

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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UNITED STATES OF AMERICA	:	
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-vs-	:	Case No. 1:11-cr-561
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SYED GHULAM NABI FAI,	:	
Defendant.	:	
	:	
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SENTENCING HEARING

March 30, 2012

Before: Liam O'Grady, Judge

APPEARANCES:

Gordon D. Kromberg, John T. Gibbs and Allison Ickovic,
Counsel for the United States

Nina J. Ginsberg, Counsel for the Defendant

The Defendant, Syed Ghulam Nabi Fai, in person

1 THE CLERK: Criminal case 1:11-cr-561, the United
2 States of America versus Syed Ghulam Nabi Fai.

3 Will counsel please identify themselves for the
4 record.

5 MR. KROMBERG: Good morning, Your Honor. Gordon
6 Kromberg for the United States.

7 With me at counsel table is John Gibbs from the
8 Department of Justice Counterterrorism Section. Case agent FBI
9 Special Agent Sarah Linden. And also at the table behind us is
10 Allison Ickovic from the Department of Justice Tax Division.

11 THE COURT: All right, good morning to each of you.

12 MS. GINSBERG: Good morning, Your Honor. Nina
13 Ginsberg on behalf of Dr. Fai, who is present.

14 THE COURT: All right. Good morning.

15 MS. GINSBERG: And, Your Honor, could I just thank
16 you for accommodating our request.

17 THE COURT: I am happy to do so, certainly. Good
18 morning to you.

19 Good morning, Doctor.

20 All right. This comes on for sentencing. Are the
21 parties ready to proceed?

22 MR. KROMBERG: Yes, Your Honor.

23 MS. GINSBERG: Yes, Your Honor.

24 THE COURT: All right. And there have been
25 objections made to the Guideline calculation. One in the

1 Probation officer not having grouped the two offenses. And
2 also, the two points for the sophisticated means.

3 Do you want to be heard further on that, Ms.
4 Ginsberg?

5 MS. GINSBERG: Your Honor, I think we may have worn
6 the Court out with our arguments already, but I would like to
7 just address one thing that the Government said in its, one of
8 its pleadings concerning the effect of whether the two
9 offenses, if they did group, the Government suggests that an
10 obstruction enhancement would be appropriate and that, in fact,
11 would result in a higher Guideline range.

12 I don't believe that that's accurate. The
13 obstruction Guideline under 3C1.1, Application Note 4, provides
14 that the adjustment, the obstruction adjustment applies when a
15 defendant provides a materially false statement to a law
16 enforcement officer that significantly obstructed or impeded
17 the official investigation or prosecution of the instant
18 offense.

19 And Application Note 5B describes the type of conduct
20 that is ordinarily included and says: Making false statements
21 not under oath to law enforcement officers is ordinarily not
22 included unless it materially impedes the investigation.

23 Your Honor, this investigation has been going on for
24 20 years with FISA intercepts 350-approximately-thousand e-mail
25 intercepts, 90,000 telephone intercepts. The Government knew

1 more about what Dr. Fai was doing than Dr. Fai knew. And in
2 fact, at the detention hearing I think the agent made the
3 statement that the inquiries sent to him by the Internal
4 Revenue Service was giving him one last chance to come clean.

5 So, there is absolutely no, I think it would be
6 impossible for this Court to conclude that his conduct impeded
7 the investigation of this offense.

8 So, therefore, we think that they should be grouped
9 and that the obstruction enhancement does not apply.

10 THE COURT: All right. Well, I looked at it
11 carefully and went over, obviously, the Guidelines, and went
12 over with the Probation officer the calculation and the
13 reasoning behind not grouping, and believe that given the
14 victims in the two offenses, that the grouping was not
15 appropriate.

16 And so, I believe that the Guideline calculation not
17 grouping the offenses is proper.

18 I also believe that the two points for the
19 sophisticated means is proper. This, as you've stated, was a
20 long-term fraud perpetrated on the IRS in the tax evasion
21 conspiracy. And also part and parcel to it was the fact that
22 the source of funds for the Kashmir American Council was
23 hidden, and that the communications between the Pakistani
24 Intelligence Service and the operation of KAC, all were part
25 and parcel to the success of the conspiracy and all demonstrate

1 collectively a sophisticated means being used and, ergo, the
2 additional two points being properly allocated.

3 And it results in a Guideline range of 27 to
4 33 months.

5 And I will order the-- Are there any other
6 corrections, additions to the report other than the Guideline
7 range which counsel wants me to consider making?

