IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
	)	Criminal No. 04-310-A
v.	)	
	)	
MICHAEL M. SEARS	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

I. Background.

The defendant, Michael M. Sears, was from May 2000 until November 2003 the Chief Financial Officer of the Boeing Company ("Boeing"). In March 2002 he also became a member of the Office of the Chairman which consisted of four senior executives of the Boeing Company. He was also a member of the Boeing Strategy and Executive Councils. The defendant joined Boeing in August 1997 following the merger of Boeing and McDonnel Douglas where defendant had been employed since 1969.

Darleen A. Druyun, was from 1993 until her retirement in November, 2002, the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management. In that Senior Executive Service position, she supervised, directed and oversaw the management of the Air Force acquisition program. In addition, she provided advice on acquisition matters to the Assistant Secretary of the Air Force for Acquisitions, the Chief of Staff of the Air Force, and the Secretary of the Air Force. Prior to Druyun's service as the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, she had a lengthy government career that included various

positions in the Air Force, the Office of Management and Budget and the National Aeronautical and Space Administration.

Druyun's daughter was employed by Boeing in their student development program in St. Louis, Missouri, having been hired by Boeing in November 2000. Prior to her daughter's hiring, Druyun had contacted defendant and asked for his assistance in obtaining employment for her daughter.[1] Defendant contacted other executives at Boeing in an effort to obtain a position for Druyun's daughter.

In 2002, Druyun was overseeing the Air Force negotiations with Boeing to lease 100 Boeing KC 767A tanker aircraft. These tanker aircraft were to be extensively modified versions of Boeing's 767 commercial aircraft, and were to have as their primary mission air refueling of other military aircraft. The total value of the contract was projected to be in the range of $20 billion. Druyun participated personally and substantially as a government official through decisions, approvals, disapprovals, recommendations and the rendering of advice in connection with the negotiation of this lease agreement with Boeing. In the summer and fall of 2002, Druyun was also involved in negotiations with Boeing in her position as Chairperson of the NATO Airborne Early Warning and Control Program Management Board of Directors. This involved the restructuring of the NATO AWACS program, and the addition of $100 million in funds. The defendant did not personally participate in any of the negotiations with the Air Force in connection with any of these matters.

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[1] Druyun had previously contacted the defendant in 2000 regarding possible employment for the boyfriend of her daughter. The boyfriend was subsequently hired and began employment at Boeing in September 2000.

II. Discussions Concerning Druyun's Employment With Boeing.

During the summer of 2002, Druyun had reached the decision that she would retire from the Air Force later that year. She did not publicly announce her decision to retire, but did notify her immediate supervisor, the Assistant Secretary of the Air Force for Acquisition, of her decision to retire on or about August 20, 2002. It was Druyun's intention, in the late summer of 2002, to seek employment in the defense industry following her retirement.

On August 13, 2002, Druyun traveled to Chicago to meet at Boeing's World Headquarters with various senior executives of Boeing, including the defendant. At some point during her visit that day, Druyun told the defendant that she was thinking of retiring later that year. The defendant told Druyun that he would like to talk to her at the appropriate time about post-government employment. Druyun advised defendant that she could not talk to defendant about her post-government employment until she completed work on certain Air Force/Boeing matters.

On September 3, 2002 , Druyun's daughter sent to the defendant an unsolicited encrypted E-mail over the Boeing Company intranet. Druyun's daughter did not personally know the defendant but was aware that her mother, Druyun, had known and had professional dealings with the defendant for a number of years. The subject line of the E-mail read "Please do not forward... RE: Darleen Druyun." In the E-mail, she advised the defendant that her mother would be retiring from the Air Force. The E-mail stated that Druyun had filed her separation papers with her JAG, but had not publically announced her decision to retire. It further stated that Druyun was interviewing with Lockheed Martin. The daughter encouraged the defendant to recruit Druyun for a position at Boeing and stated that Druyun was "officially available." The defendant responded to the E-mail as follows:

...I met with your mom last week. She informed me of her plans, and I suggested that she and I chat. She said she needed to wait until she got some of our work completed before she should chat with me. Did I miss a signal or have the wrong picture? I'm with you.. .we need to be on her menu!

