

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

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CLERK OF DISTRICT COURT
ALEXANDRIA, VIRGINIA

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

DEFENDANT MICHAEL M. SEARS'S MEMORANDUM IN AID OF SENTENCING

Defendant Michael M. Sears, through counsel, respectfully submits this Memorandum in Aid of Sentencing.

I. INTRODUCTION AND SUMMARY

Michael M. Sears rose from humble beginnings through the ranks of corporate America to become the Chief Financial Officer of The Boeing Company, one of the largest companies in the world. For over 30 years he served honorably in the highest levels of our Nation's defense industry. As evidenced by the attached letters to this Court, Mike Sears is a remarkably caring, generous, and charitable man. In addition, former government officials who worked closely with Mr. Sears on many significant and sensitive weapons systems hold him in the highest possible regard.

Yet, for sentencing purposes, Mr. Sears's corporate success is far less important than the way in which he has conducted himself throughout his personal life. First, Mike Sears has a long and distinguished record of community service and dedication to family. Second, this tragic, career-ending episode is a clear aberration from an otherwise moral, ethical, and principled life. Third, Mr. Sears has fully acknowledged and accepted responsibility for his conduct. Fourth, he

has fully and truthfully cooperated in the government's extensive inquiry into his former employer's dealings with the Department of Defense. Finally, having suffered incalculable embarrassment and emotional anguish, lost millions of dollars in income and stock benefits, and been suspended indefinitely from the only industry in which he has ever worked, Mike Sears has already suffered severely as a result of his mistake. These factors must be considered in fashioning a sentence.

The government, the probation officer, and the defense all agree that Mr. Sears's Federal Sentencing Guidelines calculation results in the shortest possible sentence available to any defendant under the Guidelines – zero to six months. Mike Sears should be treated the same as most defendants facing the bare minimum sentence under the Guidelines: he should be sentenced to probation.

II. MR. SEARS'S BACKGROUND AND CHARACTER

Mike Sears was born and raised in a working-class family outside of St. Louis, Missouri. His father worked for the San Francisco Railroad and, later, was a salesman for a chemical company. One of five children, Mr. Sears and his family lived a simple but happy life.

Mr. Sears earned a Bachelors and a Masters Degree in Electrical Engineering from Purdue University in 1969. While holding down a job, he earned a second Masters Degree in Engineering Management from the University of Missouri.

Mr. Sears joined McDonnell Douglas as an avionics engineer in 1969, after obtaining his first advanced degree. He worked on the F-15 Eagle and Advance Tactical Fighter programs. He became a chief program engineer in 1987. In 1991, Mr. Sears was promoted to Vice President and General Manager of the F/A-18 Super Hornet program. In 1996, he was promoted to President of McDonnell Douglas's commercial aircraft division and, within ten months, was

named President of its defense and aerospace division. Following the merger with Boeing, Mr. Sears was tapped to head Boeing's defense division and was placed in charge of the development and production of military and aircraft missile systems. In May 2000, he was named Chief Financial Officer and Executive Vice President of Boeing. As a result of a management reorganization in March 2002, he became one of only four members of a newly-created Office of the Chairman.

Mr. Sears's contribution to the defense of this country is not limited to his 34 years of service through his employment at McDonnell Douglas and The Boeing Company. Indeed, from 1970 through 1978, Mr. Sears served his country as a member of the Air National Guard. He was honorably discharged with the rank of Major.

Mr. Sears met his wife, Debbie, while attending Purdue. They married shortly after he graduated in 1969. They have raised two fine children, Matthew and Mark. Matthew, 25 years old, is married and teaches high school math in Durham, North Carolina. Mark, 23, lives in the St. Louis area where he works for Boeing. Mike and Debbie Sears emphasized, and have instilled in Matthew and Mark, the importance of education, respect for others, and service to the community. Indeed, their children have always been the focal point of their lives. As a result, despite an incredibly demanding career, Mike Sears always made time for his family. As Owen Carson, his friend of 20 years and a former colleague at Boeing and McDonnell Douglas, writes, Mike Sears:

committed time to maintain a loving, nurturing relationship with his wife and two sons. The reality of that commitment is found in the efforts he made to be present for athletic events and other activities that his boys were in. He coordinated his business travel to protect times that he needed to be at home with his family. He scheduled his late meetings on work days to make sure he could get to the

events with his family. Finally, Mike saved his weekends for his family. He rarely came to the office on weekends...a model that many of us also found attractive. Golfing, baseball, soccer, fishing with his family—those were activities that Mike looked forward to with his weekends.

