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

UNITED STATES OF AMERICA	**:**	**Crim. No. 4:16-CR-232-KGB**
v.	**:**	**Hon. Kristine G. Baker**
O. JOSEPH BOECKMANN	**:**	

GOVERNMENT'S SENTENCING MEMORANDUM

The defendant O. Joseph Boeckmann is a predator who used his position as a judge to gain access to vulnerable young men in order to satisfy his own prurient desires. The defendant did this for years. His actions impacted dozens if not hundreds of young men, he caused unknown financial losses to various cities and counties, and he tampered with witnesses in an attempt to keep his reprehensible conduct secret. His sentence must reflect the gravity of his criminal conduct. Accordingly, for the reasons discussed below, the United States submits that a sentence of incarceration of 37 months—at the top of the advisory Guidelines range—is sufficient, but not greater than necessary, to accomplish the goals of the § 3553(a) factors. The fact that the defendant managed, by concealing his criminal acts and obstructing justice, to escape detection and prosecution until he reached an advanced age does not mitigate his criminal activity or counsel in favor of a downward departure or variance.

I. FACTUAL BACKGROUND

The general factual background is outlined in Paragraphs 8 through 19 of the Presentence Investigation Report ("PSR"). The United States requests that the Court adopt the findings of the PSR in those paragraphs and incorporates those facts by reference.

The PSR contains descriptions of the defendant's scheme in action with regard to certain individuals who the government was able to identify during the course of its investigation. The

evidence suggests, however, that this is only a small subset of the total number of individuals whose cases the defendant dismissed for his own personal benefit. By extension, the loss described in the PSR may only represent a fraction of the actual financial harm the defendant caused to the impacted cities, counties, courts, and the state. At sentencing, the government intends to introduce evidence and testimony regarding the additional human and financial toll of the defendant's actions. This evidence falls into two categories: relevant historical information and information regarding the scope of the defendant's scheme.

A. Historical Information

The defendant's pattern of abusing power and preying upon vulnerable victims began long before he acceded to the bench. At sentencing, the United States intends to call FBI Special Agent Lennie Johnson, who will testify about two previous FBI investigations in the mid-1990s, when the defendant was a part-time deputy prosecuting attorney in Cross County. SA Johnson will testify that these investigations revealed numerous allegations that the defendant was using his position as a deputy prosecuting attorney to dismiss charges or drop whole cases in exchange for bogus "community service" and overtly sexual acts from individuals who the defendant was supposed to be prosecuting.

At sentencing, SA Johnson will testify to the following: In or around early 1995, District Attorney Fletcher Long hired the defendant as a part-time deputy prosecuting attorney in Cross County (the same county where the defendant would later be elected as District Court Judge).[1] In early 1996, the FBI received an allegation that "Boekmann [sic] was having young boys pose nude in obscene positions so Boekmann [sic] could take photographs of them in exchange for reduced bond and charges or nol-pros charges." During its investigation, the FBI identified and

[1] The defendant previously worked as a prosecuting attorney in Cross County under District Attorney David Burnett from 1976 to 1977, and under District Attorney Gene Raff from 1978 to 1989.

interviewed at least seven young men, each of whom had received case-related benefits from the defendant in exchange for allowing the defendant to photograph them (1) clothed while they were bending over in the defendant's office or doing "community service" or (2) naked while they were bending over or exposing their genitalia. The FBI also obtained contemporaneous records from the court and prosecutor's office that corroborated these accounts. In addition, the FBI obtained photocopies of photographs that were found in the defendant's office that show a young man in various poses: looking at the camera; bending over while clothed; bending over while nude; and exposing his penis.

The similarity between the accounts given by the young men who the FBI interviewed in the previous case and the young men interviewed as part of the instant case are striking and demonstrate the defendant's clear and continuous pattern of abuse dating back at least 20 years.

Person K. In or around 1995, "Person K"[2] was arrested for driving while intoxicated. Boeckmann was the prosecutor on Person K's case and told Person K that Person K could resolve the case through community service, but that Boeckmann would have to take pictures to prove that Person K did community service. According to Person K, Boeckmann told Person K that he would take pictures of Person K while Person K was "bent over to pick up cans on the side of the road." Person K complied with Boeckmann's request and the charges were lowered.

