

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

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

GOVERNMENT’S POSITION WITH RESPECT
TO THE SENTENCING FACTORS

COMES NOW the United States of America by undersigned counsel with respect to the Presentence Report and sentencing of Michael M. Sears. The government has no objection to the Presentence Report and the advisory Federal Sentencing Guideline calculation of an offense level of 8, criminal history category I, with a sentencing range of 0-6 months. The government’s position as to sentencing within that range is set forth below:

The Sentencing of Michael Sears

The defendant was among the most senior executives of the Boeing Company, one of this nation’s largest defense contractors. He served not only as the Chief Financial Officer of Boeing, but also as a member of the Office of Chairman, which consisted of the four senior executives of the Boeing Corporation. Prior to the merger of Boeing and McDonnell Douglas the defendant had served in a number of significant positions at McDonnell Douglas. This included the development of the F/A-18 aircraft for the U.S. Navy and his service as president of McDonnell Douglas Aerospace. Prior to his termination by Boeing for the events in question, Michael Sears was one of the most experienced and preeminent executives in the defense aerospace industry.

The defendant’s background, experience, responsibility and influence are important in any evaluation of his criminal conduct in this case. The defendant was approached in September,

2002 by a junior employee of Boeing concerning negotiating employment for Darleen Druyun, a senior Air Force procurement official.¹ This junior employee was the daughter of Darleen Druyun. She had been hired by Boeing in 2000 following a request to the defendant by Darleen Druyun to assist in obtaining employment for her daughter. The defendant elected to engage in a series of encrypted E-mails with the daughter over a period of approximately one month concerning the potential employment of Darleen Druyun by Boeing. This at the very time Druyun was negotiating on behalf of the United States Air Force with Boeing for a contract to lease 100 KC 767A tanker aircraft from Boeing.² A contract valued at approximately twenty billion dollars, that was widely viewed as essential to Boeing in the wake of declining commercial aircraft orders following September 11, 2001. These E-mail exchanges clearly reflected the defendant's knowledge that Druyun had not disqualified herself from negotiations and decision making in connection with Boeing and that Druyun was aware of her daughter's contact with the defendant.

The defendant agreed in early October to fly to Orlando, Florida on October 17, 2002 for the sole purpose of meeting Darleen Druyun. The two of them met alone in the private conference room at the General Aviation terminal of Orlando Airport. At the outset of the meeting Darleen Druyun advised the defendant that she had not disqualified herself from matters involving Boeing and therefore, she should not be discussing possible employment with Boeing.

¹Darleen Druyun was at the time the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management. In that Senior Executive Service (SES) position she supervised, directed and oversaw the management of the Air Force acquisition program.

²These 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.

Despite her statement that it was improper for her to discuss future employment with the defendant, Sears elected to continue the discussion. They discussed a specific position, salary, signing bonus and a start date for Druyun's employment by Boeing. At that same meeting the defendant and Druyun discussed outstanding issues between the Air Force and Boeing concerning the F-22 contract. They both agreed to keep the meeting a secret.

The statute that the defendant and Darleen Druyun chose to violate, 18 U.S.C. § 208, is aimed at preventing acts affecting a personal financial interest.³ The government and taxpayers can have no confidence in the objectivity and integrity of decisions made by a government official that benefit a company while that company is simultaneously negotiating a lucrative employment contract with that same official. When that official is negotiating contracts worth billions of dollars, the harm to the integrity of the procurement process can be immense. Darleen Druyun has acknowledged, in a Supplemental Statement of Facts filed at her sentencing on October 1, 2004, agreeing to a higher price for the Boeing KC 767A tanker aircraft than she believed was appropriate in order to ingratiate herself with Boeing. In her own words it was a "parting gift to Boeing." She also acknowledged that in other negotiations she lost her objectivity as a result of her close relationship with Boeing.