8 MS. GINSBERG: No, Your Honor.

9 THE COURT: All right. Mr. Fai, have you read the
10 presentence report, sir, and gone over it with your counsel?

11 THE DEFENDANT: Yes.

12 THE COURT: And any corrections, additions you want
13 to make at this time to the report, sir?

14 Do you have any corrections or additions you want to
15 make to the report itself?

16 THE DEFENDANT: Not at this time, sir.

17 THE COURT: All right, thank you. Please be seated.

18 And I will file the report without further, without
19 amendment.

20 I note that supplemental submissions have been made
21 by the Government believing that an upward departure is
22 appropriate under Application Note 19 of Section 2B1.1 of the
23 Guidelines. And I received Ms. Ginsberg's response, and I've
24 reviewed the case identified in her argument that there should
25 not be any upward departure.

1 And I have read the submissions of the parties and
2 the many letters and the information provided by counsel for
3 Mr. Fai, and I appreciate the fact that many of the people here
4 today are here in support of Dr. Fai, are here on his behalf
5 and the showing of support.

6 And I will hear any argument the Government wants to
7 make at this time. Mr. Kromberg.

8 MR. KROMBERG: Thank you, Your Honor.

9 First, I can't help but note that Your Honor referred
10 to the defendant sometimes as Mr. Fai and sometimes as Dr. Fai.

11 THE COURT: Well, he is Mr. Fai. And he doesn't have
12 a doctorate degree, but he is known by his friends and
13 associates as Dr. Fai. And I am not sure that there is
14 really-- He did attend graduate school, he did a significant
15 amount of work towards a doctorate degree, he just never
16 finished it.

17 MR. KROMBERG: Right. And that misrepresentation of
18 saying you're a doctor when you're not a doctor is benign
19 compared to the misrepresentation, deceit that he lived his
20 life for the last 20 years, but it is consistent with that.

21 In March 2010 the Department of Justice sent him a
22 letter saying that if you're an agent of Pakistan, you're
23 required by the Foreign Agents Registration Act to register.
24 And he wrote a letter back saying he had no obligation to
25 register because, quote, KAC nor I have never had written or

1 oral agreements with Pakistan or any other foreign entity. And
2 he categorically denied any connection to any foreign agent,
3 including Pakistan.

4 Contrary to those representations, for more than
5 20 years he operated the KAC as a front for the Pakistani
6 Intelligence Service, known as the ISI. The KAC is one of
7 three Kashmir centers that the ISI operates, one in London run
8 that Nazir Ahmad Shawl and one Abdul Majeed Tramboos in
9 Brussels.

10 The money came to Fai through that Zaheer Ahmad in
11 Pakistan. Mr. Ahmad, who also went by Dr. when he wasn't a
12 doctor, but Mr. Ahmad appears to have died suddenly in Pakistan
13 after the arrest warrants were made public in this case.

14 Fai, Mr. Fai claims that the ISI's involvement with
15 the KAC started in the early 1990s, that's what his sentencing
16 memorandum says, when we was approached by an official of the
17 ISI with an offer to provide funding for the KAC.

18 That assertion is false. The KAC was incorporated in
19 April 1990, and we seized documents from his house showing that
20 he was in contact with the ISI for years before that, and he
21 worked together with the ISI for years before the KAC was even
22 founded.

23 The criminal complaint in this case has an affidavit
24 by Special Agent Linden detailing a confidential informant who
25 proved reliable over a long period of time who said that he was

1 aware of the candidates that applied to the ISI to be selected
2 to run the KAC, and that Mr. Fai was selected because he had no
3 overt ties to Pakistan.

4 For decades the defendant followed the instructions,
5 or, in his words, he wasn't following instructions, he was
6 complying with requests from the ISI. He submitted his budgets
7 for approval. He submitted his plans of operations for
8 approval. And for decades he tried to focus the attention of
9 the people and government of the United States on the alleged
10 atrocities and misdeeds by the government of India and away
11 from the involvement of Pakistan in sponsoring terrorism in
12 Kashmir and elsewhere.

13 None of that was illegal so as long as he disclosed
14 that he was acting at the behest of the Pakistani Intelligence
15 Service, but he refused to do that.

16 The defendant's actions fell squarely within the
17 requirements for which FARA, the Foreign Agents Registration
18 Act, mandated registration. He engaged in political activities
19 for the government of Pakistan. He served as its public
20 relations counsel and political consultant. And he represented
21 the interests of the government of Pakistan before the agencies
22 and officials of the United States. His connection to the ISI
23 was the central fact that he labored to conceal for 20 years.

