

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**UNITED STATES OF AMERICA**

\*

**v.**

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**Criminal No. 1:10-cr-0181-RDB**

**THOMAS ANDREWS DRAKE**

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**DEFENDANT'S SENTENCING MEMORANDUM**

Defendant Thomas Andrews Drake, through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Deborah L. Boardman, Assistant Federal Public Defender, respectfully submits this sentencing memorandum. Sentencing is scheduled for July 15, 2011.

Mr. Drake has pled guilty to a misdemeanor, exceeding the authorized use of a government computer in violation of 18 U.S.C. § 1030. For this crime – Mr. Drake's first ever brush with the law – the defense respectfully requests that the Court impose a sentence of one year of probation with a special condition of community service. In the plea agreement, the government has agreed not to oppose a request for a non-custodial sentence. In addition, government counsel has represented to defense counsel that they will not request more than one year of probation.

As the Court determines the appropriate sentence in this case under 18 U.S.C. § 3553(a), Mr. Drake's personal history and characteristics must and should be taken into account. By any measure, Mr. Drake has led an exemplary life. As one of his many friends and colleagues writes, Mr. Drake is "a man defined by faith, family, friends and country." He has always tried to do the right thing for his family, his community, and our country. He served with distinction in the United States Air Force and the United States Navy Reserves. Friends and colleagues from all

stages of his life resoundingly call Mr. Drake a hard-working, dedicated, and honest public servant who puts others first. They herald his honesty and patriotism, and laud his commitment to family, citizenship, and the ideals of the Constitution. He continues to make substantial contributions to the well-being of his family, friends, and the community.

Against the backdrop of Mr. Drake's personal history, and in light of the suffering and punishment he already has endured as a result of his actions, incarceration is not an appropriate sentence in this case. The defense respectfully submits that a sentence of one year of probation, with a condition of community service, is an appropriate sentence that takes into account all of the factors under Section 3553(a).

**I. Mr. Drake Is Dedicated to His Family.**

**A. Mr. Drake's Childhood.**





**B. Mr. Drake's Adult Family Life.**



**II. Mr. Drake Served Our Country With Distinction in the United States Air Force and United States Navy.**

Mr. Drake served our country with distinction in the United States Air Force for ten years and in the United States Navy Reserves for five years. His record of service is extraordinary.

**A. The United States Air Force.**

In 1979, Mr. Drake, 22, enlisted in the Air Force, the same branch of the armed forces his father had served. After enlistment, Mr. Drake completed an intensive German language course at the Defense Language Institute in Monterey, California. *See Exhibit C.* Fluent in German and interested in intelligence, he became an Airborne Voice Processing Specialist. He translated and analyzed intercepted communications and operated sophisticated voice communication equipment during air missions.

From 1981 to 1985, Mr. Drake, his wife, and their young sons were stationed at RAF Mildenhall, England. Twenty years earlier, his father was stationed there when Mr. Drake was a child. At RAF Mildenhall, Mr. Drake flew on air missions over Europe, often under extremely hazardous conditions. These were very sensitive, dangerous missions conducted during the height of the Cold War. Linguists like Mr. Drake were essential to the air missions because of their ability to instantly gather intelligence and recognize possible threats. There does not appear to be a public record of the number of missions he flew; the figure appears to remain classified to this day. In 1985, Mr. Drake and his family left England and returned to Arizona where he was stationed at Davis-Monthan AFB until 1989. At Davis-Monthan AFB, he flew on electronic warfare missions as an aircrew member and a mission crew supervisor.

In the Air Force, Mr. Drake received several merit awards recognizing his courage, proficiency, and performance, including five Air Medals, Air Force Commendation Medal, Air Force Achievement Medal, two Air Force Outstanding Unit Awards, Combat Readiness Medal, two Air Force Good Conduct Medals, Air Force Overseas Long Tour Ribbon, two Air Force Longevity Service Award Ribbons, NCO Professional Military Education Graduate Ribbon, and Small Arms Expert Marksmanship Ribbon. *See Exhibit C.*

Mr. Drake's Air Force evaluations were uniformly outstanding. *See Exhibit C.* They include the following commendations:

"Since being assigned to this unit, SrA Drake has accomplished all tasks assigned to him in an outstanding and professional manner. His exceptional military bearing and awareness of the world about him were both acknowledged by his Below-The-Zone promotion to Senior Airman."

