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111-159

IMPEACHMENT OF JUDGE SAMUEL B. KENT

—————
JUNE 17, 2009.—Referred to the House Calendar and ordered to be printed
—————

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H. Res. 520]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 520) impeaching Samuel B. Kent, judge of the United States District Court for the Southern District of Texas, for high crimes and misdemeanors, having considered the same, report favorably thereon without amendment and recommend that the resolution be agreed to.

I. THE RESOLUTION

H. RES. 520

Impeaching Samuel B. Kent, judge of the United States District Court for the Southern District of Texas, for high crimes and misdemeanors.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2009

Mr. Conyers (for himself, Mr. Smith of Texas, Mr. Schiff, Mr. Goodlatte, Ms. Jackson Lee of Texas, Mr. Sensenbrenner, Mr. Delahunt, Mr. Daniel E. Lungren of California, Mr. Cohen, Mr. Forbes, Mr. Johnson of Georgia, Mr. Gohmert, Mr. Pierluisi, and Mr. Gonzalez) submitted the following resolution; which was referred to the Committee on the Judiciary

Resolved, That Samuel B. Kent, a judge of the United States District Court for the Southern District of Texas, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against Samuel B. Kent, a judge of the United States District Court for the Southern District of Texas, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

Incident to his position as a United States district court judge, Samuel B. Kent has engaged in conduct with respect to employees associated with the court that is incompatible with the trust and confidence placed in him as a judge, as follows:

(1) Judge Kent is a United States District Judge in the Southern District of Texas. From 1990 to 2008, he was assigned to the Galveston Division of the Southern District, and his chambers and courtroom were located in the United States Post Office and Courthouse in Galveston, Texas.

(2) Cathy McBroom was an employee of the Office of the Clerk of Court for the Southern District of Texas, and served as a Deputy Clerk in the Galveston Division assigned to Judge Kent's courtroom.

(3) On one or more occasions between 2003 and 2007, Judge Kent sexually assaulted Cathy McBroom, by touching her private areas directly and through her clothing against her will and by attempting to cause her to engage in a sexual act with him.

Wherefore, Judge Samuel B. Kent is guilty of high crimes and misdemeanors and should be removed from office.

ARTICLE II

Incident to his position as a United States district court judge, Samuel B. Kent has engaged in conduct with respect to employees associated with the court that is incompatible with the trust and confidence placed in him as a judge, as follows:

(1) Judge Kent is a United States District Judge in the Southern District of Texas. From 1990 to 2008, he was assigned to the Galveston Division of the Southern District, and his chambers and courtroom were located in the United States Post Office and Courthouse in Galveston, Texas.

(2) Donna Wilkerson was an employee of the United States District Court for the Southern District of Texas.

(3) On one or more occasions between 2001 and 2007, Judge Kent sexually assaulted Donna Wilkerson, by touching her in her private areas against her will and by attempting to cause her to engage in a sexual act with him.

Wherefore, Judge Samuel B. Kent is guilty of high crimes and misdemeanors and should be removed from office.

ARTICLE III

Samuel B. Kent corruptly obstructed, influenced, or impeded an official proceeding as follows:

(1) On or about May 21, 2007, Cathy McBroom filed a judicial misconduct complaint with the United States Court of Appeals for the Fifth Circuit. In response, the Fifth Circuit appointed a Special Investigative Committee (hereinafter in this article referred to as “the Committee”) to investigate Cathy McBroom’s complaint.

(2) On or about June 8, 2007, at Judge Kent’s request and upon notice from the Committee, Judge Kent appeared before the Committee.

(3) As part of its investigation, the Committee sought to learn from Judge Kent and others whether he had engaged in unwanted sexual contact with Cathy McBroom and individuals other than Cathy McBroom.

(4) On or about June 8, 2007, Judge Kent made false statements to the Committee regarding his unwanted sexual contact with Donna Wilkerson as follows:

(A) Judge Kent falsely stated to the Committee that the extent of his unwanted sexual contact with Donna Wilkerson was one kiss, when in fact and as he knew he had engaged in repeated sexual contact with Donna Wilkerson without her permission.

(B) Judge Kent falsely stated to the Committee that when told by Donna Wilkerson his advances were unwelcome no further contact occurred, when in fact and as he knew, Judge Kent continued such advances even after she asked him to stop.

(5) Judge Kent was indicted and pled guilty and was sentenced to imprisonment for the felony of obstruction of justice in violation of section 1512(c)(2) of title 18, United States Code, on the basis of false statements made to the Committee. The sentencing judge described his conduct as “a stain on the justice system itself”.

Wherefore, Judge Samuel B. Kent is guilty of high crimes and misdemeanors and should be removed from office.

ARTICLE IV

Judge Samuel B. Kent made material false and misleading statements about the nature and extent of his non-consensual sexual contact with Cathy McBroom and Donna Wilkerson to agents of the Federal Bureau of Investigation on or about November 30, 2007, and to agents of the Federal Bureau of Investigation and representatives of the Department of Justice on or about August 11, 2008.

Wherefore, Judge Samuel B. Kent is guilty of high crimes and misdemeanors and should be removed from office.

II. INTRODUCTION

The Committee on the Judiciary, acting through and with the assistance of its duly appointed Impeachment Task Force, has conducted an inquiry into the conduct of Samuel B. Kent, United States District Judge for the Southern District of Texas. In par-

ticular, the Committee has considered whether Judge Kent committed sexual misconduct against two women—Cathy McBroom and Donna Wilkerson—who worked in the courthouse where he presided. The Committee also has considered whether Judge Kent made false statements to his fellow judges who were investigating allegations of sexual misconduct made by one of the two women, and whether he made further false statements to agents of the Federal Bureau of Investigation (FBI) on one occasion, and to FBI and Department of Justice personnel on another occasion.

After a careful study of the evidence, the Committee finds that Judge Kent did commit sexual misconduct against both Ms. McBroom and Ms. Wilkerson, conduct that included unwanted touchings and sexual assaults. The Committee also finds the Judge Kent made false statements to judges investigating this conduct, and made false statements to the FBI agents and Department of Justice prosecutors.

Judge Kent's conduct is wholly unacceptable for a Federal judge and has brought disrepute upon the Federal judiciary. These acts reflect Judge Kent's abuse of his Office and his betrayal of the trust bestowed upon him by the people of the United States. Indeed, Judge Kent, whose duty it was to uphold and enforce the laws, instead thwarted and undermined the laws. It was his duty to use his position to dispatch justice impartially, but he instead abused the power of his position.

As discussed below, Judge Kent has pled guilty to a felony, obstruction of justice, and has been convicted and sentenced to Federal prison. The Committee does not base its recommendation solely on the fact of the guilty plea and conviction, however. Rather, the Committee finds the facts underlying the guilty plea and the evidence regarding his sexual misconduct to overwhelmingly demonstrate that he is unfit to hold office. The Committee therefore recommends that Judge Samuel B. Kent be impeached by the House of Representatives and tried by the United States Senate.

III. A BRIEF DISCUSSION OF IMPEACHMENT

A. PERTINENT CONSTITUTIONAL PROVISIONS

The following are the pertinent provisions in the United States Constitution that relate to impeachment:

Article I, § 2, clause 5:

The House of Representatives . . . shall have the sole Power of Impeachment.

Article I, § 3, clauses 6 and 7:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to In-

dictment, Trial, Judgment and Punishment, according to Law.

