AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

TO CONSIDER POSSIBLE IMPEACHMENT OF UNITED STATES DISTRICT JUDGE SAMUEL B. KENT OF THE SOUTHERN DISTRICT OF TEXAS

HEARING

BEFORE THE

TASK FORCE ON JUDICIAL IMPEACHMENT

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JUNE 3, 2009

Serial No. 111–11

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

50–067 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
LUIS V. GUTIERREZ, Illinois
BRAD SHERMAN, California
TAMMY BALDWIN, Wisconsin
CHARLES A. GONZALEZ, Texas
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida
DANIEL MAFFEI, New York

LAMAR SMITH, Texas
F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
DARRELL E. ISSA, California
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM ROONEY, Florida
GREGG HARPER, Mississippi

PERRY APELBAUM, *Majority Staff Director and Chief Counsel*
SEAN MCLAUGHLIN, *Minority Chief of Staff and General Counsel*

TASK FORCE ON JUDICIAL IMPEACHMENT

ADAM B. SCHIFF, California, *Chairman*

SHEILA JACKSON LEE, Texas
WILLIAM D. DELAHUNT, Massachusetts
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO PIERLUISI, Puerto Rico
CHARLES A. GONZALEZ, Texas

BOB GOODLATTE, Virginia
F. JAMES SENSENBRENNER, JR., Wisconsin
DANIEL E. LUNGREN, California
J. RANDY FORBES, Virginia
LOUIE GOHMERT, Texas

CONTENTS

JUNE 3, 2009

Page

OPENING STATEMENTS

The Honorable Adam B. Schiff, a Representative in Congress from the State of California, and Chairman, Task Force on Judicial Impeachment 1
The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Ranking Member, Task Force on Judicial Impeachment 6
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, Ranking Member, Committee on the Judiciary, and ex officio Member, Task Force on Judicial Impeachment 8
The Honorable Steve Cohen, a Representative in Congress from the State of Tennessee, and Member, Task Force on Judicial Impeachment 9
The Honorable F. James Sensenbrenner, Jr., a Representative in Congress from the State of Wisconsin, and Member, Task Force on Judicial Impeachment 9
The Honorable Henry C. "Hank" Johnson, Jr., a Representative in Congress from the State of Georgia, and Member, Task Force on Judicial Impeachment 10
The Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Task Force on Judicial Impeachment 10

WITNESSES

Mr. Alan Baron, Special Impeachment Counsel, House Committee on the Judiciary
Oral Testimony 11
Ms. Cathy McBroom, Case Manager, United States District Court, Southern District of Texas
Oral Testimony 153
Prepared Statement 160
Ms. Donna Wilkerson, Legal Secretary, United States District Court, Southern District of Texas
Oral Testimony 168
Prepared Statement 173
Mr. Arthur D. Hellman, Professor, University of Pittsburgh School of Law, Pittsburgh, PA
Oral Testimony 176
Prepared Statement 179

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Prepared Statement of Samuel B. Kent, Judge, United States District Court, Southern District of Texas 3
Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary 8
Material submitted by Alan Baron, Special Impeachment Counsel, House Committee on the Judiciary
Original Indictment 15
Superseding Indictment 19
Plea Agreement 26
Factual Basis for the Plea 38

Page

Material submitted by Alan Baron, Special Impeachment Counsel, House Committee on the Judiciary—Continued
- Transcript of Plea Hearing 41
- Transcript of Sentencing 61
- Judgment of Conviction document 139
- Letter from Edith H. Jones, Chief Judge, United States Court of Appeals for the Fifth Circuit, to Judge Samuel B. Kent 147
- Letter from Samuel B. Kent, United States District Judge, Southern District of Texas, to Barack Obama, President of the United States 151

TO CONSIDER POSSIBLE IMPEACHMENT OF UNITED STATES DISTRICT JUDGE SAMUEL B. KENT OF THE SOUTHERN DISTRICT OF TEXAS

WEDNESDAY, JUNE 3, 2009

HOUSE OF REPRESENTATIVES,
TASK FORCE ON JUDICIAL IMPEACHMENT
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Task Force met, pursuant to notice, at 12:07 p.m., in room 2141, Rayburn House Office Building, the Honorable Adam B. Schiff (Chairman of the Task Force) presiding.

Present: Representatives Schiff, Conyers, Jackson Lee, Delahunt, Cohen, Johnson, Pierluisi, Gonzalez, Smith, Sensenbrenner, Goodlatte, Lungren and Gohmert.

Staff Present: Alan Baron, Counsel; Mark Dubester, Counsel; Harold Damelin, Counsel; Kirsten Konar, Counsel; and Jessica Klein, Staff Assistant.

Mr. SCHIFF. This House Judiciary Task Force on Judicial Impeachment will now come to order. Without objection, the Chair will be authorized to declare a recess of the hearing, I'll now recognize myself for an opening statement.

This hearing has been called to commence the inquiry into whether United States District Court Judge Samuel Kent should be impeached by the United States House of Representatives. Article I, section 2 of the Constitution vests the sole power of impeachment in the House of Representatives. The task before us is not one that we welcome; however, it is an important responsibility that has been entrusted to us by the Founders.

In August 2008, a Federal grand jury returned a three-count indictment against Judge Samuel Kent after a Department of Justice criminal investigation. A superseding indictment filed in January 2009 added three additional counts, for a total of six counts charged. According to the indictment, Judge Kent is alleged to have committed acts constituting abuse of sexual contact and attempted aggravated sexual abuse in 2003 and 2007 against Ms. Cathy McBroom, a deputy clerk occasionally assigned to Judge Kent's courtroom. Judge Kent is alleged of committing acts constituting aggravated sexual abuse and abuse of sexual contact from 2004 to at least 2005 with Ms. Donna Wilkerson, Judge Kent's secretary. Aggravated sexual abuse is a crime punishable under 18 U.S.C. Section 2241 by up to life in prison. Finally, the indictment charges

Judge Kent with one count of obstruction of justice for corruptly obstructing, influencing and impeding an official proceeding by making false statements to the Special Investigative Committee of the U.S. Court of Appeals for the Fifth Circuit regarding his unwanted sexual contact with Ms. Wilkerson.

On February 23, 2009, the day his criminal trial was set to begin, Judge Kent pled guilty to obstruction of justice. As part of his plea, he admitted to engaging in nonconsensual sexual contact with Ms. McBroom without her permission in 2003 and 2007. Judge Kent also admitted to engaging in nonconsensual sexual content with Ms. Wilkerson without her permission from 2004 through at least 2005. Finally, he admitted that he falsely testified before the Special Investigative Committee of the Fifth Circuit regarding his unwanted sexual contact with Ms. Wilkerson. In particular, Judge Kent admitted making false statements with regard to his repeated nonconsensual sexual contact with Ms. Wilkerson.

On May 11, 2009, Judge Kent was sentenced to a term of 33 months in prison and ordered to pay fines and restitution to Ms. McBroom and Ms. Wilkerson. Judge Kent is ordered to surrender himself on June 15th for incarceration. The day after his sentencing, the House of Representatives passed House Resolution 424 by unanimous consent authorizing and directing this Task Force to inquire whether Judge Kent should be impeached. Accordingly, we are conducting this evidentiary hearing today.

Article 3, Section 1 provides that the judges both of the Supreme and inferior courts shall hold their offices during good behavior and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office. Article II, Section 4 of the Constitution provides that all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery or other high crimes and misdemeanors.

As we will hear today, historical precedent suggests that there are two categories of conduct that may justify impeachment: serious abuses of power, and conduct that demonstrates that an official is unworthy to fill the office that he holds. Therefore, the Task Force will examine whether the conduct that Judge Kent has admitted to as part of his guilty plea proceeding, namely making false statements in a judicial proceeding, as well as other potential obstruction of justice based on false statements to the FBI and Justice Department, render him unfit to hold judicial office.

The Task Force will also examine whether the evidence of sexual misconduct constitutes abuse of judicial power and provides a further basis for Judge Kent's unfitness to retain his office.

The purpose of this hearing is to develop a record upon which the Task Force can recommend whether to adopt articles of impeachment. These proceedings do not constitute a trial, as the constitutional power to try impeachment resides in the Senate. This inquiry will focus on whether Judge Kent's conduct provides a sufficient basis for impeachment.

In order to develop the record, the Task Force has called witnesses and will admit documents that will help us determine whether the constitutional standard for impeachment has been met. The Task Force has invited Judge Kent to testify before us

today. Judge Kent has declined this offer. The Task Force has received correspondence from Judge Kent that he has asked to be considered as a written statement for today's hearing. It will be so considered and has been made available to all Members. Without objection, I ask that it also be placed in the record.

[The prepared statement of Judge Kent follows:]

DEGUERIN & DICKSON
ATTORNEYS AT LAW
SEVENTH FLOOR, THE REPUBLIC BUILDING
1018 PRESTON AVENUE
HOUSTON, TEXAS 77002

DICK DEGUERIN
NEAL DAVIS
TODD WARD
SEAN BUCKLEY
OF COUNSEL
LEWIS DICKSON
CATHERINE BAEN
INVESTIGATOR
RALPH WARREN

AREA CODE 713
TELEPHONE 223-5959
FACSIMILE 223-9231
ddeguerin@aol.com

WEST TEXAS OFFICE
P.O. BOX 1452
MARFA, TX 79843
432-729-3343

June 1, 2009

The Honorable John Conyers, Jr., Chairman
c/o Jessica.Klein@mail.house.gov

Transmitted Via Email

Re: Samuel B. Kent

Dear Mr. Conyers:

Attached please find a letter from Judge Kent to be provided to the Congressional Task Force Members for consideration.

Your assistance is appreciated.

Yours truly,

Dick DeGuerin

DD:bls
Attachment

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,

Samuel B. Kent

Mr. SCHIFF. The Task Force has also invited Judge Kent's counsel to participate in the hearing and present arguments on behalf of his client, as well as to provide the opportunity to question any of the witnesses before us. Judge Kent's counsel has also declined to appear or participate in the hearing.

We have also received a letter from Judge Kent to the White House dated yesterday, June 2nd, stating his intention to resign June 1, 2010, a year from now. Neither his surrender to custody in 12 days nor his stated intention to resign a year from now affect

his current status as a Federal judge or our constitutional obligation to determine whether impeachment is warranted. This Task Force will proceed in a fair, open, deliberate and thorough manner and our work has and will continue to be done on a bipartisan basis.

I want to thank the witnesses, particularly Ms. McBroom and Ms. Wilkerson, for their willingness to testify at the request of the Task Force. We recognize the great sensitivity of the subject matter.

After the Task Force Members have an opportunity to make opening remarks, I will ask Alan Baron, counsel to the Task Force, to introduce the documentary record and provide the context for today's testimony. We'll then move to our panel of witnesses. After the witnesses make their initial statements, Members will have the opportunity to ask questions, observing the 5-minute rule.

At the conclusion of the hearing, we'll be scheduling a follow-up meeting of the Task Force to discuss whether to recommend articles of impeachment to the full Committee for its consideration.

I now recognize my colleague Mr. Goodlatte, the distinguished Ranking Member of the Task Force, for his opening remarks.

Mr. GOHMERT. Mr. Chairman, can I make a parliamentary inquiry? You had said, without objection, the letter from Judge Kent would be made part of the record, correct?

Mr. SCHIFF. Yes.

Mr. GOHMERT. That letter, as I understand it, is addressed to this Committee. Is it made pursuant to any penalties for making false statements to this Committee?

Mr. SCHIFF. Well, I would imagine that as a correspondence and a statement to an official arm of the government engaged in an impeachment inquiry, it would be subject to 18 U.S.C. 1001. That is just a gut reaction to your question. But we can certainly follow up and get you a more definite answer.

Mr. GOHMERT. But it was not made under oath as the witnesses—will they be sworn in today?

Mr. SCHIFF. The witnesses will be sworn in.

Mr. GOHMERT. So that is not under penalty of perjury as the witnesses will have here today?

Mr. SCHIFF. That's correct.

Mr. GOHMERT. All right. Thank you.

Mr. SCHIFF. It is also, in addition to 18 U.S.C. 1001, an offense to obstruct Congress. But in answer to your question, vis-a-vis perjury, the letter is not, as I understand it—we can consult further with the experts—not made under oath. Thank you.

Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. And thank you for holding this important hearing in an expeditious manner.

Article III of the Constitution provides that Federal judges are appointed for life, and that they shall hold their offices during good behavior. Indeed, the Framers knew that an independent judiciary, free of political motivation, was necessary to the fair resolution of disputes and the fair administration of our laws. However, the Framers were also pragmatists and had the foresight to include checks against the abuse of the independence and power that comes with a judicial appointment.

Article I, section 2, clause 5 of the Constitution grants the House of Representatives the sole power of impeachment. This is a very serious power which should not be undertaken lightly. The impeachment of a Federal judge is a very infrequent occurrence within the halls of Congress. In fact, no Federal judge has been impeached in the last 20 years. It is a power that Congress utilizes only in cases involving very serious allegations of misconduct. However, when evidence emerges that an individual is abusing his judicial office for his own advantage, the integrity of the judicial system becomes compromised, and the House of Representatives has the duty to investigate the matter and take the appropriate actions to end the abuse and restore confidence in the judicial system.

Today we are investigating whether to issue articles of impeachment against Judge Samuel Kent of the United States District Court for the Southern District of Texas. Judge Kent has served for almost 18 years as the only Federal judge in the Galveston, Texas, Division of the Southern District. Today Judge Kent still holds the position of Federal judge despite the fact that he is a convicted felon, having admitted to obstructing justice by lying during an investigation being conducted by his fellow judges that was looking into complaints that he sexually assaulted at least two women court employees who worked in the Galveston courthouse.

Judge Kent pled guilty to the obstruction of justice charge on February 23rd. In pleading guilty to the obstruction of justice charge, Judge Kent also admitted to engaging in, quote, repeated nonconsensual sexual contact with a court employee and, quote, nonconsensual contact with another employee despite requests by the employee that the conduct stop.

On May 11, Judge Kent was sentenced to 33 months in prison. He is due to report to prison on June 15. Despite his guilty plea and pending incarceration, Judge Kent has chosen not to resign his position as a Federal judge. Because his position is a lifetime appointment, Judge Kent will be able to keep the position as well as his salary and other benefits until he either resigns or is impeached and removed from office.

Judge Kent was invited to appear at this hearing and explain why his conduct does not justify impeachment. His attorney was also invited to come today, but both Judge Kent and his attorney have declined to attend.

Two of the women who were the victims of Judge Kent's sexual assaults, Cathy McBroom and Donna Wilkerson, have decided to come forward and tell their stories to the Task Force. I know this is not an easy thing for them to do, and I want to personally thank them for their willingness to come forward and testify.

It is not a pleasant task before us today, but it is a necessary one. I welcome the testimony of all of the witnesses, and I thank you, Mr. Chairman, for holding this important hearing.

Mr. SCHIFF. I thank the gentleman for his statement.

And I would now like to recognize Mr. Conyers, the Chairman of the Judiciary and ex officio Member of the Task Force.

Mr. CONYERS. Thank you, Chairman Schiff. I will submit my statement for the record.

Mr. SCHIFF. Thank you, Mr. Chairman.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

It is always a sad day when the House has to inquire into whether a federal judge has betrayed his office and should be impeached. Yet that is our task today.

I would like to make three points:

First, we meet today to carry out our Constitutional duty. The Constitution assigns to the House the exclusive responsibility to determine whether a federal judge should be impeached. Impeachment by Congress constitutes one of the few checks on the judiciary, to be used when a judge betrays his office or proves himself unfit to hold that position of trust.

Second, this inquiry is entirely consistent with precedent. The House has not shied away from impeaching federal judges in the rare occasions when circumstances have so required. In the 1980s, for example, the House impeached, and the Senate convicted and removed, federal judges who had been convicted of felony federal offenses. Indeed, I am one of the few Members of this House who recalls those proceedings.

Third, our obligations to the House and the Constitution require that we not prejudge the evidence in this case, or anticipate the course of these proceedings. Judge Kent has pleaded guilty and has been sentenced, but it is important that we consider all the evidence before casting our votes. Congress's role is more than to simply rubber-stamp a conclusion of a federal court.

In conclusion, I am pleased that the Task Force has moved so expeditiously in this matter, and am also pleased that the Task Force has made an effort to bring to light the full range of conduct of Judge Kent that may bear on his fitness to be a federal judge.

I look forward to hearing from the witnesses, and with that, I yield the balance of my time.

Mr. SCHIFF. I would now like to recognize Mr. Smith, the Ranking Member of the Committee on the Judiciary and ex officio Member of the Task Force as well.

Mr. SMITH. Thank you, Mr. Chairman. Thank you, Mr. Chairman, for holding this hearing following Judge Samuel Kent's guilty plea and sentencing. This public hearing is an indication of how seriously we take the possible impeachment of Judge Kent.

Judge Kent, who is from my home State of Texas, comes before the Task Force as a convicted felon having pleaded guilty to obstruction of justice. As part of the plea agreement, five counts of the indictment charging Judge Kent with the sexual assault of two court employees were dismissed. On June 15th, Judge Kent will start serving a 33-month prison sentence. By resigning effective June 1, 2010, Judge Kent is attempting to collect his full judicial salary for another year, even while he sits in a Federal prison. Judge Kent and his lawyer are banking on the fact that impeachments take time, literally.

Judge Kent receives $465 of his taxpayer-funded salary every day he remains in office. We are here today to put an end to Judge Kent's abuse of authority and exploitation of American taxpayers. Allowing Judge Kent to remain on the bench and retain a taxpayer-funded salary is an affront to the very idea of justice that Judge Kent once swore to uphold. Our constitutional democracy depends on the rule of law and the equal protection of the laws. These principles depend in turn on a disinterested judiciary whose members cannot place themselves above the law.

I am not unsympathetic to the claims that Judge Kent endured difficult personal tragedies and may suffer from mental illness; however, he does not have the right to continue to serve as a Fed-

eral judge and to collect a Federal salary while sitting in prison. And although his attorney claims that Congress has, quote, better things to do than pursue impeachment, I disagree. Ensuring that a Federal judge convicted of a felony does not receive a taxpayer-funded salary while sitting in jail is important to our system of justice and a priority of this Judiciary Committee.

Mr. Chairman, I yield back.

Mr. SCHIFF. I thank the gentleman for his statement.

At this time I will recognize any other Member who would like to make an opening statement.

The Committee recognizes Mr. Cohen of Tennessee and Mr. Sensenbrenner of Wisconsin.

Mr. COHEN. Thank you, Mr. Chairman.

This is an awesome responsibility to sit on a Committee such as this dealing with impeachment. And I have read the materials and the allegations that have been presented and what is the guilty plea in the judge's case.

I do want to reflect on the fact that when I was a State Senator in Tennessee, we had a similar situation, and we had a judge, a State judge, who had confronted not an employee, but a litigant before his bench, a female litigant in a divorce case, and forced himself upon her. He was tried and convicted, and we were unable to take his pension and judgeship away from him because of the issue of prospective legislation and retroactive activity. But we were able to pass a law because of that to in the future not allow a judge who was convicted of a crime pertaining to their office and in the conduct of their office from receiving a pension or a salary after conviction.

It was a very important issue in our State, and it is unfortunate that because of our laws we couldn't do anything about it, and that judge continues to receive his pension. And I think that it is something that many feel is—and I do—was a miscarriage of public trust and of public treasuries. And I have done everything I can and believe I have come into this hearing without prejudicing my own thoughts based on the experience I had on a similar-type case. But I do think public officials need to maintain the public's faith in the system, and the public tax dollars should only go to people who are doing such, and if not, reflect poorly on the state of the judiciary or our government in general.

So this is a case that is kind of a deja vu to me, and I do think that the public Treasury should be protected as should the public trust. Thank you.

Mr. SCHIFF. I thank the gentleman from Tennessee and now recognize the gentlemen from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. First of all, let me thank you for holding this prompt hearing and inquiry on whether Judge Kent should be impeached.

There is an urgency involved in this because in less than 2 weeks, Judge Kent will go to jail, and if the Congress doesn't move, and that means both the House and the Senate, he will be sitting in jail collecting a full judicial salary, which is equal to the salary that is paid to the United States Senators and Members of the House of Representatives. That in itself would be outrageous.

Judge Kent has admitted to the activity that brought about his conviction, and, unfortunately, he is putting Congress through the time and expense of actually conducting this inquiry and potentially impeaching him and trying him before the Senate of the United States.

Let me point out as a result of his felony conviction, he will undoubtedly be disbarred in Texas and consequently will no longer be able to practice law even if he still remains a judge in the year before his resignation becomes effective. That means we do have to drop whatever we are doing and go ahead with this simply as a result of the need to keep the public's faith in the judicial branch of government and our ability to remove those bad apples from office who refuse to go voluntarily.

So I thank the gentleman from California for promptly scheduling this hearing. I hope that we'll proceed to a Committee markup on articles of impeachment and presenting them to the House equally promptly. And I yield back the balance of my time.

Mr. SCHIFF. I thank the gentleman from Wisconsin, and I now recognize the gentleman from Georgia Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman, for bringing this issue promptly to our attention as well as to the American people.

The integrity of our judicial system and our judiciary is fundamental to the functioning of our legal system. And as a former judge and Chairman of the Subcommittee on Courts and Competition Policy, I am aghast at the shamelessness of Judge Kent, which has been displayed by trying to enhance his pension benefits, and it is—the right thing to do is for him to resign immediately. And that is pretty much my statement, sir.

Mr. SCHIFF. I thank the gentleman.

I'm sorry. I had someone whispering in my ear. Did you yield back the rest of your time?

Mr. JOHNSON. Certainly I do.

Mr. SCHIFF. Thank you. I thank the gentleman from Georgia.

Does any other Member wish to make an opening statement at this time?

Ms. JACKSON LEE. Congresswoman Jackson Lee.

Mr. SCHIFF. You do want to be recognized?

I recognize the gentlelady from Texas Ms. Jackson Lee.

Ms. JACKSON LEE. Did Mr. Gonzalez——

Mr. GONZALEZ. I'm waiving opening statement.

Mr. SCHIFF. You're recognized.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, for holding the meeting.

I think it is appropriate for me to not accept the burden of an entire State, but it is sad that this case has occurred in the State of Texas and particularly in the Houston-Galveston area, which I happen to have the opportunity to represent.

I'm also disappointed that the Fifth Circuit did not find a way to resolve this in light of what we have at least heard on the issues of the mental state of the individual that we have before us, but I will keep an open mind so that we can address the questions both of the integrity of the bench, which I think is enormously important, and get the particular bench that Judge Kent held in the hands of an individual that will carry out justice and the law; but

I will also call upon his grace and mercy for the understanding of the actions of individuals who may be impacted by mental health needs and substance abuse, certainly characteristics that we don't promote for individuals on the bench. But I will be listening to the presentations made by various stellar witnesses here who themselves have been victims and as well try to utilize in addition to the responsibilities of this Committee as it relates to the impeachment of Federal officials, I will also try to incorporate in my thinking his grace and his mercy.

I yield back.

Mr. SCHIFF. I thank the gentlewoman for her remarks.

And would any other Member like to make an opening statement?

Seeing none, at this point we'll hear from Mr. Alan Baron, special impeachment counsel for the House Judiciary Committee, who I have asked to set out the procedural history of the case for the purpose of introducing the documentary record.

Mr. Baron is currently a partner at Seyfarth Shaw law firm here in Washington. He is a graduate of Princeton University and Harvard School of Law. After law school Mr. Baron clerked for the Honorable Roszel Thomsen, chief judge of the U.S. District Court for the District of Maryland. He then held the position of assistant United States attorney for Maryland from 1967 to 1970 until entering private practice.