24 Every year that he operated the KAC at the request of
25 the ISI, he was required to register with DOJ, but he wouldn't

1 do that. Every year that he operated the KAC with funding from
2 the ISI, he was required to disclose to the IRS that the
3 funding was coming from the ISI. But he didn't do that either.

4 The deception of the IRS is what the Guidelines are
5 based on. By getting the money from Zaheer Ahmad through the
6 straw donors that then lowered their taxes by asserting
7 charitable deductions for the money they gave to the KAC even
8 when they were being reimbursed in Pakistan, that was a tax
9 scam.

10 But that really was barely a sidelight to the main
11 scam. The main scam was a false flag operation that Mr. Fai
12 was operating on behalf of the ISI. But the Sentencing
13 Guidelines don't take that part into account. The Sentencing
14 Guidelines don't even purport to measure that. They measure
15 \$344,000 of lost revenue to the IRS, that's what the Sentencing
16 Guidelines are based on.

17 The defendant now claims that his only, that the only
18 connection between the ISI and his work at the KAC was his
19 receipt of funds. And in his words, in his sentencing
20 pleading, there were no strings attached.

21 I don't know that that's consistent with acceptance
22 of responsibility based on the statement of facts. The
23 statement of facts established a fascinating exchange between
24 Fai and his handler at the ISI in 1995. And the defendant will
25 reject the term "handler," and his term would be "his contact"

1 at the ISI.

2 But in December 1995, we know this because the agents
3 seized this document from Fai's possession in 2011, but on
4 December 7, 1995-- And forgive me, Your Honor, I am going to
5 go into detail about this because this put the lie to the
6 assertion that there were no strings attached. December 7,
7 1995, the ISI guy by the name of Javeed Aziz Khan criticized
8 Mr. Fai for renewing a contract with the public relations firm
9 of Black, Manafort & Stone because he didn't have prior
10 authorization from the ISI to do that.

11 The next day Mr. Fai sent a response back to Khan,
12 the ISI handler, and explained that as part of a strategy to
13 make it appear that the KAC was a Kashmiri organization run by
14 Kashmiris and financed by Americans, and as agreed by Fai's and
15 Khan's predecessors at the ISI, on March 20, 1990, no one from
16 the Pakistani embassy would ever contact Black, Manafort &
17 Stone.

18 Fai responded that even though he had not shown Khan,
19 his ISI handler, the contract beforehand, Khan, had previously
20 told him that Khan had gotten the necessary approvals. In
21 requesting Khan to reconsider the decision to discontinue the
22 use of Black, Manafort & Stone, Mr. Fai reminded Khan of how
23 closely Fai had been working with the ISI with Khan and his
24 colleagues. In Mr. Fai's words, he said, quote, you were aware
25 that we have been working together for the cause for over a

1 decade now. This is in December 1995. You were aware we had
2 been working together for the cause for over a decade now. All
3 these years I have closely worked with you and others who came
4 before you. It has taken us much time, energy, dedication,
5 strategy and planning to achieve our common cause.

6 In response Khan wrote back on December 13, 1995,
7 that Fai was well aware of the procedural impediments in
8 signing contracts. Khan wrote that "we," referring to the ISI,
9 were unsatisfied with the performance of Black, Manafort &
10 Stone, and advised Fai to terminate the contract immediately.
11 Khan wrote, "I once again remind you of my earlier advice that
12 any future financial transactions, contracts, visits, events,
13 et cetera, must be forwarded to us for prior approval."

14 As the statement of facts establishes, the
15 relationship of agent and principal between ISI and Fai
16 continued until Fai was arrested 16 years later. The statement
17 of facts showed and the defendant agreed that he entered
18 contracts with the ISI approval and was reprimanded when he
19 failed to get the approvals in advance. He reported on his
20 activities to the ISI as instructed. He submitted his budgets
21 for approval, and he reduced them when the ISI told him to
22 reduce his budgets. He invited people to the conferences, to
23 the KAC conferences that the ISI instructed him to invite, and
24 he didn't invite the people who the ISI told him not to invite.

25 The topics for the conferences were chosen on the

1 basis of what the ISI told him to choose. He traveled where
2 the ISI told him to travel and he didn't travel where the ISI
3 told him not to travel.

4 In short, if he doesn't concede that there were
5 plenty of strings attached to the millions of dollars that he
6 received from the ISI to operate the KAC, his Offense Level
7 should not be reduced for acceptance of responsibility.

