

Materials Submitted for the Hearing Record:

1. June 1, 2009 Letter from Judge Kent to the Task Force declining its invitation for him to testify
2. June 2, 2009 Letter from Judge Kent to the White House purporting to resign effective June 1, 2010

Documents referenced by Mr. Alan Baron during his testimony:

1. Original Indictment (August 28, 2008)
2. Superseding Indictment (January 6, 2009)
3. Plea Agreement (February 23, 2009)
4. "Factual Basis for Plea" (February 23, 2009)
5. Transcript of Plea Hearing (February 23, 2009)
6. Transcript of Sentencing (May 11, 2009)
7. Court's "Judgement" (May 11, 2009)
8. Letter from Chief Judge Jones of the U.S. Court of Appeals for the Fifth Circuit to Judge Kent's attorney denying Judge Kent's disability claim (May 27, 2009)

June 1, 2009

United States House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

RE: Statement of Judge Samuel B. Kent, provided to The Task Force to Consider the Possible Impeachment of Judge Samuel B. Kent

Dear Honorable Congressional Task Force Members:

My health does not presently allow me to travel to Washington to address you in person. I respectfully request that you, at your discretion, accept this letter as my written statement and afford it any consideration your rules may allow.

As you know, I recently pled guilty to a single felony count of Obstruction as defined in 18 U.S.C. §1512. Furthermore, as part of my plea agreement with the Government, I admitted in open court that I had on several occasions nonconsensual sexual contact with my former case manager, Cathy McBroom, and my former secretary, Donna Wilkerson. I hereby reaffirm my plea of guilty to the Obstruction count, and also my admissions with respect to my conduct toward Cathy McBroom and Donna Wilkerson.

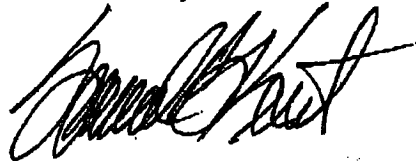
For several years, influenced by misguided emotions that probably stemmed from innate personality flaws exacerbated by alcohol abuse and a series of life tragedies (most notably the emotional horror I endured for years in connection with my first wife, Mary Ann's slow, excruciating death from brain cancer), I began relating to Mrs. McBroom and Mrs. Wilkerson in inappropriate ways. Perhaps I was attempting to meet an unfulfilled need for affection. In doing so, I allowed myself to maintain unrealistic views of how they perceived me and my actions. I sincerely regret that my actions caused them and their families so much emotional distress.

I am not proud of the way I have conducted myself in relation to Mrs. McBroom, Mrs. Wilkerson, and the Fifth Circuit Special Investigative Committee. Nevertheless, I remain proud of other aspects of my 18-year record of service on the federal bench. From 1990 through 2008, I closed almost 13,000 cases. I always took an active role in seeking to fairly level the playing field for many, many families who sought justice against large corporations and business interests.

I believe that if I had sought and received proper therapy following the death of my first wife, Mary Ann, and proper treatment for my alcohol abuse, none of these problems would have ever occurred. I hope that in the future, the federal judiciary may take steps to proactively promote and safeguard the emotional and mental health of its members. This is particularly important since federal judges naturally become alienated from many friends and colleagues upon undertaking service to the judiciary. Some of us faced with this isolation and altered identity bear the weight of our obligations and responsibilities in self-destructive ways. I am sure I am not the only federal judge who has faced severe emotional and mental problems as well as substance abuse.

In conclusion, I stand before you humbly and shamefully knowing that you must now consider me for impeachment. I ask that you take into account not only my acute failings, but also, my years of dedication to the service of my Country. Unlike other federal employees, I have no vested pension or retirement if I am removed from office. As a practical matter, given the state of my personal affairs, removal from office will render me penniless and without the health insurance I desperately need to continue treating my diabetes and related complications, as well as my continuing mental health problems. Please take these realities into consideration to the extent you may.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel B. Kent', written in a cursive style.

Samuel B. Kent

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
515 RUSK STREET, SUITE 8631
HOUSTON, TEXAS 77002

CHAMBERS OF
SAMUEL B. KENT

PHONE: 713-250-5530
FAX: 713-250-5519

June 2, 2009

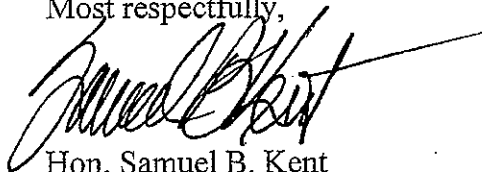
His Excellency Barack Obama
President of the United States
The White House

PERSONAL AND CONFIDENTIAL

Dear President Obama:

I hereby resign from my position as United States District Judge for the Southern District of Texas *effective June 1, 2010*.

Most respectfully,



Hon. Samuel B. Kent
United States District Judge
Southern District of Texas

cc: Hon. Edith Jones, Chief Judge
United States Court of Appeals for the fifth Circuit

Hon. Hayden Head, Chief Judge
Southern District of Texas

Mr. William Burchill, General Counsel
Administrative Office of the United States Courts

Michael Milby, District Clerk
Southern District of Texas

Special Impeachment Task Force for the House Judiciary Committee

AUG 28 2008

Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

08-598

UNITED STATES OF AMERICA §

CRIMINAL NO.

v. §

Count One: 18 U.S.C. § 2244(b)

SAMUEL B. KENT §

Count Two: 18 U.S.C. §
2241(a)(1)

Defendant. §

Count Three: 18 U.S.C. § 2244(b)

INDICTMENT

The grand jury charges:

INTRODUCTION

At all times relevant to this indictment:

1. Defendant SAMUEL B. KENT was a United States District Judge in the Southern District of Texas. From 1990 to 2008, defendant KENT was assigned to the Galveston Division of the Southern District, and his chambers and courtroom were located in the United States Post Office and Courthouse in Galveston, Texas.
2. Person A was an employee of the Office of the Clerk of Court for the Southern District of Texas, and served as a Deputy Clerk in the Galveston Division assigned to defendant KENT's courtroom.

COUNT ONE
(18 U.S.C. § 2244(b))
Abusive Sexual Contact

3. On or about August 29, 2003, in the Southern District of Texas, in the special maritime and territorial jurisdiction of the United States, defendant

SAMUEL B. KENT

did knowingly engage in sexual contact with another person without that other person's permission, to wit: defendant KENT, at the United States Post Office and Courthouse in Galveston, Texas, did engage in the intentional touching, both directly and through the clothing, of the groin, breast, inner thigh, and buttocks of Person A with an intent to abuse, humiliate, harass, degrade, and arouse and gratify the sexual desire of Person A.

All in violation of Title 18, United States Code, Section 2244(b).

COUNT TWO
(18 U.S.C. § 2241(a)(1))
Attempted Aggravated Sexual Abuse

4. On or about March 23, 2007, in the Southern District of Texas, in the special maritime and territorial jurisdiction of the United States, defendant

SAMUEL B. KENT

did knowingly attempt to cause another person to engage in a sexual act by

using force against that other person, to wit: defendant KENT, at the United States Post Office and Courthouse in Galveston, Texas, attempted to cause Person A to engage in contact between Person A's mouth and defendant KENT's penis by forcing Person A's head towards defendant KENT's groin area.

All in violation of Title 18, United States Code, Section 2241(a)(1).

COUNT THREE
(18 U.S.C. § 2244(b))
Abusive Sexual Contact

5. On or about March 23, 2007, in the Southern District of Texas, in the special maritime and territorial jurisdiction of the United States, defendant

SAMUEL B. KENT

did knowingly engage in sexual contact with another person without that other person's permission, to wit: defendant KENT, at the United States Post Office and Courthouse in Galveston, Texas, did engage in the intentional touching, both directly and through the clothing, of the groin, breast, inner thigh, and buttocks of Person A with an intent to abuse, humiliate, harass, degrade, and arouse and gratify the sexual desire of Person A.

All in violation of Title 18, United States Code, Section 2244(b).

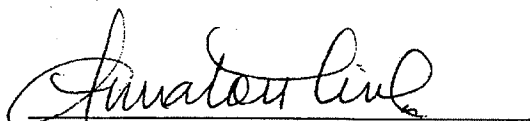
A true bill.

ORIGINAL SIGNATURE ON FILE

By: _____
Grand Jury Foreperson

WILLIAM M. WELCH II
Chief, Public Integrity Section

By:



Peter J. Ainsworth
John P. Pearson
AnnaLou T. Tirol
Trial Attorneys

TRUE COPY I CERTIFY
ATTEST:
MICHAEL N. MILBY, Clerk of Court
By: Michael N. Milby
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAN - 6 2009

Michael N. Milby, Clerk of Court

UNITED STATES OF AMERICA §

v. §

SAMUEL B. KENT §

Defendant. §

CRIMINAL NO. 08 - 596

Count One: 18 U.S.C. § 2244(b)

Count Two: 18 U.S.C. § 2241(a)(1)

Count Three: 18 U.S.C. § 2244(b)

Count Four: 18 U.S.C. § 2241(a)(1)

Count Five: 18 U.S.C. § 2244(b)

Count Six: 18 U.S.C. § 1512(c)(2)

SUPERSEDING INDICTMENT

The grand jury charges:

INTRODUCTION

At all times relevant to this indictment:

1. Defendant SAMUEL B. KENT was a United States District Judge in the Southern District of Texas. From 1990 to 2008, defendant KENT was assigned to the Galveston Division of the Southern District, and his chambers and courtroom were located in the United States Post Office and Courthouse in Galveston, Texas.
2. Person A was an employee of the Office of the Clerk of Court for the Southern District of Texas, and served as a Deputy Clerk in the Galveston Division assigned to defendant KENT's courtroom.

3. Person B was an employee of the United States District Court for the Southern District of Texas.

COUNT ONE
(18 U.S.C. § 2244(b))
Abusive Sexual Contact

4. On or about August 29, 2003, in the Southern District of Texas, in the special maritime and territorial jurisdiction of the United States, defendant

SAMUEL B. KENT

did knowingly engage in sexual contact with another person without that other person's permission, that is: defendant KENT, at the United States Post Office and Courthouse in Galveston, Texas, did engage in the intentional touching, both directly and through the clothing, of the groin, breast, inner thigh, and buttocks of Person A with an intent to abuse, humiliate, harass, degrade, and arouse and gratify the sexual desire of any person.

All in violation of Title 18, United States Code, Section 2244(b).

COUNT TWO
(18 U.S.C. § 2241(a)(1))
Attempted Aggravated Sexual Abuse

5. On or about March 23, 2007, in the Southern District of Texas, in the special maritime and territorial jurisdiction of the United States, defendant

SAMUEL B. KENT

did knowingly attempt to cause another person to engage in a sexual act by using force against that other person, that is: defendant KENT, at the United States Post Office and Courthouse in Galveston, Texas, attempted to cause Person A to engage in contact between Person A's mouth and defendant KENT's penis by forcing Person A's head towards defendant KENT's groin area.

All in violation of Title 18, United States Code, Section 2241(a)(1).

COUNT THREE
(18 U.S.C. § 2244(b))
Abusive Sexual Contact

6. On or about March 23, 2007, in the Southern District of Texas, in the special maritime and territorial jurisdiction of the United States, defendant

SAMUEL B. KENT

did knowingly engage in sexual contact with another person without that other person's permission, that is: defendant KENT, at the United States

Post Office and Courthouse in Galveston, Texas, did engage in the intentional touching, directly and through the clothing, of the groin, breast, inner thigh, and buttocks of Person A with an intent to abuse, humiliate, harass, degrade, and arouse and gratify the sexual desire of any person.

All in violation of Title 18, United States Code, Section 2244(b).

COUNT FOUR
(18 U.S.C. § 2241(a)(1))
Aggravated Sexual Abuse

7. On one or more occasions between January 7, 2004, and continuing until at least January 2005, any one and all of which constitute the offense of Aggravated Sexual Abuse, but which the Grand Jury cannot further differentiate by date, in the Southern District of Texas, in the special maritime and territorial jurisdiction of the United States, defendant

SAMUEL B. KENT

did knowingly cause and attempt to cause another person to engage in a sexual act by using force against that other person, that is: defendant KENT, at the United States Post Office and Courthouse in Galveston, Texas, did engage and attempt to engage in contact between his mouth and Person B's vulva by force and did penetrate and attempt to penetrate the genital opening of Person B by a hand and finger by force with an intent to abuse,

humiliate, harass, degrade, and arouse and gratify the sexual desire of any person.

All in violation of Title 18, United States Code, Section 2241(a)(1).

COUNT FIVE
(18 U.S.C. § 2244(b))
Abusive Sexual Contact

8. On one ore more occasions between January 7, 2004, and continuing until at least January 2005, any one and all of which constitute the offense of Abusive Sexual Contact, but which the Grand Jury cannot further differentiate by date, in the Southern District of Texas, in the special maritime and territorial jurisdiction of the United States, defendant

SAMUEL B. KENT

did knowingly engage in sexual contact with another person without that other person's permission, that is: defendant KENT, at the United States Post Office and Courthouse in Galveston, Texas, did engage in the intentional touching, directly and through the clothing, of the genitalia, groin, breast, inner thigh, and buttocks of Person B with an intent to abuse, humiliate, harass, degrade, and arouse and gratify the sexual desire of any person.

All in violation of Title 18, United States Code, Section 2244(b).

COUNT SIX
(18 U.S.C. § 1512(c)(2))
Obstruction of Justice

9. On or about May 21, 2007, Person A filed a judicial misconduct complaint with the United States Court of Appeals for the Fifth Circuit. In response, the Fifth Circuit appointed a Special Investigative Committee to investigate Person A's complaint.
10. On or about June 8, 2007, at defendant KENT's request and upon notice from the Special Investigative Committee, defendant KENT appeared before the Committee.
11. As part of its investigation, the Committee sought to learn from defendant KENT and others whether defendant KENT had engaged in unwanted sexual contact with Person A and individuals other than Person A.
12. On or about June 8, 2007, in the Southern District of Texas, defendant

SAMUEL B. KENT

did corruptly obstruct, influence, and impede an official proceeding, and attempt to do so; that is, defendant KENT falsely stated to the Special Investigative Committee of the United States Court of Appeals for the Fifth Circuit that the extent of his unwanted sexual contact with Person B was one kiss and that when told by Person B his advances were unwelcome no

further contact occurred, when in fact and as he well knew defendant KENT had engaged in repeated unwanted sexual assaults of Person B, in order to obstruct, influence, and impede the Fifth Circuit's investigation into the misconduct complaint filed by Person A.

All in violation of Title 18, United States Code, Section 1512(c)(2).

A true bill.

By: ORIGINAL SIGNATURE ON FILE

WILLIAM M. WELCH II
Chief, Public Integrity Section

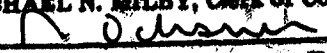
By:



Peter J. Ainsworth
John P. Pearson
AnnaLou T. Tirol
Public Integrity Section

**TRUE COPY I CERTIFY
ATTEST:**

MICHAEL N. MILBY, Clerk of Court

By: 
Deputy Clerk



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

SAMUEL B. KENT

Defendant.

§
§
§
§
§
§
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§

CRIMINAL NO. 4:08CR0596-RV

PLEA AGREEMENT

The United States of America, by and through its undersigned attorneys for the Public Integrity Section, Criminal Division, United States Department of Justice, and SAMUEL B. KENT (hereinafter referred to as the “defendant”) enter into the following agreement:

Charges and Statutory Penalties

1. The defendant agrees to plead guilty to Count Six, Obstruction of Justice, in violation of Title 18, United States Code, Section 1512(c)(2), of the Superseding Indictment. The United States agrees to seek dismissal of Counts One through Five of the Superseding Indictment after sentencing.
2. The defendant understands that Count Six has the following essential elements, each of which the United States would be required to prove beyond a reasonable doubt at trial:
 - a. First, the defendant corruptly obstructed, influenced, or impeded, or attempted to corruptly obstruct, influence, or impede an official proceeding;
 - b. Second, the defendant acted knowingly;

c. Third, the official proceeding is a proceeding before a judge or court of the United States.

3. The defendant understands that pursuant to 18 U.S.C. §1512(c)(2), Count Six carries a maximum sentence of twenty years of imprisonment, a fine of \$250,000, a \$100 special assessment, and a three-year term of supervised release, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made.

4. If the Court accepts the defendant's pleas of guilty and the defendant fulfills each of the terms and conditions of this agreement, the United States agrees that it will not further prosecute the defendant for any crimes described in the attached factual basis or for any conduct of the defendant now known to the Public Integrity Section and to the law enforcement agents working with the Public Integrity Section. Nothing in this agreement is intended to provide any limitation of liability arising out of any acts of violence.

Factual Stipulations

5. The defendant agrees that the attached "Factual Basis for Plea" fairly and accurately describes the defendant's actions and involvement in the offense to which the defendant is pleading guilty. The defendant knowingly, voluntarily and truthfully admits the facts set forth in the Factual Basis for Plea.

Sentencing

6. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by

the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that it has computed, and may raise that advisory sentence up to and including the statutory maximum sentence or lower that advisory sentence. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense(s) identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

7. The United States reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, the United States further reserves the right to make any recommendation as to the quality and quantity of punishment.

8. The defendant is aware that any estimate of the probable sentence or the probable sentencing range relating to the defendant pursuant to the advisory Sentencing Guidelines that the defendant may have received from any source is only a prediction and not a promise, and is not

binding on the United States, the probation office, or the court, except as expressly provided in this plea agreement.

Sentencing Guidelines Stipulations

9. The defendant understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the guidelines and policies promulgated by the United States Sentencing Commission, Guidelines Manual 2007 (hereinafter “Sentencing Guidelines” or “USSG”). Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties stipulate to the following:

- a. The Base Offense Level pursuant to USSG §2J1.2(a) is 14.
- b. Acceptance of Responsibility

Provided that the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the United States, through the defendant’s allocution and subsequent conduct prior to the imposition of sentence, the United States agrees that a 2-level reduction would be appropriate, pursuant to U.S.S.G § 3E1.1(a).

The United States, however, may oppose any adjustment for acceptance of responsibility if the defendant:

- i. fails to admit a complete factual basis for the plea at the time the defendant is sentenced or at any other time;
- ii. challenges the adequacy or sufficiency of the United States’ offer of proof at any time after the plea is entered;
- iii. denies involvement in the offense;

- iv. gives conflicting statements about that involvement or is untruthful with the Court, the United States or the Probation Office;
- v. fails to give complete and accurate information about the defendant's financial status to the Probation Office;
- vi. obstructs or attempts to obstruct justice, prior to sentencing;
- vii. has engaged in conduct not currently known to the United States prior to signing this Plea Agreement which reasonably could be viewed as obstruction or an attempt to obstruct justice, and has failed to fully disclose such conduct to the United States prior to signing this Plea Agreement;
- viii. fails to appear in court as required;
- ix. after signing this Plea Agreement, engages in additional criminal conduct; or
- x. attempts to withdraw the plea of guilty.

c. Agreement as to Maximum Sentencing Recommendation by the Government:

The United States agrees that the maximum term of imprisonment that it may seek at sentencing is three years, or 36 months, and it may seek a sentence less than 36 months if it is within the applicable Guidelines range.

d. Criminal History Category

Based upon the information now available to the United States (including representations by the defense), the defendant has no criminal history points and is in Criminal History Category I.