Mr. Baron served as special impeachment counsel for the U.S. House of Representatives from 1987 through 1989 by working on two judicial impeachment proceedings during that time. Mr. Baron was retained in October of 2008 as special impeachment counsel by the House Judiciary Committee with regard to the possible impeachment of U.S. district Judge Thomas Porteous and thereafter U.S. District Judge Samuel Kent.

Mr. Baron, please proceed.

TESTIMONY OF ALAN BARON, SPECIAL IMPEACHMENT COUNSEL, HOUSE COMMITTEE ON THE JUDICIARY

Mr. BARON. Thank you, Mr. Chairman.

Mr. SCHIFF. You'll need to turn your mike on if it is not on already.

Mr. BARON. Is that working?

Mr. Chairman, at the direction of——

Mr. SCHIFF. Mr. Baron, can you pull the microphone a little closer to you? That might help.

Mr. BARON. Mr. Chairman, at the direction of the Task Force, I and the staff undertook to investigate these allegations concerning Judge Kent. One of the first things we did was review the criminal case file where Judge Kent was named as a defendant and gather various documents pertinent to those proceedings. From reviewing those documents, I would like to relate certain basic facts concerning Judge Kent and also with regard to the chronology of the proceedings involving Judge Kent.

Judge Kent is 60 years old. He was born in June 1949. He has served as judge for the U.S. District Court of the Southern District of Texas in the Galveston Division, and he was the only judge in the Galveston Division. He was nominated in August 1990 to as-

cend to the bench, and he received his commission in October 1990. He has served some 19 years.

Initially a complaint was filed against Judge Kent by the person who is referred to as Person A. That is Cathy McBroom, who is here today to testify. She filed a complaint on May 21, 2007, with the Fifth Circuit judicial counsel raising allegations of sexual misconduct by Judge Kent.

On June 8, 2007, Judge Kent voluntarily, and indeed at his request, appeared before the commission. On September 27, 2007, Judge Kent was reprimanded and suspended by the Fifth Circuit counsel for a period of 4 months, and thereafter Ms. McBroom appealed the disposition of his case in that manner. At approximately that time, she asked for it to be reconsidered, but approximately at that time the Justice Department began an investigation of Judge Kent, and they returned, as you refer to, the original indictment that was referred to—returned on August 28, 2008.

And if the Members would look in the binders that I believe each of them has, they should have before them the original indictment, which has three counts. It is brought in the United States District Court for the Southern District of Texas, Houston Division, and it relates that Judge Kent was a U.S. district judge in the Southern District, and relates that he engaged in improper sexual conduct with Person A, who has since been identified as Cathy McBroom.

Thereafter, on January 6, 2009, there is a superseding indictment, which also should appear in the binder. That document contains six counts. The first three are the same first three from the original indictment involving Ms. McBroom. Counts 4 and 5 relate to yet another person identified in the superseding indictment as Person B. That is Donna Wilkerson. Both Ms. McBroom and Ms. Wilkerson are here today to testify, as noted earlier.

These counts speak of attempted aggravated sexual abuse, abusive sexual contact, and they delineate in some detail the actual conduct involved. There is a count 6 in the superseding indictment, which is obstruction of justice in violation of 18 U.S.C. Section 1512(c)(2). That is the count to which ultimately Judge Kent pleaded guilty, and what it essentially alleges is that when he appeared before the Fifth Circuit counsel in June of 2007, he lied to them. He falsely stated to them, according to the indictment, that the extent of his unwarranted sexual conduct with Person B was one kiss, and when told by Person B his advances were unwelcomed, no further contact occurred, when, in fact, and as he well knew, he had engaged in repeated, unwanted sexual assaults of Person B, et cetera.

That was the essence of the lie, and then it alleges that obstructed, influenced and impeded the Fifth Circuit's investigation into the misconduct that had been complained of.

Ms. JACKSON LEE. What page is that?

Mr. BARON. That appears at page 6 and 7 of the superseding indictment as count 6.

Ms. JACKSON LEE. Thank you.

Mr. BARON. Now, thereafter, on February 23rd, there are three documents that are relevant. There is a plea agreement that is entered into on February 23, 2009. There is a factual basis for the

plea, and then there is a transcript of the guilty plea proceedings, all of which are dated February 23rd.

Looking first at the factual basis for the plea, particularly at page 2, it relates the details of the manner in which Judge Kent engaged in obstruction of justice, and essentially that the counsel had sought to learn from him the facts, and in essence he lied to them about the nature and extent of the sexual conduct which was being investigated.

There is also a plea agreement dated February 23rd.

I would also note, to go back for a moment, that document, the factual basis for the plea, is signed by Judge Kent and his counsel.

There was also a plea agreement dated February 23rd. Page 1, he agrees—that is the defendant Judge Kent—agrees to plead guilty to count 6, and the State—the prosecutors agreed to dismiss counts 1 through 5 of the superseding indictment. On page 2 of the plea agreement, it notes that the maximum penalty under count 6 was 20 years of imprisonment and a fine of $250,000. Further down the page on page 2, under "factual stipulation," Judge Kent agrees that the attached factual basis for the plea fairly and accurately describes the defendant's action 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 the plea.

There is a transcript of the guilty plea in court when Judge Kent appeared to actually be rearraigned. He had initially pleaded not guilty, and then he was being rearraigned with regard to count 6 of the superseding indictment.

It is noteworthy that as part of that process, it is incumbent upon the judge who is taking the guilty plea to explore to be certain that the defendant understands what his rights are, that the defendant knowingly can—is competent to participate in the guilty plea proceedings, he understands which rights he is giving up: the right to jury trial, the right to have the government prove its case beyond a reasonable doubt, the right to testify, the right not to testify, that he was entitled to presumption of innocence.

The judge goes through that entire litany with Judge Kent, which, of course, Judge Kent would have been familiar with because he had served as a Federal judge for all those years, and at the end of that discussion, and this occurs at page 18 of that transcript, here is the judge speaking: And most importantly, I find that you, Judge Kent, have made your decision to plead guilty to this charge freely and knowingly and voluntarily. And you've made that decision with the advice of counsel, an attorney with whom you've indicated your full satisfaction. So let me ask you now, Mr. Kent, how do you plead to count 6 of the superseding indictment?

And then the defendant states, guilty.

I would go back just for a moment to page 10 of this transcript at line 18. The Court, in its colloquy with Judge Kent, says to him, the plea of guilty has the legal effect of saying the charge is true. You understand that?

Judge Kent replies, yes, sir.

We also have the transcript of the sentencing proceeding before the judge. That is a fairly extensive colloquy because a great deal of time——

Mr. SCHIFF. Mr. Baron, that is item 3 in the Task Force binders?

Mr. BARON. Yes, sir. That is.

The next document. An extensive colloquy occurs at that point because one of the issues was where Judge Kent fit within the sentencing guidelines, and there is sparring back and forth between counsel and with the judge about how to calculate where he stands within the sentencing guidelines. In the course of that, I would ask and direct the Task Force's attention to page 6. The prosecution was in effect arguing for a higher number within the sentencing guidelines, and it makes this representation. I'm looking now at—well, we can start at line 1. This is the prosecutor speaking. He says, during the voluntary interview, he was interviewed regarding his conduct, and he repeated the same false statements that he later told to the special investigative committee both about Person A and about Person B. Then just before the trial team was going to present the initial indictment to the grand jury—this is in August of 2008—the defendant, through his attorney, asked for a meeting at main Justice headquarters, and there in the Assistant Attorney General's conference room he sat down with his attorney and met with, among others, the trial team, the FBI agents, the chief of the Public Integrity Section and the Acting Assistant Attorney General, and during the interview portion of that meeting, he again repeated the same lies. He said that he had been honest with the FBI in December of 2007, he said that any attempt to characterize the conduct between him and person as nonconsensual is absolutely nonsense, and that is in stark contrast to the factual basis for his plea during which he admitted in engaging in repeated nonconsensual sexual contact with Person A without her permission. And he goes on with regard to Person B. And this was not refuted by Judge Kent or his counsel.

They argued about what its significance was in terms of the sentencing guidelines, but he did not deny that he had also lied to the FBI and to the prosecutors on this other occasion.

Ultimately the judge imposed a sentence of 33 months, plus a $1,000 fine and several thousand dollars to each of the victims as kind of restitution. They both testified at the sentencing in the context of impact on them as victims of Judge Kent's behavior, and that is also found within this transcript.

I have obtained certified copies of the various—many of the various documents I have referred to, the original indictment, the superseding indictment, the plea agreement, the factual basis for the plea. These are all here. I would offer them to the Task Force so that that could be made part of the record.

Mr. SCHIFF. Without objection, each of those documents will be made part of the record.

[The information referred to follows:]

United States Courts
Southern District of Texas
FILED

AUG 28 2008

Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	CRIMINAL NO. 08-596
	§	
v.	§	Count One: 18 U.S.C. § 2244(b)
	§	
SAMUEL B. KENT	§	Count Two: 18 U.S.C. § 2241(a)(1)
	§	
	§	Count Three: 18 U.S.C. § 2244(b)
Defendant.	§	
	§	

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.

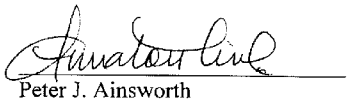
ORIGINAL SIGNATURE ON FILE

By:

Grand Jury Foreperson

WILLIAM M. WELCH II
Chief, Public Integrity Section

By:



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

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
JAN - 6 2009
Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	**CRIMINAL NO. 08- 596**
	§	
v.	§	**Count One: 18 U.S.C. § 2244(b)**
	§	**Count Two: 18 U.S.C. § 2241(a)(1)**
SAMUEL B. KENT	§	**Count Three: 18 U.S.C. § 2244(b)**
	§	**Count Four: 18 U.S.C. § 2241(a)(1)**
Defendant.	§	**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.

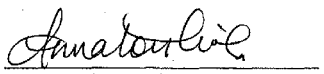
All in violation of Title 18, United States Code, Section 1512(c)(2).

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	§	**CRIMINAL NO. 4:08CR0596-RV**
	§	
v.	§	
	§	
SAMUEL B. KENT	§	
	§	
Defendant.	§	
	§	

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, Section1512(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 Govemment:

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 Allocution

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

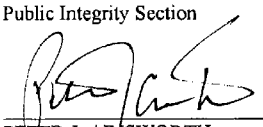
22. No other agreements, promises, understandings, or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by the defendant, defense 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
Washington, DC 20005
(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	§	**CRIMINAL NO. 4:08CR0596-RV**
	§	
v.	§	
	§	
SAMUEL B. KENT	§	
	§	
Defendant.	§	
	§	

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
F: 202-514-3003

Mr. BARON. I would also offer the transcript of the guilty plea and the transcript of the sentencing, which the guilty plea transcript is dated February 23, 2009. The transcript of the sentencing is dated May 11, 2009.

Mr. SCHIFF. Those documents will also be made part of the record.

[The information referred to follows:]

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

3 UNITED STATES OF AMERICA . H-08-CR-596
4 vs. . HOUSTON, TEXAS
. FEBRUARY 23, 2009
5 . 9:23 A.M.
SAMUEL B. KENT .
6 . . . . . .

7 TRANSCRIPT OF PLEA HEARING
8 BEFORE THE HONORABLE C. ROGER VINSON
UNITED STATES DISTRICT JUDGE
9

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

11 FOR THE GOVERNMENT:

12 Peter Joseph Ainsworth
John P. Pearson
13 Annalou Tirol
US Department of Justice
14 Criminal Division
1400 New York Ave NW
15 Washington, DC 20005

16 FOR THE DEFENDANT:

17 Dick DeGuerin
Sean Ryan Buckley
18 Catherine Baen
DeGuerin and Dickson
19 1018 Preston Avenue
7th Floor
20 Houston, Texas 77002

21 OFFICIAL COURT REPORTER:

22 Cheryll K. Barron, CSR, CM, FCRR
U.S. District Court
23 515 Rusk Street
Houston, Texas 77002
24
Proceedings recorded by mechanical stenography, transcript
25 produced by computer-aided transcription.

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

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

09:23 5 over this morning and we're now ready to proceed.

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 Bach, 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
09:28 10 an internal medicine doctor for psychiatric problems,
11 psychological problems, and diabetes for about the last three
12 years.
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
09:29 15 you're telling me?
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
09:29 20 medications for that?
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 Ability,
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
2 conduct would be the interference with the due administration
3 of justice.
4 Do you understand that?
09:35 5 THE DEFENDANT: Yes, sir.
6 THE COURT: Have you discussed this charge thoroughly
7 with Mr. DeGuerin, your attorney?
8 THE DEFENDANT: Yes, sir.
9 THE COURT: You understand what the charge is all
09:35 10 about?
11 THE DEFENDANT: Yes, sir.
12 THE COURT: I have a factual basis that has been filed
13 in this case, which has three numbered pages and appears to
14 have been signed by you and your attorney Mr. DeGuerin and
09:36 15 Mr. Ainsworth on behalf of the Public Integrity Section of the
16 Department of Justice. That is your signature on this
17 agreement?
18 THE DEFENDANT: Yes, sir.
19 THE COURT: And have you carefully read and gone over
09:36 20 this factual basis for the plea with Mr. DeGuerin?
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
09:36 25 plea that you believe is in error in any way?

09:36 1 THE DEFENDANT: No, sir.
2 THE COURT: Did you do what this factual basis sets
3 out?
4 THE DEFENDANT: Yes, sir.
09:36 5 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
16 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
09:39 5 that right of appeal. Is that correct?
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
09:39 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.
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
09:40 25 the agreement?

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,
09:41 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 1 I find that you're fully aware of the possible
2 sentence or punishment that may be imposed under the law for
3 this offense and you're aware of the operation and effect of
4 the sentencing guidelines and how those guidelines may possibly
09:42 5 affect your sentence.
6 And, most importantly, I find that you have made
7 your decision to plead guilty to this charge freely and
8 knowingly and voluntarily and you have made that decision with
9 the advice of counsel, an attorney with whom you've indicated
09:42 10 your full satisfaction.
11 So, let me ask you now, Mr. Kent: How do you
12 plead to Count 6 of the superseding indictment?
13 THE DEFENDANT: Guilty.
14 THE COURT: I accept your guilty plea. I will defer
09:42 15 adjudication of guilt until the time of sentencing, which under
16 our sentencing procedure, as you know, must be approximately 75
17 days from now.
18 So, I'm going to set you for sentencing here in
19 this courthouse for Monday morning, May the 11th, 2009, at
09:43 20 10:00 o'clock in the morning.
21 As you know, you can expect to receive a copy of
22 the presentence investigation as soon as it's finalized by the
23 US Probation Office. And normally that will take about a
24 month. When you receive a copy of that report, you should
09:43 25 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. DeCUERIN: 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 the record of proceedings in the above-entitled cause.
15
16 Date: February 23, 2009
17
18 /s/ Cheryll K. Barron
19 Cheryll K. Barron, CSR, CMR, FCRR
Official Court Reporter
20
21
22
23
24
25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
3
UNITED STATES OF AMERICA . CRIMINAL ACTION NUMBER:
4 . 4:08-CR-00596-1
VERSUS . HOUSTON, TEXAS
5 . MAY 11, 2009
SAMUEL B. KENT . 10:00 A.M.
6 . . . . . .
7 TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE C. ROGER VINSON
8 UNITED STATES DISTRICT JUDGE
9
10 APPEARANCES:
11 FOR THE GOVERNMENT:
12 Peter Joseph Ainsworth
John P. Pearson
13 AnnaLou Tirol
U.S. DEPARTMENT OF JUSTICE
14 CRIMINAL DIVISION
1400 New York Avenue NW
15 Washington, DC 20005
16 FOR THE DEFENDANT:
17 Dick DeGuerin
Sean Ryan Buckley
18 Catherine Baen
DEGUERIN & DICKSON
19 The Republic Building
1018 Preston, Seventh Floor
20 Houston, Texas 77002
21 OFFICIAL COURT REPORTER:
22 Mayra Malone, CSR, RMR, CRR
U.S. Courthouse
23 515 Rusk, Room 8016
Houston, Texas 77002
24
Proceedings recorded by mechanical stenography. Transcript
25 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.
9 THE COURT: Let me ask counsel if you will come down
09:59 10 with the defendant in front of the clerk's bench.
11 *(Compliance)*
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
10:00 15 of the superseding indictment.
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
10:00 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
10:05 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
10:06 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
10:06 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
10:06 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
10:28 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.
19 We can only speculate, and I tend to believe that
10:41 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."
11:08 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,
11:55 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
12:06 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 the record of proceedings in the above-entitled cause.

7 Date: May 25, 2009

8

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

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Mr. BARON. Finally one other document. There is an official court document. It is the judgment of conviction in a criminal case, and that, too, is dated May 11, 2009.

Mr. SCHIFF. That will be made part of the record as well.

[The information referred to follows:]

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):

TITLE/SECTION NUMBER	NATURE OF OFFENSE	DATE OFFENSE CONCLUDED	COUNT
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

Special Monetary Assessment	Fine	Restitution
$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.

Name of Payee	Total Amount of Loss	Amount of Restitution Ordered
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 _____
Deputy Clerk

Mr. BARON. Now, subsequently, Judge Kent sought to retire on disability, and he presented that to the Fifth Circuit specifically. It was to be considered by Chief Judge Edith Jones. Judge Kent presented to her voluminous materials concerning his physical and mental health and his personal history, and this is not an adversarial proceeding. There were no countervailing doctors or anyone

to argue. This was his petition. On May 27, 2009—this document also should be in the folders, I believe, that the Members have.

Chief Judge Jones considered all of the materials that had been submitted to her, and let me quote from the letter. She says, 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. And, skipping down, she says, finally I have sought legal advice from the general counsel of the administrative office of the courts.

She then goes on to conclude—this is on the second page at the bottom of the second paragraph of her letter—taken together, these facts do not show that Judge Kent's performance of professional duties was affected by mental instability or alcoholism before he was criminally investigated and indicted. And ultimately the bottom line is, for these reasons I deny the request to certify Judge Kent as disabled pursuant to 28 U.S.C. Section 372(a).

I would offer that that letter also should be made part of the record.

Mr. SCHIFF. Without objection.

[The information referred to follows:]

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.

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

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 . . . ."

Judge Samuel B. Kent
c/o Mr. Dick DeGuerin
May 27, 2009
Page 4

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

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

Mr. BARON. The Committee also received a letter dated June 1, 2009, and it is headed "Statement of Judge Samuel B. Kent Provided to the Task Force to Consider the Possible Impeachment of Judge Samuel B. Kent." Judge Kent notes that his health does not presently allow him to travel to Washington to address the Task Force in person, and then he asks that his letter be accepted as his written statement and to afford it any consideration the rules may allow.

I would request that that also be made part of the record.

Mr. SCHIFF. Yes. That has been made part of the record as well. I encourage the Members to read that.

Mr. BARON. Finally, Mr. Chairman, Members of the Task Force, there is a letter dated June 2, 2009. It is addressed by Judge Kent to the President of the United States. It reads as follows: Dear President Obama, I hereby resign from my position as United States district judge for the Southern District of Texas effective June 1, 2010. So effectively 1 year from then.

I would ask that that also be made part of the record.

Mr. SCHIFF. Without objection.

[The information referred to follows:]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
515 RUSK STREET, SUITE 9631
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

Mr. BARON. That concludes my testimony.

Ms. JACKSON LEE. Is that letter in our folder, that last one that you read——

Mr. BARON. We got it in pretty late. We do have copies for everyone. It is not in the folder, but we will distribute it. There is someone ready to do that right now.

Mr. SCHIFF. We'll make sure that each of the Members gets a copy of that letter.

Mr. Baron, thank you.

What I'd like to do now is turn to the first panel of witnesses, and Mr. Baron will be available after the witness testimony should Members have questions regarding the procedural posture of the case.

Thank you, Mr. Baron.

Mr. GOHMERT. Mr. Chairman, could I make a parliamentary inquiry? Was there—in the transcript, the witness was alluding to—there was mention of 413 notice in which they said it wasn't just Person A, it wasn't just Person B, there were additional victims of this defendant? Is that 413 notice—was that made a part of our record as well by this witness? Was that something that you had submitted?

Mr. SCHIFF. Mr. Baron, you can speak to that.

Only the documents that I think Mr. Baron referred to have been made part of the record.

Mr. GOHMERT. Then that was not one of them then.

Mr. SCHIFF. That's not one of the documents that this witness has presented.

Mr. GOHMERT. Thanks.

Mr. SCHIFF. Thank you, Mr. Baron.

Mr. BARON. Thank you.

Mr. SCHIFF. Why don't we begin. If the witnesses could come forward to the table. We have been paced for a series of two votes, So we will begin the testimony, and then we'll break and return as soon as the votes are concluded. If our three witnesses could come to the table, that would be great.

Ms. JACKSON LEE. Mr. Chairman?

Mr. SCHIFF. Yes.

Ms. JACKSON LEE. Just a moment of personal privilege, just a moment. Let me acknowledge Mr. Rusty Hardin, who has commended himself well. This gentleman—is he counsel? Mr. Terry Yates. And I assume from the Houston area? If you would allow me to acknowledge the gentlemen for commending themselves well. And I know that Mr. DeGuerin is not here, but all the lawyers who participated in this unfortunate set of circumstances, I want to thank you for your service. And I yield back, Mr. Chairman.

Mr. SCHIFF. I thank the gentlelady.

At this time, I would like to introduce our panel of witnesses. Our first witness is Cathy McBroom. Ms. McBroom served the Clerk's Office for the Southern District of Texas and had encounters with Judge Kent that ultimately led to his prosecution and the proceedings today.

Our second witness is Donna Wilkerson. She served as his secretary for 7 years and is also here to describe her encounters with Judge Kent.

Our final witness will be Professor Arthur Hellman at the University of Pittsburgh School of Law. He occupies the Sally Ann Semenko endowed chair of the university and has been part of the faculty since 1975. He is one of our Nation's foremost scholars on Federal judicial ethics and has written numerous articles on the topic. Professor Hellman has previously testified at hearings in both the House and Senate, including as a witness before the House Judiciary Committee, on the issue of judicial impeachment. His other testimony has centered on a range of issues concerning the Federal courts, and he provided valuable assistance to Members of the Judiciary Committee in drafting legislation to revise the handling of misconduct complaints against Federal judges.

Thank you for your willingness to participate in today's hearing. Without objection, your written statements will be placed in the record.

Given the gravity of the issues we are discussing today, we would appreciate it if you'd take an oath before you begin the testimony.

Excuse me one moment.

If each of you would please stand and raise your right hand.

[Witnesses sworn.]

Mr. SCHIFF. And I think what we will do is maybe reverse the order in light of the votes and—well, one moment, please. What we are going to do is we are going to break for votes. That way we won't have to break for testimony. We have two votes. We'll be back probably in about 40 minutes. Give you all a chance to grab a bite to eat, and we'll resume. I ask Members to return immediately after casting the last vote.

Thank you. We are in recess.

[Recess.]

Mr. SCHIFF. The Task Force will come to order.

Thank you. We'll start, Ms. McBroom, if you could begin your testimony. Your written testimony has been made a part of the record and thank you for beginning.

TESTIMONY OF CATHY McBROOM, CASE MANAGER, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS

Ms. MCBROOM. My name is Cathy McBroom. I've——

Mr. SCHIFF. I think your microphone may not be on.

Ms. MCBROOM. My name is Cathy McBroom. I have been employed by the United States District Court for 10 years. I am the victim that is referred to as person A in the indictment against Judge Samuel Kent. We're here today because I filed a complaint of judiciary misconduct against Judge Kent.

I began my career as a secretary for judge Nancy F. Atlas, and I worked in that capacity for about 3 years. After that I decided to pursue a case management position because I thought I would be better suited for those type of responsibilities. And I applied for the first available position, which was actually for Judge Kent out in Galveston.