The defendant has always maintained that any favoritism shown by Druyun to Boeing was not at his request or with his knowledge. Darleen Druyun does not maintain that Michael Sears asked for favors or was told by her that she was favoring Boeing. The government believes, based on its investigation, that Michael Sears has been truthful with government investigators. However, the defendant himself would acknowledge that the procurement process

³A willful violation, as in this case, is punished as a felony. 18 U.S.C. § 216(a)(2).

of the United States Air Force has been harmed by his actions in this case. As a result of the illegal actions of Michael Sears and Darleen Druyun the Department of Defense has undertaken a massive review of the procurement decisions of Darleen Druyun that involved the Boeing Corporation. This has included thousands of hours of work by investigators and auditors reviewing multiple procurements. The cost of this investigation to date is estimated to be approximately 2.5 million dollars. There may be civil litigation against the United States by other defense contractors who will argue Druyun improperly favored Boeing. The Department of Defense has devoted substantial resources to respond to the requests for information by Congressional Committees exercising their proper oversight of the Defense Department. In a time of war, the Department of Defense has been required by this case to expend significant time, effort and monies to review past decisions as to weapon system acquisitions. The diversion of these resources and the disruption of procurements such as the KC 767A tanker has resulted in significant harm to the Air Force and Department of Defense. The cloud it has cast over Air Force procurement will take years to dispel.

The United States would ask the Court to fashion a sentence for Michael Sears that reflects the harm occasioned by his very deliberate unlawful actions, provides real punishment for him, and deters others within industry from engaging in similar conduct. The defendant will properly argue that his life as a whole has been marked by significant personal and professional accomplishments. That he has suffered the loss of his position at Boeing and public embarrassment. Further, that he has pled guilty and cooperated with government investigators. While these are factors to be weighed by the Court, there are other considerations in this case.

The defendant's actions in this case were certainly not accidental or impulsive. Michael Sears had more than thirty years experience working for defense contractors and with

government procurement officials. He engaged in an illegal course of conduct for more than a month. As reflected in the Statement of Facts in this case, when first confronted by public allegations concerning the hiring of Darleen Druyun, the defendant chose to attempt to hide his actions. He provided misleading and evasive answers to outside attorneys hired by Boeing to review the allegations of improper employment negotiations.

In addition, the defendant openly communicated to his fellow senior management of the Boeing Corporation his intention to conduct employment negotiations with Druyun. While the defendant did not specifically inform the other senior managers that Druyun had not disqualified herself from matters involving Boeing, they did not ask the defendant the logical questions such negotiations raised if Boeing was to act properly in this matter. The entire senior management of Boeing was certainly aware that Druyun was overseeing critical negotiations with Boeing involving the KC 767A tanker aircraft as well as restructuring the NATO AWACS program.

The defendant felt comfortable sending an E-mail on October 18, 2002 to the three other members of the Office of the Chairman and the President of Boeing's Integrated Defense System the day after he met secretly with Druyun in Orlando, Florida. This despite Sears and Druyun's agreement to keep the meeting confidential. The subject line of the E-mail read "Employment" and in the text of the E-mail he never referenced 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...

The senior management of Boeing did not confront the obvious legal and ethical issues presented by these employment negotiations. Rather than reacting with concern to a questionable “non-meeting” with a senior government official these Boeing executives appear to have accepted the negotiations as business as usual.

The government would argue that an important step in deterring such illegal conduct in the future by companies, and their senior management, is for the Court to impose a sentence in this case which includes a term of imprisonment for Michael Sears. The alternatives are not sufficient to provide real punishment for this defendant, and the deterrence of others who may engage in similar conduct. While the imposition of a fine is certainly appropriate, the defendant’s substantial assets tend to mitigate the sting of that sanction. The defendant’s Presentence Report reflects that a fine of even the statutory maximum will have little real impact on his financial resources. A sentence of home confinement would be no real punishment given his residence which the Presentence Report values at nearly 5 million dollars. Community confinement provides some punishment, but is not likely to have the deterrent effect of a sentence to federal prison.

The government would therefore ask the Court to fashion a sentence that includes a term of imprisonment. The government would note that Darleen Druyun is currently serving a sentence of nine months in federal prison to be followed by seven months in community confinement as a condition of supervised release.⁴ A sentence to confinement within the

⁴Darleen Druyun’s sentencing range was an offense level total of 12 with a sentencing range of 10 to 16 months. Druyun’s range was higher than Michael Sear’s because she received an obstruction enhancement for providing false information to government investigators and did not receive acceptance of responsibility. The government believes Michael Sears has fulfilled his plea agreement by providing truthful cooperation and has earned acceptance of responsibility.

defendant's advisory range would punish the defendant and provide deterrence. It would also reflect the similar nature of the defendant's and Druyun's conduct which they undertook in concert, yet recognize the difference in their post conviction conduct and cooperation. Such a sentence would be fair and serve the interests of justice.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Robert W. Wiechering
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was sent by First Class

Prepaid Postage to the counsel listed below:

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On this _____ day of February, 2005.

Robert W. Wiechering
Assistant United States Attorney