Person L. In or around February 1995, "Person L" was arrested for third degree assault and posted a $150 bond. Boeckmann was the prosecutor on Person L's case, which was dismissed because the victim decided not to press charges. When Person L asked Boeckmann to

[2] As with the individuals in the Indictment, the United States asks that any public filing reference the named individuals in the previous case by their anonymized "Person" identifier. The United States has provided a "key" to the probation office and defense counsel, which lists the name and "Person" identifier for each of the individuals identified here and in the Indictment. Prior to sentencing, the United States attempted to contact Persons K through Q to determine whether they would like to submit a statement as part of sentencing. Investigators were only able to reach one of these men. Unfortunately, he was not in good enough health to participate in sentencing.

return the $150 bond, Boeckmann told Person L to meet him at Boeckmann's office. In his office, Boeckmann told Person L that he did not usually return bond money and said, "I'm going to have to have a few pictures of something to show the judge that you did some community service." Boeckmann then took five or six pictures of Person L from behind as Person L bent over, after which Boeckmann wrote Person L a check for $150.

Person M. In or around June 1995, "Person M" was arrested for burglary and theft of property. Person M, who was 19 years old at the time, asked Boeckmann to recommend a probationary sentence. Boeckmann had Person M come back to Boeckmann's office, where Boeckmann instructed Person M to bend over and touch his toes. Boeckmann told Person M that this was a form of drug test, because all of the blood would rush to Person M's head. According to Person M, he could hear Boeckmann taking photographs while Person M was bent over. Person M ultimately received a five-year suspended sentence.

Person N. In or around July 1995, "Person N" was arrested for possession of a controlled substance, speeding, and not having insurance. According to Person N, Boeckmann came to the jail and took him back to Boeckmann's office. Once there, Boeckmann asked Person N a series of interrogatory-style questions including questions about Person N's tattoos. Boeckmann then had Person N remove his shirt in order for Boeckmann to take pictures of Person N's tattoos "for the record." At some point during this initial meeting, Boeckmann told Person N that he could plead to a misdemeanor and have the remaining charges dropped if Person N completed "community service." The following day, Boeckmann took Person N to one of Boeckmann's properties in order to complete the so-called "community service." According to Person N, this entailed picking up several soda cans that appeared to have been "scattered around."

Boeckmann took photographs of Person N picking up the cans, which Boeckmann again said were, "for the record."

Person O. In or around November 1995, "Person O" was arrested for driving without a license, with no insurance, and with a defective tail light. Boeckmann told Person O that the case could be resolved through community service. According to Person O, his community service consisted of emptying the trash cans in Boeckmann's office and the adjoining rooms. According to Person O, the charges against him were later nol-prossed.

Person P. In or around November 1995, "Person P" was arrested for driving while intoxicated. According to Person P, Boeckmann told Person P that there is "always that crack where that DWI gets lost," and then arranged for Person P to come to Boeckmann's office after hours. In Boeckmann's office, Boeckmann took pictures of Person P picking up cans, which Boeckmann said was to document Person P doing "public service work." Boeckmann then had Person P to remove his pants and took pictures of Person P from behind bending over as well as frontal nudes. According to Person P, Boeckmann then used his position as the prosecuting attorney to have the DWI charges dropped.

Person Q. In or around 1995 or 1996, "Person Q" was arrested for driving while intoxicated. Boeckmann told Person Q to come to Boeckmann's office after work hours to discuss the case. During that meeting, Boeckmann told Person Q he "was going to have to do some community service." Boeckmann then threw some soda cans on the floor of the office and took pictures of Person Q bending over and picking the cans off the floor. A couple of weeks later, while Person Q's case was still pending, Boeckmann stopped by Person Q's residence and told Person Q they were going for a ride. Boeckmann and Person Q had a number of beers while driving and then parked in a field. At that point, Boeckmann told Person Q to pull down his

pants so that Boeckmann could take pictures of Person Q's genitalia. According to Person Q, "he felt pressured because he had to go to court about this DWI and he might not get a light sentence if he did not pull his pants down and allow Boeckmann to take photographs." According to Person Q, he "got out" of the DWI charges because of Boeckmann.