Druyun's daughter responded minutes later:

Oh! I think she is referring to the tanker deal - - might be too much of a conflict right now. She hopes to have the tanker deal made or scrapped by early Dec - - seems like a long time off, maybe she has to wait that long before approaching us. It still makes me very worried that she is talking to Lockheed! She is visiting me tomorrow for a couple days ... I hope that I can get a better understanding then.. she is also talking to Raytheon and L3 (formerly E-systems, I think?) Anyway, we need to talk to her...

Thereafter, the defendant communicated with Druyun's daughter to help ascertain her mother's post-retirement plans and aspirations. The defendant then sent an E-mail to the daughter stating, *"I'd appreciate your feedback following your Mom's visit this week."* Two days later, on September 5, 2002, Druyun's daughter sent the defendant the following E-mail:

As promised.. . please forgive the length!
It is the tanker lease that prevents her from talking to you right away. She said to contact her on October 1.
Let me tell you what she is looking for:
1. Must be challenging, tough, lots of responsibility. Does not want something that puts her on display. Wants to impact processes, cut bureaucracy.
2. Want to make a difference in the makeup of the IDS organization in terms of females. . . she thinks it is shameful that in the Albaugh's family there aren't women.
3. Would consider moving out of DC, but would like to stay.
4. ABSOLUTELY does not want to be somewhere under Muellner. . .she wants to be over him like at the Pentagon.
She told me point blank that she would think the perfect offer would be a COO-like position under Albaugh. Bottom line she wants to be able to make an impact in the company.

She interviewed with Lockheed's Robert Stevens, and he outlined where they would like her to fit in - something like business and process reforms (she used the term "watchdog"). She liked the sound of it, and mentioned she had a good rapport with Stevens and seemed to like what he was saying.
She is very interested in talking to us, but we would have to give her something that

would blow her out of the water! She also mentioned that Boeing has her most admired quality: honest values.

The defendant sent Druyun's daughter a reply E-mail stating, *"1 Oct it is, but I'll check with you to be sure as the date gets closer."* On September 23, 2002, Druyun's daughter sent the defendant the following E-mail:

I am fresh back from a visit to DC to see the parents, and of course Mom and I discussed life after retirement. She announces it publically on Friday, by the way. I told her that I had contacted you about discussing later employment plans, and she is VERY, VERY excited. She still wants a COO like position with IDS, and she said that is what Lockheed is doing for her right now in Bethesda. She told me very frankly that if the salary and position were ideal from us, she would accept with Boeing and work her first year traveling back and forth from DC (work 5 days in STL, fly back on weekends)...
She wants to know if this "COO" position is feasible creation with IDS, and I told her that I did not know . . . is this a possibility? She leaves for Brussels Tues, and will return this weekend, so she would like to hear from you next week after the 1st.

Consistent with Druyun's request, as conveyed through her daughter's E-mails that the defendant contact Druyun after October 1, on or about October 2, 2002 the defendant contacted Druyun by telephone to schedule a meeting between them to discuss her possible post-government employment with Boeing. They agreed to meet in Orlando, Florida on October 17, 2002.

After he scheduled the October 17th meeting with Druyun, the defendant sent an E-mail to a senior Boeing executive, who was the head of the company's Human Resources Department and who was also a member of the Office of the Chairman and the Boeing Strategy Council. Defendant's E-mail requested that the matter of Druyun's possible employment with Boeing be placed on the agenda for the next meeting of Boeing's Strategy Council which was scheduled for October 8, 2002. Specifically, the defendant's E-mail to the senior executive stated:

. . . could we please use a bit of time to discuss job opportunities for Darleen Druyun at the 8 Oct meeting. I've got a session with her on 17 Oct to discuss Boeing

interest/opportunities.

The senior Human Resources executive then caused the Druyun employment matter to be placed on the agenda for the October 8, 2002 Strategy Council Meeting.

On October 7, 2002, the day before the Strategy Council meeting, the defendant and the other members of the Office of the Chairman met with the President of Boeing's Integrated Defense System (IDS) in Seal Beach, California. This meeting was one of the two regularly scheduled semi-annual meetings at which Boeing's senior executives discuss various personnel in IDS and plan for future personnel development and staffing in IDS. Boeing's senior management had a very disciplined succession planning process. At the bi-annual meetings held for each Boeing division, the members of senior management and the head of each division consider various personnel within the company who might be candidates for each position in both the near-term and the long-term. When the company learns of persons outside the company who are available and qualified for senior positions, the senior executives consider if that person would fit the company's needs.

