

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 McDonnell 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.<sup>1</sup> 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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<sup>1</sup> 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 1<sup>st</sup>.*

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 17<sup>th</sup> 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 15<sup>th</sup>). 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 calendar 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.

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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.

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Theodore Poulos, Esquire  
Attorney for Michael M. Sears