Yes

Reviewer Decisions on Polygraph Results

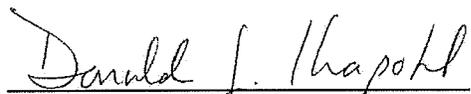
The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9).

The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021



Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
Exam Type Event Specific/Single Issue (Zone)
Scoring Method OSS-3 Two-stage (Senter 2003)
Test of Proportions None - No significant differences in artifact distribution
PF Name John Wilson 2-2021
Report Date Tuesday, February 23, 2021
Subject
Examiner

ID	Spot Scores		Decision Alpha (1 tailed)		Components	
	p-value	Result	Setting	Value	Component	Weight
R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Did Singer tell you that contributions to his charitable foundation were totally pass through to the university programs?	Yes
R7	Were you told by Singer that contributions to his charitable foundation were totally pass through to the university programs?	Yes

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/18/2021	4:42 PM	
1	2	2/18/2021	4:47 PM	
1	3	2/18/2021	4:55 PM	

Remarks	

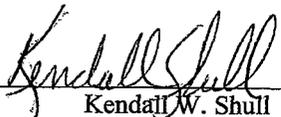
Polygraph Report

EXAMINEE:	John Wilson
DATE OF EXAMINATION:	02/18/2021
PURPOSE:	To determine if Wilson bribed or directed anyone else to bribe any college official to violate their college admissions policies.
LOCATION:	Sevierville, TN
EXAMINER:	Kendall W. Shull
EXAMINER'S CONCLUSION:	No Deception Indicated

This Forensic polygraph examination was conducted using a Comparison Question Format that meets United States Government standards as well as standards set forth by the American Polygraph Association. The data was collected using the state of the art Lafayette LX-4000 computerized polygraph system. The polygraph charts were evaluated numerically and globally using scoring techniques adopted and taught by the United States Government and generally accepted throughout the polygraph community. The examiner's conclusion is based on this examination and pertains only to the examinee's performance on the polygraph examination using the relevant questions listed in the Details section of this report. This opinion is applicable only to those questions, and should not be construed as an overall assessment of the examinee's truthfulness in other areas.

The three possible conclusions that can be reached from a polygraph examination are: **No Deception Indicated** (no specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially passed); **Deception Indicated** (specific, consistent, and significant responses were observed at the relevant questions and the examinee essentially failed); **No Opinion** (for some reason adequate data could not be collected or a conclusive opinion could not be reached by the examiner).

Prior to this polygraph examination, the examinee was advised the examination was voluntary and could be terminated at any time if requested. The examinee read, acknowledged, and signed a *Consent to Polygraph* form, which was provided. The polygraph process was explained in full, and all questions were individually reviewed with the examinee.


Kendall W. Shull
Certified Forensic Polygraph Examiner

POLYGRAPH REPORT DETAILS

The examinee in this polygraph examination was John Wilson.

On 02/18/2021, Wilson met this examiner in Sevierville, TN for a scheduled polygraph examination.

Wilson read, stated that he understood, and signed the appropriate consent to polygraph forms indicating his willingness to continue with the polygraph examination.

Wilson stated that he understood the nature of the interview and polygraph would be to determine if Wilson bribed or directed anyone else to bribe any college official to violate their college admissions policies.

Wilson was provided a polygraph examination utilizing the following relevant questions:

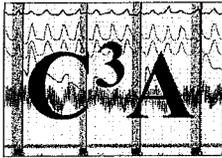
- A. Did you bribe or direct anyone else to bribe any college official to violate their college admissions policies?
(Answer: No)

- B. Did you bribe or did you ask anyone else to bribe any college official to violate their college admissions policies?
(Answer: No)

Based on a review of the physiological responses recorded at the relevant questions during this polygraph examination, it was the opinion of this examiner that these responses were:

No Deception Indicated.

It should be noted that an independent quality control review was performed by Donald J. Krapohl of the Capital Center for Credibility Assessment who supported this examinee's opinion of No Deception Indicated. A copy of that review is attached.



Capital Center for Credibility Assessment

Independent Quality Control Review

This document is the complete report of an independent quality control review by Donald J. Krapohl of the Capital Center for Credibility Assessment (C³A) for a polygraph examination conducted on Mr. John Wilson by Mr. Kendall Shull on behalf of the law firm of Delius & McKenzie, PLLC. Independent quality control of polygraph examinations is considered a best practice in the profession. The standards reference used for this review was the most recent publicly available version of the Federal Examiner Handbook (2006), the prevailing standards of US Government polygraph programs. The opinions expressed are those of the reviewer and offered within a reasonable degree of certainty in the field of polygraphy. The submission date of this quality control review is February 26, 2021.