Thus, on October 7 and 8, 2002, the defendant and other members of the company's senior management discussed the possibility of employing Druyun following her retirement from the Air Force. They were very interested in Druyun's considerable talent and experience. They also discussed the fact that they also did not want her to join Lockheed Martin, Boeing's primary competitor. They, therefore, discussed various possible positions for her at Boeing. Ultimately, they agreed that an appropriate position for Druyun would be as a Deputy in IDS's Missile Defense Systems in Washington, D.C.. Missile Defense Systems was not part of the Air Force's acquisitions process and, therefore, would avoid possible conflicts of interest in her post-retirement job.

During September and October 2002, Druyun had continued her employment discussions

with officials of Lockheed Martin. On August 26, 2002, Druyun had submitted formal papers to the Air Force disqualifying herself from involvement in all Air Force matters involving Lockheed Martin. On October 16, 2002, during a meeting with a Lockheed Martin executive in Orlando, Florida, Druyun verbally agreed to accept a position at Lockheed Martin upon her retirement from the Air Force. On the same day, her retirement from the Air Force was publicly announced.

The following day (October 17, 2002), not knowing that Druyun had informally agreed to join Lockheed Martin, the defendant flew to Orlando for the purpose of meeting Druyun to discuss her interest in post-retirement employment opportunities with Boeing. Druyun was already in Orlando to attend a National Defense Industrial Association Conference, as well as a NATO-AWACS conference.

The defendant and Druyun met alone in the private conference room at the General Aviation terminal of the Orlando Airport. The meeting lasted approximately thirty minutes. At the outset of the meeting, Druyun advised the defendant that she had entered into a handshake agreement to work for Lockheed Martin starting January 2, 2003. She also advised the defendant that she had not disqualified herself from matters involving Boeing and, therefore, she should not be discussing possible employment with Boeing. Despite her statement that it was improper for her to discuss future employment with him, the defendant and Druyun elected to engage in such discussions. The defendant then told Druyun about the availability of a Deputy position in Missile Defense Systems to be located in Washington, D.C., as well as other company opportunities. He also discussed the customary salary for such a position, the amount of a signing bonus, possible start dates and the company's long-term outlook. Druyun advised the defendant that she would consider the Boeing offer, that it met her criteria and that the compensation was similar to Lockheed Martin. She asked

Mr. Sears to Federal Express a formal offer to her home on November 14, 2002. At the end of the meeting, Druyun and the defendant agreed to keep their discussion confidential. At the conclusion of the meeting the defendant and Druyun discussed issues concerning the Air Force F-22 contract which Boeing participated in as a subcontractor. This discussion involved issues of the cost, software and late delivery of the aircraft.

The following day, October 18, 2002, the defendant sent the following E-mail to the three other members of the Office of the Chairman and the President of IDS, outlining the results of his meeting with Druyun. The subject line of the E-mail read "Employment" and in the text of the E-mail he did not reference Druyun by name.

> *Howdy. Had a "non-meeting" yesterday re: hiring Jim Evatt 's deputy. Good reception to job, location, salary, longer-term outlook. Recommend we put together a formal offer:*
> ** Job as we discussed*
> **Location defined as we discussed*
> **Salary $250K (assuming that fits)*
> **Recruitment bonus $50K (important dimension of offer.~ could get by with $40K)*
> ** Start date 3Jan03 (and immediately travel to Desert meeting)*
> *FedEx offer to home for 14Nov arrival...*

In the same E-mail, the defendant recommended that another specific senior executive have a "further details" conversation with Druyun in the near future.

In late October 2002, the other senior executive referenced in the above-quoted E-mail spoke with Druyun. During that discussion, Druyun told the other senior executive that she had decided to reject Boeing and join Lockheed, in part, because she had done so much work on Boeing matters.