I want to describe several incidents to you that are very difficult for me to talk about, but I think they are very necessary and they may be difficult for you to hear. These are incidents that I feel should never happen in the workplace. And the fact that they hap-

pened to me and they were initiated by a Federal judge is even more frightening.

The very first incident happened to me after I had been working for the judge for about 8 months. I actually worked on a different floor than the judge, but it was my responsibility to come up a couple of times during the day and check my outbox, also to bring paperwork to him, motions and things for him to review. And on this particular day, I had come up in the afternoon to check my outbox. And there was no one in chambers, so I had the key, I let myself in, I checked my outbox, and I was leaving his office to come back down to the elevator.

As I was walking down the hallway, I saw him coming toward me. And he was laughing and being pretty loud, as he usually was. As I approached him, I was actually coming pretty close also to the command center. The command center was the place where the security guards usually sat and they could monitor the building from there. And I noticed in the command center there were several of the security guards.

As I approached the judge, he asked me if I would show him the workout room. There wasn't really an official workout room in the building, but the guards had actually set up some weight equipment, free weights and things, just a few pieces of equipment in this little, small, kind of storage room that was about 10, 15 feet from the command center.

I could tell that he was—had been drinking, because he was slurring his words when he was asking me to show him the weight room. But I went ahead and took him into the weight room and pointed out the various exercise equipment that we had. And when I turned he grabbed me. And when I say he grabbed me, he grabbed with one hand sort of around my waist and he started trying to kiss me and he actually did force his tongue into my mouth. And at the same time that that was going on, he immediately started trying to remove my clothing by—he pulled up my blouse, he got his hand underneath my bra and pulled everything up at once so that my breasts were exposed.

I was begging him to stop, telling him please don't do this to me, please don't. I really love my job, I don't want to lose my job. Please don't do this. He wouldn't listen. I was trying to fight him off and keep his hands away from my body parts. He also put his hand down—tried to force his hand down my skirt. And I noticed that the door to the small—small room that we were in was cracked open, and I knew that the security guards must be able to hear what was going on in there. I even said, Judge, the guards are right outside, I know they can hear us. And he said, I don't care who hears us. He wasn't afraid of that at all. And that even made me more frightened. I guess he felt like he was powerful enough that no one was going to approach him and no one was going to come and—come to my rescue, and he was right.

Finally I threatened to just scream. I said, if you don't stop I'm going to have to scream. And at that point he—he just let go of me and just looked down at me with this disgusted look on his face and then he turned and left. And I was very shaken and upset and I sat down on a bench that was in the room and just cried for a few minutes and wondered what—what do I do now, what do I do?

And I tried to collect myself, straighten my hair, you know, get my clothes back in shape and I left the office.

When I walked out of the office an important thing is that I noticed were at least three men in that command center and all three of them had gone; no one was there. I really believe that they saw what was happening and they wanted to just leave, because they didn't want to be involved.

From there I went immediately down to my supervisor's office and I—I walked into her office and I said, why didn't you warn me about him? And she said, what—what's going on? And I told her he attacked me. And she knew immediately who I was talking about. And she asked me to close the door and so I closed the door. And she said, sit down, we'll talk. And I told her—you know, I described the incident and told her that he'd attacked me. And she said, well, do you want to file a complaint? And I said I—I don't know what that means, I don't know what you mean by complaint. All I know is I don't want to lose my job, I know that.

And she said, well, I can't guarantee that you could keep your job. I think that he's a Federal judge and he's not going anywhere, and more than likely you're going to be the one to go. And I thought about that for a moment and said that I'm not going to file a complaint. I want to know what else I can do, what are my other options. And she said, if you're not going to file a complaint then I'll talk to you off the record.

So she sat down and she told me that he had done something similar to her, but just not to that great of an extent. He had—she was up in his chambers one day and he had forced a kiss upon her, he had French kissed her. But she said that she resisted and that that was an isolated incident that—that never happened again. And that had been several years prior to what had happened to me.

And so she really felt like that he would probably talk to me later, and maybe even apologize, and maybe I'd never have to worry about it again. I hoped that that was true.

So I went about my business as a case manager and sometimes we'd go months without having that type of contact with the judge. It would be strictly business for the most part. But there were other incidents that arose after that. He started calling me on the phone. There were several, I would say probably more than 10 episodes, of him calling my office and begging me to come up and give him a kiss or just come up and talk to him. And I would resist.

And one other thing I want to say is after that first incident, I did tell one of the security guards that he had tried to attack me, and I was upset with this particular person because he didn't do anything, because he just left. And he said that he had to worry about his job, and his job was to protect the judge. And he apologized, but he said there wasn't anything he could do. So he agreed to try to watch out for me in other ways. He agreed to tell me if he knew the judge had been drinking, or the judge was looking for me, or he suspected that the judge was going to do something like that; he would call me ahead of time and give me a heads-up. So that sort of helped me to initiate various coping mechanisms that would allow me to stay in my position and sort of stay under his

radar and avoid him when I thought the situation was going to be bad.

Another incident I want to describe is about avoiding him. If I knew that he was back from a long lunch and he had possibly been drinking and he was the only one up in chambers, and I knew it was going to be a dangerous situation, if he called me and I could see that it was his extension calling me, his private line, I wouldn't answer the phone. I would just avoid his phone calls. That was a hard decision to make. As a case manager who is there to do your work, you always have to analyze, does he want me for real business or does he want me there because he wants to have sexual contact with me? It was an extremely fine line that I walked, and a very difficult position to be in.

Another incident that happened: He tried to call me several times and I wasn't answering, so he came down to my office, which was two floors down. He came right into my office, sat in front of me, across the desk from me and just started being friendly, loud, telling jokes. And, you know, I listened and laughed and, you know, I tried to participate the best I could.

He then stood up and came—started coming around my desk. And my instinct was to stand up, too. So I stood up, backed away as far as I could from him, and there was a credenza, actually just a table that I was using for a credenza behind my desk. And I backed up completely against the credenza, and he came around the desk, got in between my desk and me, and pushed me up against the credenza and pinned me there and started kissing and grabbing various body parts. My office door was open—and he was a big man, he was over 6 foot, probably closer to 6'3", 6'4"—and I could sort of see over him to the doorway to my office and I could see someone come to my office. I saw someone there for a moment and they just turned and left. I couldn't tell who it was.

But I feel like that's another example of people understanding what was happening there but everybody being afraid to address it, afraid to even come forward or say anything. That incident ended similarly. It didn't get as far as the first incident, because he wasn't able to get my clothes up, but I was able to push him away and discourage him enough that he eventually just left the room.

The other incident that I want to describe is one that happened right before I left. It was the final incident that happened to me. Judge Kent had called me up to his chambers to discuss an administrative action that had been taken in the Clerk's office, and I came up the elevator and turned to go to his office and I noticed there was a security officer sitting in the command center again. And he looked at me and said, where are you going? I said, I've been summoned to chambers. And he just kind of said, well, be careful. I still don't understand what he meant by that, but I went down to the judge's chambers. His secretary wasn't in, it was just me and the judge. He asked me to come directly into his office, asked me to close the door, and we had a brief discussion and I was about to leave—I said, okay, thank you. And I was about to leave the office and he said well, come give me a hug. And I said no, let's don't. I don't want to do that. I'm not—please don't start that. And he said, oh, come on. I've been good to you. You need to come give

me a hug, that's the least you can do. So I did. I reached up and he came around the desk and I was standing there and I reached up and gave him a hug. And the instant that I did that he reached around and grabbed my backside and pulled me in close to him, and then he started the same thing. He started trying to undress me, take my clothes off. He yanked my shirt, my sweater that I was wearing, and this time my breast was exposed and he did put his mouth on my breast. And meanwhile I'm pushing him away.

That day he had his dog, he had a bulldog that he brought to work with him at times, the dog started barking and causing a big commotion. I was afraid of the dog because the dog had incidents of attacking people, too. So here I had the judge attacking me and the dog barking and I was just trying to push him away.

And at some point he pushed my head down toward his crotch and asked me to do oral sex on him. He didn't use that language, he used more explicit language. And then I resisted and he grabbed my hand and placed my hand on his crotch. And I was just still trying to push him away and escape and beg him to stop. And at some point I heard someone come into the outer office. And he heard that, too, and so that momentarily distracted him enough to where I could break free.

And when he went into the outer office to investigate who had come in, I made my exit. And as I was leaving the office he made a statement to me that he thought I was a great case manager and that I did excellent work for him, but it didn't change the fact that he wanted to do sexual things to me. These things are described in my written statement but they are too embarrassing for me to talk about in public.

At that point I felt afraid enough that I wasn't able to go—I knew I would never be able to go back to that office again. I knew that I would be in danger if I continued to go there. I felt like he—he felt like he had power and control over me and could do whatever he wanted to me, and there was no one that was going to help me or come to my rescue or even believe me.

So I really didn't have any other alternative but to give up my job, and this was a job that I had worked very hard to attain. This was a job that I loved the responsibilities. I still do. It's something that I had planned to work until my retirement in. But I left the office and I decided that weekend that I would write a letter to my manager and request a transfer. So I did. I wrote the letter, I gave it to my manager the next week. And in the letter I described the incidents and I also asked for the transfer to Houston.

So the transfer was granted and I was offered a position in Houston that was not a case management position, but it was what they had available, so I accepted that position. And I—you know, the history of my employment is just I worked in that position until something of more of a case management in nature came available, and I did that for a while. And just recently I applied for—now I'm working for another Federal judge in a case manager position. So I now have my job back, finally, after 2 years.

One thing I want to say about my transfer back to Houston. I was in a position working for the staff attorneys and I had been doing that for oh, I guess, a month or so. And it still bothered me that even though I had made a complaint to my manager and the

complaint had been addressed and I had received a transfer, I felt that nothing, absolutely nothing, had been done to correct the situation in Galveston. And I didn't think anything was going to be done to correct that.

I knew that there were other victims out there and I also knew that there will continue to be victims if no one did anything. That thought nagged at me and just—I couldn't sleep at night because I felt like I had a responsibility to say something or do something to ensure that it wouldn't continue to happen. So after a couple of months I decided to file my judicial misconduct complaint. I wrote it myself, I mailed it off myself, and I waited to see how the circuit or the committee would handle the complaint.

Not too long after I filed the complaint, I got a letter from Judge Jones stating that a panel of judges would be in Houston to interview me. They did that; they came in and there were three people that interviewed me. It was two judges and an attorney. And it's my understanding that they interviewed other people, coworkers and other people they thought were—could be witnesses. The problem is that most the people in Galveston were extremely afraid of Judge Kent, they were afraid of retaliation. And a lot of people didn't feel at liberty to tell the truth to the committee of judges. And they didn't feel like they should offer any information that could have been helpful to the case. They were afraid for their jobs.

I felt alienated completely, because people who were my friends and my coworkers treated me as if I had the plague, they were so afraid to be associated with me. Eventually I found out that the circuit decided to reprimand the judge. And in the reprimand they gave him 4 months of administrative leave, with pay, as his punishment. That didn't seem entirely fair to me. They also classified what happened to me as sexual harassment. In my opinion what happened to me went way beyond sexual harassment. That's when I decided to go forward with a criminal complaint.

The criminal investigation brought on a whole—a whole new form of stress. I mean there was—everything that I did, I felt was under a microscope. Everyone was looking into my background, they were subpoenaing all of my records, my telephone records, my e-mail records, everything; everything I did became public. And that was very frightening and incredibly stressful not only to myself, but to my family. Seeing their mother's name in the news and the way that—it was linked to his claims of our ordeal being enthusiastically consensual was just beyond belief. My children had to listen to comments from other people about was it a consensual act, things like that, or things that kids should never have to deal with.

My marriage suffered terribly to the point of just disaster, because I was so—I was so completely stressed, I suffered from anxiety, depression, loss of sleep. I barely could even go to work every day, but I knew I had to have my income and I had to continue on. So the very best I could do was go to work and come home. I wasn't able to manage my family responsibilities, you know, decisions with the kids and making sure they met their deadlines in school and things like that. I was not capable of doing that. And everyone relied on me to do that, so I feel like I really let my family down in that area. And I wasn't able to meet my husband's needs. All of that contributed to an impact on my family.

So I just ask that you consider all of this when you vote to impeach Judge Kent because it's just—it has been an incredible ordeal for me, for my coworkers, for my family, for the other victims involved. And I think it's very important. Thank you.

Mr. SCHIFF. Thank you, Ms. McBroom. We very much appreciate your willingness to come and testify today, and I know how difficult it is. Thank you.

[The prepared statement of Ms. McBroom follows:]

PREPARED STATEMENT OF CATHY MCBROOM

Statement of Cathy McBroom

My name is Cathy McBroom. I have been employed by the United States District Court for the Southern District of Texas for ten years. I am the victim referred to as Person A in the indictment against Judge Samuel B. Kent. We are here because I filed a complaint of judicial misconduct with the Fifth Circuit Judicial Council, informing them of all the facts contained in this statement.

I began my career as secretary to Judge Nancy F. Atlas in August of 1999. After several years, I decided to pursue my goal of becoming a case manager, and in September, 2002, I accepted a position as case manager to Judge Kent. I enjoyed every element of my job responsibilities and planned to remain in that position until my retirement.

Unfortunately, in August of 2003, I encountered my first incident of sexual assault by Judge Kent after he returned from a long lunch, obviously intoxicated. After going to his chambers to check my outbox, he greeted me in the hallway next to the command center on the 6th floor. Several court security officers were in the command center at the time. Judge Kent asked me to show him the workout room, which was about ten feet from the command center. The security officers had set up some weight equipment and used the room as a make-shift gym. Judge Kent's speech was slurred, so I suspected he was drunk, but felt I should respect his request. Once inside the small room, he grabbed me and forced his tongue into my mouth while trying to remove my clothing. He had one arm around my waist and was using the other hand to pull up my blouse and my bra, exposing my entire breast. He also tried to force his hand down my skirt. All the while, I tried to push him away, begging him to stop. I tried to reason with him by telling him his actions were inappropriate, but I became more and more panicked, because he was not letting up. The door was partially cracked open and I knew the guards must have heard the struggle. I told Judge Kent that the guards were right outside and could hear him, but he laughed and said that he didn't care who heard him, or what they thought. Finally, I threatened to scream. He stopped abruptly, looked down at me with disgust, and left the room. I sat down on the bench and cried for several minutes before I was able to collect myself enough to leave the room.

I immediately reported the incident to my manager, the Deputy in Charge. She asked me if I wanted to file a complaint. I was unsure about the procedure and what protection would be offered me. She didn't explain the formal EEO procedure, but told me that if I filed a complaint, it was almost certain that I would lose my job because Judge Kent was powerful, had a life-time appointment, and wasn't going anywhere. She told me if I chose not to file a complaint, she would speak to me off the record. Then she confessed that she, too, had been "hit on" by Judge Kent. He had once grabbed her and kissed her in chambers, but she said he never tried to approach her after that. She expressed concern for Judge Kent's secretary, Donna, because she felt responsible for putting her in that position.

I decided that I wasn't ready to give up my position, and hoped that I could manage the problem by avoiding Judge Kent when I knew he was under the influence of alcohol. Over the next several years, I experienced many incidents of harassment and several other sexual assaults.

There were many occasions when I actually had to hide from the Judge because he was intoxicated and looking for me. Everyone knew the Judge had a drinking problem, and some of them also knew of his predatory nature. Some of the guards would warn me if they knew he had been drinking and was looking for me. During those times, I would refuse to answer his calls, or sometimes I hid in empty offices because I knew he would be determined to find me.

Once a security guard had warned me of Judge Kent's drunken condition, and when I refused to answer his calls, he came down to the 4th floor, into my office, and sat in the chair in front of me. He started telling me jokes and was being very loud and obnoxious. Suddenly he stood up and started around my desk. I stood up and backed up as far as I could, but he pinned me between my desk and credenza, and started kissing me, while grabbing my backside and breasts. While trying to fight him off, I caught a glimpse of someone in my doorway, but couldn't tell who it was. The person left immediately without a sound. Again, after struggling with me for a few minutes, Judge Kent gave up and left. I felt humiliated, scared, and shaken. A coworker came in sometime later and noticed that I had perspiration stains on my blue silk blouse, and that I looked disheveled. When she asked what was wrong, I confessed to her that Judge Kent had tried to force himself on me.

On one occasion, Judge Kent summoned me to his office in the morning. This time he wasn't intoxicated at all. I thought it unusual that he placed the call himself because when his secretary was in, he always asked her to call me. Even though Donna was at her desk, right outside his office, he asked me to come in to his private office and close the door. He approached me immediately, put his arms around me, and started to kiss me. Before I even had time to react, his office door opened and Donna came in unannounced. She seemed very upset when she realized what was happening. I immediately made my exit, but I felt so embarrassed about what Donna had witnessed. Later that day, Judge Kent called me to tell me that Donna was very upset because she thought I was trying to get her job. He told me to try to maintain a good relationship with Donna and suggested that I call her to reassure her that I wasn't after her job. I learned later that he had turned things around by concocting a lie that I had approached him, and that I would do anything to get Donna's job. He was trying to pit us against each other so that he could continue to manipulate and control both of us.

I asked Donna to have lunch with me the next day because I wanted her to know the truth, that Judge Kent was being sexually inappropriate with me, against my will. When she saw my demeanor, she realized that I was sincerely afraid of the man. She admitted that she had experienced the same type of abuse from him on a more regular basis. She was worried about me because she felt threatened because of what Judge Kent had told her about me, and didn't want to lose her job. When I convinced her that I wanted to stay as far from the Judge as

possible, she also became an ally, and would try to warn me if he was drunk, or going through a bad period of sexually abusing her.

It was fairly common for Judge Kent to call my office and try to coerce me into coming up to his chambers to "visit." I always knew that what he really meant was that he wanted me to come up so that he could have sexual contact, so I always resisted. He always made sexual references, telling me how beautiful, irresistible, and desirable I was. He tried to trick me by saying that I should just come up to "talk." I wanted to trust him and respect him as my superior, but when I went up to chambers, he started putting his hands on me, trying to kiss and fondle my breast.

A huge problem exists when an employee has to avoid her superior, refuse to answer his calls, or refuse to come when summoned. It is a constant inner struggle. Trying to do what a normal employee would do under normal circumstances would mean complying with his requests to come to chambers. I always had to analyze whether he wanted me for real court business, or just his personal pleasure. It was not always easy to tell.

The last and final sexual assault occurred on March 23, 2007. I was summoned to chambers to discuss an internal administrative action that had occurred in the clerk's office. After a brief discussion, he got up and asked me for a hug. I told him that I would rather not, but he indicated that he thought I owed him that much. I finally agreed, but when I reached up to give the hug, he grabbed my butt. I tried to pull away and told him that I didn't consider that a hug. Judge Kent asked if he could have just five minutes with me, pulled up my sweater and my bra all at once, and quickly got his mouth on my breast. I told him to stop and tried to push him away. His bulldog started getting excited and barking when he saw the struggle. I dropped some paperwork that I had taken to chambers and the dog started stepping on the papers, which momentarily distracted the Judge. When I tried to leave, he grabbed me again and reminded me that I owed this to him. He tried to push my head towards his crotch and told me to "suck him off." I resisted and he grabbed my hand and forced me to rub his crotch. Suddenly he heard someone enter the outer reception area and he became irritated. He went to investigate and I was able to break free. As I was leaving his office he said "you know, Cathy, I keep you around because you are a great case manager and do great work. That doesn't change the fact that I want to spend about six hours licking your clit." I just turned and left the office. By the time I reached the elevators, I was in tears. A court security officer asked me if the judge had tried to hit on me and I just shook my head "yes."

I went straight to the Probation office because I wanted to hide. I couldn't leave right away because I had carpooled that day. A couple of coworkers were in the office and saw me crying. The security officer started knocking on the door, telling me that Judge was looking for me. I told her I was not going back up there and asked her to get my things from my office. The judge started calling my cell phone but I refused to answer.

That weekend I decided that I could not continue to work in that dangerous environment so I drafted a letter to the Deputy in Charge requesting a transfer. I didn't know what the outcome would be, but I knew that even losing my job was better than enduring the abuse.

The District Clerk called a meeting to discuss my potential transfer. I was offered two different positions, neither of them in case management. I decided to take the better of the two and wait patiently for something else to open up.

In my personal life, everything has changed. My marriage was not able to survive the stress caused by the abuse that I suffered. My husband knew of the assaults immediately, and as they occurred, and he wanted me to leave from the beginning, but I was stubborn. I could not accept the fact that I was going to have to give up a career that I considered my dream job, because of a judge who chose to ignore the law. After the transfer, I suffered from anxiety, physical pain, and depression. I could no longer hold my family together because I was not able to function normally. I detailed the difficulties this situation caused me in the statement I made at Judge Kent's sentencing hearing, which is attached as Exhibit A.

Judge Kent used his power to manipulate people for his own selfish desires. He told his staff members that I was the one who pursued him. He told other judges, who I have to face every day, that it was just an affair gone bad. Being molested by a drunken giant is not my idea of an affair! Finally, he bragged about his gift for manipulation. He told his staff that if he had 15 minutes with a jury, he would be exonerated.

Everyone was afraid of Judge Kent. Long-time staff members had seen the results of his wrath. His former case manager was removed from her position only 3 years before her retirement because, according to Judge Kent, "she was no longer fun to have around." She wouldn't laugh at his jokes, and she frequently rolled her eyes. Her retirement was reduced significantly because of her salary cut.

During the Fifth Circuit's investigation, court staff members were afraid to tell the truth about incidents in Galveston because they were afraid of losing their jobs. Once the criminal investigation began, my life became impossible. Juggling my new job responsibilities with meetings with prosecutors, the FBI, and my lawyers, was incredibly stressful. While I was struggling to stay afloat, the judge was enjoying administrative leave on full pay. Everything I did or said was under a microscope. My financial records, email accounts and telephone records were all subpoenaed. One would think I was the criminal. Maybe we will eventually see a time when victims of sexual assault in the workplace can feel protected by the system, instead of victimized even further. Unfortunately, that time has not yet come.

Judge Kent is unfit to be a United States District Judge, and I hope the House of Representatives will vote to impeach him and that the Senate will convict and remove him from office.

ATTACHMENT

Sentencing statement

My name is Cathy McBroom. I am the victim referred to as Person A in the indictment against Judge Samuel B. Kent. When I think of the events leading up to his conviction, I am consumed with emotion. Even though I have been able to move on in both my personal life and my career, I am forever scarred by what happened to me in Galveston.

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

The abuse began after Judge Kent returned to work intoxicated. He attacked me in a small room not 10 feet from the command center where the court security officers worked. He tried to undress me and force himself upon me, while I begged him to stop. He told me he didn't care if the officers could hear him because he knew everyone was afraid of him. I later found out that was true, and for very good reason. He had the power to end careers and affect everyone's livelihood. The incident left me emotionally wrecked and humiliated. It was difficult to face co-workers when I knew they saw what had happened.

I told my husband about the incident immediately, and he was horrified. He told me to resign and just go back to working at a law firm. I was more stubborn than that. I'm 50 years old and had worked very hard to finally attain my dream job. Why should I lose my position and benefits just because of a judge who chose

EXHIBIT
A

to ignore the law? One can imagine the conflict my decision caused at home.

I want to answer the question in everyone's mind. If it was so bad, how were you able to stay for four years? I stayed because each time it happened, he later promised to leave me alone and behave professionally. I so wanted to believe that.