8 Judge, the statutory maximum here is eight years.
9 We're recommending a sentence of 48 months. We think that's
10 consistent with the 3553(a) factors. The history and
11 characteristics of the defendant indicate that he has had the
12 benefits of which people all over world can only dream. It was
13 these very benefits that enabled him to deceive the American
14 people and the American Congress and the American executives,
15 the Presidential administrations for the last 20 years.

16 He argues in his sentencing memorandum that he filed
17 this week that the seriousness of his offenses is substantially
18 mitigated by his "demonstrated remorse." The opposite is true.
19 He has demonstrated no remorse for his crime. The only remorse
20 that he has demonstrated is that he has been exposed as a
21 fraud.

22 He wrote two letters to you, to the Court. In those
23 letters he expressed lots of remorse for the damage that he did
24 to the Kashmiri cause by letting the KAC get exposed as an ISI
25 front, but you can search those letters and you are not going

1 to find much in the way of remorse for deceiving the American
2 government and the American people for 20 years.

3 His latest letter is seven pages long, single spaced.
4 It goes into great history about, I am sorry, great detail
5 about the history of Kashmir, but not a word about the history
6 of his dealings with the ISI. In fact, the ISI isn't even
7 mentioned.

8 He claims that he concealed his connections to the
9 ISI because revealing them would have undermined his
10 credibility with his constituents, and particularly with the
11 government of India and the indigenous Kashmiri resistance,
12 that's what he wrote in his sentencing pleading this week. To
13 the contrary, revealing his ISI connection would not have
14 undermined his credibility with the Indians. The Indian
15 government believed that he was an ISI plant the whole time.

16 Revealing his ISI connection would not have damaged
17 his credibility with the indigenous Kashmiri resistance because
18 they were funded by the ISI too.

19 There was only one object of the deception. The
20 entity with respect to which Fai most feared losing credibility
21 by revelation of his ISI connection was the government of the
22 United States. And the people with respect to which he feared
23 losing credibility most was the American people. To prevent
24 the undermining of his credibility before this Court, those are
25 the facts that Fai still tries to conceal.

1 His remorse is for being exposed as a fraud. It is
2 not even a tax fraud that he is remorseful about being exposed
3 as, that is just a part of it. The KAC was the fraud.
4 Everything he did for the KAC for the last 20 years was a
5 fraud. That has nothing to do with the political question of
6 what should happen in Kashmir or what the situation there is
7 like.

8 As much as he claims to be working for the people of
9 Kashmir, he was defrauding them too. Anyone who thought he was
10 advocating their interests, other than the ISI who bought and
11 paid for him, was defrauded. Anyone who he came into contact
12 with who thought his advocacy was for anything other than
13 shilling for the ISI, was defrauded.

14 For someone who purports to believe so ardently in a
15 cause, it's unfortunate, but telling, that he was willing to
16 betray it and become a mouthpiece for the ISI instead.

17 Now, to his credit, he entered a guilty plea and he
18 agreed to a detailed statement of facts. He submitted to
19 questioning by the agents, and he answered candidly some of the
20 questions. Had he not done that, we would have sought a higher
21 sentence. But there shouldn't be any dispute that the tax scam
22 alone, that's a two-year offense.

23 But that was only ancillary to the false flag
24 offense. If the tax scam gets two years, doesn't the false
25 flag offense get at least two years?

1 The Supreme Court said that the Foreign Agents
2 Registration Act was enacted to protect the national defense,
3 the internal security, and the foreign relations of the United
4 States by requiring public disclosure by persons engaging in
5 propaganda activities and other activities for or on behalf of
6 foreign governments so that the government and the people of
7 the United States may be informed of the identity of such
8 persons and may apprise their statements and actions in light
9 of their associations and activities.

10 This defendant's course of conduct over the last
11 20 years thwarted the ability of the government and the people
12 of the United States to properly appraise his statements and
13 activities in light of his associations and activities. He
14 thwarted the ability of the American people and the American
15 government to recognize that the propaganda that was
16 disseminated through the KAC came not from a disinterested
17 source, but from a Pakistani intelligence agency.

18 For the foregoing reasons, a term of imprisonment of
19 48 months is necessary to reflect the seriousness of his
20 offenses, promote respect for the law, provide just punishment
21 for his offenses, and afford adequate deterrence to criminal
22 conduct.

23 He should have 48 months in prison, four years of
24 supervised release, the restitution of \$344,150. And, Judge,
25 we hope that the supervised release term includes a special

1 condition that he have no contact with any agent, employee or
2 representative of the ISI or the government of Pakistan or any
3 individual that the defendant has identified to the FBI as
4 supported by or in regular contact with the government of
5 Pakistan.