In late October 2002, after learning of Druyun's conversation with the other Boeing senior executive and Druyun's decision to join Lockheed Martin, the defendant telephoned Druyun and arranged to meet with her on November 5, 2002 at her Pentagon office. Thereafter, on October 31,

2002, Druyun's daughter sent an E-mail to the defendant stating as follows:

> *Not sure if you talked to [the other senior executive], but Mom has decided to go with Lockheed. She told me this weekend. She will make her announcement publicly on her last day (the 15th). I am sad!*

Later that day, the defendant replied to Druyun's daughter via E-mail as follows:

> *I did and I've got a meeting with her next week to give it another try. All I heard was her concern over "integrity" given the work she's done on some of our programs...*

On November 5, 2002 in anticipation of her meeting with the defendant later that day, Druyun submitted a letter to the Air Force stating she intended to enter into employment discussions with Boeing and was disqualifying herself from any matters involving Boeing. Later on November 5, 2002, the defendant and Druyun met and discussed a job and terms of employment that were essentially the same as those discussed on October 17, 2002. The defendant also offered Druyun a consulting position with Boeing.

On November 14, 2002, Boeing sent two formal job offers to Druyun's home, one as a consultant to Boeing and the other as a Deputy in IDS's Missile Defense Systems. On November 15, 2002, Druyun retired from government service. On December 16, 2002, she formally accepted Boeing's employment offer by signing their offer letter to become a Deputy in Missile Defense Systems.

During the time period from September 23, 2002 until her disqualification letter of November 5, 2002, Druyun participated personally and substantially as a government employee in decisions, approvals, recommendations, investigation and the rendering of advice in matters in which, to her knowledge, the Boeing Company had a financial interest. For example, on October 22, 2002, Druyun participated in a meeting at the Pentagon with Air Force staff and an official of the Office

of Management and Budget (OMB) regarding the terms and conditions of the KC 767A tanker program and a fair price for the Boeing aircraft.

The defendant acknowledges that, as discussed above, he knowingly, intentionally and willfully aided and abetted Darleen Druyun's willful violation of Title 18, United States Code, Section 208 (a) and Section 216 (a)(2) in that he proceeded to negotiate Boeing employment opportunities with Druyun despite her statement to him that she had not disqualified herself from Boeing matters and that it was improper for her to have such negotiations with defendant when the defendant understood that Druyun was personally and substantially participating in matters in which Boeing had a financial interest.

III. The Concealment.

Druyun began her employment at the Boeing Company on January 2, 2003. In the summer of 2003, press reports appeared raising questions about the KC 767A tanker contract and the contemporaneous hiring of Druyun by Boeing. In response to this criticism, Boeing retained outside counsel to conduct an internal review of the circumstances surrounding Druyun's hiring. Druyun was informed of the company's internal investigation, and was scheduled to be interviewed by Boeing's outside counsel about the circumstances of her hiring. That interview was scheduled for July 7, 2003.

When Druyun learned of the internal investigation, she attempted to contact the defendant at his office by telephone. The defendant, however, was in London, England. Unable to reach the defendant by telephone, on the morning of July 4, 2003, Druyun sent the defendant an E-mail setting forth the version of events which she intended to convey to Boeing's attorneys. In that version, Druyun omitted any reference to her meeting with the defendant in Orlando, Florida on October 17, 2002 and, instead, stated that their first discussion of her potential employment with Boeing occurred

on November 5, 2002, after she had recused herself from Boeing matters. Specifically, Druyun's July 4, 2003 E-mail to the defendant stated as follows:

> *I have an appointment on Monday with Judy. . ., a lawyer hired by the company to review the process used by the company to ensure that the rules were properly followed and to help offset anymore negative comments. I wanted to reverify my recollection of our first discussion of potential employment. You came into see me on 5 Nov, the day before I went on leave. I had signed a recusal letter and given it to my AF lawyer since I thought that your meeting with me would probably go into the area of potential employment since my announcement had been publicly made of my retirement in mid October. As I recall at that meeting you lectured me about not jumping at my first job offer because I mentioned that I believed I had a verbal agreement with the COO of Lockheed (Bob. . .) although I did not expect anything in writing in terms of a job offer until the day I retired which was November 14, 2002. I also told you that I did not believe that I could work for Boeing because of my involvement in attending some of the 767 tanker negotiations. You countered that it was possible for me to work for Boeing if I worked in an entirely different area. I also stated that I could not be mobile because of my spouses employment for a few years and that there was nothing in this area that Boeing could offer to which you countered the company employed over 3000 people in the greater DC area. You also told me that you could not see me working in another staff job which is what Bob. . .had probably discussed and that I should consider a P&L job. As you can recall I said I would very much be interested in working for a company that could offer me a P&L in the DC area. You mentioned missile defense as one of the opportunities and generically described Boeings Executive level compensation program. You strongly recommended that I discuss this with my lawyer in the AF and asked if you could send me a job offer and I said on my last day of work which was 14 Nov 02. I did receive a job offer from you on or about 14/25 Nov 02 which I discussed with the AF lawyer. His first reaction was that he did not see an issue. He then set about reviewing it in detail after my discussion with him and concluded around 5 Dec in writing that it would be in full compliance with the rules. It is my belief that he discussed it with Boeing lawyers. I believe it was not until 16 Dec that I officially made up my mind and called you and then faxed the paperwork to the company. I see Judy at 0900 Monday AM and wanted to verify with you that this was also as you remember it. I expect that she might call you. Please let me know Mike if I have captured everything that we discussed. Hope you are enjoying Great Britain and get some aircraft sales!*