What I didn't know was that behind the scenes he was telling a different story. Now that the truth has been exposed I know so much more about his evil and deliberate manipulation, and I am utterly disgusted. He told his staff members that I was the one who pursued him. He even told his secretary that I would do anything to get her job, which was so far from the truth. He pitted us against each other through his lies and actions. After the criminal investigation began he even bragged about his gift for manipulation, which he thought would save him from conviction. He told people if he had 15 minutes with a jury, he would be exonerated.

There were times that other employees warned me that the judge was intoxicated and that he was asking for me, and during those times, I would refuse to answer my phone, or hide in empty offices. I recently had a court employee ask me "why didn't you just slap him?" When an employee decides to slap a federal judge, she better be ready to lose her job, and end her career. I wasn't ready to walk away. Going back to a law firm might not be easy after being blackballed by a judge. I knew he would do it. I had seen him do it to others.

The last assault was more terrifying and threatening that ever before. After forcing himself upon me and asking me to do unspeakable things, he told me that pleasuring him was something I owed him. That was it for me. He had won. He had

finally broken me and forced me out. I could handle no more of his abuse.

Keep in mind that my manager knew of the assaults from the very beginning. She warned me of his far-reaching power and couldn't say what would happen to me if I complained. She was also very afraid of him. She too had experienced his inappropriate behavior.

The effect of this experience has been tremendous. I have suffered anxiety, sleep deprivation, loss of self-esteem, depression, nightmares, and inability to focus. Try learning a new job after being traumatized. Judge Kent told other judges, who I have to face on a daily basis, that it was just an affair gone bad. Being molested and groped by a drunken giant is not my idea of an affair.

I tried to schedule appointments with several attorneys before Rusty Hardin, and they wouldn't even talk to me. Why? No one wants to tangle with a federal judge. Well, almost no one. Thank god that Mr. Hardin agreed to help me.

This problem not only affected me, it affected my family, my friends, and my co-workers. My marriage ultimately failed because I was no longer able to manage my my family responsibilities. I was the glue that held the family together and I could no longer function in that capacity. I left everyone down. After having an emotional breakdown at work, a dear friend offered to take me home. For a month she watched over me, fearing that I would become suicidal.

My life suddenly became impossible. Juggling my new work responsibilities with meetings with prosecutors, the FBI, my lawyers, was incredibly stressful. I couldn't just take off from

work. Meanwhile, the judge and his staff were enjoying administrative leave (on full pay). Everything I did or said was under a microscope. My financial records, my email accounts, my telephone records, my college transcripts--everything was subpoenaed. One would think I was the criminal. I know without a doubt why most sexual assault victims never complain. Only a strong person can survive this type of scrutiny. Unfortunately, my strength cost me my marriage, my job, and my home. I live in a small townhouse now, with my 16 year old son,

It has been good in one respect because it has kept this case at the forefront of the public's mind and had raised awareness

The media attention was not good for my family. Even though my children have been supportive and mature from the beginning, I cringe when I think of how they must have felt when they read Judge Kent's claims that their mother was "ENTHUSIASTICALLY CONSENSUAL." They remained strong, but I know they were humiliated.

Please let me take this opportunity to tell my co-workers in Galveston that I harbor no ill feelings towards any of them. They too were caught in Judge Kent's web of manipulation and control. I wish them nothing but the best.

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

Judge Vinson, I never expected any kind of compensation for my damages. I only persisted because I wanted to make sure that this Judge would not continue to abuse women and manipulate good people for his own selfish reasons. Taking advantage of subordinates is wrong. Claiming consensuality is a very weak response to a claim of sexual assault by a subordinate. Of course I wanted to be a good case manager. Of course I reported to chambers when he called. Of course I was nice to him. I had to be. It was part of my job. Judge Kent took advantage of my good nature and of my willingness to do what he asked of me.

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

A-5

Mr. SCHIFF. Ms. Wilkerson.

TESTIMONY OF DONNA WILKERSON, LEGAL SECRETARY, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS

Ms. WILKERSON. Thank you, Mr. Chairman. Thank you for this opportunity to let you know my story. I'm very nervous and don't do well at public speaking so I ask for a little patience with me.

My name is Donna Wilkerson, I am 45 years old. I live in Santa Fe, Texas. I'm happily married to my husband of 25 years and we

have two teenage children who attend high school in Santa Fe. I was a legal assistant and secretary in the private sector for 19 years before going to work for the Federal Government, and have worked for Judge Kent for the last 7 years as his secretary in his chambers. I began working for Sam Kent at the Federal court in December 2001. I left a happy and rewarding career in the legal field to take what I felt was a once-in-a-lifetime career opportunity as a secretary to a Federal judge.

This job provided an income which exceeded my past salary in the private sector, with excellent benefits for my family and me. And it was a 20-minute commute from my home as opposed to the law firm jobs I had in Houston, some 40 miles away.

One reason I am here today is to shed some light on what until now has been viewed by many as sexual harassment and sexual misconduct by Judge Kent. But in fact, it wasn't just sexual harassment and sexual misconduct. His acts were sexual assault. I have detailed those—these incidents involving these assaults and the more minor incidents of misconduct and harassment in my written statement that has been provided to the Task Force.

I was a 7-year victim of Sam Kent's sexual and physical—psychological abuse, I'm sorry. During my interview for this job and several times subsequent to my being hired, Sam Kent told me that he was the sole person responsible for his personnel staff's hiring and firing, and his personnel staff consisted of me and his two law clerks.

He also told me that he was the government. He would make statements routinely: I am the government, I'm the Lion King. It's good to be king. I'm the emperor of Galveston, the man wearing the horned hat guiding the ship.

He warned me in my interview, three things which he said would not be tolerated and would be grounds for my or our—with the staff—immediate dismissal: Disloyalty to him, talking out of school as he put it, and by engaging in behavior that would be an embarrassment to the court.

Sam Kent's sexual abuse and misconduct with me began on the fifth day of my job in December of 2001. He'd had a retirement party that was hosted by some friends for his retiring secretary whom I was taking her place. There was drinking and eating at that luncheon. And once there, while his retiring secretary and others were in the reception area of the chambers, he called me into his office and shut the door. He sat behind his desk and I sat in a chair in front of his desk. He told me that he was very excited to have me coming to work for him, to take Ms. Henry's place; that he thought I would be an asset to him and the operations of the court and that he thought I was intelligent and pretty and other random compliments.

As he got up, appearing to be showing me out of his office, I was walking in front of him to the door. He reached for the door as if to open it for me but put one of his hands on the door and the other hand on the other side, putting me between the door and him. He leaned in and placed a kiss on my mouth. After that he told me how beautiful he thought I was and that, again, he was glad I was there. I did not know what to do, but in my shock I did

nothing but exit the room thinking, what in the world was that and how am I supposed to handle this?

From that point forward, the abuse became more frequent and more severe. The number of these incidents from minor to most severe can be averaged at one to two times per month over a year's time for a period of approximately 5 to 5½ years, from 2001 to 2007.

Again, these episodes as to severity are set out in my written statement. These episodes were routinely followed by Judge Kent returning from long lunches where he was intoxicated. And there were periods in this time that I—that Judge Kent would stop drinking for several months and weeks at a time. There would be times where he was out on extended periods from the office wherein he obviously didn't have any contact with me.

I've explained in the past that the severity of the sexual abuse can be described using a bell curve as an example, starting with the most minor of incidents of hugs and kisses and escalating to the worse incidents of touching me inappropriately, groping me outside my clothes, then inside my clothes, both top and bottom, then attempting to and gaining penetration in my genitals with his hand and placing my hand on his crotch. And then there was one, or possibly two, most severe incidents of sexual assault.

These episodes always occurred inside of his chamber, sometimes in his office, and sometimes in the reception area, or wherever in chambers he could corner me. Preceding the incident he would always begin speaking in a vulgar and inappropriate way to me, and telling me graphically what he wanted to do to me. During these episodes I repeatedly told him no, stop, stop acting like a pig, quit, cut this out, you can't—we can't be doing this. I don't want to do this, behave yourself, and so on and so on.

There were times when he would approach me from behind while I was sitting at my desk and working at my computer. He would quickly come up behind me and put his hands over my shoulders and grope me on the outside of my clothes and then down my shirt and into my bra. Sam Kent is a 6'4" man weighing 260 to 300 pounds in any given period. Once cornered, caught, or pinned there's no getting away. Each time when I was at my desk and I knew that he was coming toward me in this manner, I would scoot my chair under my desk as far as I could, crossing my legs and arms to try to close myself off from him, all the while telling him no. He would keep trying to get his hands on me, but sometimes in this position I could literally keep his hands from moving and keep his hands off of me to the point that he would stop. But most times, however, I was not successful.

At those times I would attempt to move away to an area in the office where he would not—where he could not corner or trap me, literally even getting pieces of furniture in between us. I tried at all costs not to go inside of his office if he were in there and calling for me. I would stand in the doorway and talk to him and try to keep him off of the subject.

I know that it may be hard for some to understand or wonder how I could have endured this situation without doing anything about it. The reasons are many. My job was one that afforded—I'm sorry—offered a significant amount of pay and benefits, even more

than that of my husband. I could not afford, nor do I want to leave this job providing more than half of the income for my family.

My husband is a man with a fairly short fuse, a man of very few words who believes that part of his job as my husband and father to our children is to protect his family. Had I told him of even the first episode, the most minor of episodes, he literally would have gone to Galveston courthouse and "taken care of the situation." I was very afraid of how he would handle that situation. Any altercation, verbal or physical, with Sam Kent would have resulted in my being fired. My husband would face any variety of criminal actions and Sam Kent would have blackballed me from the Galveston County legal community.

After the incidents became more severe, my husband's reaction would have also been more severe. And whom exactly was I supposed to tell after he repeatedly told me that he was the government, he was the only one responsible for firing and hiring me. He made it clear, over and over, that he was the only person who made the decisions about his employees. And he had made that evident by his getting rid of and transferring several employees of the court whom he did not like or he felt needed to be replaced because of his own reasons.

One final and painful realization in my coming forward was dealing with my 14-year-old daughter and describing to her how she should conduct herself, how she should never put herself in a position that she has to take abuse from any young man, old man, and what she should do; and that no job, no situation, is ever worth that. How could I look her in the face and tell her these things when I couldn't do it myself? So I had to come forward, I had to do the right thing.

Sam Kent has spent his life manipulating people and abusing his relationships with people. Abusing people not just sexually, and not just women. Certainly this has been my experience the whole time I've known him.

He has also spent his time lying to everyone. He is a compulsive liar and he will never acknowledge what he has done to the people around him. He continues to try to manipulate the system and make excuses for his abhorrent behavior.

In the criminal case against him—although some of his lies were uncovered by his own admission—because of his narcissism and inability to admit fault and accept fault, he turned to even more lies by publishing ridiculous statements in the newspaper and blaming everyone and everything but himself.

Although this plea bargain required his claiming personal responsibility for his actions, as soon as he was, out of the courtroom he made statements to the press through his lawyer which were lies, and made ludicrous excuses for his past lies.

I did not fully realize how Judge Kent manipulated me until I was able to get out of his web, as he commonly referred to his position with the people involved in his career and his life.

I now realize how he maliciously manipulated and controlled everyone and everything around him. Through the entire time I was in this situation with Judge Kent he basically attempted to buy me, buy my silence as well as others. He continued to manipulate

and control what I and others would say after the action began by threatening to take his own life.

Before my first grand jury appearance, after he returned from administrative leave, 20 minutes before my scheduled appearance, he came to my desk and told me if anyone from Dr. Hirschfeld's office calls—that's his psychiatrist, one of his psychiatrists—please put them through right away. You know they have me on suicide watch again, right? He even instructed his law clerk in my presence to research his life insurance policy to make sure that it did not contain a suicide exclusion, so that if he killed himself his wife would still be paid the benefits.

On another occasion, before my last grand jury appearance, he told the law clerk that if I rolled on him, it would be all he could take and he would kill himself. And of course she, being my friend knowing the true story, notified me immediately, as she was worried that he might carry out with the plan, but that was exactly what he wanted her to do. He abused those around him and misused the power that his position brought him. He said that he hated bullies. And how sad is it that he himself is the biggest bully of them all?

He continued his manipulative behavior in seeking a mental disability when, just 2 years ago, he fought very, very hard to make his accusers and the investigators know that he was fully capable of keeping his bench.

I've heard today that he wrote a letter saying that he was unable to travel here because of health concerns and health reasons.

It is all contrived. I probably know Judge Kent as well as anyone could. And I have to agree with Judge Jones' assessment that his problems, psychologically and physically, have, of course, been brought on by this situation. And yes, he is psychologically impaired and a broken man, as he said, now. But I truly believe that it's because of this situation. Who wouldn't be psychologically troubled by this situation?

Judge Kent liked to say that he had to treat the lawyers who appeared before them harshly, because if he was nice to them that they would take advantage of him. He said that people misunderstood kindness as weakness, and now I know that this is what he truly believes. He saw my kindness to him as weakness, and he took complete advantage of me. He abused his power continuously and believed that no rules truly applied to him. I witnessed this over and over and can give so many examples of this behavior. He mocked, made racist comments. It pains me to say that he routinely used the N word and abused criminal defendants who came before him, litigants, lawyers, his colleagues and people in his everyday life.

My life has been truly affected in ways that I can never describe. No one can fully understand what it was like for me to have this happen to me. My family and I are in counseling to deal with the pain that he has caused. Our lives have been turned upside down.

I have teenage children who have had to hear the ugly details of sexual abuse perpetrated by someone they once loved and trusted. On a daily basis I struggle with the past and the pain that this situation has caused me. I'm mentally exhausted, and every day is a struggle to heal, move forward and literally function. My mar-

riage has suffered significantly from the stress of this situation, and I pray that it will survive. I am angry at the toll that this has taken on me and my family and the precious time I have been pushed, pulled, and taken away from my children and my husband, time I can never regain. I worry constantly about what my future will be like, both personally and professionally. Until this matter is completely concluded, the reality is that I'm reminded of the situation daily and it is a source of constant angst and a complete drain of my emotional and physical energy.

Ironically, until Sam Kent is off the bench, even the administrative office will not release me from his grips. I am still tied to him as a personal employee, tied to his budget, and any attempt to reassign me has not been successful; but yet he continues to earn his yearly salary as not only a convicted felon but also a man who possesses all of the horrific characteristics of everything a Federal judge is not ever supposed to be, but who still holds on to his position and seems to have protection from the real world.

Yesterday Judge Kent sent a letter to the President advising of his resign—resignation as of June 2010. I ask for your help in seeing to it that the right thing is done and that he be removed from his bench as soon as possible. Thank you very much.

Mr. SCHIFF. Thank you Ms. Wilkerson, again we very much appreciate your willingness to testify and know how very difficult it is.

[The prepared statement of Ms. Wilkerson follows:]

PREPARED STATEMENT OF DONNA WILKERSON

My name is Donna Wilkerson. I am 45 years old. I live in Santa Fe, Texas. I am happily married to my husband of 25 years and we have two teenage children who attend high school in Santa Fe. I was a legal assistant and secretary in the private sector for 19 years before going to work for the federal government and have worked for Judge Kent for the last seven years as his secretary in his chambers. I began working for Sam Kent at the federal courthouse in December 2001. I left a happy and rewarding career in the legal field to take what I felt was a once-in-a-lifetime career opportunity as the secretary to a federal judge. This job provided an income, which exceeded my past salaries in the private sector with excellent benefits for my family, and me and was a 20-minute commute from my home, as opposed to the law firm jobs I had in Houston, some 40+ miles away. During my interview for this job and several times subsequent to my being hired, Sam Kent told me that he was the sole person responsible for his personal staff's hiring and firing (his personal staff consisted of me and his two law clerks). He also told me that he *was* the Government—"I *am* the Government"; "I'm the Lion King—it's good to be king", "I'm the Emperor of Galveston", and "the man wearing the horned hat, guiding the ship." He warned me of three things which he said would not be tolerated and would be grounds for my/our immediate dismissal: disloyalty to him, "talking out of school", and by engaging in behavior which would be an embarrassment to the Court. He told me and subsequently routinely told every law clerk a story of a former law clerk whom he "thought was his friend" but upon the clerk's leaving for his law firm job, the law clerk told everyone at the law firm that the judge had a drinking problem, routinely became intoxicated on the job, performing many of his duties while intoxicated and behaved in a manner unbecoming to a federal judge. Mr. Kent advised at the end of that story how he hated that law clerk for his betrayal and had not spoken to him since.

For the last seven years, I was sexually and psychologically abused, manipulated and controlled by Sam Kent. His sexual abuse and misconduct with me began on the fifth day of my job. I had worked the first week at my job with Judge Kent's secretary of 20 years. She was retiring. On Friday of that first week, a retirement luncheon was given for her at a local restaurant. I was invited to and attended the luncheon, which lasted approximately 2–3 hours where food and alcohol were served. Mr. Kent, with others, became intoxicated, being loud and obnoxious. During the party, pictures were taken of several groups, including Sam Kent with his wife,

former law clerks, attorneys and his retiring secretary. During the taking of those photos Judge Kent joked and laughed and grabbed his wife's breasts and buttocks in front of the room full of people. After the party, everyone left except the few courthouse staff and Judge Kent, who returned to the courthouse. Once there, while his retiring secretary and others were in the reception area of his chambers, he called me into his office and shut the door. He sat behind his desk and I sat in a chair in front of his desk. He told me that he was very excited to have me coming on board to take Ms. Henry's place, that he thought I would be an asset to him and the operations of the court, and that he thought I was intelligent and pretty, and other random compliments. As he got up, appearing to be showing me out of his office, I was walking in front of him to the door. He reached for the door as if to open it for me, but put one of his hands on the door and the other one on the other side, putting me between the door and him. He leaned in and placed a kiss on my mouth. After that, he told me how beautiful he thought I was and that, again, he was glad I was there. I did not know what to do, but in my shock, I did nothing but exit the room, thinking, "what in the world *was* that and how am I supposed to handle this?" From that point forward, the abuse became more frequent and more severe. The number of these incidents, from minor to the most severe, can be averaged at 1–2 times per month over a year's time, for a period of approximately 5–5½ years, from 2001–2007. However, there were periods of time during these years that the incidents did not occur as frequently as 1–2 times per month because he had periods of weeks and months of not drinking, as well as several periods of extended time that he was out of the office. These episodes were routinely followed by Judge Kent's returning from long lunches wherein he was intoxicated. I have explained in the past that the severity of the sexual abuse can be described using a Bell Curve as an example—starting with the most minor of incidents of hugs and kisses, then escalating to worse incidents of touching me inappropriately, groping me outside my clothes, then inside my clothes (top and bottom), then attempting to and gaining penetration of my genitals with his hand, placing my hand on his crotch, and then topping the curve at the most severe episode of once, and possibly twice, pulling down my pants and performing oral sex on me. These episodes always occurred inside of his chambers—sometimes in his office, and sometimes in the reception area or wherever in chambers he could corner me. Preceding the incidents, he would always begin speaking in a vulgar and inappropriate way to me and telling me graphically what he wanted to do to me. Statements of "you have the cutest titties", "let me see those cute titties", "you have the cutest ass", "I want to eat your pussy", and "why don't you suck me off" were common to the more severe episodes. During these episodes, I repeatedly told him "no", "stop", "stop acting like a pig", "quit", "cut this out", "you/we can't be doing this", "I don't want to do that/this", "behave yourself", and so on and so on. There were times when he would approach me from behind while I was sitting at my desk and working at my computer. He would quickly come up behind me and put his hands over my shoulders and grope me on the outside of my clothes and down my shirt and into my bra.

Sam Kent is a 6'4" man, weighing 260–300 pounds, in any given period. Once caught, cornered or pinned, there was no getting away. Each time when I was at my desk and I knew that he was coming towards me in this manner, I would scoot my chair under my desk as far as I could, crossing my legs and arms to try to close myself off from him. All the while, telling him "no". He would keep trying to get his hands on me, but sometimes in this position, I could literally keep moving his hands off me to the point that he would stop. Most times, however, I was not successful. Many times he would come towards me, with his hands out, saying "let me see those cute titties", and other times he would come towards me saying other vulgar things. At those times, I would attempt to move away to an area in the office where he could not corner, trap or pin me—try to get a piece of furniture between us. I tried at all costs to not go inside of his office if he were in there and calling for me—I would stand in the doorway and talk to him and try to get him off the subject. During the most severe episode, he pinned me to a chair in his office after pulling my pants and underwear down.

When invited out to the lunches wherein he became intoxicated, we, his staff, were expected to go. If one of us didn't go, for whatever reason or excuse, he would be obviously upset with us about it, pout about it, and even tell the other staffers that did attend that he was offended. Many times after the abuse began, I declined to go to lunch with the group, making an excuse not to go, then leaving before he came back. These lunches would sometimes not begin until 1:30 or 2:00 p.m. and he would not return to the office until 3:15 or even later. Before some of the lunches that I or we did not attend, he would say before he left that he was not intending to come back to the office and that I or we could leave whenever we were finished with what we needed to do. I took that opportunity to leave as soon as I could, be-

fore he might change his mind to return to the office. Other times, he would announce to me that he needed to come back to the office to finish "signing some orders" and/or "pay a few bills", and that he wanted me to be there when he returned. Those were always his words and I knew what that meant—he was coming back to the office with the intent to harm me. But I also knew that I had to be there when he returned for fear of insubordination. Many times, I implored his career law clerk, one of the people to whom I had told a portion of the story to, to be in chambers with me so that he could not "misbehave" when he returned. During the time after Cathy McBroom came to the court as his case manager, I became aware of his sexual abuse of her, as well. We discussed it on several occasions, and on occasions when I would leave in order to be out of the office when he returned, I would call Cathy and tell her that I was "giving her a head's up" because he had gone to lunch and would be coming back to the office. She knew what that meant, also, and although she was an employee of the District Clerk's office and could not just leave, she would leave her office and go to other places or offices in the building. Sometimes she would even take her own "leave" to leave the office.

I know that it may be hard for some to understand or wonder how I could have endured this situation without doing anything about it. The reasons are many. My job was one that offered a significant amount of pay and benefits—even more than that of my husband. I could not afford nor did I want to leave the job, providing more than half of the income for my family. My husband is a man with a fairly short fuse—a man of few words—who believes that part of his job as husband and father is to protect his family. Had I told him of even the first episode, he literally would have gone to the Galveston courthouse and "taken care of" the situation. I was very afraid of how he would handle the situation. Any altercation, verbal or physical, with Sam Kent would have resulted in my being fired. My husband would face any variety of criminal actions, and Sam Kent would have blackballed me from the Galveston County legal community. After the incidents became more severe, my husband's reaction would have also been more severe. And whom, exactly, was I supposed to tell? Sam Kent made it clear, over and over, that he was the only person who made the decisions about his employees. And he had made that evident by his "getting rid of" and transferring several employees of the court whom he did not like or whom he felt needed to be replaced because of his own reasons.

Sam Kent has spent his life manipulating people and abusing his relationships with people, abusing people not just sexually and not just women. Certainly, this has been my experience the time I have known him. He has also spent this time lying to *everyone*. He is a compulsive liar and he will never acknowledge what he has done to the people around him. He continues to try to manipulate the system and make excuses for his abhorrent behavior. In the criminal case against him, although some of his lies were uncovered, by his own admission, because of his narcissism and inability to admit fault and accept fault, he turned to even more lies by publishing ridiculous statements in the newspaper and blaming everyone and everything but himself. Although his plea bargain required his claiming responsibility for his actions, as soon as he was out of the courtroom he made statements to the press through his lawyer which were lies and made ludicrous excuses for his past lies.