Executive Summary

At the request of Delius & McKenzie, PLLC, the undersigned performed an independent review of the polygraph examination of Mr. John Wilson conducted by Mr. Kendall Shull. The purpose of Mr. Wilson's examination was to determine whether he initiated a bribe to any college official, as outlined in an indictment by the US District Court, District of Massachusetts (Case 1:19-cr-10080-NMG). Mr. Wilson has denied the allegation. The present review of the polygraph examination of Mr. Wilson was to determine whether it had been conducted according to the standards promulgated in the Federal Examiner Handbook (2006). In addition, the polygraph data were subjected to independent analysis by both manual scoring and a validated polygraph algorithm. The decision of No Deception Indicated (NDI) by the testing examiner can be supported.

Background

On February 18, 2021, Mr. Kendall Shull conducted a polygraph examination of Mr. John Wilson on a single issue: whether he initiated a bribe of college officials in conjunction with the application process for his children. The polygraph technique used by Mr. Shull was a variation of the You-Phase Technique, a method taught at the US government's polygraph education course as well as virtually all other polygraph schools.

Material Available for Review

Mr. Shull submitted an electronic copy of the polygraph data file of Mr. Wilson's examination for review. The file included the polygraph test questions, the examinee's answers and the physiological recordings. The reviewer's polygraph software for this review was the LX5000 version 11.8.5.266. The reviewer was blind to the testing examiner's scores and decisions before conducting the review.

Technical Quality

The instrumentation used by Mr. Shull in the polygraph examination of Mr. Wilson was made by the Lafayette Instrument Company. It included two channels of respiration, one of electrodermal data (momentary fluctuations in skin moisture), one of cardiovascular data, and one for motion detection. All are the conventional polygraph data channels. The quality of the physiological tracings was uniformly good.

The test questions conformed to the rules of the You Phase technique. The single noted difference between Mr. Shull's testing method and that of the conventional You-Phase Technique was Mr. Shull's elimination of one type of technical question. Though the 2006 Federal standards include this question in the You Phase, research by and for the government has concluded the question does not serve any useful purpose. None of the three published studies shows any effect on decision accuracy and therefore its presence or absence in the You-Phase Technique is inconsequential.

The relevant questions were clear and unambiguous, though they were compound questions. Compound questions are not prohibited by either Federal standards or training. Indeed, they are a standard approach in a different technique used by more than a dozen Federal polygraph programs. Compound questions are rarely used in specific-incident examinations, however. Their use is not a critical error, and the foregoing is an observation only.

Operationally, the question presentations had the proper spacing and were sequentially correct. There were no departures from standard testing practices evident in the data.

Relevant Test Questions

Mr. Wilson was tested on the two following relevant test questions:

- Did you bribe or direct anyone else to bribe any college official to violate their college admissions policies? Answer: No
- Did you bribe or did you ask anyone else to bribe any college official to violate their college admissions policies? Answer: No

Reviewer Decisions on Polygraph Results

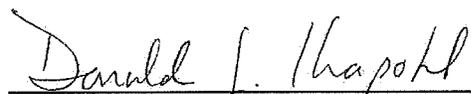
The reviewer conducted numerical analysis of the data using the Empirical Scoring System (ESS). This scoring method has the largest body of validation research. The ESS scores supported a decision of No Deception Indicated. The polygraph data were then subjected to a separate analysis by a validated polygraph algorithm, the OSS-3 (Nelson, Handler & Krapohl, 2008, version 1.9).

The algorithm similarly concluded the examinee was truthful to the relevant questions. A copy of the algorithm results is attached.

Summary

The information submitted for review indicated the polygraph examination of Mr. John Wilson by Mr. Shull supported a test result of No Deception Indicated. There were no critical defects evident in the administration of the examination.

Respectfully submitted February 26, 2021


Donald J. Krapohl, C3A

Attachment

Results of the Objective Scoring System algorithm.