Agreement as to Sentencing Allocation

10. The parties have no other agreement as to the Guidelines calculations and may argue for upward or downward adjustments or departures. The parties agree that either party may seek a sentence outside of the Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

11. In support of any variance argument, the parties agree to provide reports, motions, memoranda of law and documentation of any kind on which the defendant intends to rely at sentencing not later than twenty-one days before sentencing. Any basis for sentencing with respect to which all expert reports, motions, memoranda of law and documentation have not been provided to the United States at least twenty-one days before sentencing shall be deemed waived.

Court Not Bound by the Plea Agreement

12. It is understood that pursuant to Federal Rules of Criminal Procedure 11(c)(1)(B) and 11(c)(3)(B) the Court is not bound by the above stipulations, either as to questions of fact or as to the parties' determination of the applicable Guidelines range, or other sentencing issues. In the event that the Court considers any Guidelines adjustments, departures, or calculations different from any stipulations contained in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in Title 18, United States Code, Section 3553(a), the parties reserve the right to answer any related inquiries from the Court.

Appeal Waiver

13. The defendant is aware that the defendant has the right to challenge the defendant's sentence and guilty plea on direct appeal. The defendant is also aware that the defendant may, in some circumstances, be able to argue that the defendant's guilty plea should be set aside, or sentence set aside or reduced, in a collateral challenge (such as pursuant to a motion under 28 U.S.C. § 2255). Knowing that, and in consideration of the concessions made by the United States in this Agreement, the defendant knowingly and voluntarily waives his right to appeal or collaterally challenge: (a) the defendant's guilty plea and any other aspect of the defendant's conviction, including, but not limited to, any rulings on pretrial suppression motions or any other pretrial dispositions of motions and issues; and (b) the defendant's sentence or the manner in which [his/her] sentence was determined pursuant to 18 U.S.C. §3742, except to the extent that the Court sentences the defendant to a period of imprisonment longer than the statutory maximum, or the Court departs upward from the applicable Sentencing Guideline range pursuant to the provisions of U.S.S.G. §5K.2 or based on a consideration of the sentencing factors set forth in 18 U.S.C. §3553(a).

14. The defendant further understands that nothing in this agreement shall affect Public Integrity's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the defendant's attorney. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the waiver of the defendant's right to appeal the sentence to be imposed in this case was knowing and voluntary.

15. The defendant's waiver of rights to appeal and to bring collateral challenges shall not

apply to appeals or challenges based on new legal principles in the Fifth Circuit Court of Appeals or Supreme Court cases decided after the date of this Agreement that are held by the Fifth Circuit Court of Appeals or Supreme Court to have retroactive effect.

Release/Detention

16. The defendant acknowledges that while the United States will not seek a change in the defendant's release conditions pending sentencing, the final decision regarding the defendant's bond status or detention will be made by the Court at the time of the defendant's plea of guilty. Should the defendant engage in further criminal conduct or violate any conditions of release prior to sentencing, however, the United States may move to change the defendant's conditions of release or move to revoke the defendant's release.

Breach of Agreement

17. The defendant understands and agrees that if, after entering this Plea Agreement, the defendant fails specifically to perform or to fulfill completely each and every one of the defendant's obligations under this Plea Agreement, or engages in any criminal activity prior to sentencing, the defendant will have breached this Plea Agreement. In the event of such a breach: (a) the United States will be free from its obligations under the Agreement; (b) the defendant will not have the right to withdraw the guilty plea; (c) the defendant shall be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the United States will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding, all statements made by the defendant and any of the information or materials provided by the defendant, including such statements, information and materials provided pursuant to this Agreement or during the course

of any debriefings conducted in anticipation of, or after entry of this Agreement, including the defendant's statements made during proceedings before the Court pursuant to Fed. R. Crim. P. 11.

18. The defendant understands that Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. The defendant knowingly and voluntarily waives the rights which arise under these rules.

19. The defendant understands and agrees that the United States shall only be required to prove a breach of this Plea Agreement by a preponderance of the evidence. The defendant further understands and agrees that the United States need only prove a violation of federal, state, or local criminal law by probable cause in order to establish a breach of this Plea Agreement.

20. Nothing in this Agreement shall be construed to permit the defendant to commit perjury, to make false statements or declarations, to obstruct justice, or to protect the defendant from prosecution for any crimes not included within this Agreement or committed by the defendant after the execution of this Agreement. The defendant understands and agrees that the United States reserves the right to prosecute the defendant for any such offenses. The defendant further understands that any perjury, false statements or declarations, or obstruction of justice relating to the defendant's obligations under this Agreement shall constitute a breach of this Agreement. However, in the event of such a breach, the defendant will not be allowed to withdraw this guilty plea.

Waiver of Statute of Limitations

21. It is further agreed that should any conviction following the defendant's plea of

guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the United States has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

Complete Agreement

22. No other agreements, promises, understandings, or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by the defendant, defense counsel, and a prosecutor for the Public Integrity Section.

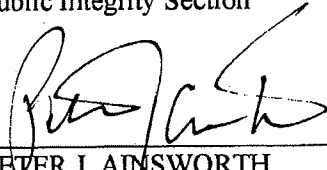
23. The defendant further understands that this Agreement is binding only upon the Public Integrity Section, Criminal Division, United States Department of Justice. This Agreement does not bind the Civil Division or any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against the defendant.

24. If the foregoing terms and conditions are satisfactory, the defendant may so indicate by signing the Agreement in the space indicated below and returning the original to me once it has been signed by the defendant and by you or other defense counsel.

Respectfully submitted,

WILLIAM M. WELCH II
Chief
Public Integrity Section

By:

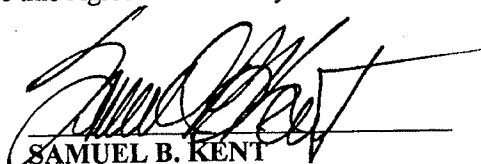


PETER J. AINSWORTH
Senior Deputy Chief
JOHN P. PEARSON
ANNALOU TIROL
Trial Attorneys
Public Integrity Section
1400 New York Ave. NW
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(202) 514-1412

DEFENDANT'S ACCEPTANCE

I have read this agreement in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty, and I believe this Agreement is in my best interest.


Date: Feb 23rd, 2009



SAMUEL B. KENT
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read each of the pages constituting this Plea Agreement, reviewed them with my client, and discussed the provisions of the Agreement with my client, fully. These pages accurately and completely sets forth the entire Plea Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: 23 Feb 09


DICK DEGUERIN, ESQ.
Attorney for the Defendant

**TRUE COPY I CERTIFY
ATTEST:**
MICHAEL N. MILBY, Clerk of Court
By 
Deputy Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

SAMUEL B. KENT

Defendant.

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CRIMINAL NO. 4:08CR0596-RV

FACTUAL BASIS FOR PLEA

The United States of America, by and through its undersigned attorneys within the United States Department of Justice, Criminal Division, Public Integrity Section, and the defendant, SAMUEL B. KENT, personally and through his undersigned counsel, hereby stipulate to the following facts pursuant to United States Sentencing Guideline § 6A1.1 and Rule 32(c)(1) of the Federal Rules of Criminal Procedure:

INTRODUCTION

At all times relevant hereto:

1. Defendant SAMUEL B. KENT was a United States District Judge in the Southern District of Texas. From 1990 to 2008, defendant KENT was assigned to the Galveston Division of the Southern District, and his chambers and courtroom were located in the United States Post Office and Courthouse in Galveston, Texas.
2. Person A was an employee of the Office of the Clerk of Court for the Southern District of Texas, and served as a Deputy Clerk in the Galveston Division assigned to defendant KENT's courtroom.
3. Person B was an employee of the United States District Court for the Southern District of Texas, and served as the secretary to defendant KENT.

4. In August 2003 and March 2007, the defendant engaged in non-consensual sexual contact with Person A without her permission.
5. From 2004 through at least 2005, the defendant engaged in non-consensual sexual contact with Person B without her permission.


OBSTRUCTION OF JUSTICE

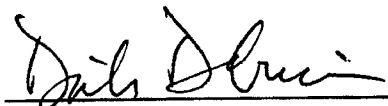
6. On or about May 21, 2007, Person A filed a judicial misconduct complaint with the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"). In response, the Judicial Council of the Fifth Circuit appointed a Special Investigative Committee to investigate Person A's complaint.
7. On or about June 8, 2008, at defendant KENT's request and upon notice from the Special Investigative Committee, defendant KENT appeared before the Committee.
8. As part of its investigation, the Committee and the Judicial Council sought to learn from defendant KENT and others whether defendant KENT had engaged in unwanted sexual contact with Person A and individuals other than Person A.
9. On June 8, 2007, in Houston, Texas, the defendant appeared before the Special Investigative Committee of the Fifth Circuit.
10. The defendant falsely testified regarding his unwanted sexual contact with Person B by stating to the Committee that the extent of his non-consensual contact with Person B was one kiss, when in fact and as he knew the defendant had engaged in repeated non-consensual sexual contact with Person B without her permission.
11. The defendant also falsely testified regarding his unwanted sexual contact with Person B

by stating to the Committee that when told by Person B that his advances were unwelcome, no further contact occurred, when in fact and as he knew the defendant continued his non-consensual contacts even after she asked him to stop.

All in violation of Title 18, United States Code, Section 1512(c)(2).

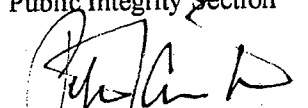
FOR THE DEFENDANT



SAMUEL B. KENT
Defendant


DICK DEGUERIN
Counsel for the Defendant

FOR THE UNITED STATES

WILLIAM M. WELCH II
Chief
Public Integrity Section


PETER J. AINSWORTH
JOHN P. PEARSON
ANNALOU T. TIROL
Public Integrity Section
Criminal Division
U.S. Department of Justice
1400 New York Ave., NW -- 12th Floor
Washington, DC 20530
T: 202-307-2281
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TRUE COPY I CERTIFY
ATTEST:
MICHAEL N. MILBY, Clerk of Court
By 
Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA .
vs. . H-08-CR-596
HOUSTON, TEXAS
FEBRUARY 23, 2009
9:23 A.M.
SAMUEL B. KENT .
.

TRANSCRIPT OF PLEA HEARING
BEFORE THE HONORABLE C. ROGER VINSON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

Peter Joseph Ainsworth
John P. Pearson
AnnaLou Tirol
US Department of Justice
Criminal Division
1400 New York Ave NW
Washington, DC 20005

FOR THE DEFENDANT:

Dick DeGuerin
Sean Ryan Buckley
Catherine Baen
DeGuerin and Dickson
1018 Preston Avenue
7th Floor
Houston, Texas 77002

OFFICIAL COURT REPORTER:

Cheryll K. Barron, CSR, CM, FCRR
U.S. District Court
515 Rusk Street
Houston, Texas 77002

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

P R O C E E D I N G S

1
2 THE COURT REPORTER: Good morning. Please be seated.

3 Let me apologize for the delay, to some of you
4 who have been here waiting; but we've had several things to go
5 over this morning and we're now ready to proceed.

09:23 6 Pursuant to notice, we're here in the case of the
7 United States of America versus Samuel B. Kent, Case Number
8 4:08-CR-0596. I think we're ready to proceed.

9 Is the government ready?

09:24 10 MR. AINSWORTH: Yes, your Honor.

11 THE COURT: Is the defendant ready?

12 MR. DeGUERIN: We are, your Honor.

13 Dick DeGuerin, Catherine Baen, and John Buckley
14 for Judge Kent.

09:24 15 THE COURT: All right.

16 MR. AINSWORTH: Peter Ainsworth, John Pearson, and
17 AnnaLou Tirol on behalf of the United States, your Honor.

18 THE COURT: All right. And, then, counsel, pursuant
19 to the matters we have just discussed, I think there's
09:24 20 something that you need to present to me. So, why don't you
21 come up in front of the clerk's bench with the defendant,
22 counsel?

23 And however many counsel need to be here -- I
24 think we only need Mr. DeGuerin and Mr. Ainsworth.

09:25 25 This is a very unusual situation, but I think we

09:25 1 have a matter to be presented. Is that right, Mr. Ainsworth?

2 MR. AINSWORTH: That's right, your Honor.

3 THE COURT: And we've gone over this, Mr. DeGuerin;
4 and you and your client are ready to proceed?

09:25 5 MR. DeGUERIN: We are ready to proceed, your Honor.

6 THE COURT: And I'm told, then, that the defendant is
7 prepared to enter a plea of guilty to Count 6. Is that
8 correct?

9 MR. DeGUERIN: That's correct, your Honor.

09:25 10 THE COURT: Mr. Ainsworth, you agree?

11 MR. AINSWORTH: That is correct, your Honor.

12 THE COURT: And let me ask Mr. Kent if that's what he
13 wants to do.

14 THE DEFENDANT: Yes, sir.

09:25 15 THE COURT: If you'll raise your right hand, please,
16 sir, I'll have the clerk administer the oath to you.

17 THE CLERK: Do you solemnly swear that the statements
18 you shall make will be the truth, so help you God?

19 THE DEFENDANT: I do.

09:25 20 THE COURT: Tell me your full name, please.

21 THE DEFENDANT: Samuel B. Kent.

22 THE COURT: Everyone in the courtroom calls you "Judge
23 Kent"; but today, for purposes of this proceeding, it's going
24 to be "Mr. Kent" for me. I think you understand why.

09:26 25 THE DEFENDANT: Yes, sir.

09:26 1 THE COURT: How old are you, Mr. Kent?
2 THE DEFENDANT: Fifty-nine. I'll be 60 June 22nd.
3 THE COURT: And your date of birth?
4 THE DEFENDANT: June 22nd, 1949.
09:26 5 THE COURT: And the last four digits of your Social
6 Security number?
7 THE DEFENDANT: 373 --
8 THE COURT REPORTER: I can't hear you, Judge. I can't
9 hear you.
09:26 10 THE COURT: Why don't you move a little closer to the
11 court reporter so she can hear you better, and get that mic in
12 front of you.
13 State the last four digits of your Social
14 Security number, please.
09:26 15 THE DEFENDANT: 3733.
16 THE COURT: And your education, you have a college
17 degree and a law degree. Is that correct?
18 THE DEFENDANT: Yes, sir.
19 THE COURT: Mr. Kent, you understand the proceedings
09:27 20 that we're going through under Rule 11 of the Rules of Criminal
21 Procedure. You've been through this many times, but let me
22 advise you that you have the right to enter a plea of guilty.
23 But before I can accept that plea, I have to be completely
24 satisfied about every aspect of it. So, for the next few
09:27 25 minutes I will be asking you questions. And if at any time you

09:27 1 do not understand a question or you want me to explain it or
2 repeat it, just let me know; and I'll be happy to do that.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. DeGuerin is your attorney, and he's
09:27 5 standing beside you. And at any time during my questioning, if
6 you want to consult with him or ask him a question before you
7 respond to my question, just let me know; and I'll give you an
8 opportunity to do that.

9 THE DEFENDANT: Yes, sir.

09:27 10 THE COURT: And, of course, you have been sworn and
11 your answers are being given under oath and they must be
12 truthful and complete. And if they're not truthful, I'm sure
13 you realize that you could be charged separately with the very
14 serious offense of perjury, making a false statement under
09:28 15 oath.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Your current employment is what?

18 THE DEFENDANT: United States District Judge.

19 THE COURT: Are you married or single?

09:28 20 THE DEFENDANT: Married.

21 THE COURT: And your residence is in what city?

22 THE DEFENDANT: Santa Fe.

23 THE COURT: Santa Fe?

24 THE DEFENDANT: Yes, sir, Santa Fe, Texas.

09:28 25 THE COURT: You need to speak a little louder. I

09:28

1 think the court reporter is having trouble hearing you.

2 Mr. Kent, have you ever been treated at any time
3 for any mental illness?

4 THE DEFENDANT: Yes, sir.

09:28

5 THE COURT: And tell me what that might be.

6 THE DEFENDANT: I was treated by a psychiatrist and
7 psychologist in the 1999 to 2003 period, following the death of
8 my wife of 31 years, from brain cancer. And I have been under
9 the care and treatment of psychiatrists and psychologists and
10 an internal medicine doctor for psychiatric problems,
11 psychological problems, and diabetes for about the last three
12 years.

09:28

13 THE COURT: And that has to do with not only the
14 charges in this case but a number of things. Is that what
15 you're telling me?

09:29

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you any prescription medication for
18 that, that you're taking? And I realize you're taking some
19 other medications, but are you taking any prescription
20 medications for that?

09:29

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do any of those medications in any way
23 impair your ability to think clearly and logically as far as
24 you can tell?

09:29

25 THE DEFENDANT: Not for purposes of today.

09:29 1 THE COURT: You think this morning you're thinking
2 clearly and logically?

3 THE DEFENDANT: For purposes of today, yes, sir.

4 THE COURT: Within the past 24 hours have you taken
09:29 5 any drugs, narcotics, or consumed any alcoholic beverages?

6 THE DEFENDANT: I have taken my regular medication
7 this morning, but it has not impaired my judgment to understand
8 what we're doing here today.

9 THE COURT: You take your prescribed medication in the
09:29 10 morning and in the evening?

11 THE DEFENDANT: Yes, sir. And sometimes in the middle
12 of the day.

13 THE COURT: And what specifically did you take?

14 MR. DeGUERIN: Judge, I can list those for you.

09:30 15 THE COURT: Would you, please, just for the record?

16 MR. DeGUERIN: For his diabetes "Metforsin."

17 THE DEFENDANT: "Metformin."

18 MR. DeGUERIN: M-E-T-F-O-R-M-I-N; Avandia,
19 A-V-A-N-D-I-A; Cozzar, C-O-Z-Z-A-R; Simovastin,
09:30 20 S-I-M-O-V-A-S-T-I-N; and for his depression, anxiety, and
21 psychiatric -- psychological conditions, Clonapam,
22 C-L-O-N-A-P-A-M; Lexapro, L-E-X-A-P-R-O; and Abilify,
23 A-B-I-L-I-F-Y.

24 THE COURT: And, again, for the record, Mr. Kent, none
09:30 25 of those seem to impair your ability to think clearly and

09:30 1 logically and you I feel that you're thinking clearly this
2 morning?

3 THE DEFENDANT: I'm competent for today's proceeding.

4 THE COURT: Mr. DeGuerin, can you confirm that?

09:31 5 MR. DeGUERIN: I can confirm that, your Honor. As
6 recently as this Saturday, I spoke with his psychiatrist and
7 his internal medicine specialist as well as his psychologist.

8 THE COURT: Mr. Kent, I think you realize that, under
9 the law and the Constitution of the United States, any person
09:31 10 accused of a serious crime is entitled to certain rights; and
11 you know what they are. I'll go over them with you to make
12 sure there's no misunderstanding.

13 First of all, you have the right to a trial by
14 jury on this charge -- or these charges. And at that trial,
09:31 15 you're entitled to have a lawyer represent you and have the
16 jury determine whether you're guilty or not guilty. You
17 understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You're also entitled to have that jury
09:31 20 make any factual determination that might possibly affect the
21 maximum sentence that you're exposed to under the law. You
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You're entitled to present evidence at
09:31 25 that trial if you choose to do so, and that may include

09:31 1 testifying yourself. You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: While you may testify at your trial, you
4 cannot be forced to testify because, under the law and the
09:32 5 Constitution, you cannot be forced to incriminate yourself with
6 respect to these criminal charges. And to that extent, you
7 have an absolute right to remain silent. Do you understand
8 that?