I did not fully realize how Judge Kent manipulated me until I was able to get out his "web", as he commonly referred to his position with the people involved in his career and life. I now realize how he maliciously manipulated and controlled everyone and everything around him. Through the entire time I was in this situation with Judge Kent, he attempted to buy me, as well as others, silence. He even went so far as to make me (as well as his former secretary) a beneficiary in his will—leaving us each a sum of money. He continued to manipulate and control what I and others would say after the action began by threatening to take his own life. Before my first grand jury appearance after he returned from administrative leave—20 minutes before my scheduled appearance—he came to my desk and told me, "If anyone from Dr. Hirschfield's office calls [his psychiatrist], please put them through right away—you know they have me on suicide watch again, right?" He even instructed his law clerk, Carey Worrell, in my presence, to research his life insurance policy to make sure that it did not contain "suicide exclusion" so that if he killed himself, his wife would still be paid the benefits. On another occasion before my last grand jury appearance, he told Ms. Worrell that if I "rolled" on him, it would be all he could take and he would kill himself. Of course, she notified me immediately, as she was worried that he might carry through with this plan, which was exactly what he wanted her to do. Ms. Worrell was also, sadly, in his web of manipulation and control.

He abused those around him and misused the power that his position brought him. He said that he "hated bullies." How sad is it that he, himself, is the biggest

bully of them all. He continued his manipulative behavior in seeking a mental disability, when just two years ago he fought hard to make his accusers and the investigators know that he was fully capable of keeping his bench.

Judge Kent liked to say that he had to treat the lawyers who appeared before him harshly because if he was nice to them that they would take advantage of him. He said that people "misunderstand kindness as weakness." Now I know that this is what he truly believes. He saw my kindness to him as weakness and he took complete advantage of me. He abused his power continuously and believed that no rules truly applied to him. I witnessed this over and over and can give so many examples of this behavior. He mocked, made racist comments and abused criminal defendants who came before him, litigants, lawyers, his colleagues, and people in his everyday life.

My life has truly been affected in ways that I can never describe. No one can fully understand what it was like for me to have this happen to me. My family and I are in counseling to deal with the pain he has caused. Our lives have been turned upside down. I have teenage children who had to hear the ugly details of sexual abuse perpetrated by someone they once loved and trusted. On a daily basis I struggle with the past and the pain that this situation has caused me. I am mentally exhausted and every day is a struggle to heal, move forward and literally function. My marriage has suffered significantly from the stress of this situation and I pray that it will survive. I am angry at the toll this has taken on me and my family, and the precious time I have been pushed, pulled and taken away from my children and my husband—time I can never regain. I worry constantly about what my future will be like both personally and professionally. Until this matter is completely concluded, the reality is that I am reminded of the situation daily and it is a source of constant angst and a complete drain of my emotional and physical energy. Ironically, until Sam Kent is off the bench, even the Administrative Office will not release me from his grips. I am still tied to him as a personal employee, tied to his budget, and any attempt to reassign me has not been successful. But yet he continues to earn his yearly salary as not only a convicted felon, but also a man who possesses all of the horrific characteristics of everything a federal judge is not ever supposed to be, but who still holds on to his position and seems to still have protection from the real world.

Thank you very much for the opportunity to explain my situation and for your assistance in this matter.

Mr. SCHIFF. Professor Hellman.

TESTIMONY OF ARTHUR D. HELLMAN, PROFESSOR, UNIVERSITY OF PITTSBURGH SCHOOL OF LAW, PITTSBURGH, PA

Mr. HELLMAN. Thank you, Mr. Chairman. The testimony that you have just heard makes all too clear the importance and, indeed, the urgency of this hearing today. The question before the Task Force is whether Judge Kent's conduct falls within the constitutional category of high crimes and misdemeanors that warrant impeachment.

I have submitted a statement in which I analyze this question in some detail. Here, I will just briefly summarize my conclusions.

In my view, based on the public record, Judge Kent's behavior does fall within the constitutional category, high crimes and misdemeanors. I reach this conclusion for two independent reasons. First, Judge Kent has admitted to making false statements in a judicial proceeding, specifically to a judicial—a special committee that was investigatng a complaint that he engaged in sexual harassment. This false testimony makes him unfit to hold judicial office.

Second, there is evidence, now ample evidence, of sexual misconduct that constitutes an abuse of official power and that it provides further evidence of Judge Kent's unfitness to retain his judicial position.

I will start with the false statements. Judge Kent has admitted that when he appeared before the Special Committee of the Fifth Circuit Judicial Council that was investigating a judicial misconduct complaint filed against him, he falsely testified regarding his unwanted sexual contact with Donna Wilkerson. False testimony by a Federal judge in a judicial misconduct proceeding falls easily within the realm of high crimes and misdemeanors that warrant impeachment.

This is so, in part, because of the context. This Fifth Circuit Special Committee was part of the mechanism that Congress itself established in the Judicial Conduct and Disability Act of 1980. In that act, Congress made a considered decision to give the judiciary itself the primary responsibility for investigating and remedying misconduct by Federal judges. If that system is to operate effectively, chief judges and special committees must be able to rely on getting truthful answers from judges who are accused of misconduct. By testifying falsely before the special committee, Judge Kent impeded the committee's performance of this congressionally mandated task.

And the mischief goes even deeper. A second purpose of the 1980 Act was to allow the judiciary, as one sponsor said, to isolate the most serious instances of misconduct and to set before the House of Representatives a record of proceedings revealing misconduct which might constitute an impeachable offense. So when Judge Kent testified falsely before that special committee he interfered with the judiciary's ability to carry out that function, a function with constitutional underpinnings.

As if that were not enough, there is another aggravating factor. The purpose of Judge Kent's falsehoods was to impede an investigation of acts of sexual misconduct that even then we knew may have constituted abuses of Judge Kent's position as a judge. As I develop more fully in my statement, abuse of official power virtually defines the impeachable offense. A public official who testifies falsely in order to cover up his abuse of power is doubly unworthy to fill his office. And when the official is a judge, the unfitness is inescapable.

The record also points to a second ground for impeachment, the acts of sexual misconduct. On this point, Judge Kent's admissions established that he engaged in repeated non-sex—non-consensual sexual contact with two court employees who were his subordinates. Now, if all you had was the admissions, I think that I would be reluctant to conclude that the admitted facts, without anything more, satisfy the constitutional standard.

But, of course, there is more, a great deal more, the testimony you have heard today from Cathy McBroom and Donna Wilkerson. Based on that testimony and other evidence, you may well find that Judge Kent relied on his position of authority and control in the Galveston Division of the district court to coerce employees of that court to engage in sexual acts for his personal gratification and to coerce and intimidate them into remaining silent rather than to report his attacks to a higher authority.

If the record shows that, there can be no question that it is impeachable behavior. It is, in the words of the authoritative com-

mentator, Richard Wooddeson, it is official oppression that introduces arbitrary power. It is a high crime and misdemeanor.

To sum up, there is at least one ground, and probably more, for impeaching Judge Kent. He has proved himself to be unworthy to fill the office he holds, and I urge the Task Force to take the next steps in the process that will enable the Senate to convict him and remove him from office. Thank you.

Mr. SCHIFF. Thank you, Professor.

[The prepared statement of Mr. Hellman follows:]

PREPARED STATEMENT OF ARTHUR D. HELLMAN

Statement of

Arthur D. Hellman

Sally Ann Semenko Endowed Chair
University of Pittsburgh School of Law

House Committee on the Judiciary
Judiciary Task Force on Judicial Impeachment

Hearing on the
Possible Impeachment of
Samuel B. Kent of the Southern District of Texas

June 3, 2009

Arthur D. Hellman
University of Pittsburgh School of Law
Pittsburgh, PA 15260
Telephone: 412-648-1340
Fax: 412-648-2649
E-mail: hellman@pitt.edu

May 31, 2009

Statement of
Arthur D. Hellman

Chairman Schiff, Ranking Member Goodlatte, and Members of the Task Force:

Thank you for inviting me to express my views at this hearing held to consider the possible impeachment of Samuel B. Kent, a judge of the United States District Court for the Southern District of Texas.

On May 11, 2009, Judge Kent was convicted on one felony count of obstructing justice in violation of 18 U.S.C. § 1512(c)(2). The conviction was based on a guilty plea in which Judge Kent admitted that he gave false testimony to a special committee of the Fifth Circuit Judicial Council that was investigating a complaint of judicial misconduct that had been filed against Judge Kent. Judge Kent was sentenced to a term of 33 months in prison. At the sentencing hearing, two witnesses – both employees at the Galveston courthouse where Judge Kent was the only resident Article III judge – described repeated instances of sexual abuse by Judge Kent.

In my view, based on the public record, Judge Kent has engaged in conduct that justifies impeachment, conviction, and removal from office under Article II of the Constitution. First, the conduct that Judge Kent acknowledged as part of the guilty plea proceedings – making false statements to a judiciary investigating body – is, without more, a sufficient basis for impeachment because it demonstrates Judge Kent's unfitness for judicial office. In addition, if the House credits the testimony of the two victims who testified at the sentencing hearing, the sexual assaults and other unwanted sexual contact demonstrate not only unfitness for office but also abuse of power. They thus constitute a second, independent basis for impeachment.

Before elaborating on these points, I will say a few words by way of personal background. I am a professor of law at the University of Pittsburgh School of Law, where I was recently appointed as the inaugural holder of the Sally Ann Semenko Endowed Chair. I have been studying the operation of the federal courts for more than 30 years. Since 2007 I have published three articles dealing with judicial misconduct and other aspects of federal judicial ethics. In November 2001, I testified at a hearing of the Subcommittee on Courts, the Internet, and Intellectual Property on "Operation of the Judicial Misconduct Statutes." Subsequent to that hearing, Chairman Coble, joined by Ranking Member Berman, introduced the bipartisan Judicial Improvements Act of 2002, which became law as part of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273. More recently, I testified at the hearing held to consider the possible impeachment of District Judge Manuel L. Real.

I. Background: Investigating Misconduct by Federal Judges

For most of the nation's history, the only formal mechanism for dealing with allegations of misconduct by federal judges was the cumbersome process of impeachment. Criminal prosecution was a theoretical possibility, but up to 1980, "no sitting federal judge was ever prosecuted and convicted of a crime committed while in office."[1] A 1939 statute created judicial councils within the circuits, but

[1] Report of the National Commission on Judicial Discipline and Removal, 152 F.R.D. 265, 326 (1993) [hereinafter National Commission Report]. In 1939, Judge Martin T. Manton of the Second Circuit Court of Appeals was convicted of crimes committed while he served as a federal judge, but he resigned from the bench before the criminal prosecution began. See Joseph Borkin, THE CORRUPT JUDGE 27, 45 (1962). Since 1980, four federal judges (in addition to Judge Kent) have been convicted of crimes committed while in office. Two (Harry Claiborne and Walter Nixon) were impeached and removed from office. One (Robert Collins) resigned from the bench, and one (Robert Aguilar) retired "on salary."

their powers were vaguely defined, particularly with respect to authority over individual judges.[2]

In the mid-1970s, prominent members of Congress came to the conclusion that the impeachment process did not provide an adequate remedy for the many possible varieties of misconduct that might arise. After extensive debate, Congress passed the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (1980 Act). This law established a new set of procedures for judicial discipline and vested primary responsibility for implementing them in the federal judicial circuits.

Of particular relevance here, the 1980 Act created a system that relied on the judiciary itself to carry out initial investigations of possible misconduct, even where impeachment might ultimately be warranted. As Senator Thurmond observed, the procedures established by the Act "would serve to isolate the most serious instances of misconduct and to actually set before the House of Representatives a record of proceedings revealing misconduct which might constitute an impeachable offense."[3]

Two decades later, Congress passed a revised version of the Act in the Judicial Improvements Act of 2002.[4] This legislation retained the framework of the 1980 Act but added some procedural details drawn from provisions adopted by

---

[2] See Peter Graham Fish, The Politics of Federal Judicial Administration 417-26 (1973); Chandler v. Judicial Council, 398 U.S. 74 (1969).

[3] 126 Cong. Rec. 28097 (Sen. Thurmond).

[4] The legislation was enacted as part of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273. The standalone version was passed by the House in July 2002 as H.R. 3892. For the legislative history, see H.R. Rep. 107-459 (2002). As noted in the text, I testified at the hearing that preceded the introduction of the bill.

the judiciary through rulemaking. The new law also gave the judicial misconduct provisions their own chapter in the United States Code, Chapter 16.

Under Chapter 16 and the implementing rules, the primary responsibility for identifying and remedying possible misconduct by federal judges rests with two sets of actors: the chief judges of the federal judicial circuits and the circuit judicial councils.[5] A national entity—the Judicial Conference of the United States—becomes involved only in rare cases, and only in an appellate capacity.[6]

Ordinarily, the process begins with the filing of a complaint about a judge with the clerk of the court of appeals for the circuit.[7] The clerk must "promptly transmit" the complaint to the chief judge of the circuit, and the chief judge must "expeditiously" review it. As part of that review, the chief judge "may conduct a limited inquiry" but must not "make findings of fact about any matter that is reasonably in dispute." Based on that review and limited inquiry, the chief judge may dismiss the complaint or terminate the proceedings. That, indeed, is what happens in the overwhelming majority of cases, typically because the complaint is frivolous or seeks only to challenge the merits of a judicial decision.

---

[5] For a detailed description and analysis of procedures under the Act, see Arthur D. Hellman, *When Judges Are Accused: An Initial Look at the New Federal Judicial Misconduct Rules,* 22 Notre Dame J. L. Ethics & Pub. Pol. 325 (2008).

[6] Chapter 16 also authorizes the circuit judicial councils to "refer" complaints to the Judicial Conference of the United States and to "certify" determinations that a judge has engaged in serious misconduct. *See* 28 U.S.C. § 354(b) (Supp. V 2005). Technically this section of the statute does not establish a channel of appellate review, but even here the council makes the initial decision, and the Judicial Conference becomes involved only after that decision has been made. At this writing, the Fifth Circuit's certification in the Kent matter is pending before the Judicial Conference.

[7] The Act also provides that the chief judge of the circuit may "identify a complaint" and thus initiate the investigatory process even when no complaint has been filed by a litigant or anyone else. That aspect of the Act does not come into play in the matter now under consideration by the Task Force.

If the chief judge does not dismiss the complaint or terminate the proceeding, he or she must promptly appoint a "special committee" to "investigate the facts and allegations contained in the complaint."[8] A special committee is composed of the chief judge and equal numbers of circuit and district judges of the circuit. Special committees have power to issue subpoenas; sometimes they hire private counsel to assist in their inquiries.

After conducting its investigation, the special committee files a report with the circuit council. The report must include the findings of the investigation as well as recommendations. The circuit council then has a variety of options: it may conduct its own investigation; it may dismiss the complaint; or it may take action including the imposition of sanctions.

Final authority within the judicial system rests with the Judicial Conference of the United States. A complainant or judge who is aggrieved by an order of the circuit council can file a petition for review by the Conference. In addition, the circuit council can refer serious matters to the Conference on its own motion. If the Conference determines that "consideration of impeachment may be warranted," it may so certify to the House of Representatives.[9]

One final point about the process: Congress has authorized the Conference to delegate its review power to a standing committee, and the Conference has done so.[10] The committee is the Committee on Judicial Conduct and Disability. But it is

---

[8] See 28 U.S.C. § 353.

[9] See 28 U.S.C. § 355(b).

[10] *See* 28 U.S.C. § 331; *see also In re* Complaint of Judicial Misconduct, 37 F.3d 1511 (U.S. Jud. Conference 1994).

the Conference itself that takes the grave step of certifying to the House its determination that consideration of impeachment may be warranted.[11]

II. The Accusations and the Procedural History

This impeachment proceeding has its origin in a judicial misconduct complaint filed on May 21, 2007, by Cathy McBroom, Judge Kent's case manager.[12] Ms. McBroom alleged that she had been sexually harassed by Judge Kent. In response to the complaint, Chief Judge Edith Hollan Jones of the Fifth Circuit appointed a special committee to conduct an investigation of the allegations.

At some point during that investigation, the special committee notified Judge Kent "of an expansion of the original complaint … to investigate instances of alleged inappropriate behavior toward other employees of the federal judicial system."[13] Either before or after that notification, Judge Kent requested an opportunity to appear before the special committee. The special committee granted his request. What happened next is described in the "Factual Basis for Plea" signed by Judge Kent and also by his counsel:

> 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.

---

[11] On June 18, 2008, the Conference certified its determination that consideration of impeachment of District Judge Thomas G. Porteous may be warranted.

[12] Ms. McBroom is referred to in many of the documents as "Person A." She identified herself as "Person A" in open court at the sentencing hearing in the criminal case. See Transcript of Sentencing Before the Hon. C. Roger Vinson, United States District Judge 45 (May 11, 2009) [hereinafter Sentencing Transcript].

[13] In re Complaint of Judicial Misconduct, Dkt. No. 07-05-351-0086, Sept. 28, 2007, at 2 [hereinafter September 2007 Order].

> On June 8, 2007, in Houston, Texas, [Judge Kent] appeared before the Special Investigative Committee of the Fifth Circuit.
>
> [Kent] 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.
>
> [Kent] 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.

Three months after Judge Kent's appearance before the special committee, the special committee filed its report with the Judicial Council of the Fifth Circuit. Judge Kent submitted a response to the report. Based on the report and the response, the Judicial Council, on Sept. 27, 2007, issued a public order "reprimand[ing] Judge Kent for the conduct that the report describes."[14] The report itself was not made public, and the Judicial Council order did not describe the misconduct. The Judicial Council "concluded [the] proceedings because appropriate remedial action had been and will be taken, including but not limited to the Judge's four-month leave of absence from the bench, reallocation of the Galveston/Houston docket and other measures."[15]

Ms. McBroom filed a motion for reconsideration of the misconduct order. She alleged that there was additional evidence of misconduct by Judge Kent, including conduct that might constitute grounds for impeachment. Meanwhile, the United States Department of Justice initiated a criminal investigation of Judge

---

[14] September 2007 Order at 2.

[15] Id.

Kent. On Dec. 20, 2007, the Fifth Circuit Judicial Council deferred action on the motion for reconsideration "in light of the ongoing investigation."

The criminal investigation proceeded, and on Aug. 28, 2008, a grand jury indicted Judge Kent on two counts of abusive sexual contact and one count of attempted aggravated sexual abuse. All three counts involved abusive sexual behavior that took place in the United States Courthouse in Galveston; the victim was "Person A" – Cathy McBroom, the original complainant. Judge Kent pleaded "not guilty."

Three months later, on Jan. 6, 2009, the grand jury returned a superseding indictment. The new indictment reiterated the three counts of the August indictment and added three more. Counts Four and Five alleged that Judge Kent committed offenses of "aggravated sexual abuse" and "abusive sexual contact." These counts, like those in the initial indictment, involved conduct at the Galveston courthouse, but the victim was "Person B," later identified as Donna Wilkerson. The final count alleged obstruction of justice – specifically, that Judge Kent made false statements to the Fifth Circuit special committee about the nature and extent of his "unwanted sexual contact with Person B." Once again Judge Kent pleaded "not guilty" to all of the charges.

Three days after the grand jury handed down its superseding indictment, the Fifth Circuit Judicial Council issued a brief order granting Cathy McBroom's motion for reconsideration of the September 2007 misconduct order. The Council explained that when that order was issued, the special committee and the Council were unaware of the "allegations of serious misconduct" added by the superseding indictment. The new order said that after the trial in the criminal prosecution, the

Council would investigate the new charges and, if necessary, impose further sanctions.

The criminal trial was scheduled to begin on Feb. 23, 2009. Instead, on that day Judge Kent appeared in court and pleaded guilty to obstruction of justice. As part of the guilty plea, Judge Kent signed a document captioned "Factual Basis for Plea." In the latter document, Judge Kent admitted that had "engaged in non-consensual sexual contact" with both Person A and Person B "without their permission." He also admitted that in his appearance before the special committee of the Fifth Circuit Judicial Council he "falsely testified regarding his unwanted sexual contact with Person B." For its part, the Government agreed "to seek dismissal of Counts One through Five of the Superseding Indictment after sentencing." The Government also agreed "that the maximum term of imprisonment that it may seek at sentencing is three years."

Sentencing took place on May 11, 2009. Judge C. Roger Vinson ruled that Cathy McBroom and Donna Wilkerson would be recognized as "victims" for purposes of the sentencing hearing.[16] This meant that both women would have an opportunity to speak, and both did. Each described a history of abuse, assaults, and lies by Judge Kent. Judge Kent spoke briefly. He apologized to his staff, to his colleagues, and "to all who seek redress in the federal system." Judge Vinson then sentenced him to 33 months in prison.

On May 27, 2009, the Fifth Circuit Judicial Council issued an order "determin[ing]" that Judge Kent "has … by his own admission engaged in conduct which constitutes one or more grounds for impeachment under Article II of the

[16] See 18 U.S.C. § 3771(a)(4). Under that statute, a "crime victim" has the right "to be reasonably heard at any public proceeding in the district court involving … sentencing."

Constitution." The Council certified its determination to the Judicial Conference of the United States and urged the Conference to "take expeditious action" to certify the matter to the House of Representatives. On the same day, Chief Judge Jones rejected Judge Kent's request that she certify him as disabled pursuant to 28 U.S.C. § 372(a).

Based on this record, it appears that the Task Force will be considering the possibility of drawing up articles of impeachment seeking Judge Kent's conviction and removal from office on three grounds:

> 1. Judge Kent made false statements to a special committee of the Fifth Circuit Judicial Council that was investigating a complaint of judicial misconduct against him. These false statements betrayed his trust as a judicial officer and impeded an investigation that was being carried out pursuant to an Act of Congress.
>
> 2. Judge Kent abused his position as a federal judge by engaging in non-consensual sexual contact with Cathy McBroom, an employee of the court that he supervised, on court premises.[17]
>
> 3. Judge Kent abused his position as a federal judge by engaging in non-consensual sexual contact with Donna Wilkerson, an employee of the court that he supervised, on court premises.

The question for the House, and for the Task Force in the first instance, is whether this behavior falls within the category of "high crimes and misdemeanors" that warrant the impeachment of Judge Kent under Article II of the Constitution. The remainder of this statement addresses that question.

---

[17] I have drawn here and in the next paragraph on the language used in the "Factual Basis for Plea" that Judge Kent and his counsel signed. Testimony at the Task Force hearing may support a stronger version of the sexual misconduct articles.

III. The Constitutional Framework

The starting point for consideration of the possible impeachment of an Article III judge is of course the Constitution of the United States. Four provisions of the Constitution are relevant.

The first is the judicial tenure provision of Article III. Section 1 of Article III provides:

> The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.[18]

Implicitly, this language is supplemented by Article II section 4:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

The process of impeachment is governed by two sections of Article I. Section 2 provides: "The House of Representatives ... shall have the sole power of impeachment." Section 3 adds:

> The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.
>
> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

---

[18] In this statement I shall use the modern spelling of "behavior."

The interpretation and interaction of these constitutional provisions has generated a voluminous body of scholarship and commentary. For present purposes, I take four propositions as established.

First, it has been accepted at least since the early 19th century that federal judges are included among the "civil Officers" who are subject to impeachment and removal under Article II. Justice Joseph Story wrote in his authoritative treatise:

> All officers of the United States ... who hold their appointments under the national government, whether their duties are executive or judicial, in the highest or in the lowest departments of the government, with the exception of officers in the army and navy, are properly civil officers within the meaning of the constitution, and liable to impeachment.[19]

As already noted, on May 27, 2009, Chief Judge Jones rejected Judge Kent's request that she certify him as disabled pursuant to 28 U.S.C. § 372(a). This means that Judge Kent will not be permitted to retire on the basis of disability. But even if Judge Kent had been allowed to invoke § 372(a), that would not have affected these impeachment proceedings. A judge who retires under § 372(a) is no longer in "regular active service," but he would still "hold [his] appointment[] under the national government." And Justice Story's language makes clear that he would still be a "civil officer[] within the meaning of the constitution, and liable to impeachment."[20]

---

[19] 2 Joseph Story, Commentaries on the Constitution of the United States § 790 at 258 (1833) (citing Rawle).