"SrA Drake is an outstanding airman. . . During one 8-week period, SrA Drake preformed all the duties of the senior entity analyst. He was commended by an Airborne Mission Supervisor (AMS) for his performance as a primary operator when tasked to fly in place of a fully qualified Category III operator. SrA Drake made several suggestions to the unit A208X1A training effort which helped to streamline this program and to reduce training time."

"SrA Drake is a very mature and capable young airman whose dedication to duty is exemplary."

"Sgt Drake's ability to get along with peers and superiors alike, combined with his drive and natural talents, serve to make him the outstanding type of young NCO the Air Force needs now and in the future."

"My best Staff Sergeant. SSgt Drake's outstanding attention to detail insures the job gets done right, the first time. His Stan/Eval documentation/records were rated 'Outstanding' by CSET – the first time ever in the Command. He is directly responsible for this unit's success. Already performs like a Senior NCO. Promote now. . . Outstanding NCO. Superior record as an operator and evaluator."



CSET and MEI reports say his files and records are the best they have seen anywhere. Unlimited potential. Challenge! Promote!”

“SSgt Drake is an NCO I can depend on. As NSOIC of Ground Training for the flight, he handled all aspects of ground training for more than 70 aircrew members. He is a prime example to younger airmen of accomplishment through dedication to duty. I have verbally commended him for the numerous hours he spends improving his linguistic and technical abilities. Promote ahead of peers.”

“SSgt Tom Drake is one of the best NCOs in the 41st--that’s why he was our nominee for TAC Instructor of the Year award. His performance is unsurpassed; his incisive training ability has improved the combat capability of all Compass Call crew members. Promote!”

“SSgt Drake is an outstanding NCO. He effectively manages the time to increase knowledge of his chosen language and its tactical application to the Compass Call weapons system. His efforts have earned him the honor of being the best. His superior airmanship and technical ability earned him an unprecedented “Exceptionally Qualified” rating on his instructor qualification flight evaluation for the second straight year. This led to his selection as the Enlisted Aircrew Instructor of the Year for TAC.”

“SSgt Drake is a leader who exudes confidence and promotes success in others. Any organization would find him invaluable. I strongly recommend promotion at the earliest opportunity.”

“SSgt Drake is one of my top NCOs. I admire his aggressiveness and honesty in his working relationships with his peers and superiors. His performance as an instructor and leader in our weapons system has contributed significantly to our overall mission.”

While Mr. Drake was serving in the Air Force and raising four young sons with his wife, he also attended school, earning an Associate’s Degree in Interpreting and Translating from the Community College of the Air Force, a Bachelor’s Degree from the University of Maryland, Europe, and a Master’s Degree from the University of Arizona.

In 1989, after nine years and three months of active duty, Mr. Drake received an

honorable discharge from the United States Air Force as a Staff Sergeant.

Mr. Drake has stayed in contact with several men with whom he served in the Air Force, and three of them have written letters to the Court. *See* Exhibit D. One of his closest friends from the Air Force is Mark Scott, who is now a Senior Manager with Harris Corporation, RF Communications Division specializing in business process management. Mr. Scott has known Mr. Drake for 29 years. They flew highly classified reconnaissance missions together in Europe for four years, supporting national intelligence consumers and military commanders. “In my opinion,” writes Mr. Scott, “he is a man defined by faith, family, friends and country.” *See* Exhibit D. Another fellow airmen, who has known Mr. Drake for over twenty years, recalls Mr. Drake as a “patient instructor and a thoroughly knowledgeable operator” with “a humble intelligence.” *Id.* A fellow German linguist writes: Mr. Drake is the “straightest straight arrow I have ever known. He once told me proudly that he never smoked marijuana or used any other illegal drugs in his life, which illustrates another Tom Drake attribute: He Follows the Rules.” *Id.*

**B. The United States Navy Reserves.**

After separating from the Air Force, Mr. Drake and his family settled in the Washington, DC area. In 1992, he joined the United States Navy Reserves. He became a naval intelligence officer and was assigned to the National Military Joint Intelligence Center at the Defense Intelligence Agency. There, he worked on the ELINT (Electronic Intelligence) desk, the Middle East/Africa desk, and the Terrorism desk. He was responsible for providing critical indications and warning intelligence to the highest levels of the Joint Chiefs of Staff and the Department of

Defense. His Navy evaluations, like his Air Force evaluations, are outstanding, and include the following remarks:

“He has performed superbly, proving his worth and demonstrating immense potential as a leader and as an intelligence officer in support of national tasking requirements.”

“Outstanding Naval Officer who routinely demonstrates top-notch leadership and management skills.”