9 THE DEFENDANT: Yes, sir.

09:32 10 THE COURT: You also have the right to confront the
11 government's witnesses, and that means you may see and hear
12 those witnesses and have your attorney cross-examine them in
13 your behalf and in your presence in open court. Do you
14 understand that?

09:32 15 THE DEFENDANT: Yes, sir.

16 THE COURT: You may also subpoena witnesses; and that
17 means you can compel witnesses to testify for you if you think
18 that would be helpful in your defense, even if they do not want
19 to do that voluntarily. Do you understand?

09:32 20 THE DEFENDANT: Yes, sir.

21 THE COURT: And importantly, you have the right to
22 persist in the prior plea of not guilty that you have entered
23 in this case. And in that event, the burden is entirely upon
24 the government to prove your guilt to a jury's satisfaction
09:32 25 with proof beyond a reasonable doubt, which is a very high

09:32 1 standard of proof.

2 And under the law and the Constitution, you are
3 presumed to be innocent, which means you do not have to prove
4 your innocence or prove anything at all. You simply must be
09:33 5 present for the trial, and the burden of proof lies entirely on
6 the government. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: However, if I accept your guilty plea this
9 morning, each of those rights that I have just identified for
09:33 10 you will be waived and given up. Do you fully understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And knowing that, is it your intent to
13 enter a plea of guilty this morning to this charge?

14 THE DEFENDANT: Yes, sir.

09:33 15 THE COURT: Do you realize the difference between a
16 guilty plea and a not guilty plea?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The plea of guilty has the legal effect of
19 saying the charge is true. You understand that?

09:33 20 THE DEFENDANT: Yes, sir.

21 THE COURT: And if I accept your guilty plea this
22 morning, do you understand that there will be no further trial
23 of any kind regarding this charge against you?

24 THE DEFENDANT: Yes, sir.

09:33 25 THE COURT: And by pleading guilty, you're giving up

09:33 1 any possible defenses you may have to the charge. You
2 understand that, too?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Likewise, you cannot appeal the question
09:33 5 of your guilt or innocence when you enter a plea of guilty. Do
6 you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If I accept your guilty plea this morning,
9 it will be final; and that means you will not be able to think
09:34 10 about it and later change your mind and withdraw that guilty
11 plea. You fully understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You're charged in Count 6 of the
14 superseding indictment with a violation of Title 18, United
09:34 15 States Code, Section 1512(c)(2), which is specifically the
16 offense of corruptly obstructing, influencing, or impeding or
17 attempting to do so, the investigation or an official
18 proceeding.

19 To establish this offense, the government has to
09:34 20 prove these things with proof beyond a reasonable doubt:

21 First, that you did corruptly obstruct, influence
22 or impede, or attempt to do so, an official proceeding;

23 And, second, that you acted knowingly;

24 Third, that the official proceeding involved was
09:35 25 a proceeding before a judge or court of the United States;

09:35

1

And that the natural and probable effect of your conduct would be the interference with the due administration of justice.

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3

4

Do you understand that?

09:35

5

THE DEFENDANT: Yes, sir.

6

THE COURT: Have you discussed this charge thoroughly with Mr. DeGuerin, your attorney?

7

8

THE DEFENDANT: Yes, sir.

9

THE COURT: You understand what the charge is all about?

09:35

10

11

THE DEFENDANT: Yes, sir.

12

THE COURT: I have a factual basis that has been filed in this case, which has three numbered pages and appears to have been signed by you and your attorney Mr. DeGuerin and Mr. Ainsworth on behalf of the Public Integrity Section of the Department of Justice. That is your signature on this agreement?

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14

09:36

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THE DEFENDANT: Yes, sir.

19

THE COURT: And have you carefully read and gone over this factual basis for the plea with Mr. DeGuerin?

09:36

20

21

THE DEFENDANT: Yes, sir.

22

THE COURT: Are those facts true and correct?

23

THE DEFENDANT: Yes, sir.

24

THE COURT: Is there anything in this factual basis or plea that you believe is in error in any way?

09:36

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09:36

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THE DEFENDANT: No, sir.

2

THE COURT: Did you do what this factual basis sets

3

out?

4

THE DEFENDANT: Yes, sir.

09:36

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THE COURT: Does the government have anything to add

6

to this?

7

MR. AINSWORTH: No, your Honor.

8

THE COURT: Did you do what you're charged with, then,

9

in Count 6 of the superseding indictment?

09:37

10

THE DEFENDANT: Yes, sir.

11

THE COURT: This is a serious offense, as I'm sure you

12

know, and carries with it a term of imprisonment of up to 20

13

years. In addition, a fine of up to \$250,000 may be imposed.

14

A monetary assessment of \$100 must be ordered and imposed. And

09:37

15

if there is a term of imprisonment, it may be followed by three

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years -- up to three years of supervised release. And,

17

further, restitution may be ordered as a part of the sentence

18

and judgment to the extent that any loss is established and

19

identified by the government.

09:37

20

Do you understand that?

21

THE DEFENDANT: Yes, sir.

22

THE COURT: Mr. Kent, I'm sure you understand how the

23

sentencing guidelines operate; but have you discussed with

24

Mr. DeGuerin how those sentencing guidelines may possibly

09:38

25

affect your sentence in this case?

09:38 1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that he cannot tell you
3 now, nor can I, exactly what your sentencing guideline range
4 will turn out to be, because, as you know, the guideline
09:38 5 calculations are very complex. They involve 40 or more
6 different factors. And those calculations must first be made
7 by the US Probation Office.

8 And after they are made, both you and the
9 government have an opportunity to object. If there are
09:38 10 objections, then I'll have to rule on those objections. And
11 it's not until that entire process is completed will we know
12 exactly what your sentencing guideline range is for sentencing.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

09:38 15 THE COURT: And, of course, you also know that the
16 sentencing guidelines themselves are advisory, they're not
17 mandatory, and that the ultimate sentencing decision is my
18 decision and not a decision that you can be promised or
19 guaranteed by the government or by your attorney.

09:39 20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And if my sentencing decision results in a
23 sentence that's more severe than you would expect, you are
24 still bound by your guilty plea and have absolutely no right to
09:39 25 withdraw that plea. Do you fully understand that?

09:39

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Normally, you would have an appeal right
3 under Title 18, United States Code, Section 3742. But if I
4 understand the plea agreement in this case, you are waiving
5 that right of appeal. Is that correct?

09:39

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you discussed that decision with your
8 attorney Mr. DeGuerin?

9 THE DEFENDANT: Yes, sir.

09:39

10 THE COURT: You fully understand the consequences to
11 you of that decision?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I do have in front of me what appears to
14 be a written plea agreement. It has 12 numbered pages, and on
15 the last page has a signature that appears to be yours above
16 what appears to be the signature of Mr. DeGuerin, your
17 attorney.

09:39

18 Is that, in fact, your signature on Page 12 of
19 this agreement?

09:40

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Before you signed this, did you carefully
22 read this agreement and go over it carefully with Mr. DeGuerin?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You understand the terms and conditions of
25 the agreement?

09:40

09:40 1 THE DEFENDANT: Yes, sir.

2 THE COURT: You realize the consequences to you of a
3 plea of guilty in accordance with this agreement?

4 THE DEFENDANT: Yes, sir.

09:40 5 THE COURT: Mr. DeGuerin, did you go over it with him?
6 MR. DeGUERIN: I did, your Honor.

7 THE COURT: Are you satisfied that he fully
8 understands it?

9 MR. DeGUERIN: I am, your Honor.

09:40 10 THE COURT: And has anyone made any promises to you of
11 any sort that may have induced you to plead guilty but which
12 are not set out in this written plea agreement or otherwise
13 made known to me here this morning?

14 THE DEFENDANT: No, sir.

09:40 15 THE COURT: So, this is the complete agreement you
16 have with the government. Is that right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Counsel, do you agree?

19 MR. DeGUERIN: I do agree, your Honor.

09:40 20 THE COURT: Mr. Ainsworth, do you agree this is the
21 complete agreement?

22 MR. AINSWORTH: Yes, your Honor.

23 THE COURT: Mr. Kent, has anyone used any threats or
24 force or pressure or intimidation to make you plead guilty to
09:41 25 this charge?

09:41 1 THE DEFENDANT: No, your Honor.

2 THE COURT: Have you had enough time to discuss your
3 case fully and completely with Mr. DeGuerin, your attorney?

4 THE DEFENDANT: Yes, your Honor.

09:41 5 THE COURT: Are you satisfied with the way he's
6 represented you in this matter?

7 THE DEFENDANT: Of course.

8 THE COURT: Do you have any complaint at all about the
9 way he's handled this matter as your defense attorney,
10 including the negotiations with the government that have led up
11 to this plea agreement and where we are at this point in time?

12 THE DEFENDANT: Absolutely none.

13 THE COURT: Do you have any questions about your case?

14 THE DEFENDANT: No, sir.

09:41 15 THE COURT: Mr. Kent, you're obviously alert and
16 intelligent this morning. You're obviously very knowledgeable
17 about the law and the facts of this case, and you fully
18 understand and appreciate the consequences of a plea of guilty
19 to these charges.

09:42 20 THE DEFENDANT: Yes, sir.

21 THE COURT: I find that the facts which the government
22 is prepared to prove with evidence at trial and which are set
23 out in the factual basis for this plea and which you have
24 admitted under oath are true are sufficient to sustain a plea
09:42 25 of guilty to Count 6 of the superseding indictment.

09:42

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I find that you're fully aware of the possible sentence or punishment that may be imposed under the law for this offense and you're aware of the operation and effect of the sentencing guidelines and how those guidelines may possibly affect your sentence.

09:42

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6

And, most importantly, I find that you have made your decision to plead guilty to this charge freely and knowingly and voluntarily and you have made that decision with the advice of counsel, an attorney with whom you've indicated your full satisfaction.

09:42

10

11

So, let me ask you now, Mr. Kent: How do you plead to Count 6 of the superseding indictment?

13

THE DEFENDANT: Guilty.

14

09:42

15

16

THE COURT: I accept your guilty plea. I will defer adjudication of guilt until the time of sentencing, which under our sentencing procedure, as you know, must be approximately 75 days from now.

17

18

19

09:43

20

So, I'm going to set you for sentencing here in this courthouse for Monday morning, May the 11th, 2009, at 10:00 o'clock in the morning.

21

22

23

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09:43

25

As you know, you can expect to receive a copy of the presentence investigation as soon as it's finalized by the US Probation Office. And normally that will take about a month. When you receive a copy of that report, you should carefully go over that report with your attorney. If you find

09:43 1 any errors in that report, bring that to the US Probation
2 Officer's attention.

3 Any objections to anything in that report must be
4 made timely, in writing, by your attorney. And if those
09:43 5 objections are not otherwise resolved through the US Probation
6 Department, I will take up the objections at the time of your
7 sentencing.

8 Mr. Kent is currently under release conditions.
9 Any reason why those cannot be continued?

09:43 10 MR. AINSWORTH: No, your Honor.

11 THE COURT: It's so ordered that he'll be continued
12 under those same release conditions until sentencing.

13 I think that completes our proceedings this
14 morning. Is there anything else?

09:44 15 MR. DeGUERIN: Yes, your Honor. I believe that the --
16 you've told us that the gag order is still in place for all the
17 parties, witnesses, and attorneys and their representatives.

18 THE COURT: Yes. That order shall remain in effect
19 until the time of sentencing.

09:44 20 And by its terms, the order expired after the
21 jury was to be selected, which we will not have a jury
22 selection. But I think there are many things that could
23 possibly affect the sentencing in this case; so, I think the
24 order should remain in full force and effect, subject to the
09:44 25 exceptions the limited amount of ability you have to

09:44

1 communicate in accordance with that order. But I think that's
2 proper, probably very necessary.

3 MR. DeGUERIN: Meaning, of course, the statement that
4 your Honor has approved?

09:45

5 THE COURT: Yes. Anything else?

6 MR. AINSWORTH: Nothing.

7 THE COURT: If there's nothing further, I think we can
8 excuse our panel of jurors with our sincere appreciation.

9 And if there's nothing else, we are adjourned.

09:45

10 Thank you.

11 *(End of requested proceedings)*

12 * * * * *

13 COURT REPORTER'S CERTIFICATION

14 I certify that the foregoing is a correct transcript from
15 the record of proceedings in the above-entitled cause.

16 Date: February 23, 2009

17

18 /s/ Cheryll K. Barron

19 Cheryll K. Barron, CSR, CMR, FCRR
20 Official Court Reporter

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NUMBER:
. 4:08-CR-00596-1
VERSUS . HOUSTON, TEXAS
. MAY 11, 2009
SAMUEL B. KENT . 10:00 A.M.
.

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE C. ROGER VINSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

1 P R O C E E D I N G S

2 THE COURT: Pursuant to notice, we are here for
3 sentencing in Case Number 4:08-CR-596, United States versus
4 Samuel B. Kent.

09:59

5 Is the government ready?

6 MR. PEARSON: The government is ready, Your Honor.

7 THE COURT: Defendant ready?

8 MR. DeGUERIN: We are, Your Honor.

09:59

9 THE COURT: Let me ask counsel if you will come down
10 with the defendant in front of the clerk's bench.

11 *(Compliance)*

10:00

12 THE COURT: Samuel B. Kent, pursuant to your plea of
13 guilty to the charge as set out in Count Six of the superseding
14 indictment, I hereby adjudge you guilty as charged in Count Six
15 of the superseding indictment.

10:00

16 As you know, before I impose sentence this
17 morning, you will have an opportunity to speak, both personally
18 and through your attorney, about anything at all that you
19 believe I should know. But first let me ask you about the
20 presentence investigation report prepared by the probation
21 office. Have you received a copy of that report and have you
22 carefully read it and gone over it with Mr. DeGuerin, your
23 attorney?

24 THE DEFENDANT: Yes, sir.

10:00

25 THE COURT: Have you found any factual errors in that

10:00 1 report that have not been corrected or which are not the
2 subject of an objection filed by Mr. DeGuerin?

3 THE DEFENDANT: Not to my knowledge.

4 THE COURT: As far as you can tell, it is accurate
10:01 5 then?

6 THE DEFENDANT: Yes.

7 THE COURT: There are a number of objections that have
8 been filed both by the defendant and the government, and I will
9 take those up beginning with the defendant's objections.

10:01 10 So, Mr. DeGuerin, you may take those in whatever
11 order that you feel is appropriate.

12 MR. DeGUERIN: Yes, sir. If I may, I will just go in
13 order that we made the objections. The first one is to the
14 additional two points for obstruction of justice under Section
10:01 15 3C1.1. Of course, the primary offense, the offense of
16 conviction, is obstruction of justice. We don't believe that
17 the subsequent false denials qualify as an obstruction of
18 justice enhancement nor repeated false denials like a plea of
19 not guilty do not qualify under the case law.

10:02 20 We've cited several cases, *U.S. versus*
21 *Cirakosky* -- or *Surasky*, I suppose, and *U.S. versus Pelliere*.
22 It is a Tenth Circuit case. Separate denials did not qualify
23 as further obstruction of justice in order to have a two point
24 increase in those cases. It's different from the cases cited
10:02 25 by the government, *Ivory*, which -- where there was an

10:02 1 affirmative instruction of a witness to lie and destruction of
2 evidence. It is different from *Akinosho*, in which there was an
3 affirmative fabrication of evidence. It is distinguishable
4 from *U.S. versus Wright* in the Fifth Circuit where there was a
10:03 5 concealing of records. It is different from *U.S. versus Mann*,
6 also in the Fifth Circuit, where there was an affirmative
7 misleading that the defendant had hired specific employees with
8 grant money. So we don't believe that the two point
9 enhancement under 3C1.1 is justified.

10:03 10 And, furthermore, there is -- the government
11 requests for a further enhancement under 3C1.1, and we don't
12 believe that under the same section -- excuse me -- that is
13 2J1.2, that those enhancements are justified.

14 THE COURT: Focusing on the 3C1.1, two level
10:04 15 enhancement, anything further? Mr. DeGuerin?

16 MR. DeGUERIN: I think that what *U.S. versus Brown*
17 requires is a two-prong test as to whether it qualifies for the
18 enhancement. One is that the conduct presented an inherently
19 high risk that justice would be obstructed. But the second one
10:04 20 is also requiring a high degree, a significant amount of
21 planning as a result of simple false denials.

22 THE COURT: And the government's response?

23 MR. PEARSON: May it please the Court, John Pearson
24 for the United States. Good morning, Your Honor.

10:05 25 We briefed this issue for the Court, and I think

10:05 1 what it boils down to is repeated acts of different kinds of
2 obstruction of the obstruction of justice investigation.

3 THE COURT: Well, there is no question that it has to
4 be different conduct.

10:05 5 MR. PEARSON: Absolutely, Your Honor.

6 THE COURT: The question that I have to resolve is
7 what is that different conduct and does it fit this guideline?

8 MR. PEARSON: I think it fits the guideline for two
9 separate reasons. Number one, in the unambiguous implication
10 to a grand jury witness, that that grand jury witness should
11 testify falsely, and this is laid out in our response to the
12 defendant's objection to the PSR.

13 The defendant in telling Person B that he had --
14 he himself had falsely denied his repeated attacks on her, he
15 was sending a clear and unambiguous statement that she must
16 repeat the lie too. And the defendant attempts to belittle
17 this by saying that it was just her conclusion, but that
18 doesn't mean it wasn't her conclusion. She, in fact, drew from
19 his statements that she was supposed to testify falsely before
20 the grand jury, as well.

21 But even above and beyond that, Your Honor, on
22 two separate occasions, the defendant asked for and was granted
23 a meeting with, first, the Federal Bureau of Investigation, law
24 enforcement agents. And that was in December of 2007. He
25 reached out to the FBI and asked to sit down with them.

10:06 1 During the voluntary interview, he was
2 interviewed regarding his conduct, and he repeated the same
3 false statements that he later told to the Special
4 Investigative Committee, both about Person A and about
10:07 5 Person B.

6 Then, just before he was -- the trial team was
7 going to present the initial indictment to the grand jury --
8 this is in August 2008 -- defendant through his attorney asked
9 for a meeting at Main Justice Headquarters, and there in the
10:07 10 Assistant Attorney General's conference room, he sat down with
11 his attorney and met with, among others, the trial team, the
12 FBI agents, the chief of the Public Integrity Section and the
13 Acting Assistant Attorney General. And during the interview
14 portion of that meeting, he again repeated the same lies.

10:07 15 He said that he had been honest with the FBI in
16 December 2007. He said that any attempt to characterize the
17 conduct between him and Person A as nonconsensual was
18 absolutely nonsense. And that's in stark contrast, Your Honor,
19 to the factual basis for his plea during which he admitted
10:08 20 engaging in repeated nonconsensual sexual contact with Person A
21 without her permission.

22 Then as to Person B, the defendant falsely stated
23 that he had kissed her on two separate occasions when, in fact,
24 it was over a much longer period of time and it was much more
10:08 25 serious conduct. Again, as the defendant admitted in his

10:08 1 factual basis.

2 And, finally, when he was asked about whether
3 there were any other women the defendant had done this to, the
4 defendant said no and that he could not recall anyone else.