6 In view of the forfeiture accomplished, we do not
7 seek any further financial penalty.

8 Thank you, Judge.

9 THE COURT: Thank you, Mr. Kromberg.

10 Ms. Ginsberg.

11 MS. GINSBERG: Judge, I think Mr. Kromberg's
12 arguments to the Court are appalling in light of the fact that
13 the Government originally charged Dr. Fai with a FARA offense,
14 elected to drop that offense, and is now essentially making a
15 closing argument that he would make to a jury if Dr. Fai was
16 charged with violating the FARA statute, all without giving him
17 the slightest ability to refute with facts. Asking this Court
18 to accept his extreme characterizations without any factual
19 support and expecting this Court to, in effect, make him prove
20 that these allegations are not true. I think it's appalling.

21 If the Government believed that he was guilty of a
22 FARA offense, if that was the main criminal conduct that
23 occurred in its view, and if the tax offense was an ancillary
24 crime, then what they should have done is made, is made him
25 plead guilty to a FARA offense if there was going to be a plea

1 agreement or this case would have gone to trial.

2 And I will tell you that Dr. Fai absolutely, from the
3 very outset, adamantly denied that he was ever, in Mr.
4 Kromberg's terms, a shill for the Pakistani government. And
5 this case would have gone to trial had the Government not
6 agreed, for whatever the reasons are-- My reasons, my view of
7 their reasons is they couldn't prove it. They have a lot of
8 words that were captured in intercepts, 20 years of intercepts,
9 hundreds of thousands of interprets, and Mr. Kromberg cannot
10 stand in front of this Court with one example of a statement, a
11 public statement by Dr. Fai, a writing by Dr. Fai, a position
12 taken at a conference that he sponsored, not one, not one word
13 that is anything that could be characterized as propaganda for
14 the Pakistani government.

15 It is an outrage for him to say that that is what
16 that man spent 20 years of his life doing when his writings,
17 which we, unfortunately, took up a lot of paper, and I
18 apologize for burdening the Court, every one of his writings,
19 every declaration of every one of those conferences, what came
20 out of the mouth of this man was, I'm not taking a side. This
21 is important, tens of thousands of people are dying, pay
22 attention to what's happening in Kashmir.

23 And his letters, he submitted letters to two
24 Presidents of this country saying, I'm not taking a position,
25 everyone has to give something, no one is going to be

1 satisfied.

2 There is not one word that Mr. Kromberg can point to
3 that Dr. Fai ever uttered that was propaganda for the
4 government of Pakistan.

5 Did he receive their money? Absolutely. Did he do
6 it in a way that is somewhat akin to getting a grant from
7 another country? Yes. Did he submit proposals? Absolutely.
8 He submitted budgets. You submit a budget when you're asking
9 someone for money. They either give you that money for those
10 things or they don't.

11 He received suggestions from people who would
12 participate in these conferences. He accepted some and he
13 rejected some. Topics, one of the topics that appears in these
14 communications, the Pakistanis want him to raise the matter of
15 2,700 mass graves discovered in Kashmir.

16 Well, the Pakistanis didn't have to tell him that
17 that is a topic that should be discussed at an international
18 peace conference. There were 2,700 mass graves discovered in
19 Kashmir.

20 THE COURT: Well, I understand that, and I don't for
21 a minute question that Mr. Fai is a true patriot of Kashmir,
22 even though he is a U.S. citizen. And the people that he has
23 advocating for, I think he also loves the country and its
24 people, and it's reflected in his writings and it's reflected
25 by the people that are here today. But, clearly, he knew the

1 positions he was taking were consistent with the positions that
2 the Pakistani intelligence service or the government wanted to
3 get out into the public domain and wanted the United States
4 government to consider. Clearly criticism is directed at India
5 and the actions taken by the Indian government, the 700,000
6 troops that are there oppressing the people in Kashmir.

7 And he clearly knew that he was being paid because he
8 was saying the things that the Pakistani government wanted him
9 to say. Correct?

10 MS. GINSBERG: No, that's not correct.

11 THE COURT: Do you think that these gifts grow on
12 trees? That three-and-a-half million dollars to fund his
13 enterprise was done out of the goodness of the Pakistani
14 government's love and concern for Kashmir?

15 I mean, they have been at war with India, they have
16 lost the wars, they have been defeated, they are looking for
17 other ways to promote the independence of Kashmir. And that
18 serves them well, doesn't it?