(A copy is attached as Tab 1)

A. **Mr. Sears's Community Involvement and Commitment to Volunteer Service**

Mr. Sears has a long and distinguished record of volunteer and community service. The examples are many, but perhaps none reveal the essence of Mike Sears more than the role he has played in the lives of Timothy Cooper and Marshall Newman, two young men whom Mr. Sears met while coaching his son Mark's seventh grade basketball team. For more than thirteen years, Mr. Sears has quietly and persistently given of himself to guide, direct, and mentor these two less fortunate young men. He has instilled in these young men the same values and principles he has instilled in his own children.

Marshall Newman lost his father after a long illness shortly after he met Mike Sears. After Marshall's father died, Mr. Sears assumed the role of mentor and surrogate father.

As Mr. Newman's mother writes:

Mike has been a role model and positive influence in Marshall's life since he was eleven years old, guiding him with his words and through his actions. It was Mike that taught Marshall that a man has a responsibility to his family, his community and his work in that order.

It was Mike who stressed education as well as sports, who encouraged Marshall with his support, his actions and his presence to set meaningful goals and take appropriate steps to reach those goals. . . .

[With] every decision [Marshall] has made, [with] every turn in the road, Mike has been there, encouraging and guiding, approving and at times, disapproving, but most of all laying the foundation of Marshall's character and

stressing integrity and ethical behavior in every aspect of his life.

(Tab 2)

Mike Sears plays a similar role in the life of Timothy Cooper. Tim grew up in one of the poorest and most dangerous neighborhoods in St. Louis. During middle school, he transferred to the same school attended by the Sears's younger son and by Marshall Newman as part of a voluntary desegregation program. The three boys soon became friends. In his letter to the Court, Tim Cooper writes, "I grew up in a neighborhood where violence has no limits," and shortly after meeting Mark Sears, "Mr. Sears took me under his wing and helped me to the degree that I tell [Mr. Sears], if I had not met his son I would be locked up or dead by now." (Tab 3) As Marshall Newman's mother attests:

Mike was there for Tim just as he was for Marshall. Mike is the moral compass that kept Tim on a stable journey through his transition to a path of responsible behavior. Mike guided Tim in his class choices and spoke to his teachers, called him from his travels to ask about his day, his homework, his chores. Tim carried with him always Mike's cell phone number and his email address [so] that he could send him school papers wherever Mike might be. He carries both still.

(Tab 2)

Throughout high school, Tim often spent nights with Mr. Sears's son or Ms. Newman's family because, as he explains, "At times I would miss the bus to school because the sounds of gunshots would send me running for home. . . . Mr. Sears would ask me to stay with them some nights, that way I would get to school for sure." Tim Cooper observes of Mike Sears:

Besides opening his home, he opened more of the world to me. He took me on vacations to places I thought I would never go. My eighth grade year I went to Disney Land in California with the Sears family. That was the first time flying anywhere, and also my first baseball game. We also

went to Gulf Shores, Alabama every spring break in high school. Mr. Sears helped me to get braces for my teeth when I got into an accident. After high school the next thing was college. However, I did not have transportation of any sort. I was unable to afford my day-by-day expenses at the time. Mr. Sears helped me get a car and he took care of the payments and fix ups on it.

(Tab 3) Mr. Cooper's own words best describe the impact Mike Sears has had on the young man's life, "I try to thank Mr. Sears and his family for all they have done and continue to do, but the amount of help and love they have given me is not repayable. He has made my life better in all that I do."

Finally, Ms. Newman sums up just how much Mike Sears and his family have meant to the lives of these two young men:

Mike was never easy on any of these boys. He was firm, unwavering; they understood his values and expectations. He understood their dreams, their insecurities, their lives. They respect him; he taught them to respect themselves, their families and their community. There is no greater gift a man can give to a boy.

I could teach my son and Tim about responsibility, hard work and compassion. But I could not teach either of them what it means to be a father, a husband, a man in every sense of the word. Mike did that, quietly, daily, without expectations or recognition, for thirteen years. He set an example so strong, so principled, a path so clear, that he changed forever the lives of these two boys and the lives of their families for generations to come. . . .

Mike's influence will be seen in the contributions Marshall and Tim make in their communities, in the direction they lead their own children, in the respectful and considerate way they treat their own spouses. It will be seen in the actions they take when they recognize a child in need. They will be involved in their world, never afraid to stand on their principle, to recognize injustice and work to make it right.