Article II, § 2, clause 1:

The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Article II, § 4:

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

In this regard, it has long been recognized that Federal judges are “civil Officers” within the meaning of Article II, Section 4.¹ Finally, as to the life tenure of Federal judges, the Constitution provides:

Article III, § 1:

The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour,

B. THE MEANING OF “HIGH CRIMES AND MISDEMEANORS”

Thirteen Federal judges have been impeached in our Nation’s history. The precedents from these prior judicial impeachments as to the meaning of the phrase “high crimes and misdemeanors” is highly instructive. The Committee takes note of these precedents in informing its recommendations to the House.

The House Report accompanying the 1989 Resolution to Impeach United States District Judge Walter L. Nixon, Jr., summarized the British precedents for impeachment, the events at the Constitutional convention leading to the adoption of the “high crimes and misdemeanors” formulation for impeachable conduct, and the interpretation of that term in the 12 judicial impeachments that had occurred prior to 1989. In its summary of the historical meaning of the term, the Report noted:

The House and Senate have both interpreted the phrase broadly, finding that impeachable offenses need not be limited to criminal conduct. Congress has repeatedly defined “other high Crimes and Misdemeanors” to be serious violation of the public trust, not necessarily indictable offenses under criminal laws. Of course, in some circumstances the conduct at issue, such as that of Judge Nixon, constituted

¹ A commentator wrote in 1825:

All executive and judicial officers, from the president downwards, from the judges of the supreme court to those of the most inferior tribunals, are included in this description.

W. Rawle, *A View of the Constitution of the United States of America*, Philip H. Nicklin ed., (1829), 213 (The Law Exchange reprint (2003)). Another prominent commentator, Joseph Story, wrote:

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

² Joseph Story, *Commentaries on the Constitution of the United States* § 790 at 258 (1833) (citing Rawle) (quoted in Statement of Professor Arthur D. Hellman, Hearing on the Possible Impeachment of Samuel B. Kent of the Southern District of Texas, House Committee on the Judiciary Impeachment Task Force (June 3, 2009), at 17).

conduct warranting both punishment under the criminal law and impeachment.²

That Report concluded:

Thus, from an historical perspective the question of what conduct by a Federal judge constitutes an impeachable offense has evolved to the position where the focus is now on public confidence in the integrity and impartiality of the judiciary. When a judge's conduct calls into question his or her integrity or impartiality, Congress must consider whether impeachment and removal of the judge from office is necessary to protect the integrity of the judicial branch and uphold the public trust.³

The Impeachment Report that accompanied the Resolution to Impeach United States District Judge Alcee L. Hastings stated that the phrase "high Crimes and Misdemeanors" "refers to misconduct that damages the state and the operations of governmental institutions, and is not limited to criminal misconduct."⁴ That Report stressed that impeachment is "non-criminal," designed not to impose criminal penalties, but instead simply to remove the offender from office,⁵ and that it is "the ultimate means of preserving our constitutional form of government from the depredations of those in high office who abuse or violate the public trust."⁶

IV. BACKGROUND OF INQUIRY INTO THE CONDUCT OF JUDGE KENT

A. JUDGE SAMUEL B. KENT

Samuel B. Kent was and remains a United States District Judge. He was appointed by President George H. W. Bush in 1990, and served nearly his entire judicial career in the Galveston Division of the Southern District of Texas. He was the sole judge in the Galveston courthouse, and wielded substantial power over the employees who worked there.

B. FACTS LEADING TO JUDGE KENT'S CONVICTION

On May 21, 2007, Cathy McBroom filed a judicial misconduct complaint with the United States Court of Appeals for the Fifth Circuit, alleging sexual misconduct on the part of Judge Samuel B. Kent. In particular, she alleged that he sexually assaulted her in March of that year. In response, the Judicial Council of the Fifth Circuit appointed a Special Investigative Committee to investigate Ms. McBroom's complaint.

²H.R. Rep. No. 101-36, "Impeachment of Walter L. Nixon, Jr., Report of the Committee on the Judiciary to Accompany H. Res. 87," 101st Cong., 1st Sess., (1989) [hereinafter "Nixon Impeachment Report"] at 5 (1989) (footnote omitted).

³Id. at 12.

⁴H.R. Rep. No. 100-810, "Impeachment of Alcee L. Hastings, Report of the Committee on the Judiciary to Accompany H. Res. 499," 100th Cong., 2d Sess. (1988), at 6.

⁵Id.

⁶Id. at 7. The last three impeachments—those of Judge Walter L. Nixon, Jr., Judge Alcee Hastings, and Judge Harry Claiborne—followed Federal criminal proceedings, and the impeachment articles were to a great extent patterned after the Federal criminal charges. Similarly, the grounds for the Committee's recommendation of impeachment of Judge Samuel B. Kent also involve conduct for which he was indicted (and, in connection with one Article, pled guilty). However, the principles that underpin the propriety of impeachment do not require that the conduct at issue be criminal in nature, or that there have been a criminal prosecution.

On June 8, 2007, Judge Kent, pursuant to his request, was interviewed by the Special Investigative Committee. The Special Investigative Committee sought to learn from Judge Kent whether he had engaged in unwanted sexual contact with Ms. McBroom or with others.

One person whose name came up in this interview was that of Donna Wilkerson, Judge Kent's secretary. As to Ms. Wilkerson, Judge Kent falsely stated that the extent of his non-consensual contact with her was one kiss, when in fact he had engaged in repeated non-consensual sexual contact with Ms. Wilkerson. He also stated to the Special Investigative Committee that once told by Ms. Wilkerson that his advances were unwelcome, no further contact occurred, when in fact he continued his non-consensual sexual contact with Ms. Wilkerson.

On September 28, 2007, in an order signed by Chief Judge Edith H. Jones, the Judicial Council for the Fifth Circuit suspended Judge Kent with pay for 4 months and transferred him to Houston.⁷ The Order did not disclose the underlying findings of fact or conclusions of law by the Special Investigative Committee.

The Department of Justice commenced a criminal investigation relating to Judge Kent's conduct, and on August 28, 2008, a Federal grand jury returned a three-count indictment charging Judge Kent with two counts of abusive sexual contact, in violation of 18 U.S.C. § 2244(b), and one count of attempted aggravated sexual abuse, in violation of 18 U.S.C. § 2241(a)(1). The abusive sexual contact counts charged him with "intentional touching, both directly and through the clothing, of the groin, breast, inner thigh, and buttocks of [Ms. McBroom]." The attempted aggravated sexual abuse count charged him with attempting to force Ms. McBroom's head towards his penis.

After various pre-trial proceedings, the grand jury issued a superseding indictment on January 6, 2009.⁸ That indictment re-alleged the three counts involving Ms. McBroom. It also added two counts relating to Ms. Wilkerson. Count four of the superseding indictment charged aggravated sexual abuse, in violation of 18 U.S.C. § 2241(a)(1), namely, that "[o]n one or more occasions between January 7, 2004 and at least January 2005, any one and all of which [would constitute the offense]," Judge Kent "did engage in [aggravated sexual abuse of Ms. Wilkerson] by a hand and finger by force. . . ." The superseding indictment also charged "abusive sexual contact" in count five, namely, that Judge Kent engaged in the "intentional touching, directly and through the clothing, of [specified parts of Ms. Wilkerson's body]."

Finally, the superseding indictment charged "obstruction of justice" in Count Six, stemming from Judge Kent's June 2007 lies to the Fifth Circuit concerning his conduct relating to Ms. Wilkerson.