19 MS. GINSBERG: Judge, Pakistan would have Kashmir
20 annexed to Pakistan. That is not the position that Dr. Fai has
21 ever taken.

22 Pakistan, Your Honor, if there are views, if Dr. Fai
23 had views that were consistent with some of the views of the
24 Pakistani government, that doesn't-- He also had publicly
25 expressed views that were consistent with the government of

1 India.

2 And it is, as Mr. Kromberg said, it was at least
3 publicized in the India media that he was receiving funds from
4 the ISI. The government of India sought him out on a regular
5 basis to try and negotiate some kind of a peaceful resolution
6 for whatever their motives were.

7 But I think that it's tempting, but there is no,
8 there is no real basis for this Court to conclude that he was,
9 that the positions he was taking, he was taking because he was
10 advocating the positions of the Pakistani government over the
11 positions of anyone else.

12 I think there is a fine line, and I am not sure when
13 it gets crossed, between what constitutes lobbying and what
14 constitutes educating. And I think it's an unfair conclusion
15 to make if you say that Pakistan thinks that the evidence that
16 the Indian government has murdered Kashmiris, that that is
17 something that should be brought to the public's attention.

18 Dr. Fai is a Kashmiri. He doesn't have to have
19 Pakistan tell him that India shouldn't be murdering tens of
20 thousands of Kashmiri people.

21 I would say to the Court that Pakistan got a lot more
22 from Dr. Fai than putting him out there as their mouthpiece.
23 What they purchased in exchange for these, for the funding, was
24 information about what was happening in terms of the debate in
25 the United States. What the Kashmiri American Council was

1 advocating, they were gaining information in much the same way
2 that the government of the United States through these FISA
3 warrants, which were obtained in order to investigate a crime
4 that they could have prosecuted 15 years ago, the Government
5 was obtaining intelligence information. They were learning
6 what Dr. Fai was doing. They were learning what the
7 Pakistanis' views were of the situation in that part of the
8 world.

9 What they learned from Dr. Fai was, what the
10 Pakistanis learned from Dr. Fai was there was going to be a
11 conference, these were the people that were going to be
12 invited, we're going to talk about mass graves, we're going to
13 talk about the murder of large numbers of people.

14 But, Your Honor, I think there is a very fine-- It
15 is equally true that Dr. Fai's statements that were consistent,
16 that were his beliefs and the beliefs of that organization, if
17 they happen to be consistent with the position of the Pakistani
18 government, that doesn't make him an agent of the Pakistani
19 Government. And when his positions diverged from those of the
20 Pakistani government, he didn't hesitate to take positions,
21 public positions that were inconsistent with the views of what
22 the ISI would have probably preferred that he do.

23 And there were disagreements about a lobbying group
24 or an advertising group. Dr. Fai did what he thought was the
25 right thing to do. And when they didn't like it, he went ahead

1 and did it anyway.

2 And I think that there is no question that he should
3 not have claimed that he was not getting funds from this
4 government because he was, but there are very prominent
5 Indian-- And, you know, I know until this case I knew very
6 little, shamefully, about the situation in Kashmir. I would
7 guess that Your Honor doesn't know a whole lot more.

8 THE COURT: I learned a whole lot reading this
9 material.

10 MS. GINSBERG: But I would say that there are public
11 writings and there are letters written in support of Dr. Fai
12 from prominent Indian people, people that wrote about his
13 conferences were former ministers, former justices on the
14 courts in India, emissaries of the Prime, appointed by the
15 Prime Minister of that country, all saying that Dr. Fai was
16 advocating for peace, for both, to bring both sides together.

17 And Mahatma Ghandi's grandson wrote a letter saying
18 that this is a man who was trying to bring peace in a place
19 where other people weren't having a whole lot of success. And
20 if there are prominent Indians who had thought for a long time
21 that he was being funded by the ISI, who observed what he did
22 and had made public representations and representations to this
23 Court that he was serving peace and not serving Pakistan, I
24 don't think you or I are in a very good position to say that
25 those people don't know better than we do or better than Mr.

1 Clark.

2 And I wish I was more eloquent on this subject, I am
3 just not, but I have to believe that when so many people on
4 both sides of the coin have said, this man strived for peace,
5 that Mr. Kromberg really, he's not the authority on whether Dr.
6 Fai was trying to advocate a position of the Pakistani
7 government in secret. It's just not, I don't think he is in a
8 position to do that.

9 I think that what this man-- It's a shame. I think
10 it's really a tragedy in many way because Dr. Fai has
11 accomplished for the cause of peace in that part of the world
12 something that I don't think any other individual has. He has
13 managed somehow to bring people together to talk about peace.