The U.S. Attorney's Office ultimately declined prosecution of these matters with the understanding that the defendant would resign from his position as a deputy prosecuting attorney, which he appears to have done. Nonetheless, a few years later the defendant ran for and was elected as a district court judge and undertook the same course of conduct, but from a different vantage point in the courtroom.

B. The Scope of the Defendant's Scheme

In addition to the historical information, the United States will also have SA Johnson testify with regard to his review of certain district court records for the City of Wynne. This testimony will provide the court with some sense of the schemes' scope: how many cases the defendant was dismissing; how many vulnerable young men were impacted; and how much money was lost. SA Johnson's testimony will be limited to his review of the court records for calendar year 2014. This review showed that in 2014 alone, the defendant dismissed 66 cases involving white or Hispanic men between the ages of 15 and 35 based on their completion of "community service." Importantly, these numbers relate to only one year out of nearly seven that the defendant worked as a district court judge before being removed from office

SA Johnson will also testify regarding certain additional evidence demonstrating the scope of the defendant's scheme, which was gathered during the search of the defendant's residence in September 2015. During that search, investigators seized at least forty-six print-outs

and thousands of digital images of young men who the defendant had photographed.[3] Despite various attempts—including the use of FBI facial-recognition software—Investigators were only able to identify a portion of the men in these photographs, most of whom are referenced in the Indictment. For instance, there are at least 16 young men whose pictures appear among the forty-six print-outs located under the defendant's bed. Of these, investigators were only able to positively identify three individuals—Person A, Person B, and Person C. Similarly, investigators were only able to identify a few of the numerous individuals who appear in the seized digital images.

C. Victim Statements

The United States also anticipates that a small number of the individuals identified in the Indictment may appear in order to make statements to the Court and that others will submit letters to be read into the record or provided to the Court.

II. GUIDELINES CALCULATION

Although the Guidelines are advisory, sentencing courts "must consult those Guidelines and take them into account when sentencing." *United States v. Booker*, 543 U.S. 220, 261 (2005). Thus, at sentencing a court "must first calculate the Guidelines range." *Nelson v. United States*, 555 U.S. 350, 351 (2009). Here, the revised PSR found a base offense level of 14, a two-level enhancement because the offense involved more than one bribe, a four-level enhancement because the offense involved an elected public official, and a two-level enhancement for obstruction of justice. PSR at ¶¶ 24-26, 29. This comports with the parties' stipulated guidelines range. *See* Doc. No. 41 at ¶¶ 5(A)-(D). The United States respectfully requests that the Court

[3] Based on the testimony of Person J, who said that he had on a number of occasions deleted files from the defendant's computer, it is likely that the United States is only in possession of a portion of the total number of photographs that the defendant took over the years.

adopt the findings of the PSR with respect to the base offense level and enhancements. PSR at ¶¶ 24-30.

As provided in the defendant's plea agreement, the United States also believes that the defendant is entitled to a three-level reduction for timely acceptance of responsibility. Doc. No. 41 at ¶5(E). Therefore, the parties' stipulated guidelines range is 30 to 37 months. *Id.* at ¶ 5(G). All references in this document to the "guidelines sentence" are to this range. The United States recognizes that Probation has taken the view that the defendant is not entitled to a reduction for acceptance of responsibility based on the defendant's affirmative denial of relevant conduct related to Person D. PSR ¶ 22. The United States maintains that the defendant has accepted responsibility.[4] However, the United States intends to call FBI Special Agent Mike Wood who was present at the initial interview of Person D and will testify regarding the contested issue.[5]

III. SECTION 3553(a) FACTORS

After calculating the Guidelines, a sentencing court must then consider that Guidelines range, as well as the sentencing factors set forth in § 3553(a), and determine a sentence that is appropriate and reasonable for the individual defendant. *Nelson*, 555 U.S. at 351; *see also United States v. Chase*, 560 F.3d 828, 830 (8th Cir. 2009). Of the enumerated factors in § 3553(a), of particular pertinence here are the "nature and circumstances of the offense and the history and characteristics of the defendant," the need for the sentence to "reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense,"

[4] The United States reserves the right to amend this position, if appropriate, consistent with the terms of the defendant's plea agreement. *See* Doc. No. 41 at ¶ 5(E).