Lafayette Instrument Company
Objective Scoring System - Version 3
 By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result **No Significant Reactions**
Description **p-value: < 0.001 - Probability this result was produced by a deceptive person**
Exam Type Event Specific/Single Issue (Zone)
Scoring Method OSS-3 Two-stage (Senter 2003)
Test of Proportions None - No significant differences in artifact distribution
PF Name John Wilson
Report Date Tuesday, February 23, 2021
Subject John Wilson
Examiner

Spot Scores		Decision Alpha (1 tailed) <small>Cumulative normal distribution (Barland 1985)</small>		Components		
ID	p-value	Result	Setting	Value	Component	Weight
R5	< 0.001		NSR	0.050	Pneumo	0.19
R7	< 0.001		SR	0.050	EDA	0.53
			Bonferroni corrected alpha	0.025	Cardio	0.28
			Test of Proportions (1 tailed)	0.050		

Relevant Questions		
ID	Question Text	Answer
R5	Did you bribe or direct anyone else to bribe any college official to violate their college admissions policies?	No
R7	Did you bribe or did you ask anyone else to bribe any college official to violate their college admissions policies?	No

Charts Scored				
Exam	Chart	Date	Time	
1	1	2/18/2021	11:56 AM	
1	2	2/18/2021	12:01 PM	
1	3	2/18/2021	12:06 PM	

Remarks	

Exhibit J

Kendall W. Shull
11167 Kingston Pike, Suite 3
Knoxville, TN 37934
Tel (865)-966-1494
www.kendallinvestigations.com

INVESTIGATIVE QUALIFICATIONS

- 2001-present **President**, Kendall Investigations and Kendall Security, Knoxville, TN.
Provide polygraph examinations, armed and unarmed guard services and private investigative services to attorneys, local police agencies, businesses and private individuals. Provide expert witness testimony. Licensed private investigator in TN. Licensed polygraph examiner in TN.
- 2004 – 2006 **Adjunct Polygraph Instructor**, Northeast Counter Drug Training Facility, Harrisburg, PA. Provide classroom instruction and training to polygraph students from law enforcement agencies across the country.
- 2003 **Information Security Specialist**, NCI (subcontractor to Wackenhut Security Incorporated), Oak Ridge, TN. Provided technical security countermeasure (TSCM) assessments.
- 1999 - 2001 **Chief and Program Manager**, Federal Bureau of Investigation Polygraph Unit F.B.I. Headquarters, Washington D.C. Managed over 80 employees. Played a significant role in the investigation and prosecution of several major cases both nationally and internationally. Served as a consultant to foreign government polygraph programs and briefed members of the U.S. Senate Governmental Affairs Committee staff. Provided expert witness testimony in U.S. District Court cases. Conducted and published research on polygraph techniques.
- 1995 - 1999 **Supervisor**, F.B.I. Polygraph Unit. Washington D.C. HQ. Managed 25 employees.
- 1991 - 1995 **Polygraph Examiner and Interrogator** for F.B.I. Washington D.C. Field Office. Conducted polygraph examinations in all areas of F.B.I. jurisdiction to include white-collar crime, political and public corruption, fraud, sexual offenses, homicide, counter-intelligence, and espionage.
- 1975 - 1991 **Special Agent**, F.B.I. Washington D.C. Field Office. Conducted investigations in areas of F.B.I. jurisdiction to include over ten years as the primary undercover investigator focused on political corruption, property crimes, narcotics and organized crime. Specific areas of investigative experience include:
- Interview and Interrogation
 - Narcotics and Organized Crime
 - Undercover and Special Operations
 - Foreign Counterintelligence Investigations
 - Applicant and Background Investigations
 - Personal Security and Surveillance

EDUCATION

- 1971 Bachelor of Science, Animal Science, Iowa State University, Ames, Iowa
- 1990 Polygraph Studies Degree, Department of Defense Polygraph Institute, Fort McClellan, Alabama
- 1992 Advanced Polygraph Studies Degree, University of Virginia, Charlottesville, Virginia
- 1993 Masters of Science, Polygraph, Jacksonville State University, Jacksonville, Alabama

SPECIALIZED TRAINING

- 1997 Clinical polygraph testing in sex offender investigations, FBI Laboratory
- 1998 Clinical polygraph testing in sex offender investigations, FBI Laboratory

ACKNOWLEDGMENTS

Recognized in the April, 2003 issue of International Intelligence Magazine "Eye Spy" as a polygraph expert.

Guest speaker at the first Raleigh International Spy Conference concerning the Robert Hanssen espionage case and acknowledged as an expert polygraph examiner.

Identified as the leading expert in the field of polygraph and interviewed concerning voice stress and polygraph by the CBS 60 Minutes television show on April 4, 2004 in New York, NY.

Conducted polygraph exams for and appeared on Entertainment Tonight and Dr. Keith Ablu TV shows.