[20] In addition, as Chief Judge Jones noted, a judge who retires under § 372(a) is still eligible to perform judicial work (although he could not do so unless designated and assigned by the chief judge).

Second, the impeachment process delineated in Articles I and II is the *sole* means of removing a federal judge from office. That is the view of most commentators; it was also the conclusion of the National Commission on Judicial Discipline and Removal established by Congress and chaired by former Congressman Robert W. Kastenmeier, the principal author of the 1980 Act. After extensive study and discussion, the Commission wrote:

> The Commission believes that removal may be effected only through the impeachment process. By "removal," the Commission means anything that relieves the judge of the aspects of office provided for in the Constitution--namely, the judge's commission of office, with its accompanying eligibility to exercise the judicial power, and nonreducible compensation.[21]

I recognize that Professor Raoul Berger took a different view in his 1973 book on impeachment,[22] but later scholars have persuasively rejected his arguments (and in particular his reliance on the common law writ of *scire facias*).[23]

Third, when Congress acts under the impeachment powers of Article I, its actions are not subject to judicial review. In *Nixon v. United States*,[24] the Supreme Court held that the meaning of the word "try" in the Impeachment Trial Clause is nonjusticiable. More broadly, the Court found that "the Judiciary, and the Supreme Court in particular, were not chosen [by the Framers] to have *any* role in impeachments."[25] This underscores the unique and solemn responsibility that

---

[21] National Commission Report, supra note 1, at 287.

[22] Raoul Berger, Impeachment: The Constitutional Problems 135-65 (1973).

[23] See, e.g., David R. Stras & Ryan W. Scott, Retaining Life Tenure: The Case for a "Golden Parachute," 83 Wash. U. L. Q. 1397, 1406-08 (2005).

[24] 506 U.S. 224 (1993).

[25] Id. at 234 (emphasis added).

devolves upon the House – and upon this Task Force as its agent – when it is considering a proposal to impeach a federal judge.

Finally, although the precise relationship between the "good behavior" clause of Article III and the impeachment provision of Article II will never be settled definitively, it is generally accepted that the power of Congress to impeach and remove a federal judge can be exercised only for the "gravest cause"[26] or for "*very serious* abuses."[27] This follows from the Framers' concern for protecting judicial independence. It can be seen in the emphatic rejection by the Constitutional Convention of John Dickinson's proposal to add, after the "good behavior" provision in what is now Article III, the following qualification: "provided that [the Judges] may be removed by the Executive on the application [of] the Senate and House of Representatives." One delegate after another objected to Dickinson's motion. Said James Wilson: "The Judges would be in a bad situation if made to depend on every gust of faction which might prevail in the two branches of our [Government]." Edmund Randolph "opposed the motion as weakening too much the independence of the Judges." Only one state voted for the motion; seven voted against it.[28]

Two conclusions follow from this analysis. First, if Judge Kent refuses to resign and is not impeached and convicted, he will remain an Article III judge and will draw his full salary.[29] When he reaches the age of 65, he would be able to

---

[26] John D. Feerick, Impeaching Federal Judges: A Study of the Constitutional Provisions, 39 Fordham L. Rev. 1, 30 (1970) (footnote omitted).

[27] Harry T. Edwards, Regulating Judicial Misconduct and Divining "Good Behavior" for Federal Judges, 87 Mich. L. Rev. 765, 777 (1989) (emphasis in original).

[28] The account in this paragraph is based on 2 Max Farrand, The Records of the Federal Convention of 1787 at 428-29 (1911); and Feerick, supra note 26, at 21.

[29] It is likely that Judge Kent will be disbarred, but there is no requirement that a district judge be a member of the bar. Judge Harry Claiborne was never disbarred in Nevada, even

"retire from the office … and …, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired."[30] Second, Judge Kent can be convicted and removed from office only if the accusations against him fall within the category of "very serious abuses" that justify impeachment. The next question, therefore, is whether the accusations do fall within that category.

IV. The Meaning of "Other High Crimes and Misdemeanors"

Under the Constitution, Judge Kent may be impeached and removed from office only for "Treason, Bribery, or other High Crimes and Misdemeanors." No one argues that Judge Kent has committed acts of treason or bribery. The question, therefore, is whether his conduct falls within the constitutional category of "high crimes and misdemeanors."

One way of approaching this question would be to look at each word separately. What are "high crimes"? What did the Framers mean by the word "misdemeanors"? Does the adjective "high" modify "misdemeanors" as well as "crimes"? However, based on my study of the relevant materials, I believe that this approach is misguided. The preferable approach is to interpret the phrase holistically and to ask: what kinds of behavior, other than treason and bribery, fall within the realm of "very serious abuses" that justify impeachment of a federal judge? In pursuing this course, I rely on evidence from the Founding Generation, writings by leading commentators, and prior impeachments.

---

though he was convicted of a felony by a federal criminal jury and also convicted and removed from office by the Senate in an impeachment proceeding.

[30] See 28 U.S.C. § 371(a). Conceivably he could seek to "retain the office but retire from regular active service." See 28 U.S.C. § 371(b).

A. Evidence from the Founding Generation

Initially the impeachments clause provided for impeachment only on the basis of treason or bribery. George Mason argued that this was too limited: "Attempts to subvert the Constitution may not be Treason as above defined." He therefore moved to add after "bribery": "or maladministration." James Madison objected that "maladministration" was too "vague." Mason thereupon withdrew "maladministration" and substituted "other high crimes & misdemeanors." With that alteration, his motion passed by a vote of 8 states to 3.[31]

What is striking here is that the phrase "other high crimes and misdemeanors" was added on the floor of the Convention without discussion, or at least without discussion that Madison thought it necessary to record. While we must be wary of putting too much weight on negative evidence, the most natural inference is that the delegates did not think that they were using a narrow and technical term. Rather, they were broadening the grounds for impeachment while avoiding (they hoped) the vagueness of the term "maladministration."

In any event, the debates at the Convention are of only limited utility in the present context. When the delegates were considering the grounds for impeachment, the impeachment clause applied only to the President.[32] The President would serve for a specified term of years, so there was no need to consider the relationship between impeachment and tenure during "good behavior."

---

[31] The account in this paragraph is based on 2 Farrand, supra note 28, at 550.

[32] The decision to make the Vice President "and other civil Officers" subject to impeachment was made later on the same day that the words "other high Crimes and Misdemeanors" were added to the impeachments clause. See id. at 552.

For an analysis of the impeachment provisions that does focus on judges, we must look at the ratification debates, and in particular at the Federalist Papers. Alexander Hamilton addressed the point directly in Federalist No. 79. In an oft-quoted paragraph, he wrote:

> The precautions for [federal judges'] responsibility are comprised in the article respecting impeachments. They are liable to be impeached for mal-conduct by the house of representatives, and tried by the senate; and, if convicted, may be dismissed from office, and disqualified for holding any other. This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own constitution in respect to our own judges.[33]

Two points about this analysis deserve emphasis. First, in describing the behavior that will justify impeachment of a judge and removal from office, Hamilton does not use either of the phrases that are part of the constitutional text. He does not say that judges may be removed if they fail to meet the Article III standard of "good behavior," nor does he quote the language of Article II referring to "Treason, Bribery, or other high Crimes and Misdemeanors." Rather, he states that federal judges "are liable to be impeached for *malconduct*."

Hamilton was a meticulous lawyer. He was also as familiar as any man then alive with the language of the proposed Constitution. The fact that he used the word "malconduct" strongly suggests that he did not interpret "Treason, Bribery, or other high Crimes and Misdemeanors" as embracing a particularized list of carefully defined offenses; rather, he read the language of Article II – at least when applied to judges – as including a broader category of misbehavior.

This interpretation is reinforced by the final sentence of the quoted passage. After summarizing "the article respecting impeachments," Hamilton adds: "This is

---

[33] The Federalist at 532-33 (No. 79) (Jacob E. Cooke ed. 1961).

the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find *in our own Constitution in respect to our own judges*." This last phrase is often cited as describing the United States Constitution.[34] However, I believe that the final clause is much more plausibly read to refer to the New York State Constitution. Hamilton speaks of "our own Constitution" and "our own judges," and of course, the Federalist Papers are addressed to "the People of the State of New York."

What then do we find in the New York Constitution as it stood at the time of the debates over ratification of the United States Constitution? The State of New York had adopted its Constitution in 1777. The tenure of judges was governed by Article XXIV. That Article provided:

> ... that the chancellor, the judges of the supreme court, and first judge of the county court in every county, [shall] hold their offices during good behavior or until they shall have respectively attained the age of sixty years.[35]

The standard for impeachment was set forth in Article XXXIII. That article provided:

> That the power of impeaching all officers of the State, for *mal and corrupt conduct* in their respective offices, [shall] be vested in the representatives of the people in assembly ...[36]

It thus appears that Hamilton thought that "Treason, Bribery, or other high Crimes and Misdemeanors" was not all that different from "mal and corrupt conduct."

---

[34] For example, in Nixon v. United States, 506 U.S. 224, 235 (1993), the Court, speaking through Chief Justice Rehnquist, said, "In our constitutional system, impeachment was designed to be the *only* check on the Judicial Branch by the Legislature." The Court then quoted the passage set forth in the text above, emphasizing the entire last sentence.

[35] 5 Francis Newton Thorpe, The Federal and State Constitutions 2634 (1909).

[36] Id. at 2635 (emphasis added).

B. Evidence from the Commentators

The discussions in the Convention and the Federalist Papers suggest that a federal officer – particularly a federal judge – is subject to impeachment for "maladministration" or "mal conduct." What kinds of offenses fall within that category? Three leading commentators offer guidance on this point. They are Richard Wooddeson, William Rawle, and Joseph Story.

Richard Wooddeson was an English historian who was a contemporary of the Framers. A few years ago, the United States Supreme Court relied heavily on Woodeson in ascertaining the meaning of the Ex Post Facto clause.[37] The Court noted that Woodeson's treatise on the common law of England "was repeatedly cited in the years following the ratification by lawyers appearing before this Court and by the Court itself." With that endorsement, Wooddeson's treatise is a useful starting-point.

Wooddeson's discussion is not lengthy, nor is it as analytical as one might hope. Nevertheless, two points emerge with some clarity. First, impeachable offenses do not necessarily correspond to ordinary crimes. Rather, impeachment lies for conduct that involves abuse of power by a government official to the detriment of the community. Wooddeson wrote:

> It is certain that magistrates and officers intrusted [sic] with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community, and at the same time in a manner not properly cognizable before the ordinary tribunals. … The commons, therefore, as the grand inquest of the nation, become suitors for penal justice …

[37] Carmell v. Texas, 529 U.S. 513, 522-24 (2000); see also Stogner v. California, 539 U.S. 607, 613 (2003) (quoting Wooddeson).

> Such kind of misdeeds … as peculiarly injure the commonwealth by the abuse of high offices of trust, are the most proper, and have been the most usual grounds for this kind of prosecution. … [38]

Wooddeson then listed some examples of cases that might call for impeachment. Among them were "a lord chancellor … guilty … of acting grossly contrary to the duty of his office" and a magistrate who "attempt[s] to subvert the fundamental laws, or introduce arbitrary power."

Second, Wooddeson makes clear that the impeachment process is forward-looking; it is designed not so much to punish as to safeguard the "general polity" against further misconduct. Thus, after listing examples of misconduct, Wooddeson emphasized "how little the ordinary tribunals are calculated to take cognizance of such offenses, or to *investigate and reform* the general polity of the state."[39]

This forward-looking perspective emerges even more strongly in the treatise published in the early 19th century by the prominent Philadelphia lawyer and historian William Rawle. Recently the Supreme Court described Rawle's treatise as "influential," and the Court relied on it in ascertaining the meaning of the Second Amendment.[40] Rawle began by asking why the United States had copied the "system" of impeachment from a "foreign nation" whose government was so different from ours. One answer, he said, is that

> the sentence which [a court of impeachment] is authorized to impose cannot regularly be pronounced by the courts of law. [The courts of law] can neither remove nor disqualify the person convicted, and therefore the obnoxious officer might be continued in power, and the injury sustained

---

[38] Richard Wooddeson, 2 A Systematical View of the Laws of England 596-97, 601-02 (1792).

[39] Id. at 602.

[40] District of Columbia v. Heller, 128 S.Ct. 2783, 2805-06 (2008).

> by the nation be renewed or increased, if the executive authority were perverse, tyrannical, or corrupt: but by the sentence which may be given by the senate, not only the appointment made by the executive is superseded and rendered void, but the same individual may be rendered incapable of again abusing an office to the injury of the public.[41]

Rawle then explained why the availability of impeachment is particularly valuable as a means of dealing with misconduct by members of the judiciary:

> We may perceive in this scheme one useful mode of *removing from office him who is unworthy to fill it*, in cases where the people, and sometimes the president himself would be unable to accomplish that object. A commission granted during good behaviour can only be revoked by this mode of proceeding.

The premise, then, is that the purpose of impeachment is to remove from office "him who is unworthy to fill it." It follows, I think, that it is a sufficient ground for impeachment of a civil officer – particularly an Article III judge – that he has engaged in behavior that makes him "unworthy to fill" that particular office.

Justice Joseph Story is probably the best known of the early commentators, in part because he was also a long-serving and influential member of the United States Supreme Court. His widely cited treatise on the Constitution contains relatively little that directly addresses the purposes of impeachment, but we can learn much from careful reading of his discussion of other issues. For example, in addressing the question "whether the party can be impeached … after he has ceased to hold office," Story takes note of the argument that "it would be a vain exercise of authority to try a delinquent for an impeachable offense, when *the most important object, for which the remedy was given*, was no longer necessary, or

---

[41] William Rawle, A View of the Constitution of the United States of America 217-18 (2d ed. 1829) (1970 reprint).

attainable."[42] From this we may infer that Story, like Rawle, viewed impeachment as a process for removing from office "him who is unworthy to fill it."

Similarly, in discussing the question whether impeachment is limited to "official acts," Story asks: "Suppose a judge or other officer to receive a bribe not connected with his judicial office; *could he be entitled to any public confidence*? Would not these reasons for his removal be just as strong, as if it were a case of an official bribe?" The premise here seems to be that a judge or other officer warrants impeachment and removal if he has engaged in behavior that results in a total loss of public confidence in his ability to perform the functions of his office. This is not quite the same thing as saying that the officer is not worthy to fill the office, but it suggests a similar forward-looking perspective.

When Story does turn to the question of what constitutes an impeachable offense, he draws heavily upon Wooddeson. Story comments approvingly that "lord chancellors, and judges, and other magistrates" have been impeached for "attempts to subvert the fundamental laws, and introduce arbitrary power."[43] He goes on to take note of other impeachments that "were founded in the most salutary public justice; such as impeachments for malversations and neglects in office … for official oppression, extortions, and deceits; and especially for putting good magistrates out of office, and advancing bad." His discussion thus reflects the twin themes that run through the writings of Wooddeson and Rawle: abuse of power and unfitness for the particular office.

---

[42] Story, supra note 19, § 800 at 271.

[43] Id. § 798 at 268.

C. The impeachment precedents

In the history of the United States, only 13 federal judges have been impeached by the House.[44] Four (Chase, Peck, Swayne, and Louderback) were acquitted by the Senate. Two (Delahay and English) resigned before the Senate held an impeachment trial.[45] Seven judges were convicted and removed from office (Pickering, Humphries, Archbald, Ritter, Claiborne, Hastings, and Nixon).

The two 19th century convictions – Pickering and Humphries – have little relevance in the present context.[46] As for the 20th-century convictions, each could be viewed as offering some guidance for the present proceeding, but the various statements made by House Managers, House Committees, and Senators all must be read in the context of the particular accusations and defenses. In Parts V and VI of this statement I shall consider the implications of the guilty verdicts (and acquittals) in some of those prosecutions.

D. Conclusion

As Justice Story observed more than 150 years ago, the constitutional category of "high crimes and misdemeanors" does not lend itself to "positive legislation" or other comprehensive definition. But that does not mean that there are no points of reference to guide the House in its inquiry. For example, no one can doubt that quid-pro-quo corruption – closely akin to the "bribery" specified in Article II – is an impeachable offense. Beyond that, I believe that the historical materials discussed here suggest two broad (and overlapping) categories of

---

[44] For a comprehensive account of the various impeachment proceedings, see Emily Field Van Tassel & Paul Finkelman, Impeachable Offenses: A Documentary History from 1787 to the Present (1999).

[45] In fact, Judge Delahay resigned after the House had agreed to a resolution of impeachment but before articles of impeachment were actually drafted. See id. at 119-20.

[46] Pickering was accused, in substance, of drunkenness and insanity. See id. at 91-100. Humphries was removed from office because he supported the Confederacy. See id. at 114-19.

conduct that may justify impeachment. The first is serious abuse of power. The second is conduct that demonstrates that an official is "unworthy to fill" the office that he holds.

Do Judge Kent's actions, as revealed in the public record, fit within either of these categories? Before turning to that question, one preliminary matter requires attention: what weight should the House (and this Task Force in the first instance) give to determinations made in the prior proceedings growing out of the misconduct complaint against Judge Kent?

V. The Relevance of Prior Proceedings

As already noted, Judge Kent's conduct has been the subject of a criminal prosecution by the Department of Justice and a misconduct investigation by the Fifth Circuit Judicial Council. In the criminal prosecution, Judge Kent pled guilty to obstruction of justice and was convicted and sentenced for that offense. In reliance on that guilty plea, the Fifth Circuit Judicial Council certified its determination that Judge Kent "by his own admission engaged in conduct which constitutes one or more grounds for impeachment under Article II of the Constitution." What is the relevance of these proceedings to this impeachment inquiry?

The short answer is that the House must exercise an independent judgment; it is not bound by determinations of other actors in other proceedings. The longer answer is fourfold.

Consider first the dismissal, at the request of the prosecution, of the five counts of aggravated sexual abuse and abusive sexual contact.[47] It is plain that these dismissals do not preclude the House from impeaching Judge Kent on the

[47] See Sentencing Transcript, supra note 12, at 77.

basis of the conduct underlying these five counts. This follows a fortiori from the fact that the House impeached Judge Alcee Hastings for engaging in "a corrupt conspiracy" to solicit a bribe after Hastings was *acquitted* of the same offense by a jury in a criminal trial.[48]

At the other end of the spectrum, the history of prior impeachments suggests that the House should not rely on Judge Kent's criminal conviction as constituting a high crime or misdemeanor. Particularly relevant here is the impeachment proceeding against Judge Harry Claiborne in 1986. Judge Claiborne had been convicted of filing false tax returns. Three of the articles voted by the House (I, II, and IV) described conduct by Judge Claiborne and said that by reason of that conduct, Judge Claiborne warranted impeachment.[49] In contrast, Article III relied solely on the guilty verdict rendered by the jury in the criminal prosecution and the ensuing judgment of conviction. The Senate convicted Claiborne by large margins on Articles I, II, and IV, but acquitted him on Article III. Three years later, when the House impeached Judge Walter Nixon, the articles of impeachment described false and misleading statements Judge Nixon had made, but they made no mention of the fact that Judge Nixon had been convicted of perjury in a criminal prosecution.

So I believe that the House should not rely on the criminal *conviction* as a basis for impeachment in and of itself. At the same time, however, the House can legitimately rely on the *facts* admitted by Judge Kent when he signed the plea

---

[48] See Alan I. Baron, The Curious Case of Alcee Hastings, 19 Nova L. Rev. 873 (1995).

[49] The Articles alleged that Claiborne knowingly and willfully falsified his income on federal tax returns. Articles I and II did say that the facts set forth in the articles "were found beyond a reasonable doubt by a twelve-person jury." For further discussion of the Claiborne impeachment, see Part VI infra.

agreement as well as the "factual basis for [the] plea." As part of the plea agreement, Judge Kent "knowingly, voluntarily and truthfully admit[ted] the facts set forth in the Factual Basis." It is hard to see how Judge Kent could now repudiate that solemn stipulation or dispute the facts he admitted. The House can thus take all of the facts set forth in that "Factual Basis" as conclusively established for purposes of this impeachment proceeding. And if the House decides to vote articles of impeachment, the House can rely on those facts as elements of impeachable offenses.

Finally, there are the various statements and determinations made by the judiciary in the course of the misconduct proceedings. I have already quoted the order issued by the Fifth Circuit Judicial Council. By the time the House considers the Task Force report, the Judicial Conference of the United States will probably have certified its determination that consideration of impeachment of Judge Kent may be warranted. These determinations can appropriately be given considerable weight. Nevertheless, at the end of the day the House must make its own independent judgment as to whether Judge Kent's conduct constitutes one or more impeachable offenses. Under Article I of the Constitution, the House has "the *sole* power of impeachment." Only the House can decide when that power should be exercised.

VI. Judge Kent's High Crimes and Misdemeanors

The final step in the analysis is to examine the record of Judge Kent's behavior and to ask whether that behavior falls within the constitutional category of "high crimes and misdemeanors." I believe that it does, for two independent reasons. First, Judge Kent has admitted to making false statements in a judicial proceeding – specifically, to a special committee that was investigating a

complaint that he had engaged in sexual harassment. This false testimony makes him unfit to hold judicial office. Second, there is evidence of sexual misconduct that constitutes abuse of official power and that provides further evidence of Judge Kent's unfitness to retain his judicial position.

A. False Statements in a Judicial Misconduct Proceeding

Judge Kent has admitted that when he appeared before the special committee of the Fifth Circuit Judicial Council that was investigating a judicial misconduct complaint filed against him, he "falsely testified regarding his unwanted sexual contact with" Donna Wilkerson. False testimony by a federal judge in a judicial misconduct proceeding falls easily within the realm of "high crimes and misdemeanors" that warrant impeachment.

Judge Kent's admitted conduct can be usefully compared to the conduct that led to the conviction and removal from office of Judge Claiborne. The articles of impeachment stated that Judge Claiborne "willfully and knowingly" filed federal income tax returns in which he failed to report substantial income. Article IV explained why this behavior constituted an impeachable offense:

> [Judge] Claiborne, by willfully and knowingly falsifying his income on his Federal tax returns for 1979 and 1980, has betrayed the trust of the people of the United States and reduced confidence in the integrity and impartiality of the judiciary, thereby bringing disrepute on the Federal courts and the administration of justice by the courts.

Judge Claiborne's dishonest behavior was totally unrelated to his role as a federal district judge. But the Senate convicted him on Article IV (as well on the two specific articles) by large margins. If Judge Claiborne's actions in submitting false information on a tax return was an impeachable offense, it would seem to follow a fortiori that making false statements in a federal judicial misconduct proceeding is also an impeachable offense.

In any event, quite apart from the Claiborne precedent, two aspects of Judge Kent's false statements aggravate the seriousness of his transgression and make clear his unfitness for judicial office. The first is the context: a special committee investigation under the Judicial Conduct and Disability Act of 1980. That Act was the product of careful and lengthy consideration.[50] In it, Congress made a considered decision to give the judiciary itself the primary responsibility for investigating and remedying misconduct by federal judges. Congress made this choice in the belief that such a system would provide greater accountability while fully preserving the independence of the judiciary. If that system is to operate effectively, chief judges and special committees must be able to rely on getting truthful answers from judges who are accused of misconduct. By testifying falsely before the special committee, Judge Kent impeded the council's performance of its Congressionally mandated task.