⁷Order of Reprimand and Reasons, In re: Complaint of Judicial Misconduct against United States District Judge Samuel B. Kent under the Judicial Conduct and Disability Act of 1980, Docket No. 07-05-351-0086, Judicial Council of the Fifth Circuit, Sept. 28, 2007, available at <http://www.ca5.uscourts.gov/news/news/Judicial%20Council%20Order.pdf>.

⁸Superseding Indictment, United States v. Kent, Crim. No. 4:08CR0596-RV (U.S. Dist. Ct., S.D. Tex., Houston Div., Jan. 6, 2009).

C. ADDITIONAL FACTS RELATED TO JUDGE KENT'S CONDUCT DURING THE INVESTIGATION

At sentencing, the prosecutor represented that Judge Kent's obstruction conduct was not limited to the single set of false statements made to the Fifth Circuit. The prosecutor set forth three other incidents of obstructive conduct or false denials.

First, at some point Judge Kent told Ms. Wilkerson that he had falsely denied his repeated attacks on her—and by so doing, according to the prosecutors, “sent a clear and unambiguous statement that she must repeat that lie too. . . . She, in fact, drew from his statements that she was supposed to testify falsely before the grand jury, as well.”⁹

In addition, the prosecutor described two other occasions where Judge Kent made false statements in the course of the investigation:

[O]n two separate occasions, the defendant asked for and was granted a meeting with, first, the Federal Bureau of Investigation, law enforcement agents. And that was in December 2007. . . . He reached out to the FBI and asked to sit down with them.

During the voluntary interview, he was interviewed regarding his conduct, and he repeated the same false statements that he later told to the Special Investigative Committee, both about [Ms. McBroom] and about [Ms. Wilkerson].

Then, [prior to the initial indictment in August 2008], defendant through his attorney asked for a meeting at Main Justice Headquarters, and there in the Assistant Attorney General's conference room, he sat down with his attorney and met with, among others, the trial team, the FBI agents, the [C]hief of the Public Integrity Section and the Acting Assistant Attorney General. And during the interview portion of that meeting, he again repeated the same lies.

He said that he had been honest with the FBI in December 2007. He said that any attempt to characterize the conduct between him and [Ms. McBroom] as nonconsensual was absolutely nonsense. And that's in stark contrast, Your Honor, to the factual basis for his plea during which he admitted engaging in repeated nonconsensual sexual contact with [Ms. McBroom] without her permission.

Then as to [Ms. Wilkerson], the defendant falsely stated that he had kissed her on two separate occasions when, in fact, it was over a much longer period of time and it was much more serious conduct. Again, as the defendant admitted in his factual basis.

* * *

[H]is false statements both to the FBI and to the DOJ trial team and his implication that [Ms. Wilkerson] should

⁹Transcript of Sentencing, *United States v. Kent*, CIM No. 4:08CR0596–RV (U.S. Dist. Ct., S.D. Tex., Houston Div.), May 11, 2009 [hereinafter “Transcript of Sentencing”], at 5.

testify falsely before the grand jury did significantly obstruct and impede the official investigation.¹⁰

D. THE PLEA PROCEEDING

On February 23, 2009, Judge Kent pleaded guilty to Count Six of the superseding indictment, obstruction of justice, pursuant to a plea agreement. As part of the plea agreement, the Government agreed to dismiss the remaining five counts at sentencing. In addition, the Government promised that it would not seek a sentence in excess of 36 months incarceration.

In connection with the plea, the defendant signed a “Factual Basis for Plea” that was filed with the court and set forth the conduct that constituted the offense. That factual statement represented, among other facts:

4. In August 2003 and March 2007, the defendant engaged in non-consensual sexual contact with [Ms. McBroom] without her permission.
5. From 2004 through at least 2005, the defendant engaged in non-consensual sexual contact with [Ms. Wilkerson] without her permission.

* * *

10. [On June 8, 2007], [t]he defendant falsely testified regarding his unwanted sexual contact with [Ms. Wilkerson] by stating to the [Fifth Circuit Special Investigative] Committee that the extent of his non-consensual contact with [Ms. Wilkerson] was one kiss, when in fact and as he knew the defendant had engaged in repeated non-consensual sexual contact with [Ms. Wilkerson] without her permission.
11. The defendant also falsely testified regarding his unwanted sexual contact with [Ms. Wilkerson] by stating to the Committee that when told by [Ms. Wilkerson] that his advances were unwelcome, no further contact occurred, when in fact and as he knew the defendant continued his non-consensual contacts even after she asked him to stop.¹¹

At the plea proceeding, Judge C. Roger Vinson placed Judge Kent under oath, and inquired of him as to whether the representations in the “Factual Basis for Plea” were accurate:

THE COURT [JUDGE VINSON]: I have a factual basis that has been filed in this case, which has three numbered pages and appears to have been signed by you and your attorney Mr. DeGuerin and Mr. Ainsworth on behalf of the Public Integrity Section of the Department of Justice. That is your signature on this agreement?

THE DEFENDANT [JUDGE KENT]: Yes,

THE COURT: And have you carefully read and gone over this factual basis for the plea with Mr. DeGuerin?

THE DEFENDANT: Yes, sir.

¹⁰Id. at 5–8.

¹¹“Factual Basis for Plea,” United States v. Kent, Crim. No. 4:08CR0596–RV (U.S. Dist. Ct., S.D. Tex., Houston Div., [Feb. 23, 2009]) [hereinafter “Factual Basis for Plea”], at 2–3.

THE COURT: Are those facts true and correct?

THE DEFENDANT: Yes, sir.¹²

Thereafter, Judge Vinson questioned Judge Kent as to his understanding of the rights Judge Kent would be giving up by pleading guilty, Judge Kent's understanding of the terms of the plea agreement, and Judge Kent's mental competence to enter the plea. Judge Kent then pleaded guilty to Count Six of the Superseding Indictment:

THE COURT: I find that the facts which the government is prepared to prove with evidence at trial and which are set out in the factual basis for this plea and which you have admitted under oath are true [and] are sufficient to sustain a plea of guilty to Count 6 of the superseding indictment.

I find that you're fully aware of the possible sentence or punishment that may be imposed under the law for this offense and you're aware of the operation and effect of the sentencing guidelines and how those guidelines may possibly affect your sentence.

And, most importantly, I find that you have made your decision to plead guilty to this charge freely and knowingly and voluntarily and you have made that decision with the advice of counsel, an attorney with whom you've indicated your full satisfaction.

So, let me ask you now, Mr. Kent: How do you plead to Count 6 of the superseding indictment?

THE DEFENDANT: Guilty.¹³

Sentencing was set for May 11, 2009.

E. THE SENTENCING

The May 11 sentencing proceeding commenced with a lengthy colloquy concerning the calculation of the Federal sentencing guidelines. Thereafter, the two victims each addressed the court.

First, Ms. McBroom spoke. She stated, in part:

When I think of the events leading up to his conviction, I'm consumed with emotion. Even though I have been able to move on in both my personal life and my career, I will forever be scarred by what happened to me in Galveston.

* * *

The abuse began after Judge Kent returned to work intoxicated. He attacked me in a small room that was not 10 feet from the command center where the court security officers worked. He tried to undress me and force himself upon me while I begged him to stop. He told me he didn't care if the officers could hear him because he knew everyone was afraid of him. I later found out just how true that was. He had the power to end careers and affect everyone's livelihood. That incident left me emotionally wrecked and

¹²Transcript of Plea Hearing, United States v. Kent, Crim. No. 4:08CR0596-RV (U.S. Dist. Ct., S.D. Tex., Houston Div.), Feb. 23, 2009 at 12.