(Tab 2)

Mr. Sears has also been remarkably active in civic and charitable organizations, including the March of Dimes. In fact, he served on the March of Dimes National Board of Trustees. As Jane Massey, the charity's Executive Vice President and Chief Operating Officer, states in her letter to the Court (Tab 4), "Mike was always there for us, supporting our mission and for our fund raising efforts." Not surprisingly, "Mike was always one to say 'YES' when asked to travel throughout the country to speak on behalf of the organization, to motivate volunteers or to thank them for outstanding efforts made on our behalf." Similarly, Elaine Noonan of Washington State Chapter of the March of Dimes explains how "Mike always exuded passion for the March of Dimes' mission" and made a "significant impact on our organization." (Tab 5)

Mike Sears's commitment to helping others extends far beyond Tim Cooper, Marshall Newman, and the March of Dimes. To this, Ms. Newman bears witness:

I am also grateful that Mike selflessly took time from a very demanding schedule to mentor not only Marshall and Tim, but other young boys in this community.

From requiring the middle school basketball team coached by Mike to attend classes in etiquette, not a popular request, to taking a week off every year for four years to take them all on spring break where he cooked and cleaned for as many as eight boys and most importantly, listened and advised, as though they were his own; this community and these young men have been impacted by Mike. Without question, they are better men for it. They have been active in Big Brother, worked with handicapped children through Special Olympics, are captains and leaders among their peers, influenced strongly by Mike's own civic actions, sense of responsibility, and desire to help the least among us.

(Tab 2)

B. Mr. Sears's Business Integrity

While Mr. Sears's offense evidences a serious lapse in judgment, that mistake should be juxtaposed to his otherwise spotless record of integrity. Several common themes run throughout nearly every letter submitted to the Court. Those who know Mike Sears the best attest to his commitment to integrity, business ethics, the Nation's defense, and to its servicemen and women. Indeed, Boeing employee Steven Krause (Tab 6) writes:

In the early 1990s our company, McDonnell Douglas, was in very bad shape. Contracts the government had entrusted to us to build products for the defense of our country were in a mess. . . .

The Board of Directors responded by putting Mike Sears in charge of our most important programs. Mike's personal commitment to unflinching honesty and ethical behavior saved our company. More than any other person at any level, he restored the Navy's faith in us. The business he saved still sustains us and continues to feed and support the families of tens of thousands of workers across the country.

Similarly, Mr. Sears's colleague, Thomas Downey, observed that Mike Sears demonstrates:

his unwavering personal commitment to do three things: to deliver the program to the U.S. government on schedule and budget; to provide our nation's service men and women with the safest, most reliable, and most capable weapons system possible; and to ensure that the U.S. taxpayers would not pay one nickel more than necessary for the capabilities needed in the airplane. Seeing Mike put these values in action, day in and day out led me to see my role on the program as more than a private sector job; it was a duty I had to my country.

(Tab 7)

Former high ranking military leaders share the sentiments felt by Mike Sears's co-workers. For instance, Navy Rear Admiral (Ret.) Riley Mixson, who served as the Navy's Red Sea Battle Force Commander during Desert Storm, writes about Mike Sears:

I state with absolute certainty that we would not have prevailed so quickly and with such minimum loss of life [in Desert Storm] if not for the aircraft, ordnance, and combat systems that Mike developed. More importantly he personally and vigorously supported our efforts with "on station" technical and logistics personnel thus ensuring the combat readiness of McDonnell Douglas aircraft and systems.

I continue to admire him as a true patriot and a man of his word. As a leading executive in the defense industrial complex he has always been more than fair in negotiating new military procurements. His stewardship following contract signing was notably the best in the business delivering reliable systems on time, on cost, on quality. His integrity was unquestionable as was his honesty. We have a more capable military because of this man.

(Tab 8)

Rear Admiral (Ret.) Jeremy Taylor, who worked closely with Mr. Sears on the F/A-18 fighter plane, notes that throughout their intense working relationship Mike Sears's "character and integrity were impeccable." (Tab 9) Richard Collins, who served as the Staff Director to the United States Senate Subcommittee on Defense Appropriations, recognizes Mr. Sears as "one of the most outstanding leaders in our Nations defense industry." (Tab 10) Among his colleagues on the Senate Staff, Mr. Collins writes that Mr. Sears was regarded as a "smart, energetic manager," a "brilliant leader," and the "model defense industry executive."