And the mischief goes even deeper. As already noted, one purpose of the 1980 Act was to allow the judiciary "to isolate the most serious instances of misconduct and [to] set before the House of Representatives a record of proceedings revealing misconduct which might constitute an impeachable offense."[51] When Judge Kent testified falsely before the special committee, he interfered with the judiciary's ability to carry out that function. Judge Kent's conduct thus falls within Wooddeson's description (echoed by Story) of behavior that has warranted impeachment: an "attempt[] to subvert the fundamental laws."

---

[50] For a brief account of the legislative history of the 1980 Act, with citations to relevant materials, see Arthur D. Hellman, The Regulation of Judicial Ethics in the Federal System: A Peek Behind Closed Doors, 69 U. Pitt. L. Rev. 189, 207 (2007).

[51] See supra text at note 3 (quoting Sen. Thurmond in Senate debate on the Act).

The second aggravating factor is the purpose of the falsehoods – to impede an official investigation of acts of sexual misconduct that may have constituted abuses of Judge Kent's position as a judge. As shown in Part IV above, abuse of power virtually defines the impeachable offense. A public official who testifies falsely in order to cover up his abuse of power is doubly "unworthy to fill" his office. And when the official is a judge, the unfitness is inescapable.

For these reasons, I believe that Judge Kent's false statements to the special committee of the Fifth Circuit Judicial Council constitute high crimes and misdemeanors that warrant impeachment.

B. Coercive Sexual Misconduct

In the "Factual Basis for [the] Plea," Judge Kent admitted that he "engaged in non-consensual sexual contact" with Cathy McBroom and Donna Wilkerson "without [their] permission." The "Factual Basis" further establishes that Judge Kent was a United States District Judge with his chambers at the federal courthouse in Galveston; that Ms. McBroom was an employee of the Clerk's Office who was assigned to Judge Kent's courtroom; and that Ms. Wilkerson was a District Court employee who served as secretary to Judge Kent. From these established facts, we may infer that Judge Kent exercised supervisory authority over both women – that he was their boss.[52]

A federal judge who "engage[s] in non-consensual sexual contact" with court employees who are his subordinates may well be abusing his power as a federal judge in a way that justifies impeachment. However, I would be reluctant to conclude that the admitted facts, without more, satisfy the constitutional standard of "high crimes and misdemeanors." Fortunately, it is unlikely that the House – or

[52] Evidence to that effect will undoubtedly be forthcoming.

the Task Force in the first instance – will have to confront that question. Ms. McBroom and Ms. Wilkerson spoke at the sentencing hearing on May 11. Both women will be testifying at this Task Force hearing. If they describe their experiences in the way they did at the sentencing hearing, and if the House credits their testimony, the record will make a strong case for serious abuse of power that does warrant Judge Kent's impeachment. Particularly compelling is this account by Ms. McBroom:

> Judge Kent … attacked me in a small room that was not 10 feet from the command center where the court security officers worked. He tried to undress me and force himself upon me while I begged him to stop. He told me he didn't care if the officers could hear him because he knew everyone was afraid of him. I later found out just how true that was. He had the power to end careers and affect everyone's livelihood …
>
> The last assault I had was more terrifying and threatening than ever before. After forcing himself upon me and asking me to do unspeakable things, he told me that pleasuring him was something I owed him. That was it for me. He had finally won. He had broken me and forced me out. I could handle no more of his abuse.[53]

The evidence would then point to the conclusion that Judge Kent relied on his position of authority and control in the Galveston Division of the District Court to coerce employees of that court to engage in sexual acts for his personal gratification – and to remain silent rather than to report his attacks to a higher authority. Such behavior is, in Wooddeson's words, "official oppression" that "introduce[s] arbitrary power." It is a high crime and misdemeanor.[54]

---

[53] Sentencing Transcript, supra note 12, at 46-47.

[54] Counts One through Five of the indictment allege extremely serious acts of "aggravated sexual abuse" and "abusive sexual contact" by Judge Kent. To the extent that these allegations are supported by evidence presented to the Task Force, they would reinforce this conclusion.

It is true that none of the judicial impeachments that resulted in conviction in the 19th and 20th centuries involved similar transgressions.[55] But that is no barrier to impeachment of Judge Kent. Justice Story emphasized that impeachable offenses "are of so various and complex a character" that "[t]he only safe guide" is the method of the common law. The common law looks to principle, and the principle is the one already set forth: that impeachment is appropriate when a public official has misused his power in a way that makes him unfit to fill the office he holds. If Judge Kent had demanded that court employees give him 10 percent of their salaries as a condition of holding their jobs, no one would doubt that he committed an impeachable offense. The sexual coercion described at the sentencing hearing is no less "obnoxious,"[56] and the result should be the same.

VII. Conclusion

When Justice Story delineated the impeachments that "were founded in the most salutary public justice," he alluded "especially" to cases where public officials were impeached "for putting good magistrates out of office, and advancing bad." The record presented to the Task Force depicts conduct that closely resembles this paradigm. Judge Kent was a "bad" magistrate. The evidence indicates that he used his position of authority and control at the federal court in Galveston to coerce employees into engaging in non-consensual sexual acts over a period of years. Although there is no evidence that he attempted to "put[] good magistrates out of office," he did something equally pernicious: he made false statements to his fellow judges in order to retain his position as a judge and avoid

---

[55] An argument can be made that one of the articles on which Judge Robert W. Archbald was convicted involved abuse of power that was far less "oppressive" than the conduct described at Judge Kent's sentencing hearing. For a detailed account, see the Appendix.

[56] See supra text at note 41 (quoting Rawle).

punishment for his sexual misconduct. He is "unworthy to fill" the office he holds, and his "commission [should be] revoked" though the impeachment process.

Appendix

The Archbald Impeachment: Article 4

Judge Robert Archbald was a member of the short-lived Commerce Court. Thirteen articles of impeachment were voted against him by the House. Overall, the articles accused Archbald of corrupt behavior – behavior that plainly falls within the core of impeachable conduct. The House Committee Report recommending impeachment said:

> [Judge Archbald] has prostituted his high office for personal profit. He has attempted by various transactions to commercialize his potentiality as judge. He has shown an overweening desire to make gainful bargains with parties having cases before him or likely to have cases before him. To accomplish this purpose he has not hesitated to use his official power and influence.[57]

Judge Archbald was convicted on five of the thirteen articles. Four of these (including the thirteenth, a catchall article) alleged specific acts of corruption. However, Article 4 did not. Article 4 involved a case that was decided by the Commerce Court in 1912. In that case, the Louisville & Nashville Railroad Co. challenged a ruling by the Interstate Commerce Commission.[58] Here are the allegations in Article 4:

- While the suit was pending before the Commerce Court, Archbald "secretly, wrongfully, and unlawfully [wrote] a letter to the attorney for [the railroad] requesting said attorney to see one of the witnesses who had testified in said suit on behalf of said company and to get his explanation and interpretation of certain testimony that the said witness had given in said suit, and communicate the same to ... Archbald, which request was complied with by said attorney[.]"

---

[57] House Report No. 946, 62d Cong. 2nd Sess., at 23.

[58] See Louisville & Nashville R. Co. v. ICC, 195 Fed. 541 (Com. Ct. 1912). The Commerce Court's decision was reversed by the United States Supreme Court. See ICC v. Louisville & Nashville Ro. Co., 227 U.S. 88 (1913).

- Later, while the suit was still pending, Archbald "secretly, wrongfully, and unlawfully again did write to the [attorney saying] that other members of [the court] had discovered evidence on file in said suit detrimental to the said railroad company and contrary to the statements and contentions made by the [attorney]." Archbald requested the attorney "to make to him ... an explanation and an answer thereto[.] "
- "[Archbald] did then and there request and solicit [the attorney] to make and deliver to ... Archbald a further argument in support of the contentions of the said attorney so representing the railroad company, which request was complied with by said attorney, all of which on the part of said Robert W. Archbald was done secretly, wrongfully, and unlawfully, and which was without the knowledge or consent of the said Interstate Commerce Commission or its attorneys."[59]

Note what is and what is not in this article. The article alleges that Judge Archbald sought and received ex parte communications from the railroad's lawyer about a case pending before Judge Archbald's court. It does not say that Judge Archbald sought or received any quid pro quo for helping the railroad to support its position. It does not even say what happened in the case.

Some of that information is provided earlier in the Committee Report, in the narrative account. The Report explains that the Commerce Court decided the case in favor of the railroad, with Judge Archbald writing for the majority (which included three other judges) and Judge Mack dissenting. The Report adds: "In the opinion of your committee, this conduct on the part of Judge Archbald was a misbehavior in office [sic], and unfair and unjust to the parties defendant in this case."[60]

The Senate convicted Archbald on Article 4 by a vote of 52 to 20. It did so even though the Article asserted, at most, an abuse of power that benefited one

---

[59] House Report No. 946, supra note 57, at 26-27.

[60] Id. at 8.

side in the case and injured the opposing parties.[61] The conviction on Article 4 thus supports the proposition that a judge's use of his power or position to injure an individual can constitute a high crime or misdemeanor within the meaning of Article II of the Constitution.

In my statement at the hearing on the resolution to impeach Judge Manuel Real, I noted that there was also a precedent that might be viewed as pointing in the other direction, although not with much force. In 1830, the House impeached Judge James H. Peck on a single article. The allegation was that Judge Peck "unjustly, oppressively, and arbitrarily" punished a lawyer for contempt of court.[62] In the Senate, there was not even a majority for conviction; the vote was 21 to 22.

The impeachment article describes what sounds like an abuse of power that was neither criminal nor corrupt. In that respect it resembles the accusations against Judge Real – but not the accusations against Judge Kent. Moreover, Judge Peck's counsel, William Wirt, acknowledged that "if [Judge Peck] knew that [the lawyer's behavior] was not a contempt, and still punished it as one, it would have been an intentional violation of the law, which would have been an impeachable offense."[63] But Wirt also argued that "a mere mistake of law is no crime or misdemeanor in a judge." Senators may have voted for acquittal on the ground that the House managers had not shown more than "a mere mistake of law" without bad intent. Judge Kent's guilty plea and his admission of facts in the "Factual Basis" foreclose any argument that his case resembles Peck's.

---

[61] In fact, it is by no means clear that Judge Archbald's actions caused any harm to the defendants. Four judges joined the opinion of the Commerce Court, and nothing in the House Committee report indicates that the other three judges saw or were influenced by the material that Judge Archbald obtained through his ex parte communications with the railroad counsel.

[62] See Van Tassel & Finkelman, supra note 44, at 113.

[63] See id. at 109.

May 31, 2009

Mr. SCHIFF. We'll now begin the questioning, and I'll recognize myself for 5 minutes.

Ms. Wilkerson, I wanted to ask you—Ms. McBroom went through some of the chronology of how she filed the complaint around how the disciplinary proceeding was begun. Can you tell us a little bit about how you came to be involved in the legal proceedings, whether it was through the grand jury or otherwise, and what the course of the legal process was?

Ms. WILKERSON. Yes, sir. I was questioned by the—initially I was questioned by the Fifth Circuit panel, and then I was called for grand jury testimony. I did not elaborate, I did not tell the whole story from the beginning.

I became involved about a year and a half later. I did not want to come forward from the beginning, but I was sought out to tell the truth, and realized at a point that I had to tell the truth and come forward and do the right thing. And some people close to me also helped me make that decision that this had to be done. And so that's how I got involved.

Mr. SCHIFF. Thank you.

Professor, I want to ask you a couple of questions. First Mr. Baron related the part of the transcripts of the sentencing proceeding in which the prosecutor made reference to the same false statements that were the subject of the Fifth Circuit proceeding. The judge had also made to the FBI the same false denials. He also made reference to those same false denials being made later to the Justice Department. False statements to the FBI, false statements to the Justice Department in connection with the same conduct, in view—in your view, would those constitute impeachable offenses as well?

Mr. HELLMAN. Yes, I think they would. And I rely here in part on the impeachment and conviction of Judge Harry Claiborne, who was convicted of tax fraud unrelated to his duties as a Federal judge. I think that if that is an impeachable offense, this kind of falsehood is an easy case after that.

Mr. SCHIFF. In terms of the testimony we heard today, can you elaborate a little bit on whether it's necessary to show a nexus between the sexual assaults that were described and his position of authority or his responsibilities as a judge. Is there—and the necessity of there being a nexus—in other words, if the two women who testified today, let's say they didn't even work in the courthouse but were assaulted in the manner they described, would that be impeachment because it also constitutes criminal conduct, or would you need to show a nexus with his position of authority as a district judge, his position as employer? Is a nexus required for impeachment and has a sufficient nexus, in your view, been laid here?

Mr. HELLMAN. Let me take the first part of that question. It is interesting that the question you pose was actually posed in a slightly different context more than 150 years ago by Justice Joseph Story, who was not only a Supreme Court Justice but one of our most authoritative constitutional commentators. And he posed that question: Suppose you had the misconduct—he talked about bribery rather than sexual misconduct—and it was totally outside the official capacity. He didn't quite answer it, but he put the question: Would we have any less confidence in that person's ability to hold his office simply because the misconduct occurred in a private

capacity? The answer obviously to that question is no, you would not have confidence in the ability to hold that office.

It seems to me, though, that you don't have to get to that here. Based on the testimony here, you have ample evidence of the nexus that this—that Judge Kent was able to engage in this behavior repeatedly and over a period of time because of the position of power he had as a Federal judge, and particularly as the only Article III judge in that Galveston courthouse. That's abuse of power, and abuse of power is quintessentially what makes for an impeachable offense.

Mr. SCHIFF. Last question. The Constitution makes mention of judges serving during good behavior, which has been interpreted as meaning a life term. But I wonder whether those words "good behavior" also add context to what the framers meant by high crimes and misdemeanors. And the reason I ask is this: Unlike other Federal officials, Members of Congress, the President, who serve for a term of years and then are up before the voters, the judges are never up before the voters. There is only one method to be removed from judicial office, and that is by impeachment.

Does that fact of there being no other remedy, no other mechanism for removal, and the discussion or the mention of good behavior mean that the framers had in mind either a different view of what constitute a high crime and misdemeanor in the case of judicial officer, or that good behavior should inform that in some way? Is there any discussion of whether, in the cases of someone appointed for life, that the same definition of high crimes and misdemeanors is nonetheless viewed in a different way?

Mr. HELLMAN. Unfortunately for us today, the sequence in which the framers at the convention in Philadelphia considered these questions doesn't enable us to give a confident answer to that question. What is reasonably clear from the commentators over a period of time is that the concept of high crimes and misdemeanors does relate to the particular office because of this emphasis on unfitness or unworthiness to hold the office. And so I think in that sense you do look at judges a little bit differently, partly because of the particular responsibilities that they have, and partly because, as one of the commentators did say, you cannot remove them from office otherwise. So that does—that does put the context of the particular office, it does make it important in that sense.

Mr. SCHIFF. Thank you, Professor. I now recognize the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. I just want to make sure that the record is absolutely clear. And I would like to ask both you, Ms. Wilkerson, and you, Ms. McBroom, in your respective written testimonies you go into some detail on exactly what the nature of the misconduct of Judge Kent was against you. I'm not going to ask you to repeat this in public, but I would like each of you to say whether or not your detailed explanation is the truth and that is exactly what happened. You can just say yes or no.

Ms. WILKERSON. Yes, sir, absolutely.

Ms. MCBROOM. Yes, it's the truth.

Mr. SENSENBRENNER. Now, all of the instances that you described in your oral testimony, as well as in the written testimony

which has been included in the record, took place while you were working, and during working hours; is that correct or not?

Ms. WILKERSON. That's true.

Ms. MCBROOM. That's correct.

Mr. SENSENBRENNER. So this was all harassment that occurred on the job while the clock was running for both of your jobs, correct?

Ms. WILKERSON. Yes, none of these incidents occurred outside of the courthouse, ever.

Ms. MCBROOM. Same with me.

Mr. SENSENBRENNER. I have no further questions, Mr. Chairman.

Mr. SCHIFF. I thank the gentleman. Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I feel compelled to apologize to both Ms. Wilkerson and Ms. McBroom for the treatment that you have detailed to us today, and hopefully you will accept the knowledge that your Federal Government, the system of the judiciary, is one overall that you can be proud of.

This is a difficult position for you to be in. And I believe it is very important for you to know of the many jurists and Members of Congress who stand away from the details that you have offered here today. So thank you for your coverage, for being here today, and accept this as an apology for, again, what you have represented to us today.

Let me just try to find out from Ms. McBroom and from Ms. Wilkerson, did you overlap in tenure in Judge Kent's court? What were the years of service, again, Ms. Wilkerson? Can you give me the year to year—I think you said something like 2001 to 2007; is that accurate?

Ms. WILKERSON. Thank you very much for your kind words. Yes, our tenure did overlap. I came to the court in December of 2001. And, if I may speak for Cathy, I believe she came in July or so.

Ms. MCBROOM. It was September of 2002.

Ms. WILKERSON. So I was there for almost a year before Cathy came.

Ms. JACKSON LEE. Thank you.

And I think what you said, Ms. Wilkerson—and I will ask both of you. You indicated that when the judicial panel came forward, you were still at a point of intimidation and concern about your employment. So tell me just what you did when that panel came forward and asked you to speak to them?

Ms. WILKERSON. Yes, ma'am, absolutely. At the time of the Fifth Circuit interviews, Judge Kent earlier—I believe my interview was in June, June sometime—Judge Kent had already been interviewed.

Prior to that time, in between the time when Ms. McBroom filed her complaint and the time that I was interviewed, Judge Kent told me and told everyone that I knew of, including his lawyer, that he had been inappropriate with me on several occasions, kisses and hugs, a couple of times. The first few times, in his words, were that I was sweet about it, I was nice about it, but after the second or third time I made it very clear to him that I wanted no part of that. He told me from the beginning that that was his story, that was what he told his lawyer, that is what he told the Fifth Circuit.

And then, ultimately, that is what he said that he told the FBI when the criminal investigation began.

So that was the story that he told everyone. That is what he told me. That is what he told his law clerks. That is what he told even his colleagues, even the chief judge, I believe. But, in fact, that is not what he said at all in his interview with the Fifth Circuit and the FBI.

Ms. JACKSON LEE. So he said less than that.

Ms. WILKERSON. He said less than the story he even told me.

Ms. JACKSON LEE. And when you went—did you go before the panel?

Ms. WILKERSON. Yes, ma'am, I did.

Ms. JACKSON LEE. And how did you feel the necessity—what testimony did you offer?

Ms. WILKERSON. My testimony was that that was the story, that I had been approached two or three times, a few times. I made it very clear that it was unwanted and it was more than a few times.

Ms. JACKSON LEE. And that was on record, and——

Ms. WILKERSON. Yes, ma'am.

Ms. JACKSON LEE [continuing]. Then you still were in his employ as a personal secretary?

Ms. WILKERSON. Yes, ma'am. I let them know that the—with that story.

Ms. JACKSON LEE. You went forward with that. Well, that is good. I just wanted to make sure that you were at that panel and provided that information.

Ms. WILKERSON. Yes, ma'am, I did.

Ms. JACKSON LEE. Ms. McBroom, so it was 2002 that you started, and your complaint was filed when?

Ms. MCBROOM. I believe it was filed toward the end of May 2007.

Ms. JACKSON LEE. Right. And you went before that panel, as well?

Ms. MCBROOM. Yes, I did.

Ms. JACKSON LEE. Okay. And likewise gave your almost complete testimony?

Ms. MCBROOM. I gave them every piece of information I had.

Ms. JACKSON LEE. Okay. Let me thank you. And because my time—Professor, let me ask you——

Mr. SCHIFF. Will the gentlewoman yield for just one moment? I want to make sure we have a clear record on this, Ms. Wilkerson.

Ms. JACKSON LEE. I would be happy to yield.

Mr. SCHIFF. I thank you.

In your comments to the judicial panel, there are many things that you did not tell them that you only disclosed later. Is that correct?

Ms. WILKERSON. That is correct.

Mr. SCHIFF. Okay. I just wanted to make sure we were clear about that.

Ms. JACKSON LEE. And I thank you for clarifying. I am understanding that Ms. Wilkerson framed her testimony at least with the items that the judge said, but, more importantly, that she was against these—or she refused these sexual assaults or advances—I don't want to characterize your testimony. But you made it clear on the record at that time.

Ms. WILKERSON. Yes, ma'am, I made it clear there had been more than one incident of sexual misconduct and that it was against my wishes.

Ms. JACKSON LEE. Thank you. I think that is clear.

Mr. Chairman, if you would indulge me, I was just in the middle of finishing very quickly with Professor Hellman.

Professor, it does seem quite clear in the law about the idea of the impeachment standard. Where do you place the representations about alcohol abuse and mental health concerns?

I would like you to—I am not sure what you have read or the materials that you have read, but I do know that there is a letter in the record from Judge Edith Jones, where they made the determination that, I guess, obviously you are upset and have some mental issues because you are in the midst of this crisis.

Does there have any impact if this person represents or proves that they had a mental health issue throughout the period of these actions, as it relates to the impeachment proceeding?

Mr. HELLMAN. Well, I suppose it has a view as an impact—you know, you can feel perhaps a little bit more sympathetic toward Judge Kent as an individual. The question, though, for this Task Force in the first instance and then for the House is, is he worthy of the position he holds?

And if he is not worthy of that position, as much of this evidence indicates very strongly, then that background, it seems to me, should not affect that determination. Because without removal from office, he will continue to sit as a Federal—not to sit as a Federal judge—to hold the title of Federal judge, to receive the salary of a Federal judge, and also to occupy a position that otherwise could be filled by a new judge appointed by the President.

So that, it seems to me, is what is primarily relevant at the impeachment stage.

Ms. JACKSON LEE. Could you just—I will conclude on this question. Could you just restate the premise? Is that constitutional or case law on "worthy to be"? Could you——

Mr. HELLMAN. Well, there is not—I mean, one of the other points——

Ms. JACKSON LEE. I want you to help us with the right question, so that is why I am asking you.

Mr. HELLMAN. Right. Yeah, no, I think the—we don't have case law on this for the simple reason that the Constitution vests the impeachment responsibility in the House and the trial responsibility in the Senate. Neither of those are judicially reviewable.

For that reason, we rely heavily on the commentators. And one of the most authoritative commentators uses the standard of "worthiness for office," that a public official should be removed if he has shown himself to be unworthy of the office he holds. And so that is, I believe, the question here. And obviously there is very ample evidence on that, at this point.

Ms. JACKSON LEE. I thank the Chairman.

I thank all the witnesses very much for your testimony.

I yield back.

Ms. MCBROOM. Mr. Chairman, may I add something to my statement?

Mr. SCHIFF. Of course.

Ms. MCBROOM. There were several incidents of sexual misconduct that were not alcohol-related. There were incidents where I was called up to his chambers in the morning and he tried similar things, tried to grab me, kiss me, fondle, when he had not been drinking. It was not always alcohol-related.

As a matter of fact, he would go months at a time without drinking. I can't say that each incident was because of being intoxicated. It was not.

Ms. JACKSON LEE. That is an important clarification. I thank you for your testimony.

Mr. SCHIFF. I thank the gentlewoman. Her time has expired.

Mr. Goodlatte of Virginia?

Mr. GOODLATTE. Thank you, Mr. Chairman.

Ms. McBroom, can you describe generally the power that Judge Kent exercised in the Galveston courthouse? Is it basically true that it was a one-judge courthouse and he basically ran everything and supervised everybody?

Ms. MCBROOM. Yes, it was a one-judge courthouse. I think all of the employees were afraid to get out of line. I know when I began my employment there, my own manager, the deputy in charge for Galveston, sat down and talked to me and told me that I needed to be very careful to stay under his radar, that anything could set him off.

Mr. GOODLATTE. So there was nobody in the courthouse that you or anybody else really would feel like you could go to complain——

Ms. MCBROOM. Not anyone who was not afraid of him.