“Energetic, Highly Dedicated, and Seasoned Intelligence Officer.”

“Outstanding Naval Intelligence Professional.”

“As a watchstander on the Middle East/Africa desk in the high-pressure environment of the National Military Joint Intelligence Center (NMJTC), he has provided invaluable support to the Joint Chiefs of Staff (JCS).”

“Flawless handling and control of classified material.”

“Serves as integral part of the Navy’s component for intelligence support to the Joint Chiefs of Staff.”

*See Exhibit E.*

In 1997, after five years of service, Mr. Drake received an honorable discharge from the United States Navy Reserves.

### **III. Mr. Drake Has An Exemplary Employment History.**

Mr. Drake’s employment history is impressive. After receiving an honorable discharge from the Air Force in 1989, he worked for several consulting firms and defense contractors in the Washington, DC area, including GTE, Booz Allen Hamilton, Coastal Research & Technology, and Integrated Computer Concepts. He worked primarily on government contracts with the National Security Agency. While he was working on NSA contracts, Mr. Drake received several

letters of appreciation and commendation from NSA in recognition of his significant contributions to the agency. *See* Exhibit F (letters from NSA describing Mr. Drake as “exceptional,” “superb,” “instrumental,” whose “professionalism and dedication to excellence is unfailing”).

Many of Mr. Drake’s professional colleagues have written letters of support to the Court. *See* Exhibit G. They include veterans of the NSA, the Central Intelligence Agency, and the Department of Defense. They emphasize his loyalty, integrity, leadership abilities, competence, patriotism, and his desire to improve his working environment, NSA, and our country.

In late August 2001, Mr. Drake left private industry and began working for the National Security Agency. He was hired as Senior Change Leader working for the Director of the Signals Intelligence Directorate. He was a Senior Executive at NSA until his resignation in April 2008. Some of his NSA colleagues have written letters of support. *See* Exhibit G. A current NSA employee who has known Mr. Drake for 14 years writes: “I was most impressed by Tom’s focus on personal integrity, honesty, loyalty, dedication, accountability, and responsibility. These are values he consistently demonstrated in his work and emphasized in the work of his co-workers and subordinates . . . Tom chose to work for the government because he felt that it was the best way he could make a positive difference and influence change where he felt improvements were needed.”

Between August 2006 and November 2007, Mr. Drake served as the NSA’s Professor and Chair at the Industrial College of the Armed Forces at the National Defense University in Washington, DC. His annual performance evaluation was outstanding. *See* Exhibit H. Rear

Admiral Gerard M. Mauer, Jr., Commandant of the Industrial College of the Armed Forces, wrote: “Tom has performed in an absolutely outstanding manner as a faculty member at the Industrial College of the Armed Forces! . . . From the day he arrived, he has been a significant contributor . . . Tom has been an excellent ambassador for NSA and an excellent, highly value-added member of the faculty.” *Id.* Mr. Drake’s Department Chair and first-line supervisor at ICAF, a 30-year veteran of the United States Army, has written a letter of support. *See* Exhibit I. He writes: “I have nothing but confidence in and respect for Tom’s honesty, work ethic, and integrity. My job as Department Chair would have been infinitely easier if I had been blessed with an entire department of people just like Tom. Tom always went the extra mile—with total professionalism . . . He was highly respected and well-liked by both our students and faculty. It would be an honor to work and closely associate with Tom again.”

After Mr. Drake resigned from NSA and left his post at NDU, he became an adjunct professor at Strayer University. A fellow professor and colleague from Strayer writes: “I have never had any doubts about Tom’s patriotism or motivations. Tom is a genuine professional who was well informed but discreet and careful.” *See* Exhibit I.

After he resigned from NSA, and while teaching part-time at Strayer, Mr. Drake began working full-time for an Apple Retail Store in the Washington, DC area. He commutes more than an hour each way to work. Five of his Apple colleagues have written letters to the Court. *See* Exhibit J. One colleague describes him as “hard-working, dedicated, honest, and brilliant . . . Whenever I need help, advice, or support at work, Mr. Drake is the first person I search for when looking for assistance. Equally as important, Mr. Drake routinely goes above and beyond for a customer, enthusiastically seeking out unique solutions and often staying after his shift to make

sure an above-quality job is done. He has an unparalleled dedication to performing at his greatest potential.” See Exhibit J. Another Apple colleague writes: “He thrives on clarity on all aspects of work. He also brings a fantastic energy to our team. He has recently helped inspire the team with a new initiative with a phrase he created, “It’s personal!” This quote has caught on with other members of the team, and pushed our store initiative . . . Mr. Drake is a good, honest man who works hard every day and is willing to work hard to live a good life.” Another colleague writes: “While Mr. Drake has been dealing with tremendous personal stress of his case, he has continued to show up each day for work and to do his fair share of whatever task is needed, however menial, to keep our store functioning smoothly. Seeing his humble acts of service on a daily basis [inspired me].”