Mike Sears's integrity and compassion is known to all with whom he worked on a daily basis. Owen Carson describes how Mr. Sears always took an interest in the families of the people he worked with and how he routinely made sure that his colleagues maintained a balance between their careers and families. (Tab 1) Tom Gunn describes Mr. Sears as a "man of others" and recounts how he witnessed Mike "assist a grieving widow, disabled employee or hurting co-worker" on countless occasions. (Tab 11) Steven Krause describes how Mr. Sears put himself

before the corporate political firing line to save the jobs of several lower-level executives who had been unfairly targeted for termination by Mr. Sears's superiors. (Tab 6) Finally, Doug Jacobsen speaks volumes about Mr. Sears's character in the following passage from his letter to the Court:

We had a fine young man in our communications department that decided to move to another company. He tendered his resignation. His farewell party was conducted. He then developed a sudden illness that eventually led to his death. His new company would not cover any "preexisting" illness. Boeing was under no obligation to cover him because he had terminated his employment. However, Mike Sears would hear nothing of this! He rehired the young man. Made sure he had insurance. He worked with his family. He ensured all medical bills were paid and all company insurance fees were paid in order for his wife and young family to be covered. That is the Mike Sears I know. That is the Mike Sears I would like [the Court] and the rest of the world to know.

(Tab 12)

For sentencing purposes, the improper conduct Mike Sears has acknowledged must be examined in light of his otherwise exemplarily record and life of integrity, compassion, and kindness.

III. THE OFFENSE CONDUCT AND ITS AFTERMATH

A. The Conduct Mr. Sears Has Acknowledged

The Presentence Report and the detailed Statement of Facts filed with the Court in connection with Mr. Sears's plea agreement accurately set forth the conduct underlying the offense to which Mr. Sears has pled. The following facts are particularly relevant to sentencing.

The record plainly establishes that Mike Sears never set out to improperly recruit Darleen Druyun to work for Boeing. In the summer of 2002, it was widely rumored in the defense industry that Druyun would be leaving the Air Force to join the private sector. During a visit to

Boeing's headquarters in August 2002, Druyun told Mr. Sears that she was considering retiring later that year. Consistent with the rules governing recruitment of government employees, Mr. Sears told Druyun to let him know when it would be appropriate to speak with her about post-government employment. Clearly, he was perfectly willing to wait for Druyun to take the actions required by law.

However, on September 3, 2002, Druyun's daughter and Boeing employee, Heather McKee, sent Mr. Sears an unexpected and unsolicited email advising Mr. Sears that her mother had filed her separation papers with JAG, was interviewing with Lockheed Martin, and was now "officially available." Mr. Sears responded by mentioning the conversation he had had with Druyun several days earlier to the effect that Druyun would discuss employment with Boeing only when it was appropriate to do so. Mr. Sears also noted in his email to McKee that her mother had told him she "needed to wait" for such discussions, and asking McKee, "Did I miss a signal or have the wrong picture?"

In a series of subsequent emails, Mr. Sears received information from McKee about Druyun's post-retirement aspirations.¹ Significantly, he did not use McKee as a conduit to negotiate a job with Druyun. In sum, Mike Sears never believed he was negotiating employment for Druyun through McKee.

In none of the September 2002 emails did Mr. Sears make any job offers to Druyun. Nor did he respond to what McKee described as Druyun's "wish list" of jobs Druyun might be interested in. In fact, other than saying that he would like to speak with Druyun at the

¹ McKee decided to commence the email exchange with Mr. Sears with an encrypted email. In Boeing's computer system, all responses to encrypted emails are automatically encrypted. As the events of early October 2002 demonstrate, Mike Sears shared information about Druyun's potential recruitment with multiple senior officials at Boeing – hardly evidence

appropriate time, Mr. Sears did not convey any information whatsoever about Boeing employment in his emails to McKee. Instead, the record demonstrates that, consistent with the rules in this area, Mr. Sears simply waited for Druyun to tell him when it would be appropriate for him to discuss employment opportunities. Mr. Sears trusted Druyun and never even considered the possibility that she would fail to do what was required of her prior to commencing employment negotiations.

On September 23, 2002, McKee advised Mr. Sears that Druyun wanted him to contact her after October 1st. On October 2, 2002, Mr. Sears called Druyun and agreed to meet on October 17 in Orlando because Druyun would be attending a conference there. Mr. Sears fully expected that Druyun would formally and properly recuse herself from Boeing matters prior to that meeting, a critical fact unchallenged by government. At that time, Mr. Sears had no reason to question Druyun's ethics and assumed that it would be appropriate to have specific employment discussions at their meeting.