Upon reviewing Druyun's E-mail, the defendant recognized that Druyun's recitation of events was not entirely truthful. While in nearly all respects it was accurate and consistent with the defendant's recollection, the defendant understood that Druyun was requesting that he support her

position that they first discussed her possible employment on November 5, 2002, rather than on October 17, 2002. The defendant agreed to support her position. Later that day, the defendant sent Druyun a reply E-mail stating, in pertinent part, as follows:

> *Precisely as I can recall. You obviously take good notes/have good memory... much better than mine.*
> *And we 're all thrilled that things' have worked out this way re: your employment choice!!!*
> *Enjoy the 4th!....*

In September 2003, various news stories appeared raising questions as to whether Druyun, while with the Air Force in April 2002, had improperly provided Boeing with proprietary pricing information of a Boeing competitor in connection with negotiations on the tanker deal. On September 3, 2003, the Defense Department announced it had begun an investigation into that matter. Moreover, in early October 2003, additional new stories appeared which, in part, reported that Druyun's daughter had been employed with Boeing since 2000 and raised questions about Darleen Druyun's relationship with Boeing. In telephone conversations with the defendant in September and October 2003, Druyun expressed her concerns, anxieties and distress caused by these stories, especially her concerns that her daughter might somehow be harmed or tainted. The defendant sought to be supportive of Druyun and to allay her fears. In the context of these discussions, the defendant told Druyun that all would be fine and to "hang tough."

On or about October 20, 2003, Druyun contacted the defendant by telephone. At that point in time, the defendant and Druyun were both aware that the Department of Defense Inspector General had recently served a subpoena on Boeing in connection with a criminal investigation of the hiring of Druyun. Druyun advised the defendant that she had learned the company had located various E-mails relating to her hiring. Despite the fact that he had engaged in employment

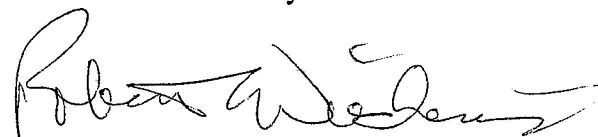
negotiations with Druyun in Orlando on October 17, 2002, the defendant told Druyun that he believed any such E-mails merely reflected pre-planning by Boeing and not employment negotiations. As he had done before, the defendant told Druyun to "hang tough."

On October 22, 2003, the defendant met with Boeing's counsel at the company's headquarters in Chicago to discuss Druyun's hiring. During this interview session, the defendant did not initially recount the October 17, 2002 meeting in Orlando. He did so only when he was shown a copy of his calender entry for that day which reflected the meeting and a copy of his October 18, 2002 E-mail to the other members of the Office of the Chairman and the President of IDS which, as quoted above, described the outcome of that meeting. He provided misleading and evasive answers concerning the October 17, 2002 Orlando meeting and the October 18, 2002 E-mail. For example, he denied that there was discussion of a specific position at Boeing or negotiation of employment terms at the October 17, 2002 Orlando meeting. He told the interviewer that his reference to a "non-meeting" in the October 18, 2002 E-mail meant only that the meeting was not a meeting to discuss a job or offer. In fact, the purpose of the meeting in Orlando on October 17, 2002 was to discuss employment. The defendant also told the interviewer that the July 4, 2003 E-mail from Darleen Druyun was not an effort by Druyun to get the defendant to corroborate her false story about when employment negotiations began. The defendant also failed to disclose to the interviewer on October 22, 2003 that he had been contacted in September, 2002 by Darleen Druyun's daughter concerning the hiring of Darleen Druyun.