¹³Id. at 17-18.

humiliated. It was so difficult to face my coworkers when I knew they had seen what happened to me.

* * *

[E]ach time an assault occurred, he would later promise to leave me alone and behave professionally, and I so wanted to believe that.

What I didn't know was that behind the scenes he was telling a much different story. Now that the truth has been exposed, I know so much more about his evil and deliberate manipulation, and I'm utterly disgusted. He was telling his staff members that I was the one pursuing him. He even told his secretary that I would do anything to have her job. . . . After the criminal investigation began, he even bragged about his gift of manipulation, which he thought would save him from conviction. People were asking him to just resign, and he would tell them if he had just 15 minutes with a jury, he would be exonerated.

There were times that other employees warned me that judge was intoxicated, and that he was asking for me. And during those times, I would refuse to answer my phone or I would hide in an empty office.

* * *

The last assault I had was more terrifying and threatening than ever before. After forcing himself upon me and asking me to do unspeakable things, he told me that pleasing him was something I owed him. That was it for me. He had finally won. He had broken me and forced me out. I could handle no more of his abuse.

Keep in mind that I had already reported his behavior to my manager. She knew about the assaults from the very beginning. . . . She was also very afraid of him. She had experienced his inappropriate behavior herself.

* * *

Even though my children have been supportive and mature from the beginning, I cringe when I think of how they must have felt when they read in the paper Judge Kent's claims that their mother was enthusiastically consensual. . . .

This judge has hurt so many people in so many ways. Every employee in Galveston has been afraid of his power and control. . . .¹⁴

Ms. Wilkerson spoke next:

For the last 7 years, I was sexually and psychologically abused and manipulated. Sexual abuse began on the fifth day, the fifth day of my career working with Sam Kent. I knew Sam Kent better than anyone and sadly no one really knows Sam Kent or the truth of his life and how he has conducted himself. . . .

¹⁴Transcript of Sentencing, United States v. Kent, Crim. No. 4:08CR0596-RV (U.S. Dist. Ct., S.D. Tx., Houston Div.), May 11, 2009 [hereinafter "Sentencing Transcript"] at 48-51.

I would like to tell you about the real Sam Kent. Sam Kent has spent his life manipulating people and abusing his relationships with people. Certainly this has been my experience the time I have known him. He has also spent this time lying to everyone. He will never acknowledge what he has done to the people around him. He continues to try to manipulate the system and make excuses for his aberrant behavior. Some of his lies have now been uncovered by his own admission, yet because of his narcissism and inability to admit fault and accept fault, except in an instant—or an instance such as today when he thinks it will gain him some mercy, or the day he pled guilty, he turns to even more lies by publishing ridiculous statements in the newspaper and blaming everyone and everything but himself.

* * *

He continues his manipulative behavior in seeking a mental disability when just 2 years ago he fought hard to make his accusers and the investigators know that he was fully capable of keeping his bench.¹⁵

Thereafter, Judge Kent's attorney addressed the court. He requested that Judge Kent be sentenced to a medical facility, and that the court order drug and alcohol counseling. He further noted that "although [Judge Kent] says that he is not an alcoholic, [he] is an alcoholic."¹⁶

Then Judge Kent addressed the court on his own behalf. He said he was a "completely broken man, but in some ways a better person. . . ." ¹⁷ He apologized to his staff—though he did not mention the two women directly—and to "my wife and family and to my marriage, all of whom and which I have likely irretrievably lost."¹⁸ He apologized "to all who seek redress in the Federal system for tarnishing its image and because never again can I vouchsafe their interest[.]" ¹⁹ He continued:

I have had the benefit of 26 months of absolute sobriety, a wonderful pretrial officer, a sensitive and thoughtful presentencing officer, terrific attorneys and excellent medical help. Through their assistance, I have come to see what a flawed, selfish, thoughtless and indulgent person I have been, and I have already begun to try and put myself right and emerge from this a better person.²⁰

The prosecutor spoke and after summarizing Judge Kent's conduct requested a 36-month sentence, consistent with the plea agreement.

Finally, Judge Vinson imposed the sentence:

The consequence to you of your wrongful conduct is not only the loss of a job which many feel is the best job in

¹⁵Id. at 52–54. Judge Kent sought to retire on a medical disability. On May 27, 2009, Chief Judge Edith H. Jones of the Fifth Circuit denied this request.

¹⁶Id. at 58.

¹⁷Id. at 59.

¹⁸Id. at 59.

¹⁹Id. at 59–60.

²⁰Id. at 60.

the world, but also punishment under the law. And as you well know, the law is no respecter of persons, and everyone stands equal in this Court. And former judges are no exception.

Your wrongful conduct is a huge black X on your own record. It's a smear on the legal profession, and, of course, it's a stain on the justice system itself. And, importantly, it is a matter of grave concern within the Federal courts.²¹

Judge Vinson thereafter imposed upon Judge Kent a sentence of 33 months incarceration to be followed by 3 years of supervised release, a \$1,000 fine, and restitution to Ms. McBroom of \$3,300 and to Ms. Wilkerson of \$3,250. Judge Kent was permitted to remain on release and required to surrender voluntarily to the prison designated by the Bureau of Prisons no later than 12:00 noon on June 15, 2009.

V. COMMITTEE ACTIONS

A. ESTABLISHMENT OF THE IMPEACHMENT TASK FORCE

On May 12, 2009, one day after Judge Kent's sentencing for obstruction of justice, the House passed House Resolution 424, providing that "the Committee on the Judiciary shall inquire whether the House should impeach Samuel B. Kent, a judge of the United States District Court for the Southern District of Texas." The next day, May 13, 2009, the Committee passed a resolution amending its January 22, 2009 resolution (which had established a Task Force to inquire into whether a different Federal judge should be impeached) to provide that the Task Force was to additionally conduct "an inquiry into whether United States District Judge Samuel B. Kent should be impeached."

B. TASK FORCE HEARING OF JUNE 3, 2009

The Task Force held an evidentiary hearing on its inquiry into whether Judge Kent should be impeached on June 3, 2009. Testimony was received from Alan Baron, Esq., the lead Task Force attorney, Ms. Cathy McBroom, Ms. Donna Wilkerson, and Professor Arthur Hellman, University of Pittsburgh School of Law. Judge Kent was also invited to appear and testify before the Task Force. However, both Judge Kent and his lawyer declined to appear.

1. Statement of Alan Baron

Alan Baron, Esq., the lead Task Force attorney, provided an overview of the investigation. As part of his statement to the Task Force, he identified and introduced into the record the following documents:

- 1) The original Indictment dated August 28, 2008, and the Superseding Indictment dated January 6, 2009;
- 2) The transcript of the February 23, 2009 Plea Proceeding;
- 3) The February 23, 2009 "Factual Basis for Plea;"
- 4) The transcript of the May 11, 2009 Sentencing Proceeding;

²¹Id. at 70.

- 5) The Court's Judgment (setting out Judge Kent's sentence), signed by Senior United States District Judge Roger Vinson, May 11, 2009;
- 6) The May 27, 2009 letter from Chief Judge Edith H. Jones to Judge Kent c/o his attorney denying Judge Kent's disability claim;
- 7) The June 1, 2009 letter from Judge Kent to the Task Force declining its invitation for him to testify;
- 8) The June 2, 2009 letter of Judge Kent to President Obama purporting to resign effective June 1, 2010.

One issue in particular that Mr. Baron highlighted was the fact that the prosecutor at Judge Kent's sentencing proceeding represented to the Court that Judge Kent had made false statements to law enforcement in connection with the Federal investigation.