In this regard, Mr. Sears acted in a manner consistent with the then-common practice within Boeing for hiring former government officials. In 2004, former Senator Warren Rudman completed a thorough review of Boeing's internal policies and practices regarding the hiring of government employees. Senator Rudman concluded that Boeing officials historically relied upon government employees with whom it discussed possible employment to comply with Section 208:²

[There] was excessive reliance by the company on government and former government employees to monitor

that Mr. Sears was proceeding clandestinely in the fall of 2002.

² Indeed, the proscriptions in Section 208 are directed towards government officials, not private sector executives. Thus, compliance with its requirements depends on government officials undertaking the proper notification and recusal measures.

their own compliance with relevant laws, both during the hiring process and after being employed by Boeing. This was the result not of any overt policy or procedure, but rather of sporadic adherence to the written policies and procedures that were in place. As noted above, this was especially true for senior executive hires out of the USG, where it was not at all uncommon for Boeing's [conflict of interest] review to be conducted after the employee had already been offered a job.

This reliance on government employees and former government employees to "do the right thing" is not wholly misplaced. It is hard to dispute the proposition that primary responsibility for complying with disqualification requirements, as well as for many of the post-employment restrictions, rests with the person who is leaving government service. Moreover, we found that most of the ex-USG employees to whom we spoke at Boeing had an understanding of the basic rules in this area, a high sensitivity to the need for compliance, and a ready willingness to turn to USG ethics/legal personnel for advice on disqualification and post-employment issues while still in government service.

Mr. Sears's actions between October 2, 2002 and October 17, 2002 establish that he believed his upcoming discussions with Druyun would be legal and permitted because, in advance of the Orlando meeting, she would have had complied with regulations governing discussions with potential employers. Mr. Sears openly discussed with the other members of Boeing's top management, including the head of Human Resources and the General Counsel, his upcoming meeting with Druyun to discuss job opportunities. Indeed, Boeing officials met several times to formulate job opportunities for her. These actions were neither illegal, nor unethical, nor surreptitious. It thus strains credulity to suggest that Mr. Sears did anything improper prior to the October 17, 2002 meeting in Orlando.

On October 17, 2002, Mr. Sears traveled to Orlando and met with Druyun as previously scheduled. At the outset of the meeting, Druyun told Mr. Sears that she had just entered into a

handshake agreement to join Lockheed in January 2003. Then, much to his surprise, Druyun told Mr. Sears that she had not recused herself from Boeing matters. In that moment, without reflection or planning, Mike Sears made a spontaneous decision that has dramatically altered his life and, ultimately, brought him before this Court. He and Druyun proceeded with employment discussions on behalf of his company and, in that instant, he violated the law. Again, any suggestion or innuendo that Mr. Sears or other Boeing executives had done something improper up until that moment is simply not supported by the facts.

Mr. Sears has daily wished that he could turn back the hands of time to that moment when, contrary to a lifetime of honorable and ethical behavior, he acted inappropriately. Mr. Sears's letter to the Court expresses the pain and anguish that has flowed from the biggest mistake of his life:

Words cannot adequately express how truly sorry I am for what I did. I know that I let many people down. When Ms. Druyun told me at the meeting in Orlando that she had not recused herself from Boeing matters I should have ended any employment discussions with her. Obviously, I did not. I can attempt to rationalize my conduct but, regrettably, in the end, I know that I exercised exceedingly poor judgment. Now I find myself preparing to face the judgment of the Court.

B. Mr. Sears Has Already Suffered Severely From His Decision

In sentencing Mike Sears, the Court should consider the enormously high personal, professional, and financial price he has already paid as a result of his mistake. First, before this incident, Mr. Sears was a strong candidate to become the next CEO of Boeing. Instead, he has been fired and is now entirely unemployable in the industry in which he spent his entire career. This is as steep a professional penalty as any defendant can pay.

Second, Mr. Sears has paid an enormous financial penalty for his mistake. As a result of his termination by Boeing, Mr. Sears lost several million dollars worth of stock benefits, lost his significant salary, and has been suspended by the Department of Defense from working in the industry he served for more than thirty years. By any conservative estimate, Mr. Sears has been penalized in excess of \$10 million in salary, stock benefits, and future compensation.