The defendant's employment with Boeing was terminated by the company on November 24, 2003.

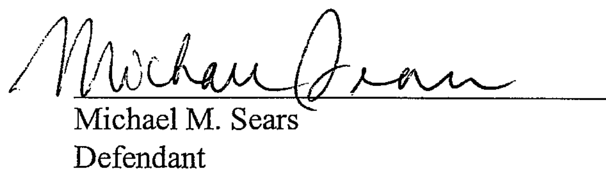
Respectfully submitted,

Paul J. McNulty
United States Attorney

By: 

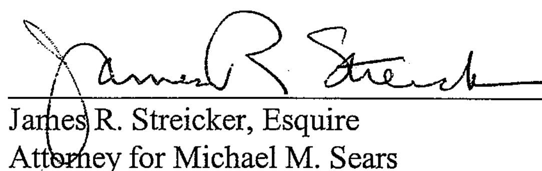
Robert Wiechering
Assistant United States Attorney

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, Michael M. Sears, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.



Michael M. Sears
Defendant

I am Michael M. Sears' attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.



James R. Streicker, Esquire
Attorney for Michael M. Sears

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MICHAEL M. SEARS,	)	
	)	
Defendant.	)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, Robert W. Wiechering, Assistant United States Attorney, the defendant, Michael M. Sears, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to waive indictment and plead guilty to a single count criminal information charging the defendant with Aiding and Abetting Acts Affecting a Personal Financial Interest, in violation of Title 18, United States Code, Section 208(a) and 216(a)(2) and 2. The maximum penalties for this offense are a term of five years of imprisonment, a fine of $250,000, full restitution, a special assessment, and three years of supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

a. the right to plead not guilty and to persist in that plea;

b. the right to a jury trial;

c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and

d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

4. Waiver of Right to Jury Trial on Sentencing Factors

The defendant, by entering this plea, also waives the right to have facts that determine the offense level under the Sentencing Guidelines (including facts that support any specific offense characteristic or other enhancement or adjustment) (1) charged in the information, (2) proven to a

jury, or (3) proven beyond a reasonable doubt. The defendant explicitly consents to be sentenced pursuant to the applicable Sentencing Guidelines, to have the sentence based on facts to be established by a preponderance of the evidence before the sentencing judge, and to allow the court to consider any reliable evidence without regard to its admissibility at trial. The defendant explicitly acknowledges that his plea to the charged offense authorizes the Court to impose any sentence that is authorized by the Sentencing Guidelines up to and including the maximum sentence set forth in the United States Code. The defendant also waives all challenges to the constitutionality of the Sentencing Guidelines.

5. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with the Sentencing Guidelines and Policy Statements. The defendant understands that the Court has not yet determined a sentence and that any estimate of the probable sentencing range under the sentencing guidelines the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. Notwithstanding the foregoing, for purposes of applying the guidelines, promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

a. The base offense level for the offense of conviction pursuant to Guideline § 2C1.3 is level 6.

b. The government reserves the right to argue the offense involved actual or planned harm to the government warranting a 4 level increase under the provisions of § 2C1.3(b)(1). The defendant reserves the right to oppose such an increase.

c. Should the U.S. Probation Office determine that the defendant has accepted responsibility, then pursuant to § 3E.1 a 2-level decrease is applicable because the defendant has demonstrated acceptance of responsibility for his offense.

d. Based on the information currently available to the government, defendant has no prior convictions, and his criminal history category is I; and

e. The parties agree that there exists no aggravating or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines that should result in a sentence different from the range determined by the court.

f. The parties agree that the facts set forth in the Statement of Facts and as otherwise known to the government do not warrant a two level increase for obstruction of justice under the provisions of 3C1.1 of the Guidelines.

g. The defendant and his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant understands that

the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

6. Waiver of Appeal and Review

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

7. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars ($100.00) per count of conviction.

8. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

9. The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the Information or Statement of Facts or any other specific allegations which were the subject of this office's investigation of the defendant.

10. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.

e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

11. Use of Information Provided by the Defendant Under This Agreement

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement,

however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

12. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

13. Motion for a Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

14. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney).