In addition, Mr. Baron informed the Task Force that Judge Kent and his attorneys had been provided the opportunity to make submissions to the Task Force or to appear before it. The invitation to appear personally had been declined.

2. Testimony of Cathy McBroom

Ms. McBroom submitted a lengthy written statement which she adopted under oath as truthful.

In her written statement she described the following encounters in specific:

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

utes before I was able to collect myself enough to leave the room.²²

She described another encounter as follows:

Once a security guard had warned me of Judge Kent's drunken condition, and when I refused to answer his calls, he came down to the 4th floor, into my office, and sat in the chair in front of me. He started telling me jokes and was being very loud and obnoxious. Suddenly he stood up and started around my desk. I stood up and backed up as far as I could, but he pinned me between my desk and credenza, and started kissing me, while grabbing my backside and breasts. While trying to fight him off, I caught a glimpse of someone in my doorway, but couldn't tell who it was. The person left immediately without a sound. Again, after struggling with me for a few minutes, Judge Kent gave up and left. I felt humiliated, scared, and shaken. A coworker came in sometime later and noticed that I had perspiration stains on my blue silk blouse, and that I looked disheveled. When she asked what was wrong, I confessed to her that Judge Kent had tried to force himself on me.²³

She described the March 2007 encounter that resulted in her filing a formal complaint as follows:

The last and final sexual assault occurred on March 23, 2007. I was summoned to chambers to discuss an internal administrative action that had occurred in the clerk's office. After a brief discussion, he got up and asked me for a hug. I told him that I would rather not, but he indicated that he thought I owed him that much. I finally agreed, but when I reached up to give the hug, he grabbed my butt. I tried to pull away and told him that I didn't consider that a hug. Judge Kent asked if he could have just 5 minutes with me, pulled up my sweater and my bra all at once, and quickly got his mouth on my breast. I told him to stop and tried to push him away. His bulldog started getting excited and barking when he saw the struggle. I dropped some paperwork that I had taken to chambers and the dog started stepping on the papers, which momentarily distracted the Judge. When I tried to leave, he grabbed me again and reminded me that I owed this to him. He tried to push my head towards his crotch and told me to "[commit oral sex]." I resisted and he grabbed my hand and forced me to rub his crotch. Suddenly he heard someone enter the outer reception area and he became irritated. He went to investigate and I was able to break free. As I was leaving his office he said "you know, Cathy, I keep you around because you are a great case manager and do great work. That doesn't change the fact that I want to spend about 6 hours [performing oral sex on you]." I just turned and left the office. By the time I reached the

²²Statement of Cathy McBroom, Hearing on the Possible Impeachment of Samuel B. Kent of the Southern District of Texas, House Committee on the Judiciary Impeachment Task Force (June 3, 2009) [hereinafter "McBroom Statement"], at 1.

²³Id. at 2.

elevators, I was in tears. A court security officer asked me if the judge had tried to hit on me and I just shook my head “yes.”²⁴

She generally described Judge Kent’s efforts to gain access to her alone, sexual references that he made when speaking to her, and her efforts to avoid him. She also described the power that Judge Kent had and exercised as the only Judge in the Galveston Federal courthouse.

3. Testimony of Donna Wilkerson

Ms. Wilkerson submitted a lengthy written statement which she adopted under oath as truthful. Ms. Wilkerson described generally Judge Kent’s conduct towards her as follows:

His sexual abuse and misconduct with me began on the fifth day of my job. I had worked the first week at my job with Judge Kent’s secretary of 20 years. She was retiring. On Friday of that first week, a retirement luncheon was given for her at a local restaurant. I was invited to and attended the luncheon, which lasted approximately 2–3 hours where food and alcohol were served. Mr. Kent, with others, became intoxicated, being loud and obnoxious. During the party, pictures were taken of several groups, including Sam Kent with his wife, former law clerks, attorneys and his retiring secretary. During the taking of those photos Judge Kent joked and laughed and grabbed his wife’s breasts and buttocks in front of the room full of people. After the party, everyone left except the few courthouse staff and Judge Kent, who returned to the courthouse. Once there, while his retiring secretary and others were in the reception area of his chambers, he called me into his office and shut the door. He sat behind his desk and I sat in a chair in front of his desk. He told me that he was very excited to have me coming on board to take Ms. Henry’s place, that he thought I would be an asset to him and the operations of the court, and that he thought I was intelligent and pretty, and other random compliments. As he got up, appearing to be showing me out of his office, I was walking in front of him to the door. He reached for the door as if to open it for me, but put one of his hands on the door and the other one on the other side, putting me between the door and him. He leaned in and placed a kiss on my mouth. After that, he told me how beautiful he thought I was and that, again, he was glad I was there. I did not know what to do, but in my shock, I did nothing but exit the room, thinking, “what in the world was that and how am I supposed to handle this?” From that point forward, the abuse became more frequent and more severe. The number of these incidents, from minor to the most severe, can be averaged at 1–2 times per month over a year’s time, for a period of approximately 5–5½ years, from 2001–2007. However, there were periods of time during these years that the incidents did not occur as frequently as 1–2 times per month because he had periods

²⁴Id. at 3.

of weeks and months of not drinking, as well as several periods of extended time that he was out of the office. These episodes were routinely followed by Judge Kent's returning from long lunches wherein he was intoxicated. I have explained in the past that the severity of the sexual abuse can be described using a Bell Curve as an example—starting with the most minor of incidents of hugs and kisses, then escalating to worse incidents of touching me inappropriately, groping me outside my clothes, then inside my clothes (top and bottom), then attempting to and gaining penetration of my genitals with his hand, placing my hand on his crotch, and then topping the curve at the most severe episode of once, and possibly twice, pulling down my pants and performing oral sex on me. These episodes always occurred inside of his chambers—sometimes in his office, and sometimes in the reception area or wherever in chambers he could corner me. Preceding the incidents, he would always begin speaking in a vulgar and inappropriate way to me and telling me graphically what he wanted to do to me. Statements of “you have the cutest [breasts],” “let me see those cute [breasts],” “you have the cutest ass,” “I want to [commit oral sex on you],” and “why don't you [commit oral sex on me]” were common to the more severe episodes. During these episodes, I repeatedly told him “no,” “stop,” “stop acting like a pig,” “quit,” “cut this out,” “you/we can't be doing this,” “I don't want to do that/this,” “behave yourself,” and so on and so on. There were times when he would approach me from behind while I was sitting at my desk and working at my computer. He would quickly come up behind me and put his hands over my shoulders and grope me on the outside of my clothes and down my shirt and into my bra.

* * *

During the most severe episode, he pinned me to a chair in his office after pulling my pants and underwear down.²⁵

She also elaborated on Judge Kent's views of his own power:

During my interview for this job and several times subsequent to my being hired, Sam Kent told me that he was the sole person responsible for his personal staff's hiring and firing (his personal staff consisted of me and his two law clerks). He also told me that he was the Government—“I am the Government”; “I'm the Lion King—it's good to be king,” “I'm the Emperor of Galveston,” and “the man wearing the horned hat, guiding the ship.” He warned me of three things which he said would not be tolerated and would be grounds for my/our immediate dismissal: disloyalty to him, “talking out of school,” and by engaging in

²⁵ Statement of Donna Wilkerson, Hearing on the Possible Impeachment of Samuel B. Kent of the Southern District of Texas, House Committee on the Judiciary Impeachment Task Force (June 3, 2009) [hereinafter “Wilkerson Statement”], at 1–3.

behavior which would be an embarrassment to the Court.²⁶

Ms. Wilkerson claimed that she was afraid of speaking out and losing her job, and thus had not been forthright with investigators and law enforcement when initially questioned about Judge Kent's conduct towards her. It was not until her third grand jury appearance that Ms. Wilkerson described the full extent of Judge Kent's non-consensual sexual contact with her.