Third, on a personal level, Mr. Sears's mistake has heaped great shame and humiliation on him and on his family. He and Debbie continue to suffer immense pain and anguish as a result of his wrongdoing. Worst of all, as he acknowledges in his letter to this Court, Mike Sears knows his actions caused great pain to those he loves the most. Mr. Sears has sought both professional counseling and guidance from the clergy. Pastor David Heil of the First Presbyterian Church in Deerfield, Illinois describes Mr. Sears's condition in November 2003 when his world came crashing down:

At that time, Michael was suffering great shame, anguish and remorse. He was struggling with the guilt of his conscious knowing that his actions not only caused a great upheaval in his own life, but also in the lives of those for whom he cares most deeply. He was questioning his self-worth. And he was searching for meaning and direction in his life in the context and aftermath of his own perceived disgrace.

(Tab 13)

Mike Sears has ruined his career, decimated his reputation, lost millions of dollars, and caused severe pain to those he loves most. He will carry the stain of being a convicted felon for the rest of his life. In short, he has been severely punished already. For this reason alone, incarceration serves no purpose. Surely, all corporate executives considering Mr. Sears's highly-publicized fall from grace will be amply deterred from illegal conduct.

IV. GUIDELINE CALCULATIONS AND MR. SEARS'S SENTENCING REQUEST

A. The Sentencing Guidelines

The parties agree that the offense to which Mr. Sears has pled is governed by Guideline Section 2C1.3, which carries a base offense level of 6. The parties also agree that Mr. Sears has affirmatively demonstrated acceptance of responsibility and that a two-level decrease is warranted. The government has urged, and the Probation Office has found, that a four-level increase is appropriate under the provision of Section 2C1.3(b)(1) for actual or planned harm to the government. While the defense may take issue with that enhancement, it does not have an impact upon the sentencing range. Even with the four-level increase, the adjusted offense level is eight, placing Mr. Sears in Zone A, a sentencing range of zero to six months.

Most significantly, in proceeding with the October 17, 2002 employment discussions with Druyun, Mr. Sears did not intend, contemplate, or cause any harm to the government warranting a sentence beyond probation. This is particularly true since Druyun began that meeting by telling Mr. Sears that she had accepted a position with Lockheed a day earlier. Indeed, the government does not dispute that Mr. Sears never sought or expected any favorable treatment from Druyun on Boeing matters. To the contrary, the government agrees that Druyun never indicated to Mr. Sears in any fashion that she had favored Boeing in the past or would do so in the future.

B. The Comparison to Ms. Druyun's Actions and Sentence

To fully understand why Mike Sears should be sentenced to probation, this Court should be fully apprised of Druyun's conduct and why it bears no relationship to the mistake Mr. Sears has acknowledged. The highly disparate facts are described below.

Druyun initially entered into a plea agreement with the government that provided for a sentence within the Guideline range of 0 to 6 months. Druyun, of course, was the government

official whose conduct is specifically proscribed by 18 U.S.C. § 208. After Druyun pled guilty, but before she was sentenced, she agreed to take a polygraph examination during which it was determined that she had, for an extended period, been providing false information to the government. It also came to light that she had falsified a notebook that she had submitted to the government. In sum, Druyun not only violated the express terms of her plea agreement, she also committed separate and additional criminal offenses far more serious than a Section 208 violation – making false statements to the government, in violation of 18 U.S.C. § 1001, and obstruction of justice, in violation of 18 U.S.C. § 1519. The government chose not to indict her for these criminal acts, but it did withdraw from the original plea agreement. The parties then entered into a new agreement reflecting her subsequent criminal conduct and the favoritism she supposedly showed Boeing long before October 17, 2002.

As a result of Druyun's repeated deception, she received (i) no credit for acceptance of responsibility, (ii) a four-level increase for harm to the government, and (iii) a two-level increase for obstruction of justice. This resulted in an offense level of 12 with a sentencing range of 10 to 16 months. Under these circumstances, Judge Ellis sentenced Druyun to 9 months incarceration, 7 months community confinement, and 3 years of supervised release.

Druyun has told several conflicting stories in the course of the government's investigation. In her latest version, one relayed after she had been caught providing false information to the government and doctoring records, and in response to renewed threats that her daughter Heather would be indicted, Druyun claims that beginning in 2000 she somehow began to favor Boeing on certain government projects. She now claims she did so because Boeing hired her daughter and future son-in-law in 2000 and because of her own formless and unexpressed plans for potential future employment. Mr. Sears has reported that, at Druyun's

request, he caused the resumes of these two individuals to be sent through appropriate channels at Boeing and that he thus assisted in their hiring. Boeing's hiring of these two individuals was entirely legal. Indeed, Druyun promptly notified the Air Force of her daughter's employment at Boeing, and the Air Force cleared the potential conflict. As a result, the favoritism Druyun now claims she showed to Boeing because it hired her relatives, if it ever even existed, was the product of a conflict known to, and cleared by, the Air Force. Moreover, Druyun's supposed favoritism began more than two years before October 17, 2002.