10:08 5 And, again, Your Honor, as we laid out in our 413
6 notice, it wasn't just Person A, it wasn't just Person B, there
7 were additional victims of this defendant. That's why the
8 obstruction enhancement applies here, because we have got that
9 attempt to impede the investigation. And, frankly, Your Honor,
10:08 10 it was somewhat successful in that for a period of time, the
11 investigation was solely focused on the assaults on Person A,
12 and it wasn't until later developments that we were able to
13 expand that investigation to look at the assault on Person B.

14 THE COURT: What about Mr. DeGuerin's point that it
10:09 15 has to significantly impair the investigation?

16 MR. PEARSON: I'm not sure that I read that other than
17 for the application note about false statements to law
18 enforcement officers.

19 If I can have the Court's indulgence for just one
10:09 20 moment.

21 *(Pause)*

22 MR. PEARSON: What he is referring to is application
23 note 4G, providing a materially false statement to a law
24 enforcement officer that significantly obstructed or impeded
10:09 25 the official investigation for prosecution of the instant

10:09 1 offense.

2 Now, Your Honor, we submit that we qualify even
3 if you look at it under that application note, because his
4 false statements both to the FBI and to the DOJ trial team and
10:09 5 his implication that Person B should testify falsely before the
6 grand jury did significantly obstruct and impede the official
7 investigation.

8 But you don't even have to go there, Your Honor,
9 because it wasn't just materially false statements to a law
10:10 10 enforcement officer. When he met with the trial team, those
11 people aren't law enforcement officers, Your Honor. Those are
12 federal prosecutors. Those are officials at the Department of
13 Justice. And then you go beyond that, and you have got his
14 statements and implications to Person B, so I don't think that
10:10 15 that application note applies. But even if it does, we still
16 satisfy the burden.

17 THE COURT: You are saying that Department of Justice
18 officials who have the power to determine whether to prosecute
19 or not are not law enforcement officers?

10:10 20 MR. PEARSON: I say for purposes of this application
21 note, they are not law enforcement officers. I think that is
22 speaking about 1811, Your Honor, people like FBI agents, police
23 officers and other federal investigators.

24 THE COURT: All right. Anything else?

10:11 25 MR. PEARSON: No, Your Honor.

10:11 1 THE COURT: Mr. DeGuerin?

2 MR. DeGUERIN: Yes, sir, if I may respond. As far as
3 significantly impairing the on-going investigation, within two
4 weeks of the meeting in the Justice Department, they indicted
10:11 5 him on Person A.

6 THE COURT: You say that meeting was in August?

7 MR. DeGUERIN: Yes, sir.

8 THE COURT: Of '08?

9 MR. DeGUERIN: Yes, sir.

10:11 10 THE COURT: And the indictment was filed August 28.
11 That's right.

12 MR. DeGUERIN: Yes, sir.

13 THE COURT: The meeting was August 11th.

14 MR. DeGUERIN: Yes, sir. The focus at that meeting
10:11 15 was -- it started out actually being the focus was on the house
16 deal. Judge Kent sold his house to the mother of his former
17 law clerk, a lawyer that practiced in front of him. The
18 government claims that that was an above market sale. It was
19 not. In fact, the facts are and the truth is that it was sold
10:12 20 for actually less than the appraisals. There were two
21 appraisals. That is not really what this is about at all.
22 That's -- I do contest the facts that the government says about
23 that. It is just not correct. That was the focus.

24 And the secondary focus of that meeting was on
10:12 25 Person A, not on Person B. Just as the focus of the Fifth

10:12 1 Circuit's investigation was Person A, not Person B.

2 An argument could have been made about relevance
3 of the Person B statements to the inquiry as to Person A. We
4 are not here to make that argument but simply to point out the
10:12 5 facts. And I must emphasize to the Court, Judge Kent is not
6 denying his responsibility, but we do have the right to point
7 out where the enhancement should not apply and the facts that
8 apply those enhancements.

9 Now, what Judge Kent said in the two times that
10:13 10 he met with law enforcement agents -- and, by the way, there
11 were two FBI agents at that meeting in the Justice Department,
12 the same two FBI agents that he had met with before -- excuse
13 me -- one of the same two FBI agents that he had met with
14 before, so I think it's a bit -- well, I don't think that the
10:13 15 argument that it's not law enforcement would hold much water.

16 He, as he continued to do, denied the full
17 involvement with Person B, but I need to point out also that
18 Person B also denied that involvement continuously until the
19 third time she appeared before the grand jury. And even then,
10:14 20 she said -- and we have quoted this in our pleadings: "He did
21 not say that I needed to tell them the same thing."

22 She said again in answer to the question: "Is
23 that what you thought you needed to say?"

24 "He did not say that to me."

10:14 25 "Is that what you thought you needed to say,

10:14 1 because it might be ugly for him or ugly for you or other
2 people?"

3 "He did not say that to me."

4 That's what she said. And finally: "He did not
10:14 5 tell me that I was untruthful with them, and this is what I
6 said."

7 We are mixing a little bit what the government
8 said was the influence, if there was, on Person B with Judge
9 Kent's repeated denials.

10:15 10 THE COURT: But I have read that transcript of what
11 she said, and she goes on to say that she certainly felt he
12 implied it.

13 MR. DeGUERIN: Yes. She does say that. And that's
14 where the Eighth Circuit case, *Emmert*, comes into play. We
10:15 15 have cited that in our briefing, *U.S. versus Emmert*. Ambiguous
16 statements -- and these were made just outside the courtroom
17 where the defendant told the witness, "Stay strong; be
18 quiet" -- were not plainly obstructive as to warrant the
19 adjustment.

10:15 20 What she says in her grand jury testimony is that
21 subjectively she believed that by telling her that this is what
22 he said, he wanted her to say the same thing. That's her
23 belief.

24 THE COURT: Well, I think she was saying that there
10:16 25 was a signal. She interpreted it as a signal.

10:16 1 MR. DeGUERIN: She did say that.

2 THE COURT: Anything else?

3 MR. DeGUERIN: Well, if you look at her testimony in
4 the previous two grand juries, as well as her testimony before
10:16 5 the Fifth Circuit, it went well above and beyond the simple
6 denial. In fact, it was an affirmative -- and Judge Kent
7 didn't tell her to say this. It was an affirmative vouching
8 for his credibility, vouching for his -- for the relationship
9 that they had, that she handled it, that she went on, that it
10:16 10 was something that she felt that she could handle. That's what
11 she said.

12 THE COURT: If I understand the government's position
13 on this, the government is saying it isn't just that but also
14 the statements that were made in the interviews with the FBI
10:17 15 and with the Justice Department, both in 2007 and in 2008.
16 That those statements constituted separate but obstruction of
17 justice.

18 MR. DeGUERIN: Yes. I think that's what they are
19 saying, Judge, and it is confusing the two. That is whatever
10:17 20 he said to Ms. Wilkerson, but that's the offense of conviction,
21 and what would have happened later, which was simply repeating
22 his earlier denials.

23 THE COURT: Well, see, the original appearance before
24 the Special Investigative Committee was in June of '07.

10:18 25 MR. DeGUERIN: That's correct.

10:18 1 THE COURT: And then the FBI interview at the
2 defendant's request was in November of '07 here.

3 MR. DeGUERIN: Yes, sir.

4 THE COURT: And then the second interview in
10:18 5 Washington was in August of '08, the next year.

6 And you're saying that the subject of that second
7 interview focused on the home sale?

8 MR. DeGUERIN: It originally focused on --

9 THE COURT: Which isn't part of our proceeding at all.

10:18 10 MR. DeGUERIN: It is not part of your -- the
11 proceeding, but it expanded at that meeting.

12 THE COURT: Well --

13 MR. DeGUERIN: And in *Pelliere*, which we've cited to
14 you -- it's from the Tenth Circuit -- there were three separate
10:18 15 denials in addition to the original. One was at a detention
16 hearing through the attorney. The second was to a federal
17 agent after the plea, and the third was during an interview
18 with the probation officer. This is all --

19 THE COURT: Which case is that?

10:19 20 MR. DeGUERIN: *Pelliere*. It is 57 F 3d 936.

21 THE COURT: I have all of those cases. I just haven't
22 found it. I don't hold you to one bite of this apple, so go
23 ahead.

24 MR. PEARSON: Thank you, Judge. I just want to make
10:19 25 two small factual corrections. It is true that the defendant

10:20 1 was indicted around two weeks after his August 2008 meeting at
2 the Department of Justice, but it was only on the Person A
3 assaults. I think it is important to keep in mind that the
4 indictment with the count to which he ultimately pled guilty
10:20 5 wasn't until January of the following year. So the argument
6 that it was no harm, no foul for him to lie during this
7 Department of Justice meeting because the indictment only came
8 down two weeks later, that doesn't hold up, because those
9 charges were only about the Person A assaults. They weren't
10:20 10 about the Person B assaults and they weren't about the
11 obstruction in front of the Fifth Circuit. And the argument
12 that goes along with that, that the focus was only on the sale
13 of the house and only on Person A also doesn't hold up.

14 First of all, we obviously disagree about the
10:20 15 sale of the house, but we agree with the defendant that he was
16 not indicted for that, and that's not the focus of the
17 sentencing here today. But as far as the focus only being on
18 Person A, that is just not accurate. We've provided a copy of
19 the FBI 302 to Ms. Masso with the probation office. And it is
10:21 20 clear from the 302 that he was asked about Person A but also
21 about other individuals, as well. And that's what caused him
22 to spread this knowingly false story, and that's why the
23 obstruction enhancement applies.

24 I think that the defendant continues to misstate
10:21 25 the issue by claiming that he was merely repeating earlier

10:21 1 denials. And if this were an interview where the FBI had
2 reached out or we had tried to set up a proffer session with
3 the defendant, then that argument might hold sway, but I think
4 it is crucial here that the defendant pushed. He asked. He
10:21 5 called the FBI, trying to get ahead of the investigation,
6 getting his story out there first. And in a case like this,
7 where there were no eyewitnesses to the assaults, only the
8 defendant, the victim and the individuals who observed the
9 victims immediately afterwards, getting that story out was
10:22 10 crucial.

11 Later, just before he was about to be indicted,
12 the defendant tried it again. Through his counsel, he reached
13 out to the Department of Justice and asked for a meeting with
14 not just the FBI, not just the trial team, but the trial team's
10:22 15 first level and second level supervisors at the Department, so
16 it goes beyond just repeating earlier denials. And I think
17 that, along with the totality of the circumstances, both his
18 implications to Ms. Wilkerson, which she feels were
19 unambiguous, merit the two level enhancement.

10:22 20 THE COURT: Okay. Mr. DeGuerin? This is the last
21 bite.

22 MR. DeGUERIN: Yes, sir, and I will make it a very
23 short one. That meeting was held at my request, and it was
24 primarily to discuss the house deal. It got expanded, but at
10:23 25 that time the focus was on Person A. It was not on Person B.

10:23 1 It was almost a throw-out question. Well, is there anybody
2 else? No. There was the same false denial that had happened
3 with the Fifth Circuit. It did not impede the Fifth Circuit
4 from what they eventually did, which was almost at the limit of
10:23 5 their ability to do anything. And it did not impede the
6 Justice Department from bringing an indictment.

7 One final thing I have to say about that is that
8 Person B did not come forward, did not want to come forward,
9 until after an appearance before the Fifth Circuit and two
10:23 10 appearances before the grand jury and after the government
11 forced immunity on one of her closest friends who had been
12 Judge Kent's law clerk. And he testified before the grand
13 jury, and then after Judge Kent and I had both been telling her
14 to, please, get a lawyer. That's really what we told her,
10:24 15 Judge. As soon as I became involved, I tried to get her to get
16 a lawyer. Judge Kent told her several times to get a lawyer.

17 And, finally, she got a lawyer, realized that she
18 had made false statements. And that's when the third grand
19 jury testimony occurred. That's the truth. That's putting
10:24 20 everything into perspective. And so what you really have is
21 three false denials. The first one is the one of conviction,
22 and then there are two following ones, basically the same
23 facts, not elaborating, not giving false evidence, not
24 providing affirmative false evidence and a subjective belief on
10:24 25 the part of Person B.

10:25 1 That's all I have.

2 THE COURT: I think that fairly states what the facts
3 are. Then the question is, how does that apply to guideline
4 3C1.1 which says "obstructing or impeding the administration of
10:25 5 justice," which this coincidentally happens to be the subject
6 of the offense of conviction under Section 1512(c)(2). This is
7 an adjustment under the guidelines, which ordinarily is applied
8 to every run of the mill possible offense of conviction but
9 rarely applied to one that has the same underlying offense of
10:25 10 conviction.

11 But it says, "If the defendant willfully
12 obstructed or impeded or attempted to obstruct or impede the
13 administration of justice with respect to the investigation,
14 prosecution or sentencing of the instant offense of conviction
10:25 15 and the obstructive conduct related to either the defendant's
16 offense of conviction and any relevant conduct or a closely
17 related offense, increase the offense level by two."

18 And I have to confess that this is a very
19 difficult application to make in this case because we are
10:26 20 dealing with essentially the same underlying subject matter but
21 different events relating to it. It is one that I have really
22 labored over. I have looked at all the case law that you
23 cited. I don't find any case law that is squarely encompassing
24 the same things and the facts and circumstances we have.

10:26 25 I have to say though that the government is

10:26 1 accurate that there were three separate things, in addition to
2 the offense, that cumulatively seemed to bring it within this
3 definition and language of the guideline. And I admit that
4 this is a very, very close question, Mr. DeGuerin, but I think
10:27 5 under the law and the plain reading of the guideline, I have to
6 overrule your objection, and I do.

7 A lot of these guidelines overlap, and the next
8 objection, I think, is a similar situation, so I will take that
9 one up now.

10:27 10 MR. DeGUERIN: Yes, sir. Our second objection has to
11 do with the three point adjustment under 2J1.2(b)(2).

12 Part of this has to do with the Fifth Circuit,
13 but given that the Fifth Circuit imposed its own disciplinary
14 proceedings and did so in an expeditious manner after hearing
10:28 15 testimony, the questions which appear to be a very minor part
16 of their investigation, the questions about Person B and the
17 false answers did not cause any premature or improper
18 termination of the investigation, and it did not result in the
19 unnecessary expenditure of any government resources in that
10:29 20 investigation. To the contrary, once the superseding
21 indictment came out regarding Person B, the Fifth Circuit then
22 reopened their investigation. So that's still pending. That
23 is still going to go on. And the statement did not result in
24 any sort of substantial interference with government or court
10:29 25 resources.

10:29 1 It is clear that the focus of the Fifth Circuit's
2 investigation was the Person A allegation. The review of the
3 transcripts of the other persons who were -- of whom we have
4 transcripts is clear about that.

10:30 5 There is no transcript of what Judge Kent said.
6 There are only some notes, and those notes are ambiguous and
7 they actually differ from the charges in the indictment. We
8 are not making an issue about that, and Judge Kent is not in
9 any respect trying to say that he is not guilty or to avoid
10:30 10 responsibility there. However, he is being punished already
11 for obstruction of justice, and to call this a substantial
12 interference is improper and doesn't justify the enhancement.

13 Furthermore, what he said provided no additional
14 burden than if he had simply refused to say anything, so we
10:31 15 don't believe that there is a substantial interference under
16 2J1.2 to justify the three point enhancement.

17 THE COURT: Well, the government is obviously pointing
18 out that as soon as the superseding indictment was returned and
19 Person B was brought into the picture, they reconsidered and
10:31 20 came out with a statement that said that conduct is beyond the
21 misconduct the Special Investigating Committee and the Council
22 discovered and considered. It essentially said, in light of
23 that, the investigation is reopened.

24 I suppose the question then becomes, is that
10:32 25 substantial impairment that led them to do that?

10:32 1 MR. DeGUERIN: It is not a substantial impairment into
2 what they were investigating, Your Honor, because their
3 investigation into Person A's complaint and the number of
4 people that they interviewed and the outcome of their
10:32 5 investigation was a very severe reprimand and severe conditions
6 imposed on Judge Kent, the most severe that they could have
7 done under the powers that the Fifth Circuit Judicial Council
8 has. The only more severe thing they could have done would be
9 to recommend impeachment, and so now they have opened another
10:33 10 investigation. Really it is separable and separate from the
11 original investigation.

12 THE COURT: Government?

13 MR. PEARSON: Thank you, Your Honor. I think the best
14 place to start in analyzing this enhancement is with the text
10:33 15 of the guideline and the application note. The guideline says,
16 "If the offense resulted in substantial interference with the
17 administration of justice, increase by three levels."

18 So the question is: What's substantial
19 interference? And in the application notes -- this is
10:33 20 application note one -- it explains, substantial interference
21 with the administration of justice includes what Mr. DeGuerin
22 mentioned, a premature or improper termination of a felony
23 investigation. That's not this situation.

24 What he didn't mention and what is applicable
10:34 25 here is an indictment, verdict or any judicial determination

10:34 1 based upon perjury, false testimony or other false evidence.

2 The third prong of this application note, the
3 unnecessary expenditure of substantial governmental or court
4 resources also applies. And that's an independent reason to
10:34 5 uphold the three level increase, and that is laid out in the
6 PSR, the extreme difficulties that the Southern District of
7 Texas has had to go through in dealing with the defendant's
8 conduct. But before we even get there, it's clear that there
9 was a judicial determination based upon false testimony or
10:34 10 other false evidence.

11 What's a judicial determination? That's the
12 September 28, 2007 order of reprimand entered by the Judicial
13 Council of the Fifth Circuit. It's clear that this was based
14 on false testimony or other false evidence, number one, because
10:35 15 common sense dictates that if the defendant had been open about
16 his repeated serious assaults on his secretary, who was herself
17 a federal employee, the Fifth Circuit's Special Investigative
18 Committee would have conducted additional interviews, conducted
19 more in-depth interviews. But above and beyond that --

10:35 20 THE COURT: Go ahead.

21 MR. PEARSON: Above and beyond that, there is the
22 order, Your Honor, and I think that's the key here. It's the
23 January 9, 2009 order that the Court cited where the Council
24 says, "In light of the new allegations of additional serious
10:35 25 misconduct of which the Special Investigative Committee and the

10:35 1 Council were unaware." They grant the motion for
2 reconsideration and they vow to take such additional steps as
3 are necessary to impose further sanctions in light of the
4 result of the investigation.

10:36 5 THE COURT: Mr. DeGuerin says that the defendant could
6 simply have taken the Fifth and not said anything, and the
7 government's response is, well, he doesn't have the Fifth
8 Amendment privilege before this Investigating Committee. Is
9 that right? Is that your position?

10:36 10 MR. PEARSON: Yes, sir.

11 THE COURT: But the Committee itself didn't place him
12 under oath. This was really a very -- there was not even a
13 transcript made, so we don't know all the details, but it was
14 obviously not very formal. And I'm not sure that they could
10:36 15 have required him to answer anything, if he had politely
16 refused. Could they?

17 MR. PEARSON: In terms of compelling him to answer the
18 question?

19 THE COURT: Yes.

10:36 20 MR. PEARSON: I'm not sure they had the 6001 statutory
21 ability. That is usually --

22 THE COURT: That's the point. This is an unusual
23 proceeding we are talking about.

24 MR. PEARSON: Sure. And I think the practical result
10:37 25 is if a judge who's the subject of a sexual misconduct

10:37 1 complaint is asked, "Well, what about any inappropriate or
2 assaultive conduct on your secretary or other employees in the
3 courthouse?"

4 And he says, "I decline to answer that question
10:37 5 based on my Fifth Amendment privilege," I think it is very
6 likely that the Council would have perked its ears up.