4. Testimony of Professor Arthur Hellman

Professor Hellman provided expert testimony that, in essence, concluded that Judge Kent's conduct in making false statements to fellow judges (and thereby obstructing justice), as well as abusing his power as a Federal judge to sexually assault women, constituted independent grounds to justify his impeachment and removal from office.

First, Professor Hellman reviewed the history of the phrase "high crimes and misdemeanors" including the views of the Framers, the accepted body of scholarly interpretation, and the House impeachment precedents. He concluded that this phrase generally described acts that constituted an abuse of power, or otherwise generally rendered the judge unfit to hold office—including a judge's exercise of "arbitrary power."²⁷ As but one example, Professor Hellman cited from an influential 19th-century treatise in making that point:

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

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

The premise, then, is that the purpose of impeachment is to remove from office "him who is unworthy to fill it." It follows, I think, that it is a sufficient ground for impeachment of a civil officer—particularly an Article III judge—that he has engaged in behavior that makes him "unworthy to fill" that particular office.²⁸

Professor Hellman concluded that, as a legal matter, there were "two broad (and overlapping) categories of conduct that may justify impeachment. The first is serious abuse of power. The second is conduct that demonstrates that an official is 'unworthy to fill' the office that he holds."²⁹

Professor Hellman likewise concluded that the facts in the record rose to the level necessary to warrant Judge Kent's impeachment. As to Judge Kent's false statements to the Fifth Circuit (the basis

²⁶Id. at 1.

²⁷See Statement of Professor Arthur D. Hellman, Hearing on the Possible Impeachment of Samuel B. Kent of the Southern District of Texas, House Committee on the Judiciary Impeachment Task Force (June 3, 2009), at 13–20 ("abuse of power" discussed at 18–19; "arbitrary power" at 18).

²⁸Id. at 19 (emphasis supplied by Hellman) (quoting William Rawle, *A View of the Constitution of the United States of America*, (2d ed. 1829), at 218 (1970 reprint)).

²⁹Id. at 21–22.

of his criminal conviction), Judge Hellman noted: “False testimony by a Federal judge in a judicial misconduct proceeding falls easily within the realm of ‘high crimes and misdemeanors’ that warrant impeachment.”³⁰

As to Judge Kent’s sexual misconduct towards Ms. McBroom and Ms. Wilkerson, Professor Hellman stated that if the evidence showed that Judge Kent abused his position in committing the acts and otherwise exhibited conduct that demonstrated his unfitness for office, then impeachment would be warranted on the basis of his sexual misconduct. As Professor Hellman stated:

If [Ms. McBroom and Ms. Wilkerson] describe their experiences in the way they did at the sentencing hearing, and if the House credits their testimony, the record will make a strong case for serious abuse of power that does warrant Judge Kent’s impeachment.

* * *

The evidence would then point to the conclusion that Judge Kent relied on his position of authority and control in the Galveston Division of the District Court to coerce employees of that court to engage in sexual acts for his personal gratification—and to remain silent rather than to report his attacks to a higher authority. Such behavior is, in Wooddeson’s words, “official oppression” that “introduce[s] arbitrary power.” It is a high crime and misdemeanor.³¹

Professor Hellman provided the following analogy to support his conclusion why the sexual misconduct would support impeachment:

If Judge Kent had demanded that court employees give him 10 percent of their salaries as a condition of holding their jobs, no one would doubt that he committed an impeachable offense. The sexual coercion described at the sentencing hearing is no less “obnoxious,” and the result should be the same.³²

5. Judge Kent’s Letter

In his letter of June 1, 2009, Judge Kent stated, in pertinent part:

For several years, influenced by misguided emotions that probably stemmed from innate personality flaws exacerbated by alcohol abuse and a series of life tragedies (most notably the emotional horror I endured for years in connection with my first wife, Mary Ann’s slow, excruciating death from brain cancer), I began relating to Mrs. McBroom and Mrs. Wilkerson in inappropriate ways. . . . In doing so, I allowed myself to maintain unrealistic views of how they perceived me and my actions. I sincerely re-

³⁰Id. at 26.

³¹Id. at 28–29 (citation omitted). Richard Wooddeson—the individual quoted by Professor Hellman—was an English historian of the late 18th century, a contemporary of the Framers. Professor Hellman, in his Task Force Statement, described Wooddeson’s writings as having been relied on by the Supreme Court in other contexts associated with Constitutional interpretation.

³²Id. at 31 (internal footnote omitted).

gret that my actions caused them and their families so much emotional distress.³³

C. FACTUAL DEVELOPMENTS SUBSEQUENT TO THE HEARING

1. Obtaining Information Regarding Judge Kent's False Statements to Law Enforcement

Alan Baron, Esq., has interviewed the FBI agent who was in attendance when Judge Kent was interviewed by the FBI on November 30, 2007, and when Judge Kent made statements to the FBI and Department of Justice in a meeting of August 11, 2008, where he attempted to persuade the Department not to seek an indictment of him. In both instances, his testimony was inconsistent with that of Ms. McBroom and Ms. Wilkerson, and misrepresented the nature and duration of his non-consensual sexual contact with both women. Mr. Baron provided a copy of his memorandum describing those interviews to the Task Force.³⁴

2. Prior Statements of Donna Wilkerson

As noted in the discussion of her testimony, Ms. Wilkerson acknowledged that she was not fully forthright with law enforcement when first questioned about Judge Kent's conduct towards her. She provided some explanation for this, describing generally that Judge Kent told her what his story was (namely, a few kisses that stopped when she told him they were unwelcome) as a signal for how she should testify, and otherwise manipulated her by suggesting, prior to her first grand jury appearance, that her appearance might provoke him to commit suicide.³⁵

The prosecutors at sentencing specifically referenced that Ms. Wilkerson had not been truthful in her initial grand jury appearances—a fact they attributed to Judge Kent's attempts to influence her testimony. In the context of a discussion of the applicability of the "obstruction" enhancement under the Sentencing Guidelines, the prosecutor stated:

The defendant in telling [Ms. Wilkerson] that he had—he himself had falsely denied his repeated attacks on her, he was sending a clear and unambiguous statement that she must repeat that lie too. . . . She, in fact, drew from his statements that she was supposed to testify falsely before the grand jury, as well.³⁶

³³ Letter from Judge Samuel B. Kent to Task Force Members, Re: Statement of Judge Samuel B. Kent, Provided to The Task Force to Consider the Possible Impeachment of Judge Samuel B. Kent (June 1, 2009), at 1. He also represented he had no pension or retirement and needed health insurance for his medical and mental health problems. *Id.* at 2.

³⁴ The Task Force also obtained the FBI "302" statements of interviews from the two dates on which Judge Kent met with the FBI and Department of Justice and which detail his effort to mislead investigators during those meetings.

³⁵ Ms. Wilkerson testified:

Before my first grand jury appearance after he returned from administrative leave—20 minutes before my scheduled appearance—he came to my desk and told me, "If anyone from Dr. Hirschfield's office [his psychiatrist] calls, please put them through right away—you know they have me on suicide watch again, right?" He even instructed his law clerk, Carey Worrell, in my presence, to research his life insurance policy to make sure that it did not contain "suicide exclusion" so that if he killed himself, his wife would still be paid the benefits. On another occasion before my last grand jury appearance, he told Ms. Worrell that if I "rolled" on him, it would be all he could take and he would kill himself.