In 2004, Druyun, while under enormous personal and legal pressure, belatedly confessed to supposed favoritism towards Boeing because of these hirings and her inchoate hopes of possible future employment. Her confession cannot implicate Mr. Sears who had no reason to suspect Druyun's actions. Quite clearly, any perceived or possible harm to the government from Druyun's self-professed but undocumented favoritism is not the result of anything Mr. Sears did and would not constitute other relevant conduct within the meaning of the Sentencing Guidelines. Simply stated, no such harm can or should be attributable to Mr. Sears.

The government argues more generally that the procurement process as a whole has been harmed as a result of the course of conduct underlying this case. The Department of Defense has undertaken a painstaking review of the various procurement matters in which Druyun played a significant role while with the Air Force. That review became necessary, however, only after the government uncovered Druyun's deceptions during the time she was purportedly cooperating. Druyun's deceptions during that period, and her belated acknowledgement of her supposed subjective favoritism to Boeing, caused the upheaval within the Defense Department. Despite the government's painstaking review, nothing has emerged to cast further blame on Mr. Sears.

The circumstances which led to Ms. Druyun's incarceration are a far cry from those of Mr. Sears's case. Mr. Sears should not be tainted by Druyun's deception after her plea agreement or her subsequent new revelations. Even if her most recent version of events is true and Druyun improperly favored Boeing before October 17, 2002, it bears no relationship to Mike Sears's wrongful negotiations in Orlando. Indeed, all of the purported favoritism took place before October 17, 2002.

As for the costs of investigation and the expenses associated with reexamining contracts handled by Druyun, they, too, bear no relationship to Mike Sears's sentence. All government investigations necessarily result in disruption and the expenditure of public funds. In addition, none of the reexaminations being conducted by the government turn on decisions Druyun made after October 17, 2002. Of potentially greatest significance, and as the parties agree, Mike Sears had no involvement in the then ongoing negotiation of the Boeing KC 767A tanker deal or the NATO AWACS restructuring negotiations Druyun was handling for the Air Force in 2002.

Unlike Druyun, Mr. Sears never deceived government investigators. On the contrary, the government acknowledges that Mr. Sears has been fully cooperative and truthful in the government's investigation. Mr. Sears has participated in a number of interviews with government investigators as well as a lengthy and detailed polygraph examination conducted by the same examiner who conducted the polygraph examination of Druyun. That examination revealed no indicia of deception on a wide variety of topics. Most significantly, the examination revealed no deception when Mr. Sears affirmed that he never sought or expected favorable treatment from Druyun.

C. Mr. Sears's Conduct Clearly Falls Within Sentencing Guideline Section 5K2.20(b) Aberrant Behavior

An accurate assessment of the relevant facts reveals that Mr. Sears's only goal was to hire Druyun following her retirement from government service. He waited to engage in negotiations until Druyun indicated that it was appropriate for her to speak with Boeing. The October 17, 2002 meeting was the first time Mr. Sears realized that something was amiss. His failure to act appropriately then was "aberrant behavior" supporting a downward departure were it not for the fact that his conduct is already within the lowest possible range within the Sentencing Guidelines.

The parties have agreed that there exist no aggravating or mitigating circumstances warranting a sentence outside the applicable Guideline range of zero to six months. (*See* Plea Agreement, §5(e)). Thus, neither party seeks a departure from the applicable range. We note, however, that the Guidelines would nonetheless permit a downward departure under the facts and circumstances of this case pursuant to Guideline Section 5K2.20(b) -- Aberrant Behavior. That Subsection applies:

if the defendant committed a single criminal occurrence or single criminal transaction that (1) was committed without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life.

Quite clearly, Mr. Sears's conduct meets the definition of aberrant behavior. The instant offense plainly represents a marked deviation from an otherwise honorable, exemplary, and law-abiding life. The offense to which Mr. Sears has pled involved no significant planning. Rather, Mr. Sears made a spontaneous decision to proceed with employment discussions when, to his surprise, Druyun reported that she had not recused herself from Boeing matters. The Fourth Circuit recognizes that "an act which occurs suddenly and is not the result of a continued

reflective process is one for which the defendant may be arguably less accountable.” *United States v. Glick*, 946 F.d 335, 338 (4th Cir. 1991) (quoting *United States v. Carey*, 895 F.2d 318, 325 (7th Cir. 1990)). Finally, the offense was of very limited duration. Druyun recused herself from Boeing matters on November 5, 2002, a few days after the meeting in Orlando. Mr. Sears’s conduct meets the definition of “aberrant behavior.”