Mr. GOODLATTE. Right. Did Judge Kent do or say anything that communicated to you that he felt he could get away with his misconduct toward you because he was a Federal judge?

Ms. MCBROOM. Well, at the time I told you about in the wait room, whenever I told him the security officers were right outside, he didn't say it was because he was a Federal judge, he just said, "I don't care. I don't care who hears me." I just understood that it was because he was in that position of power.

Mr. GOODLATTE. What did it take, because of this environment, for you to be able to get the assistance or support from somebody else? How did you follow through on this to——

Ms. MCBROOM. Do you mean when I decided to request the transfer?

Mr. GOODLATTE. Well, yes. When did you first seek some help in terms of dealing with the problems that you were having?

Ms. MCBROOM. Oh, I sought help from the very beginning, from the very first incident by making my manager aware of what is going on. And she even agreed that if there were times when I felt threatened I could leave. She said, if you need to leave, you just go ahead and go, take off.

But there were certain times when I actually had a lot of work to do and he might have been in the building and may have been looking for me, and I thought if I could temporarily just escape until he left the office then I could stay and continue to do my work. I know that sounds crazy, but I really did want to perform my responsibilities. Sometimes I would just go hide in an empty office until I knew that he had gone for the day.

Mr. GOODLATTE. Thank you.

Ms. Wilkerson, how did the fact that Judge Kent was a Federal judge affect you in your initial response to his actions?

Ms. WILKERSON. Well, as I said in my statement, I—what could I do? He had made it very clear that he was the sole person in our staff, the two law clerks and myself, he was the sole person responsible for every decision there. And I literally, when I came there, there was no training, there was no—in fact, several times throughout the 7 years that I was with him, I had asked to go to several training seminars and such, and he declined those. There was no training. I was like, who am I supposed to go to with this? Who am I supposed to tell this to? How am I supposed to handle this?

Mr. GOODLATTE. So you didn't even have the resource of a supervisor——

Ms. WILKERSON. I did not have a manager. He was my manager. He was the manager.

Mr. GOODLATTE. And how did you ultimately bring this to the attention of others, that you had been subjected to this treatment?

Ms. WILKERSON. Initially, I told the Fifth Circuit panel when they asked me in the investigation of Ms. McBroom's complaint. That was the first time.

Well, let me back up. I had told two of our law clerks. One was a career law clerk, and one was a term law clerk that had left. And they've remained—she remains a co-worker and a dear friend, and he remains a dear friend. And I had told them back when. I had not told them the severity of it because it was too humiliating. I had told no one, no one, the details because it was too embarrassing and humiliating. Who could I tell these things to? I hadn't told my husband. I couldn't tell anyone. I personally felt I couldn't tell anyone.

So I told them, but—and they were in agreement, that's awful. And one even went so far as to say, yeah, I think he is a predator. What are you to do? Everyone, even—and this guy, this friend of mine that was the former law clerk, of course he was intimidated and afraid of him also.

Mr. GOODLATTE. Mr. Chairman, I know my time has expired. I wonder if I might have leave to ask one question of Professor Hellman.

Mr. SCHIFF. Of course, without objection.

Mr. GOODLATTE. It seems there are various views as to what sort of conduct would be sufficient to justify impeachment. Can you discuss for the Task Force how the concept of abuse of trust or abuse of position fits within the concept of high crimes and misdemeanors?

Mr. HELLMAN. Yes. Abuse of trust, abuse of a position really is the heart of high crimes and misdemeanors.

Mr. GOODLATTE. You may want to hit your speaker button there.

Mr. HELLMAN. I think it is—I'll bring it closer there.

What is striking to me as I listen to the very courageous testimony of Ms. McBroom and Ms. Wilkerson, this context is new—sexual abuse, sexual assault, sexual harassment—but it fits so closely to the description in one of the classic works by the commentator Wooddeson, "a magistrate who introduces arbitrary

power." Those were the words he used. And that is what we are hearing about here today.

Judge Kent introduced arbitrary power into the Galveston courthouse for his own personal gratification and satisfaction. It is a sad thing for me to hear, as somebody both to listen to the personal ordeals but also, as somebody who generally admires the Federal judiciary, that there was a judge who introduced arbitrary power, abused his power in this way. That is the essence of an impeachable offense, in my view.

Mr. GOODLATTE. Thank you. And I think it is a sad thing for all of us to hear.

And I want to especially thank Ms. McBroom and Ms. Wilkerson for being willing to step forward and testify here today. It is no—I don't think any of us can in any way underestimate the stress that this must put you under. But we thank you very much. You are providing a great service to your country.

Thank you, Mr. Chairman.

Mr. SCHIFF. Thank you. The time of the gentleman has expired.

Mr. Pierluisi of Puerto Rico?

Mr. PIERLUISI. Thank you, Mr. Chairman.

I want to extend my heartfelt thanks to both of you, Ms. McBroom and Ms. Wilkerson, for appearing before us. Few individuals will ever experience the depth of pain and humiliation you have felt because of Judge Kent's conduct. You're both brave women for bringing his inexcusable behavior to light.

As I see it at this point in this proceeding, Judge Kent's refusal to resign immediately from his office adds insult to injury. He already insulted you; he insulted all of us who believe in the American justice system. He insulted everybody. But now he injured everybody. Now he is insulting us.

One thing is to cause the damage he caused to you, and now it is quite another and it is really flabbergasting that he wants to keep earning a Federal salary while even incarcerated. It makes no sense. He is forcing this Congress to take action. And that's what this is all about.

Having said that, I imagine that no action that Congress takes can make you whole for the unspeakable harm Judge Kent caused you. Both of you mentioned the devastating impact that he has caused in your personal and professional lives. So on a human—on a personal basis, I just want to make sure, does this process help you in healing? Does it help you in moving on? I just want to hear from you on that.

Ms. MCBROOM. I find it extremely helpful, and it is helping me to have closure, first of all, to know that I live in a country where it does matter. In America, sexual assault is a crime. Sexual assault in a workplace is even more of a crime, in my opinion.

And it is—I just feel—I feel good about myself for coming forward, and I am so grateful that everyone is taking notice and that there is going to be action taken. It is very healing. Thank you very much.

Mr. PIERLUISI. You're welcome.

Ms. WILKERSON. Thank you for your kind words, as well.

Yes, this process, although very intimidating and out of my comfort zone for sure, I do feel that this process will help. I have kept

thinking over this time, you know, the next step, the next step, the next step of trying to move forward and heal, and it seems like it couldn't get any crazier. This whole thing has been surreal.

But all I can say is that, with each step forward, as painful as it is and as painful as the past has been, I am moving closer and closer to, you know, some sunshine in my days and to a healing process that, like Cathy says, people are taking notice and must take notice that this cannot and should not ever be acceptable or tolerated and that the system will maybe eventually, maybe not when we think it needs to be done, but will take care of situations such as this. So thank you very much.

Mr. PIERLUISI. You're welcome.

I have no further questions.

Mr. SCHIFF. The gentleman yields back.

Mr. Lungren of California?

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Professor Hellman, your testimony is very helpful in terms of establishing the parameters within which we work. And you made it very clear that it is the Congress, both the House in terms of impeachment and the Senate in terms of trial, who make the final determination. And while precedent is important and commentators are important, it is the collective judgment of the House and the Senate that prevails and is not appealable.

You were asked a question about good behavior because of the reference to the Constitution. I think as we try and understand that, you go back to the Founding Fathers and you look at the commentary, which I think is pretty important, called the Federalist Papers, where I think it was Madison who said that "the Constitution is established for a virtuous people. It would be insufficient for any other." And he was talking generally about the public. But I think it is also guidance in terms of those who are in official office.

He also went on to say, "If men were angels, we wouldn't need a government." But obviously we aren't and we need a government. But he also said, "Once you have selected the people who are to govern, you have to watch those who are governing." And that is our requirement here. We're supposed to watch those who are governing. And, in this case, we are given the responsibility to make judgments with respect to the conduct of those who have lifetime appointments.

And I don't think it is a close question as to whether or not what was related by these two witnesses here needs to have a nexus to employment. If one, while being a Federal judge, conducts himself in the way they have described, which in my estimation are prima facie cases of sexual assault or in some cases rape, there need not be a direct nexus to the job. That makes it even worse. So I think that is a separate and appropriate basis upon which we can impeach.

Secondly, it seems to me, what they have described here is a case in which someone abused his power not only with respect to these two women, but if you look at the conduct in its entirety, it is obvious to me that he has used his influence to corrupt the process in which other employees look the other way. And that, to me, is one of the worst acts that someone with authority can have. They essentially corrupt the actions of others so that they either—they are

aiding and abetting or, in the least, they are looking the other way. And when you have a Federal institution in a particular community which is the Federal court, to have the power to corrupt that entire workplace and the people who work within it is sufficient to find within the definition of high crimes and misdemeanors, in my judgment.

To the ladies who testified here, what you have described is a reign of judicial terror. And if we do not act here, we not only do not do justice to you, but we send a message loud and clear to the rest of the country that, when one gets a lifetime appointment as a Federal judge, they are above the law.

And if we allow him to sit in his incarcerated state and continue to draw his salary and then get his pension, what we have said is we are not serious about the fact that no person is above the law; that, along with the tremendous authority you get to be a Federal judge with lifetime tenure, the question of good behavior really doesn't mean anything.

It either means something or it doesn't mean something. You don't have to be, with all due respect, Professor, a professor or a Member of Congress or a lawyer to look at two words, "good behavior," and kind of figure out what they mean. And what you two ladies have described here is the absence of good behavior.

I happen to have a 91-year-old mother, I've got four sisters, I have a wife, I have two daughters. What you have described here is so unacceptable that Members of Congress have got to act. This cannot be allowed to go forward without an official response by this Congress.

And to let someone, first, try and get off on some sort of dodge of his own physical disability or mental disability or, secondly, to resign a year from now so that he can retain his salary is totally unacceptable. And I want to thank the two of you for the courage that you have displayed, because God knows it is not easy for you to come forward and what it's done to your families.

But we have to act based on the information you gave us. This is not a difficult case. It is a clear-cut case. This man should not be on the bench now; he shouldn't have been on the bench. And we have the obligation to act to make sure that not only he is on the bench but anybody else who would seek to be on the bench or serve on the bench would never give a thought toward acting the way he acted toward you and others.

So you have done a great service to this country by coming forward. I know it's not easy, but there are a lot of people in this country who respect you for what you've done and thank you for what you've done. And now it is our obligation to do the job that must be done based on the information that you have given us.

Thank you very much for being here.

Ms. MCBROOM. Thank you.

Ms. WILKERSON. Thank you very much.

Mr. SCHIFF. The time of the gentleman has expired.

The gentleman from Texas, Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

I'm going to piggyback a little bit on what Mr. Lungren said. And what is the amazing thing, Ms. Wilkerson and Ms. McBroom, is both of you all have, in responding to my good friend from Puerto

Rico's question about how you're finding this experience and you're saying, "Well, it has been painful, but it is gratifying that the system is working." But I hope you realize the system is only working because you came forward. The system would not have worked. And so, when we talk about courage and bravery, that's what we are all discussing here.

The second thought that I have is, look, sexual assault is a violent act. Had the judge struck you, it would have been a simple case. And we need to be reminded of that. Unfortunately, in today's society, things are taken in context and such in a way that we don't treat violent acts the same. But this was a violent act, first and foremost. But your contribution is making sure that people are held accountable.

And the last thought is, tremendous adversity, that you come out of this stronger, that the family comes out stronger. And that would be all of our wish for you. And I think that is where you're headed. If you don't get there soon, I think you will get there.

Professor Hellman, let me ask you quickly—because I do want to take the sensitivity, sensibilities of the witnesses, of the victims into account. I want them fully vested in the process to the extent necessary, because to continue different forums and different hearings does take its toll. It's just human nature.

But in your paper, in your written statement, you have—let me start off. "The short answer is the House must exercise independent judgment. It is not bound to determinations of other actors in other proceedings. The longer answer is fourfold," and then you go into examples. And you have, "So I believe that the House should not rely on the criminal conviction as a basis for impeachment in and of itself. At the same time, however, the House can legitimately rely on the facts admitted by Judge Kent when he signed the plea agreement as well as the factual basis for the plea."

Preceding that paragraph, though, you allude to two instances, one where a judge pled not guilty and was acquitted, but nevertheless we use what was in the charging instrument as a basis to impeach him. The second example you use is where a judge—this is Judge Clayburn, in essence, where he was found guilty, but that wasn't the basis for impeachment; it was the underlying facts.

But in this case—in those two cases, these judges pled not guilty. Isn't there some significance here in that we may be able to get to A to B if, in fact, we recommend to the full Committee that articles of impeachment be filed and they accept our recommendation? Can't we get from A to B in the simplest form possible? And that is relying on the plea—everything that was encompassed, the finding of guilty to a felony, a Federal felony, and the underlying facts that are encompassed in the statement, as you suggest, the factual basis for the plea?

Mr. HELLMAN. Well, on the false statements, I do think that the facts he has admitted to, without more, state an impeachable offense on the false statements. It is on the sexual misconduct that I think the admitted facts, without more, don't quite get you from A to B. On the obstruction, false statements count, yes.

And, of course, all you need is one article that the Senate convicts by two-thirds and he is removed from office. That's all you need.

Mr. GONZALEZ. The reason that I state my question is simply, if the full Committee moves forward with the impeachment, then you know the role of the House of Representatives. It is still up to the House of Representatives to return, basically, like, an indictment. We are a big grand jury; that's the way I always think of us, anyway. Then it goes for trial before the Senate.

And to have to put witnesses to any extent or degree back under the microscope at a national level, at this point, is something, if at all possible—this is my own personal opinion; it is definitely not anything I have shared with any of the Members of the Task Force—that if we don't have to do it, we shouldn't have to do it. And we can still, if, in fact, impeachment is appropriate and the finding is appropriate, then we move forward.

Can't we do that with what we have here, without fully engaging the witnesses and having them being part and parcel of that process?

Mr. HELLMAN. I appreciate and understand exactly the point you make. And it is my view that, if all—if all you want is to assure that Judge Kent will be—I suppose I should not say "assure." It requires a two-thirds vote of the Senate, and each Senator will use his or her independent judgment. But it does seem to me that the admitted facts on the obstruction count that Judge Kent pleaded guilty to are sufficient to impeach him and convict him on that without the need to get into the details, the witnesses on the sexual misconduct.

Now, you may have other reasons for wanting to impeach him, as some of these comments here suggest. But if the simple question is, can he be removed from office, should he be removed from office solely on the basis of these false statements which he has admitted, I do believe that is sufficient.

Mr. GONZALEZ. Thank you.

Mr. Chairman, without objection, just 1 minute. I wanted to ask the witnesses——

Mr. SCHIFF. Without objection.

Mr. GONZALEZ. Thank you very much.

You're aware of the letter this Committee has received from Judge Kent. I think you all have alluded to it, and you've been able to read it.

I'm going to ask you, since you're familiar with Judge Kent, his demeanor and the manner in which he treated individuals that came before his court, if a party came before him, did Judge Kent hold that party accountable for their acts?

And let me go further than that. And if someone came before him, a party or a defendant, and said, "Oh, if you rule against me or if you find me guilty, it 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 problem; please take these realities into consideration to the extent that you may," would it have altered his judgment? What would he have done?

Ms. MCBROOM. He would have dealt with them severely. He wouldn't have appreciated the fact that they were trying to play on his sympathies.

Ms. WILKERSON. That's true.

Mr. GONZALEZ. Thank you very much.

Ms. WILKERSON. He would have thrown some expletives in there. There would be no question whatsoever.

Mr. GONZALEZ. I appreciate it.

I yield back, Mr. Chairman.

Mr. SCHIFF. The time of the gentleman has expired.

Mr. Gohmert of Texas?

Mr. GOHMERT. Thank you, Mr. Chairman.

And I do thank the witnesses for being here.

I did want to ask, we received a June 2, 2009, letter addressed to the President from Judge Kent. It says "personal and confidential," but apparently he didn't just send it to the President; it was provided for all of us. I don't know what he means, "personal and confidential," if he expected us to consider this.

But I don't know, Professor, if you know, or perhaps the Chairman knows, what the effect would be if we did nothing and allowed him to resign effective a year from now on June 1, 2010?

Mr. SCHIFF. If the gentleman will yield?

Mr. GOHMERT. Sure.

Mr. SCHIFF. He would remain a Federal judge for the course of the year. He would draw his salary while incarcerated for the year. And my understanding, although we would have to get further analysis, he could change his mind a year from now and decide to un-resign.

Mr. GOHMERT. But if he resigned, would that end his ability to get a pension?

Mr. SCHIFF. I believe—and counsel can correct me if I'm wrong—that if he resigns from the bench or is impeached from the bench, he would not collect his pension. Under the circumstances of his years of service and his current age, my understanding is that he would not collect——

Mr. GOHMERT. He wouldn't get his pension.

Mr. SCHIFF. If he resigned prior to a certain age, which he has not attained, or is impeached.

Mr. GOHMERT. So if he did resign effective a year from now, he does not get a pension, correct?

Mr. SCHIFF. I think that is correct.

Mr. GOHMERT. Counsel was nodding. Is that correct?

Okay. All right. Thank you.

Well, as a former judge, I go into a hearing like this understanding, first of all, you've had a Federal judge plead to obstruction of justice, which indicates a great deal of injustice from the judge. But since we are supposed to take this up as a separate body and look at a separate punishment, basically, of removing him, impeaching him, actually charging him and pursuing elimination, which means no pension, no salary, yet we have to take a fresh look.

So I'm constantly looking for issues of credibility. And you've come in here today; you haven't been examined toughly. I'm sure that that kind of stuff has happened, as you've been questioned by the FBI and people all through this time. But he pled guilty to obstruction of justice, and one might normally think, well, that is sufficient unless we were to find that there was an obstruction—I

mean, there was some type of miscarriage of justice in the obstruction plea.

But examining the plea transcript, I don't find anything that indicates a miscarriage of justice. And in looking for other issues, perhaps of credibility, of mental culpability, mens rea, or contriteness which a judge likes to consider—and is it true contriteness, or is this a manipulative type of contriteness? Are there issues that indicate true rehabilitation? You have both indicated that this is a manipulative judge. So what indications do we have that that may be the case even today or that he is contrite truly and he is no longer being manipulative if the evidence is there?

Well, it certainly appears that when you have a judge who lied to the judicial counsel, as we heard, who voluntarily sought to make appearances in which he could lie, that that is clear indication of great manipulation. And, as we have seen in the transcript, you know, he again repeated the same lies. He said he had been honest with the FBI in December of 2007 and that—he went on to say that Person A—you know, acting with Person A is nonconsensual is absolute nonsense, which we later know he has admitted was actually not absolute nonsense but actually was a fact. So, again, misrepresenting. Person B, he said the defendant falsely—the transcript said falsely stated that he attempted to kiss her on two separate occasions, when, in fact, it was over a much longer period.

So, again, he is still trying to manipulate through this process up to the actual sentencing hearing through this transcript. But other indications, too—you know, we know this is an articulate guy. We can take judicial notice of his opinions and the things that he has said in court. He's got a good vocabulary. He is articulate enough. But then we know he also—because I want to know, is he really contrite? Is he really feeling—has he been rehabilitated after what he has been through?

We know he forced the Fifth Circuit to act upon his request to retire with a disability, knowing what he had done, already admitting to obstruction of justice. Boy, that is real manipulation. And then you come in here and we have this letter of resignation, June 2nd, addressed to the President, to retire a year from now, which he could withdraw at any time. If we took this and said, "Oh, well, great, he is going to retire, he is going to resign, and so we don't have to deal with it anymore"—but he could withdraw that at any time within the next year? That is real manipulation, not making it final, not making it clear that he is resigned to the fact that he needs to resign.

And then you compare that to the letter that's dated June 1 to this Committee, which the Chair and counsel have already indicated comes not under oath, so should not carry the credibility of someone who came in and took the oath. But in that letter, he ends up saying that—as my friend from Texas said, that removal from office "will render me penniless and without the health insurance I desperately need to continue treatment." Well, that is contradictory to his resignation. He completely contradicts himself. On one, he says he's got to have this. And then the next day sends a letter saying, "I'll resign next year," which gives us a clear indication he

has no intention to resign next year. This is further manipulation, and it is rather insulting.

So, last, we come to the issue—and I appreciate so much the insights my friend from Texas had into this, Mr. Gonzalez. But this not only has gone on beyond contriteness, but it is further manipulation such that I don't think we should stop even if we get a letter of resignation. I think this man needs to be impeached. Because when you have a Federal judge who would do all he can to get paid for doing the job of a Federal judge while he is in prison for committing a crime while he is a Federal judge, this is somebody who needs to be impeached. And a message needs to go out to others that you're not going to play games with this panel, you're not going to play games with this Congress. You try to manipulate us like you have others, then we are going forward. You want to resign, you do it before you try to manipulate this body, or otherwise we are taking it to the wall.

Thank you, Mr. Chairman. I yield back.

Mr. SCHIFF. Thank you.

The gentleman yields back.

I just want to conclude by thanking you, Ms. McBroom and Ms. Wilkerson, again, for your courage in coming forward. I was a law clerk for a Federal judge in Los Angeles, a judge of great integrity. And it grieves me enormously to hear what you suffered in your courtroom and the courthouse. It is unimaginable.

And I want to echo the comments of my colleagues, that it is a tremendous public service that you came forward. Had you not come forward, Judge Kent would be sitting on the bench right now and, very conceivably, mistreating or assaulting other people in the courthouse. You've put an end to that. So you've done a great public service in coming forward. We are very grateful. We know how hard it must be, and I wanted to thank you again.

We will be scheduling a fall meeting of the Task Force very promptly to discuss whether to recommend articles of impeachment to the full Committee for its consideration.

And I want to thank my colleague, the Ranking Member of the Task Force, Bob Goodlatte, for his work.

I want to thank you, Professor Hellman.

And, with that——

Ms. JACKSON LEE. Mr. Chairman?

Mr. SCHIFF. Yes, the gentlewoman from Texas?

Ms. JACKSON LEE. Is there a time frame for both our discussions and then the procedure moving to the Senate? Obviously, it has to go to the full Committee. Do we have a range of time? I'm making an inquiry.

Mr. SCHIFF. Yes, it is my intention to move very quickly to reconvene this Task Force to discuss what recommendation we want to make to the full Committee. It will then be up to the full Committee to schedule a full Committee meeting to act upon the recommendations of the Task Force.

If the Task Force recommends articles of impeachment and the full Committee then votes to approve those articles, it would then be up to the floor schedule to schedule floor action. But it would be my intention, not in the least of which because I don't think we want this to drag on and further prevent our witnesses from

achieving some form of closure but also for the reasons that my colleagues have explained, that we move promptly and expeditiously.

Ms. JACKSON LEE. A further inquiry is on the full Committee proceedings. Are all parties invited, or do they act upon our Task Force recommendations? Are parties invited again to the full Committee procedurally?

Mr. SCHIFF. No. My understanding would be that the Task Force will make a recommendation to the full Committee. We will deliberate as in a legislative markup, but we will not have witnesses at the full Committee hearing.

Ms. JACKSON LEE. If I just may have a moment of personal privilege, if you would, let me just—these are constituents that live in and around the Houston area, and, obviously, the story saddens me.

But thank you again for being such good people and willing to expose yourselves. And thank you for also understanding that there are good people around you who care about you. And you have allowed us to clear the air for other workers, not only in our area, in the Houston-Galveston area, but around the Nation. So thank you so very much for your contributions.

I yield back, Mr. Chairman.

Mr. SCHIFF. I thank the gentlewoman.

This hearing of the Task Force on Judicial Impeachment is adjourned.

[Whereupon, at 3:07 p.m., the Task Force was adjourned.]