Wilkerson Statement at 7.

³⁶ Sentencing Transcript at 5.

Similarly:

[I] need to point out also that [Ms. Wilkerson] also denied that involvement continuously until the third time she appeared before the grand jury.³⁷

Subsequent to the hearing, the Task Force obtained and reviewed the prior grand jury testimony of Ms. Wilkerson.

D. TASK FORCE MEETING AND INTRODUCTION OF RESOLUTION

On June 9, 2009, the Task Force met and approved a proposed resolution containing four articles of impeachment for recommendation to the Committee. Also at this meeting, four additional documents were submitted into the record. They were:

- 1) The Judgment of Conviction of Judge Kent;³⁸
- 2) Memorandum of Interview signed by Alan Baron, Special Impeachment Counsel to the Task Force, summarizing an interview with FBI Special Agent David Baker;
- 3) Memorandum of Interview signed by Kirsten Konar, Esq., counsel assisting the Task Force, summarizing an interview with Ms. Donna Wilkerson;
- 4) Medical and mental health records of Judge Kent submitted by Ms. Jackson Lee

Later that day, H. Res 520 was introduced by Chairman John Conyers, Jr., along with Ranking Member Lamar Smith, Task Force Chairman Adam Schiff, Task Force Ranking Member Bob Goodlatte, and every other member of the Task Force. The resolution was referred to the Committee.

E. JUDICIAL CONFERENCE CERTIFICATE TRANSMITTED TO HOUSE

By way of a letter dated June 9, 2009, the Judicial Conference of the United States transmitted to Speaker of the House Nancy Pelosi a certificate setting forth its “determination that consideration of impeachment of United States District Judge Samuel B. Kent, of the Southern District of Texas, may be warranted.”³⁹ The Judicial Conference noted, as a basis for its determination:

In sum, Judge Kent has stipulated, as the basis for his plea of guilty, that

- (a) in August 2003 and March 2007, he engaged in non-consensual sexual contact with a person ([Ms. McBroom]) without her permission;
- (b) from 2004 through at least 2005, he engaged in non-consensual sexual contact with a person ([Ms. Wilkerson]) without her permission; and
- (c) in connection with a judicial misconduct complaint against him, he testified falsely before a Fifth Circuit special investigative committee regarding his unwanted, non-consensual sexual contact with [Ms. Wilkerson], by understating the extent of that contact

³⁷ Id. at 10.

³⁸ That document was also made part of the record at the Task Force Hearing of June 3, 2009.

³⁹ A copy of the transmittal letter and Certificate is attached to this Report.

and by falsely stating that it had ended after [Ms. Wilkerson] told him it was unwelcome.⁴⁰

F. FULL COMMITTEE MARKUP ON JUNE 10, 2009

On June 10, 2009, the Committee on the Judiciary voted to consider the four Articles of Impeachment set forth in House Resolution 520. In connection with that Markup, two additional documents were identified and made part of the record:

- 1) Letter from Judge Kent's attorney, Dick DeGuerin to the Committee on the Judiciary (June 9, 2009);
- 2) "Certificate To The Speaker, United States House of Representatives [regarding District Court Judge Samuel B. Kent]," from the Judicial Conference, dated June 9, 2009.

VI. DISCUSSION OF THE ARTICLES OF IMPEACHMENT

Article I charges that Judge Kent "engaged in conduct with respect to employees associated with the court that is incompatible with the trust and confidence placed in him as a judge." In particular, Article I charges that "[o]n one or more occasions between 2003 and 2007, Judge Kent sexually assaulted Cathy McBroom, by touching her private areas directly and through her clothing against her will and by attempting to cause her to engage in a sexual act with him." Ms. McBroom testified to facts consistent with this Article, and Judge Kent, in his signed "Factual Basis for Plea," admitted: "In August 2003 and March 2007, the defendant engaged in non-consensual sexual contact with [Ms. McBroom] without her permission."⁴¹ The Article thus provides: "Wherefore, Judge Samuel B. Kent is guilty of high crimes and misdemeanors and should be removed from office."

Article II charges that Judge Kent "engaged in conduct with respect to employees associated with the court that is incompatible with the trust and confidence placed in him as a judge," in particular, that "[o]n one or more occasions between 2001 and 2007, Judge Kent sexually assaulted Donna Wilkerson, by touching her in her private areas against her will and by attempting to cause her to engage in a sexual act with him." Ms. Wilkerson testified to facts consistent with this Article, and Judge Kent, in his signed "Factual Basis for Plea," admitted: "From 2004 through at least 2005, the defendant engaged in non-consensual sexual contact with [Ms. Wilkerson] without her permission."⁴² The "Factual Basis" also sets forth Judge Kent's admissions that he "had engaged in repeated non-consensual sexual contact with [Ms. Wilkerson] without her permission[.]" and that he "continued his non-consensual contacts even after she asked him to stop."⁴³ The Article thus con-

⁴⁰ Factual Basis for Plea at 2. 28 U.S.C. §§ 351 et seq sets forth the procedures for the judicial branch to refer concerns regarding judges that might warrant impeachment to the House of Representatives. 28 U.S.C. § 355(b)(1) provides:

In general.—If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary.

⁴¹ Factual Basis for Plea at 2–3.

⁴² *Id.*

⁴³ *Id.*

cludes: “Wherefore, Judge Samuel B. Kent is guilty of high crimes and misdemeanors and should be removed from office.”

Article III charges that on June 8, 2007, when Judge Kent appeared before the Special Investigative Committee appointed by the Fifth Circuit to investigate Ms. McBroom’s complaint, he made false statements concerning his non-consensual sexual contacts with Ms. Wilkerson. Judge Kent has admitted this during the February 2009 plea proceeding, and specifically admitted in the “Factual Basis” the substance of the false statements, as follows:

10. [On June 8, 2007], [t]he defendant falsely testified regarding his unwanted sexual contact with [Ms. Wilkerson] by stating to the [Fifth Circuit Special Investigative] Committee that the extent of his non-consensual contact with [Ms. Wilkerson] was one kiss, when in fact and as he knew the defendant had engaged in repeated non-consensual sexual contact with [Ms. Wilkerson] without her permission.
11. The defendant also falsely testified regarding his unwanted sexual contact with [Ms. Wilkerson] by stating to the Committee that when told by [Ms. Wilkerson] that his advances were unwelcome, no further contact occurred, when in fact and as he knew the defendant continued his non-consensual contacts even after she asked him to stop.⁴⁴

Article III goes on to note that Judge Kent was indicted, pled guilty, and was sentenced to imprisonment for the felony of obstruction of justice (in violation of title 18, United States Code, section 1512(c)(2)) arising from that conduct, and that the sentencing judge described the conduct as “a stain on the justice system itself.” The Article thus concludes: “Wherefore, Judge Samuel B. Kent is guilty of high crimes and misdemeanors and should be removed from office.”

Article IV charges that on or about November 30, 2007, Judge Kent made material false and misleading statements about the nature and extent of his non-consensual sexual contact with Ms. McBroom and Ms. Wilkerson to agents of the Federal Bureau of Investigation, and that on or about August 11, 2008, he made similar material false and misleading statements to agents of the Federal Bureau of Investigation and representatives of the Department of Justice. These statements were described by the prosecutor at Judge Kent’s sentencing, and were confirmed by a Federal Bureau of Investigation Special Agent during the Impeachment Task Force investigation. The Article thus concludes: “Wherefore, Judge Samuel B. Kent is guilty of high crimes and misdemeanors and should be removed from office.”