If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;

b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed

under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

15. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Paul J. McNulty
United States Attorney

By:
Robert W. Wiechering
Assistant United States Attorney

APPROVED:

Approving Supervisor

Date of Approval:

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: 11/9/04 ____________________
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 11/10/04 ____________________
Counsel for the Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)
)
v.) CRIMINAL NO. 04-310-A
)
MICHAEL M. SEARS,)
)

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT ONE

INTRODUCTION

At all times material herein, except as otherwise indicated:

1. The Department of the Air Force was a department of the executive branch of the United States Government. The office of the Secretary of the Air Force was a part of the Department of the Air Force.

2. The defendant, Michael M. Sears was from May, 2000 until November, 2003 the Chief Financial Officer of the Boeing Company. In March, 2002 he also became a member of the Office of the Chairman which consisted of four senior executives of the Boeing Company. He also served as a member of the Boeing Strategy and Executive Councils. The defendant joined Boeing in August 1997 following the merger of Boeing and McDonnel Douglas where the defendant had been employed since 1969.

3. Darleen A. Druyun was a member of the Senior Executive Service (SES) and Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management from 1993 until on or about November 15, 2002.

4. Darleen A. Druyun, as the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, supervised, directed and oversaw the management of Air Force acquisition programs and provided advice on acquisition matters to the Assistant Secretary of the Air Force for Acquisition, the Chief of Staff of the Air Force, and the Secretary of the Air Force. She chaired the Acquisition Professional Development Council which was responsible for recruiting, training, and retaining military and civilian acquisition personnel. She also was chairperson of the NATO Airborne Early Warning and Control Program Management Board of Directors which managed the multi-billion dollar NATO E-3A program funded by twelve nations.

5. In January 2002, Congress approved the Department of Defense and Emergency Supplemental Appropriation for Recovery From and Response to Terrorist Attacks on the United States Act. Section 8159 of this act authorized the Air Force to make payments on a multi-year program for leasing not more than 100 general purpose Boeing 767 aircraft. Following a Request for Information in March 2002, the Boeing Company was selected by the Air Force as the sole source for negotiations to lease 100 Boeing KC 767A tanker aircraft. Darleen A. Druyun, in her position as Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management was responsible for overseeing the negotiations. Darleen A. Druyun oversaw the negotiation of the leasing of these aircraft from Boeing until her disqualification on November 5, 2002.

THE OFFENSE

From on or about September 23, 2002 through on or about November 5, 2002, in the Eastern District of Virginia, and elsewhere, Michael M. Sears, the defendant herein, did aid and abet Darleen A. Druyun to knowingly, intentionally and willfully participate personally and

substantially as a government employee through decision, approval, recommendation, the rendering of advice, investigation and otherwise, in a contract and other particular matter, in which to their knowledge the Boeing Company, a company with whom Darleen A. Druyun was negotiating concerning prospective employment, had a financial interest.

(All in violation of Title 18, United States Code, Sections 208(a) and 216(a)(2) and 2)

Respectfully submitted,

Paul J. McNulty
United States Attorney

By:
Robert W. Wiechering
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

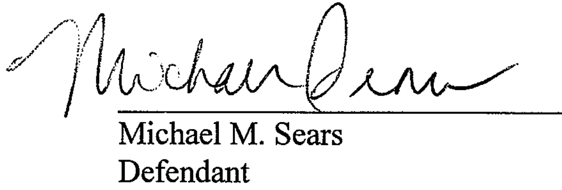
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO.
	)	
MICHAEL M. SEARS	)	

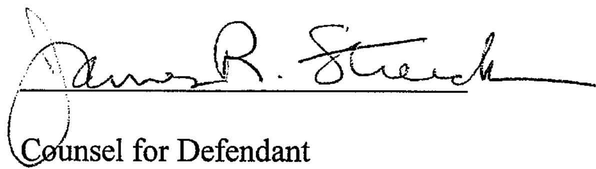
WAIVER OF INDICTMENT

I, Michael M. Sears, the above named defendant, accused of Aiding and Abetting Acts Affecting a Personal Financial Interest in violation of Title 18, United States Code Section 208(a) and 216(a)(2) and 2, being advised of the nature of the charge, the proposed information, and of my rights, hereby waive in open court prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

Date: 11/9/04



Michael M. Sears
Defendant



Counsel for Defendant

Before: ______________________________
UNITED STATES DISTRICT JUDGE