7 THE COURT: Or he could have just simply said, "I
8 respectfully decline to answer," period.

9 MR. PEARSON: I think that that also would have perked
10:37 10 the Council's ears up. If this is not a criminal type
11 investigation, if it really is similar to, say, an internal
12 investigation done by a federal agency or by an outside
13 corporation, if someone takes the Fifth or declines to answer a
14 question, then that is -- that doesn't mean that that body
10:37 15 can't consider that refusal to answer questions in doing
16 additional interviews. And, in fact, that is what happens.

17 For example, in the civil context, if someone
18 takes Five or if they refuse to answer questions, then that can
19 be used against them in that civil context. I think it is a
10:38 20 little bit of a -- I think it is illogical to argue that he
21 could have just declined to answer, and they would have still
22 reached the same outcome.

23 THE COURT: Anything else?

24 MR. PEARSON: I'm happy to talk about the government
10:38 25 resources issue. I think that's an additional independent

10:38 1 prong, but while the obstruction of justice enhancement --
2 there is evidence on both sides, and that's a close case. This
3 clearly, at least from the government's perspective, falls in
4 the heartland of application note one in terms of the judicial
10:38 5 determination and also the enormous expenditure of substantial
6 governmental resources to investigate and prosecute the case
7 and court resources to deal with the aftermath of the
8 defendant's false statements.

9 So, for that reason, we do feel that the three
10:39 10 levels are warranted.

11 MR. DeGUERIN: It is speculation to say that the Fifth
12 Circuit was deflected in their investigation. Whether their
13 investigation would have gone farther if he would have said, "I
14 refuse to testify about or refuse to answer that question," or
10:39 15 whether it was even material to the Fifth Circuit's inquiry,
16 which was focused on Person A. And that was the focus of that
17 inquiry, so it is mere speculation.

18 What we do know though is that by agreement
19 between Judge Kent, who did acknowledge improper conduct, the
10:39 20 Fifth Circuit ruled -- the Fifth Circuit Judicial Council
21 ruled, imposed its sanctions, and that was the end of that.
22 The Person A then objected and filed a request to reopen it,
23 but it was not granted.

24 What happened was, once the second indictment
10:40 25 came down with Person B named as a new complainant, then the

10:40 1 Fifth Circuit said they would grant Person A's motion to
2 reopen, and that's still pending. So I believe that we have to
3 look at this from the Fifth Circuit Judicial Panel -- Judicial
4 Council's viewpoint. It is exclusive --

10:40 5 THE COURT: Well, you know, if that's the way you look
6 at it, you have got to say, "Well, they considered and made the
7 decision on the evidence that they had at the time." And now
8 they are saying, "Well, there is obviously more evidence that
9 we didn't take into consideration."

10:40 10 Isn't that what the Fifth Circuit Council
11 essentially has done?

12 MR. DeGUERIN: No, sir. What I'm saying is they
13 concluded and they imposed their sanctions based on the
14 complaint that they had. That is, Person A.

10:41 15 They completed that and did what they thought was
16 right about Person A's complaints and how they could resolve
17 that, and Judge Kent agreed to that. And so the final result
18 was an agreed resolution.

10:41 19 We can only speculate, and I tend to believe that
20 the issue about Person B was not relevant to the inquiry as to
21 what happened to Person A, particularly given that Person B was
22 until right before the second indictment one of Judge Kent's
23 most staunchest supporters, and that is clear through a number
24 of the letters that you have.

10:42 25 THE COURT: I think that's probably true. Well, this

10:42 1 adjustment again overlaps the other adjustment in some
2 respects, but it really focuses on what took place before the
3 Fifth Circuit Council and the Investigative Committee and
4 whether that constituted substantial interference with the
10:42 5 administration of justice. And, again, this is one of those
6 that there's a good argument to say that this is double
7 counting in some fashion because we are piling it on to say,
8 well, this was really substantial. But applying the plain
9 language of the guideline and the commentary and its
10:42 10 definition, as the government has pointed out, it does fit this
11 situation.

12 The Fifth Circuit Council clearly made a judicial
13 determination based on the information that it had before it,
14 which included the false testimony or other false evidence, and
10:43 15 in the alternative, there was a considerable amount of
16 resources, governmental and court resources expended as a
17 consequence of that, leading up to where we are now. So the
18 adjustment does apply. This is not as close a question as the
19 first objection. The objection has to be and is overruled.

10:43 20 MR. DeGUERIN: Judge Kent has asked that he be allowed
21 to sit down. He is having some physical problems.

22 THE COURT: Yes. You may go ahead and do that. Can
23 we just bring a chair up and let him sit here in front?

24 *(Compliance)*

10:44 25 THE COURT: All right, Mr. DeGuerin.

10:44 1 MR. DeGUERIN: The third objection that we have filed,
2 Judge, has to do with the three point enhancement under 3B1.1,
3 use of position of public or private trust.

4 First, there is no question that Judge Kent was
10:44 5 in a position of public trust, but that's not -- that doesn't
6 answer the question. It's whether that position of trust
7 facilitated the commission of the offense.

8 Now, this is no different from a highly placed
9 person in the private sector, a person of relative higher
10:45 10 position than the female involved. It is whether the position
11 facilitated the commission of the offense that we focus on.
12 And the cases that we've cited, although there is no case
13 directly on point, of course, *U.S. versus Morris* is an Eleventh
14 Circuit case. It speaks about the analogy to a fiduciary
10:45 15 position, a fiduciary function between the two persons, and
16 that's not here.

17 In *U.S. versus Brogan* -- that's a Sixth Circuit
18 case that we've cited -- that position of trust where the
19 discretion, the level of discretion afforded an employee is the
10:46 20 decisive factor.

21 Here, either Person A or Person B could have put
22 a stop to this or changed jobs or done so forth, but merely
23 because he was a federal judge doesn't give him that type of
24 control that would facilitate the commission or concealment of
10:46 25 the offense. This is not again, Your Honor, in any way to

10:46 1 belittle the position that he was in or the guilt that he feels
2 and the responsibility that he feels for what he has pled
3 guilty to, but it is -- we don't believe that this three point
4 adjustment is justified and believe, as in the Court's words,
10:47 5 it appears to be piling it on.

6 THE COURT: Government?

7 MR. PEARSON: Thank you, Your Honor. I am glad to
8 hear that Mr. DeGuerin is now acknowledging that the defendant
9 did, in fact, hold a position of trust under the two part
10:47 10 K-test laid out by the Fifth Circuit.

11 In his initial objection to the PSR, his argument
12 paragraph begins: "As to the relevant conduct underlying its
13 instant offense, Kent's position did not constitute a position
14 of trust, because his position did not afford him substantial
10:48 15 discretionary judgment to sexually harass or abuse his staff
16 members."

17 I think it is clear that this was a position of
18 trust, and the question for the Court is whether the defendant
19 abused that position in a way that significantly facilitated
10:48 20 the commission or concealment of the offense.

21 Now, we've presented evidence both to the
22 probation office and to the Court about the culture of fear
23 that developed at the Galveston courthouse, the people that
24 were transferred or removed from their positions because of the
10:48 25 defendant, but we don't need to go into that here. All we need

10:48 1 to do is review what the defendant said to Person A during the
2 most serious assault in his chambers in 2007.

3 After having assaulted her, as she is trying to
4 flee his chambers, he says words to the effect that, you know,
10:49 5 you're a great case manager. And that's why I keep you around.

6 MR. DeGUERIN: May I ask -- I think the Court knows
7 what this quotation is.

8 THE COURT: I know what it is. You don't have to --

9 MR. PEARSON: That's fine, and I don't intend to use
10:49 10 the graphic language here, Your Honor. What I want to point
11 out is the fact that the defendant referenced Person A's
12 employment. The fact that he referenced his superior position
13 to her, that I keep you around, that's using your position of
14 trust to facilitate the offense.

10:49 15 The fact, Your Honor, that these assaults
16 occurred in the courthouse, that they occurred oftentimes in
17 the defendant's chambers, which is the veritable seat of his
18 power. So I think that on the factual record that has been
19 presented, there is no question that his position as a U.S.
10:49 20 District Judge, as the only district judge in the Galveston,
21 Texas courthouse, contributed significantly, that it
22 significantly facilitated the commission of the offense. So
23 for that reason, we agree -- or we submit that the two level
24 enhancement applies.

10:50 25 MR. DeGUERIN: Let me speak first. I don't want there

10:50 1 to be a confusion over a position of trust in one context and a
2 position of trust as it applies to the sentencing enhancement.

3 First, I prefaced my statement by saying we all
4 know that Judge Kent as a United States District Judge, as an
10:50 5 Article III District Judge enjoyed a position of trust. And we
6 all know that that position of trust is gone. It is lost. But
7 that's not the position of trust that applies to the guideline.

8 THE COURT: I understand that, and I think it is clear
9 from the guideline itself what that includes and what it
10:51 10 doesn't include. It excludes, for example, bank tellers that
11 have positions of trust but don't really have any great
12 discretion, that sort of thing.

13 MR. DeGUERIN: Yes, sir. And the case law confirms
14 that. The case law in general deals with persons that had used
10:51 15 their -- the fiduciary relationship that they had with the
16 person to abuse that relationship.

17 Here, what the government attempts to use as a
18 justification is that Judge Kent ran his courtroom and the
19 courthouse in Galveston with some statements such as, "I'm the
10:51 20 man with the three cornered hat and the bow and the bow."

21 In order to understand those, you have to
22 understand Judge Kent's sense of humor and his self denigrating
23 sense of humor to some respect. Throughout -- the statement
24 that Judge Kent made to you. Anyone that knows Judge Kent
10:52 25 knows about that, making outrageous statements. The sort of

10:52 1 rulings that he made, particularly regarding out of county
2 lawyers and their reluctance to come to Galveston, were
3 humorous. I suppose that if you are at the pointed end of the
4 humor stick, you might not think they are so humorous, but that
10:52 5 is his sense of humor. And so rather than supporting the
6 government's position --

7 THE COURT: I have read the letters that have been
8 submitted, both on his behalf and in opposition, and there were
9 a lot of lawyers on each side of this fence. I know that.

10:53 10 MR. DeGUERIN: There is no one in the middle. That's
11 accurately stated.

12 The other thing that the government uses is
13 administrative decisions when some of the -- some employees
14 were transferred out of Galveston. There is no evidence to
10:53 15 show that those weren't justified. And, in fact, in some of
16 the cases, there were independent, internal investigations
17 regarding those employees. So to call that justification for
18 enhancement, I think, is unjustified.

19 THE COURT: Clearly the position of U.S. District
10:53 20 Court Judge is a position of trust. It is public trust, but we
21 are really talking about more than that here. And the inquiry
22 really is what events or facts or circumstances resulted in an
23 abuse of the position? And that's what I have got to focus on.

24 As I have already indicated, the commentary says
10:54 25 there are factors to consider. And for this adjustment to

10:54 1 apply -- and I'm reading -- "the position of public or private
2 trust must have contributed in some significant way to
3 facilitating the commission or concealment of the offense,
4 e.g., by making the detection of the offense or the defendant's
10:54 5 responsibility for the offense more difficult." And that's
6 really what has to be the focus in this case, and there is an
7 awful lot of evidence that Judge Kent was the only judge, only
8 active judge anyway in the Galveston courthouse and that his
9 will, expressed or implied, was considered to be the equivalent
10:55 10 of a decree, and things operated in that fashion in the
11 courthouse. And consequently, there was a lot of intimidation
12 of employees, rightfully so or not. It's a fact, and I think
13 the evidence squarely supports that. Everything I have seen --
14 and I realize we haven't had any great evidentiary hearing, but
10:55 15 there is an awful lot of information that has been submitted.
16 And on balance I find that it supports that conclusion, that
17 Judge Kent was deemed to be the person in charge, and his word
18 carried a great deal of weight, negative or positive. And
19 because of that, that's a position that implicates this
10:56 20 adjustment.

21 There was an abuse of that because the two
22 victims that we've identified, plus a number of others, have
23 all said that they were in fear for their jobs or transfer or
24 all sorts of possible negative results for either revealing or
10:56 25 at least standing up in opposition to some of the things that

10:56 1 went on. So this adjustment applies and the objection is
2 overruled.

3 I think that concludes all of your objections,
4 Mr. DeGuerin.

10:56 5 MR. DeGUERIN: It does, Your Honor. There is one
6 other enhancement that the government has asked for.

7 THE COURT: Now, let me ask the government to address
8 that, and then I will let you respond.

9 MR. PEARSON: Your Honor, I think we have addressed
10:56 10 this adequately in our briefing, both to the probation office
11 and to the Court. This is the enhancement for conduct that was
12 otherwise extensive in scope, planning or preparation,
13 2J1.2(b)(3)(c). And the prong that we're proceeding under is
14 conduct that was extensive in scope, planning and preparation.

10:57 15 And some of this, as the Court has pointed out,
16 is incorporated in other guidelines enhancements, his false
17 characterization of his conduct before the Fifth Circuit's
18 Special Investigative Committee, during his FBI interview and
19 during his meeting with the Department of Justice prosecutors.

10:58 20 His attempts to imply to Person B that she should
21 falsely testify before the grand jury and his going over to
22 Person B's home, speaking with her husband, ostensibly
23 apologizing, but then again repeating those same false
24 statements that he had only kissed her once or twice, and that
10:58 25 it had stopped after she resisted.

10:58 1 There is another issue that we bring up in our
2 briefing about the defendant's statements to one of his law
3 clerks, that if Person B left his side, he didn't know what he
4 would do, with the implication that potentially he might harm
10:58 5 himself. And it is clear from Person B's grand jury testimony
6 that she felt the defendant's actions were trying to influence
7 her testimony. And so for that reason, we feel that the
8 (b) (3) (c) enhancement for conduct that was extensive in scope,
9 planning or preparation applies.

10:59 10 THE COURT: Mr. DeGuerin?

11 MR. DeGUERIN: Well, clearly this is double counting.
12 It double counts under the 3C1.1 enhancement and it double
13 counts under the other 2J1.2 enhancements. I don't think it
14 applies. Extensive in scope, planning or preparation, first,
10:59 15 we have already addressed this at length about the subjective
16 belief of Person B that his statements saying "this is what I
17 told the Fifth Circuit" were meant to influence her testimony.
18 I don't think you can judge this out of context, because if you
19 look at the statements that Person B made, both to the Fifth
11:00 20 Circuit and to the grand jury in the first two appearances, it
21 was far beyond that, and it certainly was not something that
22 she attributes to planning or preparation by Judge Kent.

23 Here are some statements: "The judge is a good
24 man with a good heart who is loyal and kind to the people that
11:00 25 are loyal and kind to him. He never -- it was a -- it never

11:01 1 was a bad situation. I have been there five and a half years.
2 It is a perfectly happy, familial environment among all of us.
3 Everybody gets along. There is not a problem."

4 "What happened when Judge Kent kissed you the
11:01 5 first time?"

6 "I don't know that I said anything other than,
7 'We shouldn't be doing this.'"

8 This is Person B saying this. This is not
9 something that she was told to say.

11:01 10 The rest of the transcript is cited in our
11 objections to this, and the Court has the full transcript, of
12 course.

13 And then in the grand jury, when asked whether
14 she reported what she then said -- this is the third -- the
11:01 15 unwelcome advances: "No, because I took care of it on my own.
16 I mean, I'm a big girl, and I can take care of myself. And I
17 felt like I communicated that this is not where this is going
18 or where I want it to be, and it quit, stopped."

19 I said that was the third. That is not the third
11:02 20 appearance. That's the first grand jury appearance.

21 "You didn't feel it was serious enough to go to
22 other people?"

23 "Right."

24 That's not something she says that Judge Kent
11:02 25 told her to say. Further, it was never intense enough to ever

11:02 1 complain officially to someone, except to him.

2 We've covered this under the 3C1.1 obstruction.
3 I believe that being that some of the same section that the
4 Court has already granted the 2J1.2 increase, that an increase
11:02 5 -- a further increase would not be justified.

6 THE COURT: Government?

7 MR. PEARSON: Your Honor, I don't have any additional
8 argument to add. I would just like to point out that the
9 statement that "the defendant was loyal and kind to those who
11:03 10 are or were loyal and kind to him," that's obviously not a
11 defense.

12 With that, we will rest on our papers.

13 THE COURT: Well, this is one of those catchall
14 adjustments. And first of all, I don't find that what went on
11:03 15 in this case was, quote, otherwise extensive in scope, planning
16 or preparation so as to warrant the adjustment. But even if
17 you could deem it to fit into that, it has already been
18 included and is encompassed in one of the other adjustments
19 that I have already made, so this objection has to be and is
11:03 20 overruled, Mr. Pearson.

21 The government has also objected to the
22 acceptance of responsibility, I think.

23 MR. PEARSON: Yes, sir. I'm happy to address that.
24 We had significant concerns based on the defendant's initial
11:04 25 document which was titled "Acceptance of Responsibility" but

11:04 1 contained language indicating that he had committed this
2 offense as an act of misplaced honor or that he committed this
3 offense with good intentions or the best of intentions. And
4 that was why at the time we objected to recommending acceptance
11:04 5 of responsibility.

6 Since that time, the defendant has submitted an
7 additional acceptance of responsibility in which he takes
8 significant steps towards accepting responsibility for both his
9 obstruction and the underlying assaultive conduct.

11:04 10 So, with the Court's permission, we would like to
11 defer recommending or not recommending acceptance of
12 responsibility until we hear the defendant's allocution to the
13 Court, to the public and to the victims before we make our
14 decision.

11:04 15 THE COURT: Okay. Well, on the basis of what I have
16 seen at this point, certainly the defendant is entitled to it.
17 That's what I will tell you. Things can change, but that's
18 where we are.

19 MR. PEARSON: Yes, sir.

11:05 20 THE COURT: Any other objections from the government?

21 MR. PEARSON: Not at this time. Thank you.

22 THE COURT: There is one minor thing that I believe
23 needs to be corrected in the PSR, and that is paragraph 130,
24 Counsel. If you will look at that, the last sentence in
11:05 25 paragraph 130.

11:05 1 It says, "The plea agreement further states that
2 the defendant will not receive a sentence of more than 36
3 months."

4 That's not really an accurate statement. The
11:05 5 plea agreement states instead that the government will not seek
6 a sentence of more than 36 months, but the Court is left with
7 full discretion, and I think that was clearly understood by
8 everyone. Right?

9 MR. PEARSON: That's correct, Your Honor.

11:06 10 THE COURT: So I'm going to change that to say that
11 the government will not seek a sentence of more than 36 months
12 to accurately reflect that.

13 MR. PEARSON: Your Honor, that calls to mind one other
14 issue, which is the matter of restitution for Person B. I
11:06 15 don't know when the Court wants to take that up.

16 THE COURT: Well, Mr. Pearson, I was just going to
17 inquire, because that is the next thing on my mind too.

18 MR. PEARSON: Yes, sir.

19 THE COURT: And it applies to the matter of
11:06 20 restitution and the definition of a victim, so maybe you should
21 speak first.

22 MR. PEARSON: Your Honor, very briefly on this, our
23 position is that both Person A and Person B qualify as victims
24 for purposes of the Crime Victims' Rights Act. And that as a
11:06 25 result, their counseling sessions should be paid for by the

11:07 1 defendant. The PSR walks through this issue in paragraph 43
2 for Person A and lays out a dollar figure.