[5] SA Wood will testify that Person D initially lied to investigators about the nature of his interactions with the defendant, but after being confronted with relevant evidence admitted to the facts described in the PSR. *See* PSR at ¶ 13. SA Wood will testify that Person D said he had lied in part because the defendant had offered to pay Person D money if he provided false testimony to investigators. SA Wood will also testify that he has reviewed Person D's grand jury transcript and that the Person D's sworn testimony is consistent with the account he gave during his initial interview.

and the need for the sentence to "afford adequate deterrence to criminal conduct." These factors support a sentence at the top of the Guidelines.

The United States expects the defendant to request a downward departure or a downward variance to account for his age and health. *See* Doc. No. 41 at ¶ 5(H) (allowing the defendant to request a departure, variance, or both based on the conditions identified U.S.S.G. § 5H1.1 and 5H1.4). "[F]actors such as a defendant's age, medical condition, prior military service, family obligations, entrepreneurial spirit, etc., can form the bases for a variance even though they would not justify a departure." *Chase*, 560 F.3d at 830–831 (collecting cases); *see also* U.S.S.G. § 5(H)1. According to the Guidelines, "[g]enerally, the most appropriate use of specific offender characteristics is to consider them not as a reason for a sentence *outside* the applicable guideline range but for other reasons, such as determining the sentence *within* the applicable guideline range . . . ." U.S.S.G. § 5H, Introductory Comment (emphasis added). *See Rita v. United States*, 551 U.S. 338, 358-59 (2007) (noting that, although it was brief, the record was sufficient to show the district court understood the arguments for a downward departure, but found them insufficient to merit a reduced sentence). *See Chase*, 560 F.3d at 830-832 (discussing the differences between downward departures and variances and the necessary findings that must be made in denying each).

The defendant's age and allegedly deteriorating health are factors this Court must consider, and in some cases such considerations would warrant a more lenient sentence. But not in this case. The defendant abused his position of trust to prey on young men in a manner carefully crafted to take advantage of his many victims' vulnerabilities while concealing his scheme. He did this for years. The abuse only stopped because the defendant was caught. Once he was caught, the defendant tried to pay witnesses to provide false testimony to law

enforcement. Now he would like to avoid full responsibility for his actions because of his age and his reportedly diminishing health. Effectively, he wants sympathy for the fact that he was able to carry out his scheme for so long. He wants credit for having avoided detection. He wants special consideration for some of the very things that make his actions so egregious. He should not receive it. To grant him this request would be tantamount to giving the defendant credit for three of the most insidious qualities of his conduct: concealment, obstruction, and the duration of his criminal activity.

Courts have routinely rejected defendants' requests for a downward variance or departure, and this Court should do so here. *See United States v. Stong*, 773 F.3d 920, 927 (8th Cir. 2014) (upholding district court's denial of a downward variance on the basis of the defendant's age and health); *United States v. Bordeaux*, 674 F.3d 1006, 1009 (8th Cir. 2012) (upholding district court in finding that the defendant's terminal cancer was not of the "extraordinary nature necessary to merit a downward departure"); *United States v. Statman*, 604 F.3d 529, 534–35 (8th Cir. 2010) (district court sufficiently considered the defendant's health and age in determining that a guidelines sentence was reasonable); *see also United States v. Corrine Brown*, 16-CR-93, Doc. No. 235, Sentencing Order (M.D. Fl. December 4, 2017) ("While I do not relish the prospect of incarcerating Ms. Brown at her relatively advanced age, she has given the Court no other option because she chose to commit these serious crimes at a relatively advanced age."). Rather, for the reasons discussed below, the United States submits that a sentence of 37 months is sufficient, but not greater than necessary, to account for the § 3553(a) factors in this case.

A. <u>A sentence of 37 months is necessary based on the nature, circumstances, and seriousness of the defendant's fraud scheme.</u>

The defendant's crimes are unquestionably serious. The defendant was a district court judge charged with upholding the Constitution of the State of Arkansas. The people who appeared in his court were members of the local community as well as people passing through Cross County. These people expected the fair administration of justice. They expected one fair system to apply to everyone. Instead, everyone was treated unfairly. Everyone suffered.