D. Mr. Sears’s Sentencing Request

Given the facts and circumstances of this case and the exemplary life Mike Sears has led for 57 years, the lowest possible sentence available to the Court is appropriate. We respectfully request that this Court impose a sentence of probation.

First and foremost, Mr. Sears’s personal history and his honorable, compassionate, and ethical nature support such a sentence. But for his poor judgment in Orlando on October 17, 2002, the record plainly reveals that Mr. Sears has led an exemplary life. He is a man committed to his family, his community, his country, and his fellow man. He never set out to commit a crime. However, in an aberrational split-second case of poor judgment, he made the wrong decision on October 17, 2002. That mistake set in motion a series of events that have destroyed his career, impugned his good name, and led to months of anguish and pain for himself and others close to him. At bottom, Mr. Sears is an extraordinary asset to his community. He poses absolutely no threat or danger to society and there is equally no risk of future criminal conduct.

Mike Sears has expressed and acted on his sincere remorse for his conduct. He has done all within his power to make up for his mistake. He acknowledged his conduct, accepted responsibility, and cooperated fully with the government. During meetings with the government and in the government’s polygraph examination, he openly acknowledged exactly what he did

and what, to his knowledge, Druyun and others at Boeing did and did not do. He stands ready to assist the government in any and all further inquiries.

A sentence involving a period of confinement is not necessary to punish Mr. Sears. The destruction of his career, the pain and anguish he has caused himself and his family, and the public shame and humiliation for such a respected and high-profile executive have all served as a unique and severe form of punishment.

As Mr. Sears writes, his entire life "darkened." Yet, true to his character, with the support of his family and friends, he has begun a recovery and has sought to make some good from a tragedy of his own making. His mistake has forced him to reassess the direction his life was taking. His error has led to a strengthening of his relationships with his wife, children, siblings and friends. It has also strengthened his bond with his God. Mr. Sears explains that

[O]ur faith in God and His plan for us became our plan to survive this horrible situation and to begin making us better people. . . . Our involvement in the church, the support of the minister, the new friends we made were all critical to our survival and to recovering our mental and spiritual health.

Indeed, Pastor Heil notes how Mike Sears's fate serves as a meaningful lesson to all:

[W]e are also blessed by his willingness to share his own sense of self -- of who he was before, and of who he is now. In other words, he shares his learning of what it means to be redeemed and rehabilitated after doing something that he acknowledges was wrong and contrary to both our nation's laws and his own ethics and principles. From my point of view, there are so many in my congregation that can learn from Michael's example.


(Tab 13)

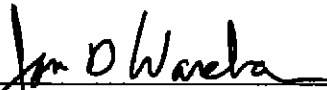
Finally, a sentence of probation will not diminish the seriousness of the offense. Mr. Sears stands convicted of a felony. He has already paid a substantial price for his poor judgment. The Sentencing Commission has determined, as reflected in the Guideline calculation, that probation is a permissible sentence for Mr. Sears. A sentence of probation with a condition of substantial community service is not only within the applicable Guideline range, it is also the most just disposition. Indeed, given Mike Sears's compassionate nature and record of service to those in need, a sentence of probation involving community service will benefit society far more than a period of confinement.

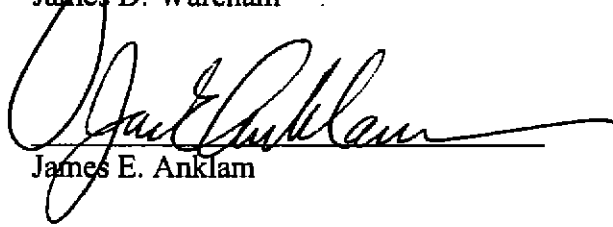
V. CONCLUSION

For the reasons set forth above, we respectfully request that the Court sentence Mike Sears to a period of probation.

Respectfully submitted,


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15 February 2005

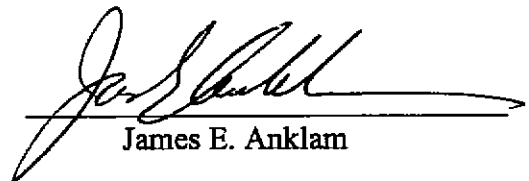
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant Michael M. Sears's Memorandum in Aid of Sentencing was served by first-class mail, postage-prepaid this 15th day of February 2005 upon the following:

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