3 We have documentation that I believe we submitted
4 to the probation office last week for Person B that also sets
11:07 5 out a dollar figure for her, and we would ask that as part of
6 imposing sentence, this Court impose restitution costs as well
7 under the Crime Victims' Rights Act.

8 THE COURT: Well, let's address first the question of
9 victim for two purposes, because victims have the right to
11:07 10 speak at this sentencing hearing and they are entitled to
11 restitution under the Victims' Restitution Act, so let's see
12 why you feel that they fit the definition.

13 There is a definition in the restitution
14 provision, which is Section 3663(a)(1)(B). It is (a)(1) --
11:08 15 there are too many letters in here. It is subparagraph two of
16 whatever that provision is, which says, "The term 'victim'
17 means a person directly and proximately harmed as a result of
18 the commission of an offense for which restitution may be
19 ordered under the various statutes."

11:09 20 "In the case of an offense that involves as an
21 element a scheme, conspiracy or pattern of criminal activity,
22 any person directly harmed by the defendant's criminal conduct
23 in the course of that scheme, conspiracy or pattern."

24 In the case of a victim who is under 18, which is
11:09 25 not applicable here, the other provisions -- in other words,

11:09 1 there is some serious question about who the victim of the
2 offense of conviction may be.

3 And, Mr. Pearson, I would like you to speak to
4 that, and then Mr. DeGuerin.

11:09 5 MR. PEARSON: Your Honor, proceeding under the
6 statutory language of directly and proximately harmed, we would
7 submit that both Person A and Person B are victims for purposes
8 of the statute, because they were both directly harmed in terms
9 of the defendant's assault and his false statements to the
11:10 10 Fifth Circuit. And they were proximately harmed in terms of
11 what they had to go through during this process and what they
12 are still going through today. And so I think it begins and
13 ends with the statutory text of whether they have been directly
14 and proximately harmed, and for that reason, we feel they are
11:10 15 victims.

16 THE COURT: All right. Mr. DeGuerin?

17 MR. DeGUERIN: The offense of conviction is
18 misleading, obstructing the Fifth Circuit Judicial Council's
19 investigation. The offense of conviction is not assaultive
11:10 20 conduct against either Person A or Person B. We don't believe
21 that they qualify as victims of the conduct for which he has
22 been convicted and to which he has pled guilty.

23 THE COURT: For purposes of the Restitution Act, the
24 assault cannot be the subject of the -- it is not the object of
11:11 25 the offense of conviction. It is the statements and whatever

11:11 1 flowed to result in a proximate effect from that. That's where
2 we are.

3 MR. DeGUERIN: Yes, sir.

4 THE COURT: The Supreme Court has addressed this,
11:11 5 Counsel. Do you want to speak to that in *the Huey v United*
6 *States* decision from 1990, talking about the restitution
7 aspect?

8 Counsel, do either one of you want to address
9 that?

11:12 10 MR. DeGUERIN: I will be the first to admit I don't
11 have that decision, Judge. It looks like we have both been
12 caught unprepared on that.

13 THE COURT: Go ahead.

14 MR. DeGUERIN: Like I say, I don't have it.

11:12 15 THE COURT: You don't have it?

16 MR. DeGUERIN: No, sir.

17 MR. PEARSON: Judge, I don't have that here in front
18 of me either. We're proceeding first and last with the statute
19 here.

11:12 20 MR. AINSWORTH: Your Honor, could I address just one
21 point that came up in response to Mr. DeGuerin?

22 This is Peter Ainsworth.

23 If I could remind the Court, the Person A was a
24 complainant at the time the obstructive conduct that amounts to
11:12 25 the offense of conviction occurred. She is entitled to justice

11:12 1 in this case. I mean, we know now, once the plea has been
2 taken, the defendant has admitted to repeatedly sexually
3 harassing or assaulting her; in addition, sexually assaulting
4 Person B. But importantly, Person A through an act of personal
11:13 5 bravery filed a complaint, and so in terms of directly being
6 harmed as set forth in the statute, Person A fits that
7 description to a bill. She has an entitlement and a right to
8 justice as a complainant in a judicial misconduct proceeding,
9 and defendant Kent obstructed that proceeding, and he admits
11:13 10 it.

11 THE COURT: You are talking about just Person A or
12 Person A and Person B?

13 MR. AINSWORTH: Well, I would submit that it is Person
14 A and Person B, because, quite frankly, the obstruction did
11:13 15 encompass both. And the Fifth Circuit admits that, as much,
16 when it, soon after the superseding indictment was returned,
17 says, "We are going to reopen on Person A."

18 Now Mr. DeGuerin says, well, those must be
19 compartmentalized, but I think the Court understands that they
11:14 20 can't be. That if there was a lie as to what happened to
21 Person B, it is going to prevent and obstruct the judicial
22 investigative proceeding as to what happened to Person A, as
23 well.

24 THE COURT: Well, the *Huey* case stands for the
11:14 25 proposition, as I read it, that you have to look at the offense

11:14 1 of conviction. Agree?

2 MR. AINSWORTH: And we agree with that. But I think
3 that under this offense of conviction, Person A and Person B,
4 but certainly Person A had an entitlement to justice in this
11:14 5 case, again, a very difficult act for her to step forward and
6 file her complaint. I think that as a complainant she is
7 directly harmed, not just proximately, but directly harmed by
8 the obstructive conduct.

9 We would strongly urge the Court at the very
11:15 10 least to allow these two women to address the Court briefly as
11 victims that they are.

12 THE COURT: Really there is probably some distinction
13 between a victim for purposes of the right to address the Court
14 and a victim for restitution, and I haven't attempted to try to
11:15 15 determine that.

16 MR. AINSWORTH: I agree, but our primary request of
17 this Court is to allow them to address it. We would certainly
18 like to see a restitution order entered. But certainly for
19 today's purposes, we would like to request that they have an
11:15 20 opportunity to talk to the Court.

21 THE COURT: Mr. DeGuerin?

22 MR. DeGUERIN: The offense of conviction is false
23 statements about Person B, and that is the offense of
24 conviction. The victim, if there is a victim of that offense,
11:16 25 the offense of conviction, is the Fifth Circuit.

11:16 1 THE COURT: The Fifth Circuit is a victim. There is
2 no question about that. The only issue is whether the two
3 other individuals or either of them is a victim for purposes of
4 what we are doing.

11:16 5 MR. PEARSON: Judge, just following up on what
6 Mr. Ainsworth said, I will submit that both Person A and
7 Person B are victims. Person A because she is the complainant
8 in the judicial misconduct complaint. So when the defendant
9 obstructed the investigation of her complaint, she is harmed by
11:16 10 that. And also Person B was directly and proximately harmed by
11 the obstruction because of what she had to go through in terms
12 of the investigation and what she is still going through today,
13 both as a result of the relevant conduct, which I realize is
14 not the focus for purposes of the restitution. But especially
11:17 15 for purposes of addressing the Court, we feel very strongly
16 that both victims should be allowed to address the Court.

17 THE COURT: All right. Mr. DeGuerin, I give you the
18 last word.

19 MR. DeGUERIN: Thank you, Your Honor. I can only
11:17 20 repeat what I have said. I believe that the offense of
21 conviction limits who the victims of the offense of conviction
22 are. And the offense of conviction is misleading or
23 obstructing the Fifth Circuit's investigation regarding
24 Person B. That is what the false statement was.

11:17 25 THE COURT: It is. And that's a result of the nature

11:17 1 of the witness cases in terms of what they have worked out, but
2 I cannot overlook the fact that we do have two individual
3 victims here. And the natural consequences of some of this
4 conduct, particularly the misstatements to the Investigative
11:18 5 Committee, have resulted in certainly some publicity, emotional
6 distress as a result of all of this. And I think justice
7 itself says you have to recognize these two individuals as
8 victims, even if you focus on the offense of conviction itself,
9 which was really the false statement made to the Investigative
11:18 10 Committee. So for purposes of this proceeding, they will be
11 deemed victims and for restitution, as well, if that
12 is warranted. And we will get to that later.

13 MR. DeGUERIN: And if the record is not clear on it,
14 we do object to that.

11:18 15 THE COURT: Yes. And your objection is overruled. I
16 understand.

17 Perhaps it may be appropriate at this point then,
18 since I have recognized them as victims, for the government to
19 call them, if they wish to be heard.

11:19 20 MR. PEARSON: Yes, Your Honor.

21 THE COURT: Counsel, you may have a seat while this
22 goes on. I think this -- I'm not sure how long this might be,
23 but it could be lengthy.

24 MS. TIROL: Good morning, Your Honor. AnnaLou Tirol,
11:19 25 for the record.

11:19 1 At this time we would call Person A and Person B
2 to speak to the Court. We will start with Person A as named in
3 the indictment.

4 MS. McBROOM: May it please the Court, my name is
11:19 5 Cathy McBroom. I'm the victim referred to as Person A in the
6 indictment against Judge Samuel B. Kent.

7 When I think of the events leading up to his
8 conviction, I'm consumed with emotion. Even though I have been
9 able to move on in both my personal life and my career, I will
11:20 10 forever be scarred by what happened to me in Galveston.

11 First, I want everyone to know that I value my
12 position, and I count it an honor to be serving the public in
13 my capacity as a case manager. Both the judges of the Southern
14 District of Texas and the clerk's office have shown me the
11:20 15 utmost consideration and respect since my transfer, and I'm
16 very grateful for that. My statement regarding my experiences
17 with Judge Kent should in no way be a reflection of other
18 judges or the justice system as a whole.

19 The abuse began after Judge Kent returned to work
11:20 20 intoxicated. He attacked me in a small room that was not
21 10 feet from the command center where the court security
22 officers worked. He tried to undress me and force himself upon
23 me while I begged him to stop. He told me he didn't care if
24 the officers could hear him because he knew everyone was afraid
11:20 25 of him. I later found out just how true that was. He had the

11:21 1 power to end careers and affect everyone's livelihood. That
2 incident left me emotionally wrecked and humiliated. It was so
3 difficult to face my coworkers when I knew they had seen what
4 happened to me.

11:21 5 I told my husband about the incident immediately,
6 and he was horrified. He told me to resign and just go back to
7 working at a law firm. I was way more stubborn than that. I'm
8 50 years old, and I had worked very hard to finally attain the
9 job that I considered to be my dream job. Why should I lose my
11:21 10 position and my benefits and start all over just because of a
11 judge who chose to ignore the law? One can only imagine the
12 conflict that resulted from my decision, in my home.

13 Also I want to answer the question in everyone's
14 mind. If it was so bad in Galveston, how were you able to stay
11:22 15 for four years? Number one, I didn't have to come into contact
16 with the judge every day. I had limited contact with the
17 judge. The rest of my job was completely enjoyable. And also
18 because each time an assault occurred, he would later promise
19 to leave me alone and behave professionally, and I so wanted to
11:22 20 believe that.

21 What I didn't know was that behind the scenes he
22 was telling a much different story. Now that the truth has
23 been exposed, I know so much more about his evil and deliberate
24 manipulation, and I'm utterly disgusted. He was telling his
11:22 25 staff members that I was the one pursuing him. He even told

11:22 1 his secretary that I would do anything to have her job. That
2 was so far from the truth. He pitted us against each other
3 through his lies and his actions. After the criminal
4 investigation began, he even bragged about his gift of
11:23 5 manipulation, which he thought would save him from conviction.
6 People were asking him to just resign, and he would tell them
7 if he had just 15 minutes with a jury, he would be exonerated.

8 There were times that other employees warned me
9 that judge was intoxicated, and that he was asking for me. And
11:23 10 during those times, I would refuse to answer my phone or I
11 would hide in an empty office.

12 I recently had a court employee ask me, "Why
13 didn't you just slap him?" When an employee decides to slap a
14 federal judge, she better be ready to lose her job and end her
11:23 15 career, and I knew that.

16 I wasn't ready to walk away. Going back to a law
17 firm might not have been as easy after being blackballed by a
18 judge. I knew he would do it, because I had seen him do it to
19 others.

11:23 20 The last assault I had was more terrifying and
21 threatening than ever before. After forcing himself upon me
22 and asking me to do unspeakable things, he told me that
23 pleasuring him was something I owed him. That was it for me.
24 He had finally won. He had broken me and forced me out. I
11:24 25 could handle no more of his abuse.

11:24 1 Keep in mind that I had already reported his
2 behavior to my manager. She knew about the assaults from the
3 very beginning. All she could do was warn me of his
4 far-reaching power, but she couldn't tell me what would happen
11:24 5 to me if I complained. She was also very afraid of him. She
6 had experienced his inappropriate behavior herself.

7 The effect of this experience has been
8 tremendous. I have suffered anxiety, sleep deprivation, loss
9 of self-esteem, depression, nightmares, and I had an inability
11:24 10 to focus. Try learning a new job after being traumatized like
11 that.

12 Judge Kent told other judges who I have to face
13 on a daily basis that it was just an affair gone bad. Being
14 molested and groped by a drunken giant is not my idea of an
11:25 15 affair.

16 I tried to schedule appointments with several
17 attorneys for advice during the Fifth Circuit investigation.
18 No one was willing to talk to me. Why? Because no one wants
19 to tangle with a judge. Well, almost no one. Thank God that
11:25 20 Mr. Hardin agreed to help me, free of charge. He was able to
21 guide me through the process and give me the strength that I
22 needed to stay strong and to stay courageous.

23 This problem not only affected me. It affected
24 my family, my friends and my coworkers. My marriage ultimately
11:25 25 failed because I was no longer able to manage my family

11:25 1 responsibilities. I was the glue that held the family
2 together, and I could no longer function in that capacity. I
3 felt I had let everyone down.

4 One day after having an emotional breakdown at
11:26 5 work, a dear friend of mine, another case manager, offered to
6 take me home with her. For a month, she watched over me. I
7 actually lived with her for a month, because she feared that I
8 would become suicidal.

9 Once the criminal investigation started, my life
11:26 10 really became impossible. Juggling my new work
11 responsibilities with meetings with prosecutors, the FBI, my
12 lawyers, all of that was incredibly stressful. I couldn't just
13 take off from work. Meanwhile, the judge and his staff were
14 enjoying administrative leave on full pay. Everything I did or
11:26 15 said was under a microscope; my financial records, my email
16 accounts, my telephone records, even my college transcripts.
17 Everything was subpoenaed. One would think I was the criminal.
18 I know without a doubt why most sexual assault victims never
19 complain. Only a very strong person can survive this type of
11:27 20 scrutiny. Unfortunately, my strength cost me my marriage, my
21 job and my home.

22 The media attention has been good in one respect
23 because it has kept this case at the forefront of the public's
24 mind and has raised awareness, but it has not been good for my
11:27 25 family. Even though my children have been supportive and

11:27 1 mature from the beginning, I cringe when I think of how they
2 must have felt when they read in the paper Judge Kent's claims
3 that their mother was enthusiastically consensual. They remain
4 strong, but I know they were humiliated.

11:27 5 This judge has hurt so many people in so many
6 ways. Every employee in Galveston has been afraid of his power
7 and control, so afraid that many of them refused to tell the
8 truth about the incidents or failed to offer information that
9 could have been helpful to the government. Some of the court's
11:28 10 current employees wanted to write letters asking for a stiff
11 penalty but were afraid of retaliation. He is, after all,
12 still a judge. Some people can't afford to be courageous. The
13 only reason I could was because of the support of my family and
14 my close friends who constantly believed in me and asked me to
11:28 15 stay strong. I am so fortunate to have those people in my
16 life.

17 Please let me take this opportunity to tell my
18 coworkers in Galveston that I harbor no ill feelings toward any
19 of them. They too were caught in Judge web -- I'm sorry --
11:28 20 Judge Kent's web of manipulation and control, and I wish them
21 nothing but the best.

22 Judge Vinson, I never expected any kind of
23 compensation for my damages. I only persisted because I wanted
24 to make sure that this judge would not continue to abuse women
11:28 25 and manipulate good people for his own selfish reasons. Taking

11:29 1 advantage of subordinates is wrong; claiming consensuality is a
2 very weak response to a claim of sexual assault by a
3 subordinate.

4 Of course, I wanted to be a good case manager.
11:29 5 Of course, I reported to chambers when he called me. Of
6 course, I was nice to him. I had to be. It was part of my
7 job. Judge Kent took advantage of my good nature and of my
8 willingness to do what he asked of me.

9 Please hold him accountable for his actions and
11:29 10 impose a sentence that he and others like him won't soon
11 forget. He was given so many gifts, and he squandered them.
12 He used his incredible power to his own benefit and hurt so
13 many people in the process.

14 Thank you.

11:29 15 THE COURT: Do we have another?

16 MS. TIROL: Yes, Your Honor. Person B would like to
17 address the court.

18 MS. WILKERSON: My name is Donna Wilkerson. I'm
19 happily married to my husband of 25 years, and we have two
11:30 20 teenage children. I have worked hard all of my life in the
21 legal field, and I worked for Sam Kent for the last seven
22 years.

23 For the last seven years, I was sexually and
24 psychologically abused and manipulated. Sexual abuse began on
11:30 25 the fifth day, the fifth day of my career working with Sam

11:30 1 Kent. I knew Sam Kent better than anyone and sadly no one
2 really knows Sam Kent or the truth of his life and how he has
3 conducted himself; his wife, his family, his colleagues, his
4 friends and supporters or even his own attorney. And on the
11:31 5 subject of supporters, his family, his own real family, is and
6 has been estranged over the past seven years from him. What
7 does that say when your own family cannot stand beside you?

8 I would like to tell you about the real Sam Kent.
9 Sam Kent has spent his life manipulating people and abusing his
11:31 10 relationships with people. Certainly this has been my
11 experience the time I have known him. He has also spent this
12 time lying to everyone. He will never acknowledge what he has
13 done to the people around him. He continues to try to
14 manipulate the system and make excuses for his aberrant
11:31 15 behavior. Some of his lies have now been uncovered by his own
16 admission, yet because of his narcissism and inability to admit
17 fault and accept fault, except in an instant -- or an instance
18 such as today when he thinks it will gain him some mercy, or
19 the day he pled guilty, he turns to even more lies by
11:32 20 publishing ridiculous statements in the newspaper and blaming
21 everyone and everything but himself.

22 Although his plea bargain required his claiming
23 responsibility for his actions, as soon as he was out of the
24 courtroom, he made statements to the press through his lawyer
11:32 25 which were lies and making ludicrous excuses for his past lies.

11:32 1 I could not fully realize how Mr. Kent
2 manipulated me until I was able to get out of his web, as he
3 commonly referred to his position with the people involved in
4 his career and his life. I now realize that he maliciously
11:32 5 manipulated and controlled everyone and everything around him.
6 He abused those around him and misused his power -- or the
7 power -- excuse me -- that his position brought him.

8 He said that he hated bullies. How sad is it
9 that he himself is the biggest bully of them all?

11:33 10 He continues his manipulative behavior in seeking
11 a mental disability when just two years ago he fought hard to
12 make his accusers and the investigators know that he was fully
13 capable of keeping his bench.

14 Mr. Kent liked to say that he had to treat the
11:33 15 lawyers who appeared before him harshly, because if he was nice
16 to them, that they would take advantage of him. He said that
17 people, quote, misunderstand kindness as weakness. Now I know
18 that this is what he truly believes. He saw my kindness to him
19 as weakness, and he took complete advantage of me.