14 The day he was arrested, there was a voice-mail on
15 his message on his phone from someone from the embassy of India
16 asking, saying that we need to get together.

17 Your Honor, I think those people know an awful lot
18 better than Mr. Kromberg about the message that Dr. Fai was
19 advocating and what he was trying to do in this world.

20 And you can only see so many people die before you
21 feel motivated to do something. And he made grave errors,
22 there is no question about that, but I have no doubt that he is
23 remorseful. And I have no doubt that he has suffered a great
24 deal, and that he and a great many other people are going to
25 suffer a great deal as a result of what happens in this court

1 today.

2 THE COURT: All right. Thank you, Ms. Ginsberg.

3 Mr. Fai, please come to the podium, sir. This is
4 your opportunity to tell me anything you would like to before I
5 sentence you. I have read both of the letters that you wrote
6 to me.

7 Go ahead.

8 THE DEFENDANT: Thank you, Your Honor.

9 I do stand here to accept your judgment. I really
10 would like to find the words-- In fact, I do not know really
11 how to express my remorse for the actions that I have taken.

12 And I believe that words possibly cannot define the
13 damage part of what I have done to my beautiful family and to
14 the fans in the United States because my actions have proved
15 very damaging, not only me as a person, but to the cause of the
16 people as well.

17 Your Honor, I would like to tell you with double
18 fullest possible consciousness that I never intended to harm
19 anybody anywhere in the world. And in particular, I never
20 intended to harm the United States, my adopted homeland, its
21 people and its government.

22 If it makes any difference, my sole motivation was to
23 allow the people options and their right of self determination.
24 I have not seen the ages of the people here behind me.

25 Your Honor, it was none other than then the President

1 of the United States, President Harry Truman, who gave of that
2 right in the United Nations.

3 And, unfortunately, I am witness to so many tragic
4 situations in Kashmir. Your Honor, today is March 30 and,
5 unfortunately, March 30 is the 16th death anniversary of my
6 cousin, Syed Shabir Siddiqui, who was burned alive by the
7 Indian army in 1996.

8 My motivation is and it has always been to tell the
9 world what an Indian American scholar from New York, Mr. Pamkay
10 Mishra, wrote in Daily Guardian London, that more than 80,000
11 people have been killed in Kashmir.

12 And I am aware, I am very conscious of the fact that
13 really does not justify what I have done. That really does not
14 justify that I should not have been conscious of the part which
15 I have taken.

16 But I will tell you, Your Honor, today I am very
17 confident that I know that it is not easy to seek the justice
18 from the people who have a just cause, but we have to be away
19 from the deception. I know the road of freedom is long, but
20 there cannot be any shortcuts.

21 I would like to really make one point, Your Honor.
22 The Pakistani position is that Kashmir will accede to Pakistan.

23 THE COURT: Say that again. I am sorry.

24 THE DEFENDANT: The position of Pakistan is that
25 Kashmir should accede to Pakistan. The Indian position is that

1 Kashmir is an integral part of India.

2 Your Honor, I have 25 articles which I have written
3 in Washington Post, Washington Times, Boston Globe, Plain
4 Dealer, Financial Times, Daily Guardian, in which I have
5 proposed the best possible solution for Kashmir is the
6 independence of Kashmir. It is not what I have published
7 today. I have published it right from 1991, I think it was
8 June of 1991 my article appeared in the Washington Post.

9 And finally, Your Honor, I know that I have misjudged
10 so many people. And I don't know really many of them who they
11 are, but through this Court I would like to seek their
12 forgiveness and I would like to seek their understanding.

13 I truly and honestly, Your Honor, appreciate this
14 opportunity, and I want to thank you for your patient hearing.

15 Thank you very much.

16 THE COURT: All right. Well, I don't doubt your love
17 for Kashmir and its people, and I do not doubt that your
18 mission over the last 25 years has been a mission to bring
19 peace to Kashmir and to try and identify a means to peace
20 between India and Pakistan and Kashmir. You are to be heartily
21 commended for those efforts. But your zealousness overwhelmed
22 your good judgment.

23 And as Ms. Ginsberg points out, you're not here on a
24 FARA charge. You are here because you participated in a
25 conspiracy to defraud the United States, and also to corruptly

1 impede the IRS through your association with the Pakistani
2 intelligence community.