VII. CONCLUSION

The following language from the House Report accompanying the Judge Walter L. Nixon, Jr., articles of impeachment also aptly sets out the core principles underlying and justifying the Impeachment Resolution against Judge Kent:

⁴⁴Id.

The [House's] role is not to punish [Judge Kent], but simply to determine whether articles of impeachment should be brought. Under our Constitution, the American people must look to the Congress to protect them from persons unfit to hold high office because of serious misconduct that has violated the public trust. Where, as here, the evidence overwhelmingly establishes that a federal judge has committed impeachable offenses, our duty requires us to bring articles of impeachment and to try him before the United States Senate.⁴⁵

VIII. COMMITTEE CONSIDERATION

On June 10, 2009, the Committee met in open session and ordered the resolution, H. Res. 520, favorably reported without amendment by a rollcall vote of 29 to 0, a quorum being present.

IX. COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes took place during the Committee's consideration of H. Res. 520:

1. Impeachment Article 1. Approved 30 to 0.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Gonzalez	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		

⁴⁵Nixon Impeachment Report, at 33–34.

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	30	0	

2. Impeachment Article 2. Approved 28 to 0.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin			
Mr. Gonzalez	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	28	0	

3. Impeachment Article 3. Approved 30 to 0.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Gonzalez	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	30	0	

4. Impeachment Article 4. Approved 28 to 0, with one Member passing.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			Pass
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Quigley	X		
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Gonzalez	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	28	0	

5. Motion to report H. Res 520 favorably. Passed 29 to 0.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Gonzalez	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Ms. Wasserman Schultz			
Mr. Maffei	X		
Mr. Smith, Ranking Member	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Lungren			
Mr. Issa	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Rooney	X		
Mr. Harper			
Total	29	0	

X. LETTER FROM JUDICIAL CONFERENCE
REGARDING JUDGE KENT



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

June 9, 2009

Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

Dear Madam Speaker:

At a special session held today, the Judicial Conference of the United States, by its members present, determined unanimously to transmit to the House of Representatives, under 28 U.S.C. § 355(b)(1)-(2), the enclosed Certificate and attachments in a proceeding under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. One member was not present and did not participate in the Conference's deliberations on this matter.

Please be advised that the Certificate is a "determination" within the meaning of the following provision in 28 U.S.C § 355(b)(1): "Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination." The Judicial Conference will make no public statement on this matter, but has transmitted the Certificate and attachments to the subject judge and to the Chief Judge of the Fifth Circuit Court of Appeals in her capacity as chair of the Judicial Council of the Fifth Circuit.

Sincerely,

A handwritten signature in cursive script that reads "James C. Duff".

James C. Duff
Secretary

Enclosures

RECEIVED
JUN 10 2009
U.S. HOUSE OF REPRESENTATIVES
CLERK'S OFFICE



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

CERTIFICATE

TO THE SPEAKER, UNITED STATES HOUSE OF REPRESENTATIVES:

Pursuant to 28 U.S.C. § 355(b), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge Samuel B. Kent, of the Southern District of Texas, may be warranted. Having been informed that Judge Kent was convicted of a felony, and that the judgment has become final by the exhaustion or termination of all rights of direct judicial review, the Conference, under Rule 1 of its *Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer Has Engaged in Conduct that Might Constitute Grounds for Impeachment*, accepts the judgment as conclusive and has determined in its discretion to issue this certificate.

The Conference's determination in this matter is based on

(1) the court record in Case No. 4:08-cr-00596, *United States v. Samuel B. Kent*, filed in the Southern District of Texas at Houston, which reflects Judge Kent's February 23, 2009, plea of guilty to obstruction of justice in violation of 18 U.S.C. § 1512(c)(2); the resulting judgment of conviction, dated May 11, 2009, in which Judge Kent is sentenced to a term of 33 months' imprisonment; and the absence of any timely notice of appeal of that judgment; and

(2) the certification of the Fifth Circuit Judicial Council, premised on the judgment of conviction in said case, that Judge Kent has engaged in "conduct which constitutes one or more grounds for impeachment under Article II of the Constitution."

This certificate is transmitted with the certification of the Fifth Circuit Judicial Council and relevant portions of the court record.

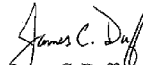
TO THE SPEAKER, UNITED STATES HOUSE OF REPRESENTATIVES
Page 2

In sum, Judge Kent has stipulated, as the basis for his plea of guilty, that

- (a) in August 2003 and March 2007, he engaged in non-consensual sexual contact with a person ("Person A") without her permission;
- (b) from 2004 through at least 2005, he engaged in non-consensual sexual contact with a person ("Person B") without her permission; and
- (c) in connection with a judicial misconduct complaint against him, he testified falsely before a Fifth Circuit special investigative committee regarding his unwanted, non-consensual sexual contact with Person B, by understating the extent of that contact and by falsely stating that it had ended after Person B told him it was unwelcome.

Judge Kent's conduct and felony conviction, as described above, have brought disrepute to the Judiciary.

Executed this 9th day of June, 2009.


James C. Duff
Secretary

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U. S. Circuit Judge; Carolyn Dineen King, U. S. Circuit Judge; E. Grady Jolly, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Edith Brown Clement, U. S. Circuit Judge; Jennifer Walker Elrod, U. S. Circuit Judge; Leslie H. Southwick, U. S. Circuit Judge; Eldon E. Fallon, U. S. District Judge; James J. Brady, U. S. District Judge; Robert G. James, U. S. District Judge; Neal B. Biggers, Jr., U. S. District Judge; Louis G. Guirola, Jr., U. S. District Judge; Sam R. Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; David Folsom, U.S. District Judge; Orlando L. Garcia, U. S. District Judge

DOCKET NO. 07-05-351-0086

IN RE: Samuel B. Kent
United States District Judge
Southern District of Texas

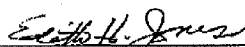
Pursuant to Title 28, Section 354 (b)(2)(A), the Judicial Council of the Fifth Circuit, based on the court record in Case No. 4:08-cr-00596, *United States of America v. Samuel B. Kent*, filed in the Southern District of Texas at Houston, and the subsequent lapse of fifteen days after sentencing without a notice of appeal or any post-judgment motion being filed, determines that Samuel B. Kent, a United States District Judge for the Southern District of Texas, has pled guilty to obstruction of justice in violation of 18 U.S.C. § 1512(c)(2) and has thus

by his own admission engaged in conduct which constitutes one or more grounds for impeachment under Article II of the Constitution, and so certifies its determination to the Judicial Conference of the United States.

The Judicial Council urges the Judicial Conference of the United States to take expeditious action on this matter pursuant to 28 U.S.C. § 355(b).

The foregoing events and certification, together with the facts that Judge Kent has voluntarily moved out of his chambers and ceased handling cases, moot this Council's reopening of the disciplinary proceeding against Judge Samuel B. Kent.**

FOR THE COUNCIL.



Chief Judge

Dated: May 27, 2009

*United States Circuit Judge Catharina Haynes stood recused and did not participate in this Judicial Council decision.

**Copies of this Council certification and resolution are being contemporaneously delivered to the complainant and to Judge Kent pursuant to 28 U.S.C. § 354(b)(3).