11:33 20 My life has been truly affected in ways that I
21 can never describe. No one can fully understand what it was
22 like for me to have this happen to me. My family and I are in
23 counseling to deal with the pain that he has caused. Our lives
24 have been turned upside down. I have teenage children who have
11:34 25 had to hear the ugly details of sexual abuse, perpetrated by

11:34 1 someone they once loved and trusted.

2 On a daily basis, I struggle with the past and
3 the pain that this situation has caused me. I worry about what
4 my future will be like, both personally and professionally. My
11:34 5 life is forever changed.

6 Mr. Kent often criticized the criminal defendants
7 who would appear before him. He chastised them for not being
8 accountable for their actions. He often mocked defendants for
9 begging for mercy and, ironically, now he's the one begging.

11:34 10 I implore the Court to treat Mr. Kent like the
11 convicted felon he is, by his own admission of guilt. Sam Kent
12 himself would have laughed out loud at the idea of granting
13 probation to a person who committed the wrongs that he has
14 committed. I ask that he be imprisoned. A prison sentence is
11:35 15 the only way justice can be served in this case.

16 Additionally, I have learned in the last few days
17 from the prosecutors that there is a possibility that Judge
18 Kent would not be made to surrender himself until a few weeks
19 from now. I want to add that for the last two years, I heard
11:35 20 practically on a daily basis how he was going to kill himself,
21 how he would never -- he would see this to the end, but he
22 would never go to jail. He would kill himself.

23 My family and I live less than two miles from
24 Judge Kent in a very small town. We pass each other. We share
11:35 25 some of the same streets to our homes. Judge Kent is crazy.

11:35 1 And I am fearful and very disturbed to know that based on his
2 comments in the past, his statements in the past of what his
3 actions would be, if he were sentenced to jail, that he could
4 potentially harm my family and then himself. So I ask that he
11:36 5 not be given that two-week time to surrender himself.

6 Thank you very much.

7 THE COURT: Anyone else?

8 MS. TIROL: No, Your Honor.

9 THE COURT: Counsel, if you will come back up in front
11:36 10 of the clerk's bench.

11 *(Compliance)*

12 THE COURT: I think where we are is that we have
13 considered all of the objections and all, including the
14 government's and the defendant's, have been overruled, and I
11:37 15 have given an acceptance of responsibility of two levels
16 reduction with an offense level of 19 and a criminal history
17 category of one and a guideline range of 30 to 37 months.

18 I think that's where we are. Does anyone
19 disagree?

11:37 20 MR. PEARSON: That's correct, Your Honor.

21 MR. DeGUERIN: That's correct.

22 THE COURT: By way of allocution then, would you like
23 to speak for him, Mr. DeGuerin?

24 MR. DeGUERIN: I would, and he would like to speak
11:37 25 also.

11:37 1 THE COURT: I will give him the opportunity.

2 MR. DeGUERIN: We have provided the Court with a
3 number of reports from physicians, some who have been treating
4 Judge Kent for a decade or more and others who were brought in
11:38 5 recently because of an emergency situation about which the
6 Court and prosecution is aware. Most recently, he was
7 hospitalized for several days for stress-related matters.

8 We believe that consideration of those matters,
9 they are true, they are real, they do -- they go a long way
11:38 10 toward explaining much of his conduct. Not excusing. Not
11 asking for an excuse and certainly not avoiding responsibility,
12 but these things go a long way toward understanding the tragedy
13 that this Court is faced with, the tragedy to the victims, the
14 tragedy to the complainants, the tragedy to the justice system
11:39 15 and to Judge Kent himself and his family.

16 This Court has a difficult job, but at the same
17 time, although justice must be served, justice tempered with
18 mercy is Your Honor's responsibility. We have suggested that
19 the Court would be justified, given the collateral
11:39 20 consequences, to have mercy. The collateral consequences, of
21 course, Judge Kent gave up his partnership in a large law firm
22 to take the bench. He served as a judge very well. He served
23 the people that came before him both in criminal but more often
24 in civil cases, particularly the admiralty cases that came
11:40 25 before him. He had one of the highest rates of case

11:40 1 disposition in the entire Fifth Circuit, let alone in the
2 Southern District of Texas, and he is proud of that record.

3 He will no longer be a district judge, no matter
4 what happens. He has tendered his resignation to the state
11:40 5 bar. He will no longer be a lawyer. He will be a convicted
6 felon. His family, like the family of those of the
7 complainants, has been terribly adversely affected and will
8 continue to be, and those are the collateral consequences of
9 this plea.

11:41 10 Punishment that someone undergoes can be measured
11 by the length of the fall, and in this case, Judge Kent's fall
12 has been monumental. We ask that he be sentenced to a medical
13 facility; that the Court recommend drug and alcohol counseling
14 and treatment. It is very clear to me with both personal and
11:42 15 professional knowledge of alcoholism that Judge Kent, although
16 he says that he is not an alcoholic, is an alcoholic. His
17 father was an alcoholic and his mother is an alcoholic. Other
18 members of his family have suffered from alcohol abuse. He
19 clearly qualifies for that.

11:42 20 His medical condition, he is under a whole
21 cornucopia of medications, and they are all very, very vital to
22 his continued existence, so sentence to a treatment facility or
23 a hospital type prison system would be justified.

24 We would ask that he be granted a voluntary
11:43 25 surrender. That actually is something that counts in the

11:43 1 Bureau of Prisons' consideration of his prison. And we would
2 ask that Judge Kent be allowed to address the Court.

3 THE COURT: Mr. Kent, would you like to speak
4 personally now?

11:43 5 THE DEFENDANT: May I stand at the podium?

6 THE COURT: You may. Let me say that I have read your
7 submissions to the Court already that you have already put down
8 in writing. You may take that as accepted and read.

9 THE DEFENDANT: May it please the Court, I stand
11:44 10 before you a completely broken man, but in some ways a better
11 person forward. Job teaches that God is often not a favored
12 uncle but an earthquake, and it took an upheaval of seismic
13 proportions to shake me out of my hubris; shaken out I am.

14 I apologize first to my incredible staff who were
11:44 15 the best at what they did, as can be imagined. I let drinking
16 and personal lapses cost them in personal offense, and me in
17 their loss; more, I tended to see them as friends instead of
18 professional coworkers. And in doing so, I was devastatingly
19 wrong.

11:44 20 I apologize to you, my colleagues, the Fifth
21 Circuit and the public we serve. I apologize to my wife and
22 family and to my marriage, all of whom and which I have likely
23 irretrievably lost.

24 I apologize to all who seek redress in the
11:45 25 federal system for tarnishing its image and because never again

11:45 1 can I vouchsafe their interest, a job I truly loved and will
2 terribly miss.

3 I have had the benefit of 26 months of absolute
4 sobriety, a wonderful pretrial officer, a sensitive and
11:45 5 thoughtful presentencing officer, terrific attorneys and
6 excellent medical help. Through their assistance, I have come
7 to see what a flawed, selfish, thoughtless and indulgent person
8 I have been, and I have already begun to try and put myself
9 right and to emerge from this a better person.

11:45 10 I know that you will do what honor and duty
11 impels. If you go the punitive route, I will do my best to
12 work within the system available to me to teach literacy and
13 history and hope to those less fortunate than I have been.

14 If you go the redemptive and charitable route, I
11:45 15 will redouble my efforts to work with my doctors to try and
16 become the man I have always wanted to be.

17 From now on, regardless, I will do my best never
18 to harm another by my faults and weaknesses, and I now realize
19 what matters is where I end up and not how I get there.

11:46 20 I submit myself humbly to you, imploring only
21 that in meting out fair justice you bear in mind the human
22 frailty, and my sincere apologies to all concerned.

23 I thank you for hearing me.

24 THE COURT: Anyone from the government?

11:46 25 MR. AINSWORTH: Your Honor, I would like to spend just

11:46 1 a moment summing up and give Your Honor our specific
2 recommendation, if you would like that.

3 THE COURT: Yes, I would. And I would like you to
4 address the matter of restitution, and then I will give
11:46 5 Mr. DeGuerin an opportunity to address that as well, because it
6 really hasn't been covered.

7 MR. AINSWORTH: Okay. First of all, it goes without
8 saying that this is a case that is quite distinctive from
9 others that I have been involved in, probably the Court, maybe
11:47 10 even Mr. DeGuerin. But let me make two points about why this
11 case stands out in the government's view.

12 First of all, the repeated nature of the conduct,
13 the sexual assaults and the devastating impact that this Court
14 has heard about today from the mouths of these two women --
11:47 15 that's something that sets it apart -- the humiliation that
16 they have felt, that they've been subjected to, the degradation
17 that they have been subjected to. There is no need to use new
18 words because, quite frankly, the words that they have used are
19 more than adequate, and the emotion that came with it was quite
11:47 20 powerful.

21 Engaging in a pattern of sexual assaults,
22 defendant Sam Kent repeatedly attacked the personal dignity of
23 these two women, and he did so for the basest of reasons, his
24 own carnal gratification.

11:48 25 Let me go to the second reason why this case is

11:48 1 different. This case is also set apart because of the repeated
2 nature of Judge Kent's assaults on our justice system. It was
3 not confined to the falsehoods he fed to his brother and sister
4 judges on the Fifth Circuit Investigative Committee and on the
11:48 5 Fifth Circuit Judicial Conference. In fact, it went beyond
6 that, as we know. There were the lies to the Fifth Circuit.
7 There were the implications, and you have heard from
8 Ms. Wilkerson about how she was told what she needed to say,
9 and she said it. She said it not only to the Fifth Circuit,
11:48 10 but she repeated it in the grand jury, knowing that she had to
11 stick with it.

12 You have heard about the statements to the law
13 clerk, that, in fact, Judge Kent implied that he might harm
14 himself if Donna Wilkerson finally changed her story and told
11:49 15 the truth. You have heard about the lies to the FBI, the lies
16 to the Department of Justice and the lies even to Donna's
17 husband, again, just months before or a few weeks before she
18 testified truthfully.

19 In conclusion, defendant Sam Kent continually put
11:49 20 himself above the law. He acted this way when he repeatedly
21 committed acts of felonious sexual assaults. He acted this way
22 in his pattern of obstruction.

23 Once though, Ms. McBroom, in an act of personal
24 bravery, blew the whistle on his crime spree, he started the
11:49 25 acts of obstruction, the pattern of obstruction.

11:49 1 We take the opportunity now, the United States,
2 to ask this Court to send a message today. We ask that the
3 Court impose a 36-month sentence of imprisonment. We ask that
4 this Court send a signal and a message that no one is above the
11:50 5 law. The United States, in fact, asks this Court to send a
6 clear signal that we remain a country of laws and not of men.

7 As to the restitution, I think the figures are
8 there, and we can get into some detail, but there is not a lot
9 of money that's being identified and sought here. I believe
11:50 10 Ms. Wilkerson identifies \$12,480, but that is prospective.
11 That's money that she expects that will be necessary in mental
12 health sessions and professionals in order to put her family
13 and her life back together.

14 THE COURT: In looking at that -- and it was somewhat
11:50 15 difficult for me, but I gleaned that she had already attended
16 nine sessions at \$130 per session. Maybe I misread it.

17 MR. AINSWORTH: I think she had -- there are two
18 components of this. One is what is anticipated in the future;
19 one is what has been spent up to this point. I think the far
11:51 20 easier calculation is Ms. McBroom's. Cathy McBroom has
21 submitted, I believe, \$3,300 as the total amount.

22 THE COURT: That was the actual. You estimated
23 initially 2,000. The actual was 3,300, a reduced rate
24 apparently.

11:51 25 MR. AINSWORTH: That's my understanding. If the Court

11:51 1 would like some clarification, obviously we can get it.

2 THE COURT: That's what I have seen submitted through
3 the probation office.

4 MR. AINSWORTH: May we inquire? Is that correct?

11:52 5 MS. McBROOM: That's what I have spent. About 3,000.

6 THE COURT: What did she say? I didn't hear her.

7 MR. AINSWORTH: She said that's what she spent.

8 Approximately 3,000.

9 THE COURT: 3,300 or 3,000?

11:52 10 MS. McBROOM: I honestly just gathered up my receipts
11 and just sent them in. I didn't total it. I'm sorry.

12 MR. PEARSON: Your Honor, I believe that the documents
13 submitted to the probation officer totaled 3,300.

14 THE COURT: That's what I have seen.

11:52 15 MR. PEARSON: Yes, sir.

16 THE COURT: Anything else?

17 MR. AINSWORTH: And the letter -- I don't know -- I'm
18 sure the Court has it, but the letter from the Center for
19 Relationship Wellness regarding Ms. Wilkerson lays out a figure
11:52 20 in the second to the last paragraph.

21 THE COURT: Mr. DeGuerin?

22 MR. DeGUERIN: I don't know if this is the time to
23 address it, Your Honor, but I know that federal employees are
24 entitled to counseling. I don't know if any of this has been
11:53 25 covered by either federal insurance or federal counseling.

11:53 1 That might be a matter to be inquired about by the probation
2 officer.

3 THE COURT: I know Ms. Wilkerson's report doesn't
4 mention anything about insurance. I don't know if she is
11:53 5 entitled to insurance or not, if there was a claim made.

6 MS. WILKERSON: No, Your Honor. Your Honor, my
7 initial sessions have been covered through the employee
8 assistance program of the court that Mr. DeGuerin refers to,
9 but that is a limited, short time counseling program. But
11:53 10 after actually one more visit, that benefit will be used up,
11 and my only option is to then file it on my own personal health
12 insurance that I have, unless restitution is granted.

13 THE COURT: Do you know if it will be covered? That's
14 the question.

11:54 15 MS. WILKERSON: Yes, sir. I believe so.

16 THE COURT: Do you think so?

17 MS. WILKERSON: Yes. I have no reason to believe that
18 it would not be covered.

19 MR. AINSWORTH: Your Honor, we have something to -- we
11:54 20 just received Mr. DeGuerin's filing, I think, late Friday. We
21 had to travel this weekend. We do have something filed to the
22 Court that specifically meets some of the issues and concerns
23 or requests raised by Mr. DeGuerin in his Friday submission.
24 If we could orally move the Court to accept it under seal, I
11:54 25 think that's probably not going to be objected to. And it

11:54 1 deals with some of the mental health issues, as well as the --

2 THE COURT: I don't -- I really don't know what you
3 are referring to, so I can't rule on it.

4 Mr. DeGuerin, do you want to be heard on this?

11:55 5 MR. DeGUERIN: I haven't had a chance to read it. I
6 got it this morning just before the Court came in.

7 MR. AINSWORTH: It's a short piece that tries to
8 address quickly some of the concerns that have been requested.
9 It is five pages, less than five pages. We can do that orally,
10 if the Court would prefer.

11 And, lastly, I'm going to defer to Mr. Pearson if
12 the Court wants to hear any response to any of the matters that
13 were in the last submission. The government would join or make
14 the request for immediate remands today for some of the
11:55 15 concerns that Ms. Wilkerson expressed, as well.

16 THE COURT: Let me see what this filing is.

17 MR. PEARSON: Judge, this is just a response to the
18 defendant's sentencing memo that was filed on Friday. Most of
19 the issues have already been covered here, including whether
11:56 20 the obstruction enhancement should apply.

21 We also respond to the defendant's argument that
22 he made in his sentencing memo that he should receive either a
23 downward departure or a variance on the basis of his past and
24 present psychological and medical conditions, and we respond to
11:56 25 that explaining why, if you look at the text of the guidelines,

11:56 1 they explicitly reject those kinds of departures in these
2 situations.

3 And then we also deal with the consideration of
4 the letters. Your Honor has already cited to those letters,
11:56 5 and so I think that issue has already been covered.

6 THE COURT: I have read all the letters that have been
7 submitted.

8 MR. PEARSON: Yes, sir. And then the last one is
9 dealing with what Mr. DeGuerin just brought up about the
11:56 10 substance abuse program and the medical facility. We will
11 defer to the Court on the substance abuse program, but we do
12 object and we do not feel that the defendant should be
13 sentenced to a medical facility. We believe that is the Bureau
14 of Prisons' determination.

11:57 15 THE COURT: Well, the Bureau of Prisons is ultimately
16 going to make that decision anyway, so I can recommend --
17 that's all -- as you know.

18 MR. PEARSON: Yes, sir.

19 THE COURT: Mr. DeGuerin, do you want the last word on
11:57 20 that?

21 MR. DeGUERIN: Yes, sir. We ask for that
22 recommendation. As the Court knows from the submissions that
23 we have given, prominent and unquestionable -- unquestionably
24 qualified doctors have been treating and examining Judge Kent
11:57 25 for many years.

11:57 1 Most recently just two weeks ago, he was in
2 critical condition, admitted to a hospital because of what
3 turned out to be pneumonia, what was thought to be stress
4 related. If Judge Kent were to actually -- was a danger to
11:58 5 himself or to others, that could have happened many times.
6 We've acted, I think, in a way to prevent that. He has had the
7 kind of counseling that suicide is not an option.

8 As far as the response that the government has
9 filed, certainly I have no objection to them filing whatever
11:58 10 they want to file, but we have a different view. I hope that
11 they are not trying to in an indirect way escape from the deal
12 that we made. We don't want to back out of the plea. We want
13 to enforce the conditions of the plea.

14 Secondly, although a downward departure might not
11:59 15 be warranted because of the medical condition, certainly a
16 variance could be considered by this Court. He does have a
17 very serious medical and psychological condition. There can be
18 no question about that. It goes a long way to explain his
19 conduct, as well as the alcohol abuse that is historically in
11:59 20 his family. So we renew our request for a medical facility for
21 the alcohol abuse and drug abuse program.

22 THE COURT: Let me ask Mr. Kent to stand now.

23 *(Compliance)*

24 THE COURT: Samuel B. Kent, as you undoubtedly know,
11:59 25 sentencing is the most difficult thing that a trial judge has

11:59 1 to do. And in my experience, I have always tried to very
2 carefully and completely go over every aspect of each
3 defendant's case. Because each defendant is different, each
4 case has to be decided under its own facts and circumstances.

12:00 5 In your case, it's particularly difficult, and I
6 have spent many hours, in fact, going over all the tons of
7 material it seems like that have been submitted to me in this
8 case. I have reviewed everything in your presentence
9 investigation report and subject to the corrections that we
12:00 10 have made on the record this morning, I find that it is
11 accurate. It is incorporated into and will remain part of your
12 sentence as the guideline procedure contemplates.

13 I have seen from the presentence investigation
14 report and all the material provided to me that you have had
12:01 15 significant personal and professional accomplishments. You
16 were a very successful attorney in private practice. Your
17 appointment to the federal bench in 1990 by the first President
18 Bush was a recognition of your legal abilities and the
19 professional respect you held.

12:01 20 At that time, you took your place as one of the
21 575 authorized U.S. District Court judges across this country,
22 575 judges who were charged with the awesome responsibility and
23 the authority of upholding the Constitution and the laws of the
24 United States. And for over 18 years, you did that, a period
12:01 25 that is longer than many judges ever serve, as you know.

12:02 1 I also conclude from reading all the materials
2 that have been submitted to me that you patiently endured the
3 pain of nursing your first wife through her long struggle with
4 a fatal brain tumor. So, in short, there are many positive
12:02 5 entries in the ledger of your life in this case, yet there are
6 serious major negative entries, as well. And it is for those
7 negative actions for which you now stand convicted that you
8 must be held accountable. And every action, whether it is good
9 or it is bad, has a consequence. The consequence to you of
12:02 10 your wrongful conduct is not only the loss of a job which many
11 feel is the best job in the world, but also punishment under
12 the law. And as you well know, the law is no respecter of
13 persons, and everyone stands equal in this Court. And former
14 judges are no exception.