3 You agreed to defraud the United States in your zeal
4 to assist the people in Kashmir, but you also knew that the
5 Pakistani government wasn't paying you out of sympathy for
6 Kashmir. They were paying you in this manner so that you would
7 be acting also as their voice in the mission to bring peace to
8 Kashmir. And you took their money willingly.

9 You willingly entered into a conspiracy to defraud
10 the IRS by willingly allowing straw donors to give the money to
11 fund the KAC, to cover up the source of the money, to engage
12 with the Pakistani intelligence in the manner of covering up
13 the nature of where those funds came from, and did so for a
14 very long time.

15 And it enabled you to advocate on behalf of Kashmir.
16 It also allowed you to live a lifestyle that was comfortable,
17 not in any way lavish, but comfortable, and remain here in the
18 United States comfortably, raise your children and educate
19 them, and as well as to help the Kashmir people.

20 It's troubling, having considered all this and
21 considered you, that in March of 2007, or in 2010 when you were
22 approached by the United States, you didn't at that stage admit
23 the role that Pakistan was playing in funding the KAC. It
24 demonstrates just how zealous you were, I think, but also what
25 you were willing to do to continue to take the funds coming

1 from Pakistan notwithstanding that you had to suspect that the
2 United States government was aware who was funding you, and to
3 continue to defraud the IRS in doing so.

4 And I am not sure-- I think, I think you understand
5 that what you did was very serious, but I have to agree with
6 Mr. Kromberg that in your mind you still today believe that
7 what you did on behalf of promoting peace for Kashmir justified
8 the means that you used, and that that means was unlawful. And
9 I don't think that you really believe that what you did was of
10 any great harm to the United States.

11 And it was harmful to the United States, and that's
12 why you're here. And that's why the laws exist. And you
13 ignored that even though the FBI brought it to your attention
14 multiple times.

15 So, a sentence of imprisonment is necessary under the
16 3553 factors to promote, respect for the law, to consider the
17 seriousness of the offense, to deter you and others from future
18 activities such as this. And it's necessary, even though you
19 have done some very moving things on behalf of the Kashmir
20 people and that your cause is a wonderful cause, but the way
21 that you have gone about it necessitates a sentence of a period
22 of incarceration.

23 On each of these counts, I am going to sentence you
24 to 24 months of incarceration, three years of supervised
25 release, a \$100 dollar special assessment. Those sentences

1 will run concurrently with each other.

2 I will not impose a fine or costs of incarceration
3 given the fact that there is the forfeiture.

4 I will impose the forfeiture as conditions of
5 supervised release.

6 I will direct that you not have any contact with
7 co-conspirators in the case, including unnamed straw donors,
8 and persons involved with the Pakistani government and
9 intelligence service or their agents.

10 And I will order that you provide the Probation
11 Office with any financial documents that they request.

12 That you prepare correct tax returns for the year
13 2005 through 2011 for the KAC in a reasonable period of time.

14 That the mandatory drug testing will be suspended
15 because it's not necessary unless otherwise determined to be
16 necessary by the Probation Office.

17 The Government have any objection to self-surrender
18 for Mr. Fai?

19 MS. KROMBERG: No, Your Honor. I just note, when the
20 Court mentioned forfeiture, I think the Court may have been,
21 may have intended to refer to the restitution order. There was
22 a forfeiture in this case that was administratively done. But
23 there is a restitution--

24 THE COURT: Restitution of 344,000-some dollars, and
25 I will order that. Thank you.

1 I will allow you to self-surrender.

2 Ms. Ginsberg, do you have a facility in mind?

3 MS. GINSBERG: Your Honor, I would ask the Court to
4 recommend Cumberland.

5 I would also ask if the Court would consider
6 postponing the surrender date until after June 25, which is the
7 date on which his daughter graduates.

8 THE COURT: Graduation. Yes, I will do that.

9 I sincerely hope that while you're at a minimal
10 security facility like Cumberland, that I see no reason why you
11 can't continue to advocate on behalf of the Kashmiri people and
12 to write. I know that the KAC is dormant, I guess is the word
13 for it at this stage, but there may be an opportunity to
14 arrange conferences through other people in the future, and I
15 hope that cause continues to be identified as an important
16 international matter. And good luck to you.

17 Thank you, counsel.

18 All right. Anything else?

19 MR. GINSBERG: No, Your Honor.

20 MR. KROMBERG: No, Your Honor.

21 THE COURT: All right, we are in recess.

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HEARING CONCLUDED

23 I certify that the foregoing is a true and
24 accurate transcription of my stenographic notes.

25 /s/ Norman B. Linnell
Norman B. Linnell, RPR, CM, VCE, FCRR