#### **IV. The Offense.**

Mr. Drake has pled guilty to exceeding the authorized use of a government computer in violation of 18 U.S.C. § 1030. As the Court knows, this crime is a misdemeanor. In pleading guilty, Mr. Drake has admitted that he accessed information on the NSA computer system for the purpose of providing that information to a person not authorized to receive it. The crime does not involve the handling or mishandling of classified information. Rather, it relates to Mr. Drake’s decision to communicate with a *Baltimore Sun* reporter about his belief that NSA was engaged in waste, fraud, and abuse. His decision to communicate with a *Sun* reporter was not taken lightly. He chose to do so after he assisted with a Department of Defense Inspector General audit of certain NSA programs and after he emailed the Director of the NSA about his concerns. Mr. Drake never intended to harm the country, and he never intended to provide the reporter with classified information.

**V. The Goals of Sentencing Will Be Met By a Probationary Sentence.**

Mr. Drake and his family have suffered immensely. For Mr. Drake, this case began more than four years ago, on November 28, 2007, the day the FBI searched his home. Every day since then, he has suffered emotionally, physically, professionally, and financially.

The emotional and physical toll this case has had on Mr. Drake is difficult to quantify or describe. He has lost friends in the Intelligence Community who do not want to be associated with him because they fear retribution. His reputation in the community has been irreparably tarnished; people who do not understand the charges or the facts have blithely labeled him a spy. He has lost more than twenty pounds due to the pressure, anxiety, and stress caused by the case. His family also has suffered. [REDACTED]

[REDACTED]

[REDACTED] The impact of the stress on Mr. Drake and his family has been witnessed firsthand by his good friend from the Air Force, Mark Scott, who has stood by him throughout this ordeal. In Mr. Scott's letter, he states: "I observed first-hand in Mr. Drake the emotional roller coaster ride associated with a lengthy legal battle. His ability to handle the stress and anxiety was underscored by an active desire to provide for his family and fulfill his duties as head of household . . . I believe that Mr. Drake is remorseful for what he did. On June 11<sup>th</sup> he told me during an emotional telephone call that his admission of guilt was indeed truthful . . . Recently, Mr. Drake asked me to partner with his wife and son in the months ahead to watch over him as he begins to rebuild his life post sentencing." Exhibit D.

Mr. Drake's professional life has been completely upended as a result of this case. Not

long after the FBI raid of his home, his security clearance was suspended. He will never work in the Intelligence Community again. In fact, it is highly unlikely that Mr. Drake will ever work for the federal government again. This is particularly punitive for him because he needs five more years of federal service to be eligible for his federal pension.

In addition to losing his security clearance and his federal pension, Mr. Drake also lost a teaching position at Strayer University as a result of this case. In 2010, Mr. Drake was a part-time adjunct professor at Strayer teaching a course on political science and contemporary international problems. Just days after the Indictment issued in April 2010, Strayer terminated Mr. Drake mid-semester, because it took the position that a professor facing charges under the Espionage Act reflected poorly on the university. The loss of his teaching position was a devastating professional blow for Mr. Drake.

Financially, Mr. Drake has been set back significantly because of the prosecution. After he resigned from NSA, he started working full-time at the Apple Retail Store, where he makes [REDACTED] an hour, grossing approximately [REDACTED] a year. He was forced to take out a second mortgage on his home to help pay for a private attorney who represented him during the two-year investigation period. Mr. Drake paid his counsel more than \$82,000 in attorneys' fees.<sup>1</sup>

In the end, a one-year probationary sentence, with a condition of community service, is the just punishment in this case, for this crime, and for this defendant. It is a sentence that is sufficient but not greater than necessary to meet the sentencing goals under 18 U.S.C. § 3553(a).

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<sup>1</sup> In fairness, we must advise the Court that Mr. Drake received a \$10,000 prize in April when he was awarded the Ridenhour Truth-Telling Prize. Past winners of the Ridenhour awards include Thomas Tamm, Daniel Ellsberg, President Jimmy Carter, Seymour Hersh, and Senator Russ Feingold.



Respectfully submitted,

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