12:03 15 Your wrongful conduct is a huge black X on your
16 own record. It's a smear on the legal profession, and, of
17 course, it's a stain on the justice system itself. And,
18 importantly, it is a matter of grave concern within the federal
19 courts.

12:03 20 My duty this morning is to simply apply the law
21 fairly to ensure that you are given no preferential treatment
22 or, on the other hand, to ensure you are not treated overly
23 harshly or improperly simply because you have been a judge. In
24 other words, your punishment should be the same as one -- as
12:04 25 imposed on one similarly situated, regardless of background or

12:04 1 experience.

2 That's what I have endeavored and do endeavor to
3 do in approaching the sentence in your case. So, therefore,
4 pursuant to the Sentencing Reform Act of 1984 and the
12:04 5 amendments to that Act that have been made effective by
6 Congress since 1984 and in accordance with the applicable
7 sentencing guidelines and policy statements from the United
8 States Sentencing Commission and the law as interpreted and
9 construed by the United States Supreme Court, it is the
12:04 10 judgment of the Court that you are hereby committed to the
11 custody of the Bureau of Prisons to be imprisoned for a term of
12 33 months.

13 In determining this sentence, I have considered
14 all of the factors set out in Title 18, United States Code,
12:05 15 Section 53a, which include the nature and circumstances of the
16 offense itself, which is unusual in this case, and the history
17 and characteristics of you yourself. Those are clearly the
18 most important factors to take into account in any sentencing,
19 and especially in this sentencing.

12:05 20 I have also considered and weighed carefully the
21 need of this sentence to reflect the seriousness of the
22 offense, to promote respect for the law and to provide just
23 punishment for this offense, to afford adequate deterrents to
24 criminal conduct, to protect the public from further crimes and
12:05 25 to provide any medical care or other treatment that might be

12:05 1 appropriate for you individually.

2 I have also considered all of the factors that
3 are set out in the statute, but those are the ones that I
4 consider to be most pertinent, most apropos.

12:06 5 After taking all those factors into account, I
6 conclude the sentence that I have determined is one that is
7 reasonable under the circumstances and a greater sentence is
8 not necessary to comply with those statutory purposes. The
9 sentence itself is intended to meet the sentencing goals of
10 punishment, as well as deterrents.

11 I have also taken into account, of course, the
12 fact that the sentencing guidelines themselves are advisory
13 only, and I have used them only in an advisory capacity. You
14 personally have a family history and a personal history of
12:06 15 alcohol abuse, so, therefore, while incarcerated, you will
16 participate in the Bureau of Prisons' residential drug abuse
17 program, or such similar program offered for the treatment of
18 substance and specifically alcohol abuse that may be offered at
19 the institution where you are located as deemed eligible by the
12:07 20 Bureau of Prisons.

21 From the financial information provided to me --
22 and let me add that in addition to that information, I am
23 certainly aware that you in all likelihood will no longer be
24 drawing a salary either from disability or otherwise from job
12:07 25 as a judge of the United States District Court. And I have

12:07 1 assumed that, and I find that you have only a limited financial
2 ability to pay a fine, certainly one below the applicable fine
3 range. And after taking into account any restitution that may
4 otherwise be ordered in this case, I find that you will be able
12:07 5 to pay a modest fine in the amount of \$1,000 to be paid in
6 increments during the course of supervised release and as a
7 condition of supervised release. So that will be ordered and
8 is ordered with any interest on that fine to be waived in the
9 interest of justice.

12:08 10 As the law requires, a special monetary
11 assessment of \$100 must be and is ordered, which is due and
12 payable immediately.

13 In accordance with Title 18, United States Code,
14 Section 3663, it is ordered that you make restitution to the
12:08 15 following individuals: First, to Person A, as identified in
16 the record, in the amount of \$3,300. And second, to Person B,
17 who is also identified in the record, in the amount of \$3,250,
18 taking into account payments that have been made or will be
19 made within the next eight months for purposes of counseling.
12:09 20 Any interest on restitution is also waived in the interest of
21 justice. The restitution will be paid, unless otherwise paid,
22 as a condition of supervised release.

23 Upon release from imprisonment, you will be
24 placed on supervised release for a term of three years under
12:09 25 the standard conditions of supervision adopted by this Court

12:09 1 and with the following special conditions: First, any unpaid
2 portion of the restitution will be paid in installments of not
3 less than \$200 per month, commencing within three months after
4 you are released from incarceration.

12:09 5 Second, any unpaid portion of the fine will also
6 be paid in installments of not less than \$31 per month,
7 commencing within three months after release from imprisonment
8 with payments toward the victims' restitution taking priority
9 over anything that is applicable.

12:09 10 As the third condition, you will be evaluated for
11 substance abuse and referred to treatment as determined
12 necessary through an evaluation process, and you may be tested
13 for the presence of any illegal controlled substances or
14 alcohol at any time during the term of supervision.

12:10 15 Fourth, you will participate in a program of
16 mental health counseling and/or treatment.

17 Fifth, you will provide the supervising U.S.
18 probation officer with requested financial information, both
19 personal and business, and shall not incur any new debts or
12:10 20 liquidate any assets without the prior approval of the
21 supervising U.S. probation officer unless and until the
22 financial obligations are satisfied.

23 Sixth, and finally, you shall not have any
24 contact with the individual victims identified in this case.

12:10 25 Counsel, I have made a number of findings of fact

12:11 1 and conclusions of law with respect to the sentence I have
2 imposed on Mr. Kent. Do counsel have anything that needs to be
3 amplified further in the record in the way of objections?

4 MR. DeGUERIN: No, Your Honor.

12:11 5 MR. AINSWORTH: No, Your Honor.

6 THE COURT: Mr. Kent, your plea agreement places
7 strict limitations on any appeal. Nevertheless, if there are
8 grounds for an appeal, you are advised that you may have that
9 right and if you are and do have grounds for an appeal and take
12:11 10 an appeal and you are unable to afford the cost of an appeal,
11 you may apply for need to appeal in forma pauperis. If
12 granted, it will allow you to take appeal without any cost to
13 you, as you know.

14 Any appeal must be filed within 10 days, but if
12:11 15 you feel you have grounds to appeal, upon request, your
16 attorney can file a notice of appeal on your behalf.

17 It is my intention to allow Mr. Kent to
18 voluntarily surrender. I understand that there have been some
19 concerns expressed by the government and by at least one of the
12:12 20 victims. I don't take these lightly. I consider them to be
21 very serious matters, but I'm treating Mr. Kent exactly the
22 same as I would any other individual, regardless of whether he
23 has ever had any connection with this Court or not, and I would
24 normally under these circumstances allow a defendant to
12:12 25 voluntarily surrender. It has benefits accruing in the Bureau

12:12 1 of Prisons, so, therefore, as the condition of the sentence
2 imposed and while awaiting commencement of the sentence, the
3 defendant will remain under the same release conditions
4 previously imposed, and he is ordered to surrender to the U.S.
12:12 5 Marshal here in Houston, Texas on or before 12:00 noon on
6 June 15, 2009.

7 In the event a place of confinement is designated
8 by the Bureau of Prisons prior to that date -- and I certainly
9 expect that to be the case -- the defendant may voluntarily
12:13 10 surrender at his own expense to the institution no later than
11 12:00 noon on June 15, 2009.

12 Mr. Kent, you are advised that failure to abide
13 by your release of conditions or failure to surrender to the
14 marshal or the institution will not only constitute a violation
12:13 15 of your release conditions, but subject you to prosecution for
16 any number of previous offenses, of which you are fully aware.

17 I think that concludes the sentencing.

18 Mr. DeGuerin?

19 MR. DeGUERIN: Your Honor, it sometimes takes longer.
12:13 20 That's about four weeks away.

21 THE COURT: It is a little over four weeks. My
22 experience is that that is normally enough. Now, this may
23 implicate some additional concerns under the Bureau of Prisons,
24 because they don't get a federal judge that often, so there may
12:14 25 be some difficulties. If there are, just file a motion, but I

12:14 1 expect that to be the case.

2 MR. DeGUERIN: One other thing, Judge. We have a
3 request that you designate a medical facility.

4 THE COURT: I will recommend to the Bureau of Prisons
12:14 5 that the defendant be designated to an institution that has a
6 good medical facility in light of some serious medical
7 conditions, including the conditions Mr. Kent clearly has, and
8 I think I have already recommended the abuse program.

9 I also think that the Bureau of Prisons should
12:14 10 include -- should designate him to an institution that has a
11 mental health facility because some institutions do not have
12 that. And that is my recommendation to the Bureau of Prisons.

13 Anything else?

14 MR. DeGUERIN: No, sir.

12:14 15 MR. PEARSON: Yes, Your Honor. At this time we will
16 go ahead and move to dismiss the remaining counts.

17 THE COURT: Granted. Counts One through Five are
18 dismissed.

19 MR. PEARSON: Thank you.

12:15 20 THE COURT: Anything else?

21 MR. DeGUERIN: No, sir.

22 MR. AINSWORTH: On behalf of the government, I would
23 like to thank the Court for your time.

24 THE COURT: Thank you, Counsel, all concerned. I
25 realize it has been a long time this morning, a little longer

1 than I anticipated.

2 If there is nothing else, we are now adjourned.

3 Thank you.

4 (Proceedings concluded)

5 * * * *

6 I certify that the foregoing is a correct transcript from
7 the record of proceedings in the above-entitled cause.

8 Date: May 25, 2009

9

/s/ Mayra Malone
Mayra Malone, CSR, RMR, CRR
Official Court Reporter

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

-vs-

Case # 4:08cr596-001/RV

SAMUEL B. KENT

USM # 45225-079

Defendant's Attorney:
Dick DeGuerin, Esquire (Retained)
1018 Preston Avenue, 7th Floor
Houston, TX 77002

JUDGMENT IN A CRIMINAL CASE

The defendant pled guilty to Count 6 of the Superseding Indictment on February 23, 2009. Accordingly, **IT IS ORDERED** that the defendant is adjudged guilty of such count(s) which involve(s) the following offense(s):

<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>DATE OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. § 1512(c)(2)	Obstruction of Justice	June 8, 2007	Six

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, including amendments effective subsequent to 1984, and the Sentencing Guidelines promulgated by the U.S. Sentencing Commission.

Counts 1, 2, 3, 4, and 5 are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Date of Imposition of Sentence:
May 11, 2009



ROGER VINSON
SENIOR UNITED STATES DISTRICT JUDGE

May 11, 2009

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **33 months**.

The Court recommends to the Bureau of Prisons:

While incarcerated, the defendant shall participate in the Bureau of Prisons Residential Drug Abuse program, or other such similar program for the treatment of substance abuse.

That the defendant be designated to a Bureau of Prison facility that has a medical and mental health unit as appropriate for the defendant's medical and mental health conditions.

The defendant shall surrender to either the United States Marshal for this district or to the institution designated by the Bureau of Prisons on 12 noon, June 15, 2009.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime and shall not possess a firearm, destructive device, or any other dangerous weapon.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the following standard conditions that have been adopted by this court.

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and

- shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within **72 hours** of being arrested or questioned by a law enforcement officer;
 12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
 13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
 14. If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

The defendant shall also comply with the following additional conditions of supervised release:

1. Any unpaid portion of the restitution shall be paid in installments of not less than \$200.00 per month. These payments are to commence with three (3) months from the defendant's release from imprisonment.
2. Any unpaid portion of the fine shall be paid in installments of not less than \$31.00 per month. These payments are to commence with three (3) months from the defendant's release from imprisonment. Payments toward the victims' restitution shall take priority over payments of the fine.
3. The defendant shall be evaluated for substance abuse and referred to treatment as determined necessary through an evaluation process. The defendant may be tested for the presence of illegal controlled substances or alcohol at any time during the term of supervision.
4. The defendant shall participate in a program of mental health counseling and/or treatment.
5. The defendant shall provide the probation officer all requested financial information, both business and personal. The defendant shall not incur any new debts or liquidate any assets without the permission of the supervising United States Probation Officer, until the financial obligations are satisfied.
6. The defendant shall not have any contact with the individual victims identified in this case.

Upon a finding of a violation of probation or supervised release, I understand the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

CRIMINAL MONETARY PENALTIES

All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk, U.S. District Court, unless otherwise directed by the Court. Payments shall be made payable to the Clerk, U.S. District Court, and mailed to 111 N. Adams St., Suite 322, Tallahassee, FL 32301-7717. Payments can be made in the form of cash if paid in person.

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments. The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

SUMMARY

<u>Special Monetary Assessment</u>	<u>Fine</u>	<u>Restitution</u>
\$100.00	\$1,000.00	\$6,550.00

SPECIAL MONETARY ASSESSMENT

A special monetary assessment of \$100.00 is imposed.

FINE

A fine in the amount of \$1,000.00 is imposed. Interest is waived.

RESTITUTION

Restitution in the amount of \$6,550.00 is imposed. Interest is waived.

The defendant shall make restitution to the following victims in the amounts listed below.

<u>Name of Payee</u>	<u>Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Cathy McBroom	\$3,300.00	\$3,300.00
Donna Wilkerson	\$3,250.00	\$3,250.00

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise. If nominal payments are made by the defendant the court authorizes those payments to be made to the victims on a rotating basis.

The amount of loss and the amount of restitution ordered will be the same unless, pursuant to 18 U.S.C. § 3664(f)(3)(B), the court orders nominal payments and this is reflected in the Statement of Reasons page.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) special monetary assessment; (2) non-federal victim restitution; (3) federal victim restitution; (4) fine principal; (5) costs; (6) interest; (7) penalties. The defendant must notify the court of any material changes in the defendant's economic circumstances, in accordance with 18 U.S.C. §§ 3572(d), 3664(k) and 3664(n). Upon notice of a change in the defendant's economic condition, the Court may adjust the installment payment schedule as the interests of justice require.

Special instructions regarding the payment of criminal monetary penalties pursuant to 18 U.S.C. § 3664(f)(3)(A):

Unless the court has expressly ordered otherwise above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. In the event the entire amount of monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due. The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

**TRUE COPY I CERTIFY
ATTEST:**

MICHAEL N. MILBY, Clerk of Court

By *M. Schmitt*
Deputy Clerk



UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CHAMBERS OF
EDITH H. JONES
CHIEF JUDGE

12505 U.S. Courthouse
515 Rusk Avenue
Houston, TX 77002
Telephone (713) 250-5484

May 27, 2009

Judge Samuel B. Kent
c/o Mr. Dick DeGuerin
DeGuerin & Dickson
Seventh Floor, The Republic Building
1018 Preston Avenue
Houston, Texas 77002

Dear Mr. DeGuerin:

Your client, Judge Samuel B. Kent, has requested that I certify him to the President as disabled pursuant to 28 U.S.C. § 372(a). It is my understanding from press reports that even though such certification would entitle him to be treated as a retired judge, and therefore technically able to continue to hear cases, Judge Kent has foresworn any desire or intent ever to sit as a federal judge again.

In order to evaluate this request, I have considered numerous medical, psychological, and psychiatric reports concerning Judge Kent. I have spoken with nearly all of the doctors who prepared those reports. I received a personal briefing in a meeting with you. I have independently undertaken a review of his case dispositions, based on statistics provided by you and the clerk's office, for more than two years before he ceased handling cases in February 2009. Finally, I have sought legal advice from the General Counsel of the Administrative Office of the United States Courts because of the novelty of the circumstances underlying this request.

Judge Samuel B. Kent
c/o Mr. Dick DeGuerin
May 27, 2009
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The medical reports paint a picture of a man who has had psychological problems in dealing with the high authority inherent in his position, with those whom he viewed as subordinates, and with women. Further, he suffers from alcoholism and diabetes, both of which may have contributed to his mental instability. In particular, abuse of alcohol seems to have been a catalyst of his serious misconduct toward Ms. McBroom and Ms. Wilkerson. Finally, certain past experiences, including the multi-year illness and ultimate death of his first wife, have shadowed him. I do not doubt the sincerity or reasonableness of the conclusions of all the professionals that Judge Kent, who now requires various psychotropic medications to control depression, is currently unable to perform his duties as a federal judge. It should be added, however, that these professionals differ in their opinions of the extent to which the disability is a permanent condition.

The other side of the picture is that until he was criminally indicted, Judge Kent continued to handle a high volume of cases expeditiously. In 2007, accounting for the commencement of judicial misconduct proceedings in May and the fact that Judge Kent was required to withdraw from handling any cases from September through December by order of the Fifth Circuit Judicial Council, his annualized rate of case dispositions still equalled that of his peers in the Southern District. He actually closed 172 cases following his return to the bench in January 2008 despite the ongoing federal criminal investigation and his remaining recused from cases involving either the United States as a party or allegations of sexual misconduct. (The first indictment was entered in August 2008.) Judge Kent also advises that he ceased drinking alcoholic beverages as of late March 2007. His case disposition rate prior to that time was not affected by the consumption of alcohol and was consistently high compared to the rates of many of his peers. Taken together, these facts do not show that Judge Kent's performance of his professional duties was affected by mental instability or alcoholism before he was criminally investigated and indicted.

The inescapable conclusion must be that the criminal investigation, indictment, and the attendant publicity and shame have triggered Judge Kent's current inability to function

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professionally. None of the medical professionals have opined otherwise. Although they point to his systemic and possibly lifelong psychological problems, and most of them believe that Judge Kent's disability may be permanent, they do not express firm medical opinions that his present disability did not arise from, or was not significantly exacerbated by, the criminal proceedings.

Because Judge Kent's present disability is interrelated with the consequences of criminal prosecution culminating in the guilty plea, federal law does not permit him to retire on disability under 28 U.S.C. § 372(a). The General Counsel of the Administrative Office has written a formal opinion letter noting that the combined effect of 28 U.S.C. §§ 372(a) and 294(b) place a disabled judge on senior status, still eligible to perform such work as he is capable of." Despite Judge Kent's denial that he would ever attempt to return to the bench, these statutes assume that a judge on disability retirement remains in good standing as a federal judge. Judge Kent has forfeited his claim to such status by pleading guilty to a felony, an impeachable offense. The General Counsel's letter adds that the purpose of Section 372(a), irrespective of its express language, confirms that a disability assessment can hinge on the cause rather than the fact of an impairment--at least when that cause is impeachable criminal misconduct. Further, the interpretation of 28 U.S.C. § 372(a) must be influenced by public policy that a claimant should not profit from his own wrongdoing, by engaging in criminal misconduct and then collecting a federal retirement salary for the disability related to the prosecution.

For these reasons, I deny the request to certify Judge Kent as disabled pursuant to 28 U.S.C. § 372(a).

* See 28 U.S.C. § 294(b): "Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned"

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After checking, I have found no prohibition against publicizing this letter. The novelty of the request by Judge Kent and the intense public interest in the criminal case create a unique need to advise the public of the reasons for this decision. In doing so, I have endeavored not to dwell on the specific details of Judge Kent's medical or psychological condition.

Very truly yours,


Edith H. Jones

EHJ/pw

cc: President Barack Obama
Chief Judge Hayden Head, Southern District of Texas
Mr. William Burchill, General Counsel,
Administrative Office of the United States Courts