Recognized as expert witness in field of polygraphy in Southern District Court, New York, NY November, 2007

AWARDS RECEIVED

- 1988, 1989 U.S. Attorney's Award for Meritorious Service, Washington, D.C.
- 1990 U.S. Attorney's Award for Meritorious Service, Virginia
- 1989, 1991 Department of Justice Commendation
- 1979 -1991 Numerous Distinguished Service and Incentive Awards

PROFESSIONAL AND CHARITABLE AFFILIATIONS

American Polygraph Association
TN Polygraph Association
American Association of Police Polygraphists
FBI Agents Association
Society of Former Special Agents of the FBI
TN Professional Investigators Association
East TN Chapter of the Make-A-Wish Foundation

Exhibit K

DONALD J. KRAPOHL**CURRICULUM VITAE**

Address: PO Box 11
Blythewood, SC 29016, USA

E-mail: donkrapohl@c3acorp.com

Telephone: (803) 463-1096

Polygraph License: South Carolina, License #90.

EMPLOYMENT HISTORY

Wells Fargo Investigative Services Position: Polygraph Examiner	1979 – 1985
Central Intelligence Agency Positions: Manager/Polygraph Examiner/ Researcher	1985 – 2006
National Center for Credibility Assessment Deputy Director	2006 – 2015
Capital Center for Credibility Assessment Director, Educational Services School Director: Behavioural Measures UK	2015 – Present

EDUCATION

M.A., Psychology, The Catholic University of America, Washington, D.C., May 1994

B.A., Psychology, Saginaw Valley State University, University Center, MI, May 1979

SPECIALIZED TRAINING

Munford Institute of Polygraphy. Atlanta, GA, 1979.

FBI's Advanced Polygraphy Course. University of Virginia, 1986.

University of Utah Advanced Polygraph Workshop, 1987.

Post-Conviction Sex Offender Testing, 2000.

Updated February 1, 2021

PROFESSIONAL MEMBERSHIPS

American Academy for Forensic Sciences.
2019 - Present

American Association of Police Polygraphists
2007 - 2019

American Polygraph Association
1979 - Present
President, 2006-2007
Chairman, 2007-2008

American Society for Tests and Materials
1997 - 2019
2016 - 2018 Chair on Forensic Psychophysiology

Various State Polygraph Associations (Honorary)

EDITORSHIPS/PEER REVIEWER

Editor-in-Chief, American Polygraph Association
1997 - 2001, 2008 - 2014

Associate Editor, American Polygraph Association
2015 - Present

Associate Editor, *European Polygraph*
2013 - Present

Peer Reviewer, *Journal of Forensic Sciences*
2018 - Present

SELECTED PROFESSIONAL PUBLICATIONS

Textbook

Krapohl, D.J., and Shaw, P. (2015). *Fundamentals of Polygraph Practice*. Academic Press: San Diego, CA.

Updated February 1, 2021

EXHIBIT 2

March 16, 2021

Via Email (hcooper@toddweld.com)Howard M. Cooper
Todd & Weld, LLP
One Federal Street
Boston, MA 02110**Re: *Operation Varsity Blues***

Dear Mr. Cooper:

We represent 241C Films, the producer (“Producer”) of the documentary *Operation Varsity Blues* (“Documentary”), and we write in response to your March 5, 2021 letter that was forwarded to us. After reviewing the concerns raised in your letter, we respectfully – but emphatically – disagree with your assertion that the Documentary will “make potentially defamatory suggestions” about Mr. Wilson or his family. Indeed, we are confident that the Documentary will not give rise to any viable defamation claim against him or his family.

First, truth is an absolute defense to a defamation claim. *See, e.g., Gilbert v. Sykes*, 147 Cal. App. 4th 13, 28 (2007). This defense does not require the defendant “to justify every word of the alleged defamatory matter”; it is sufficient that the “substance,” “gist,” or “sting” of the statement is true. *Id.*

Second, any statements in the Documentary based on wiretap transcripts are protected by the fair report privilege and thus not defamatory. *See Wilson v. Slatalla*, 970 F. Supp. 405, 421 (E.D. Pa. 1997) (statements in book based on “the credit reports and the wiretap transcripts themselves” were “by the fair report privilege”).

Finally, our confidence that the Documentary will not defame your clients is bolstered by the documentarian’s track record of telling difficult stories based on real-life events. Like the documentarian’s other works, the Documentary here has undergone a rigorous pre-broadcast review process before its release.

DWT.COM

March 16, 2021

Page 2

For each of these reasons, Mr. Wilson will have no basis for a defamation or any other claim against the Producer arising from the Documentary. We hope this letter addresses your concerns. If you have any questions, please do not hesitate to contact me at (213) 633-6828.¹

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "Diana Palacios", written over the printed name below.

Diana Palacios

¹ This letter is sent without any waiver or relinquishment of my client's rights, defenses, or remedies, all of which are expressly reserved.