On the one hand, young men unwittingly agreed to resolve their matters through "community service," not knowing what truly lay in store of them. These were young men who were already in vulnerable positions. For many this was their first encounter with the justice system. They were tricked into coming to the defendant's house. The defendant preyed on and benefited from the power differential. He knew that these men were not in a position to argue with him or question his requests. He dangled their case dismissals in front of them while making them do his bidding. He posed them in embarrassing positions; positions that he found sexually gratifying. And when he sensed an opportunity to ask for more, he would take it—using the men's powerlessness and poor socioeconomic circumstances to create a personal collection of explicit, exploitative images.

But these young men were not the only ones who suffered as a result of the defendant's illegal actions. Community service was essentially not available to women, older men, or most men of color. These people were impacted as well. Indeed, when the Judicial Discipline and Disability Commission ("JDDC") conducted its first interviews with staff from the Wynne courthouse, they raised the community service as an issue of gender discrimination—women were forced to pay their fines, while certain men were allowed to do community service. This unequal availability of alternative case resolution further undermined the judicial system in Cross County. In every respect, the defendant's actions constitute a serious violation of the social

contract. No one in his courtroom was treated fairly. He eroded the community's trust in the fair administration of justice. To restore this trust, his punishment must reflect the seriousness of his crime. A sentence of 37 months, at the top of the Guidelines, is appropriate in this regard.

Furthermore, because the defendant's actions caused financial harm to the communities in which he worked, his sentence should also include a financial element. By falsely dismissing cases, the defendant deprived the cities and counties of needed funds to which they were entitled, funds that would have been used for the public benefit. A fine of $50,000, in the middle of the Guidelines, is therefore appropriate.

B. A sentence of 37 months is also necessary based on the nature, circumstances, and seriousness of the defendant's witness tampering.

The defendant's punishment must also account for the nature, circumstances, and seriousness of the second crime to which he pleaded guilty, witness tampering. This crime is inherently serious, but particularly so given that the defendant was a judge and a member of the bar. The defendant knew he was under investigation, he knew Person J had information relevant to that investigation, and he knew Person J had provided truthful testimony to the JDDC. Knowing all of that, the defendant—who was still serving as a district judge—had his associate contact Person J in order to convince Person J to recant the truthful story he provided to the JDDC and lie to investigators. The defendant admits that he expected his associate to pay Person J to change his testimony. This alone is undeniably serious. But the defendant's associate took it one step farther. He threatened Person J in order to convince Person J to take the defendant's hush money. Even if this was not the defendant's intention, the defendant is nonetheless responsible for his associate's actions. This is particularly true because the defendant, as a former-prosecutor and judge, was aware that criminal schemes can easily grow.

Furthermore, this was not the only time the defendant attempted to tamper with a witness in this case. In April 2016, long after the federal investigation had begun, the defendant offered to pay Person D to provide false testimony to investigators. This shows that the defendant's attempt to bribe Person J was not the result of a brief or momentary lapse in judgment. He knew what he was doing, and he did it at least two times. Under these circumstances, the already serious crime of witness tampering is particularly egregious. This too weighs heavily in favor of a sentence of 37 months, at the top of the Guidelines range.

C. A sentence of 37 months is necessary based on the history and characteristics of the defendant.

The defendant's crimes must also be viewed in light of his historical conduct, which in this case includes the defendant's abuse of his position as a deputy prosecuting attorney. What this shows is the defendant had already been engaging in this same pattern of behavior for years prior to running for and being elected as district judge. Moreover, it draws into question his entire motive for seeking his position as a district judge. Indeed, given the evidence at hand, it can be fairly inferred that the defendant's goal in running for his judicial position was to once again have access to young men in vulnerable situations. As such, whereas years of legitimate public service would normally weigh in a defendant's favor when considering the individual's history and characteristics, in this case the defendant's public employment was a self-serving aspect of the criminal scheme and weighs in favor of a sentence at the top of the guidelines.

In addition to calling into question the motive behind his public employment, the defendant's previous conduct and his actions thereafter speak to his knowledge of the wrongfulness of his behavior and his lack of remorse. The defendant was forced to resign from his position as a prosecuting attorney because he was abusing his position for his own sexual gratification. The defendant then had the gall to run for election as a district court judge *in the*

same county. After he was elected, the defendant almost immediately began abusing his new position. And when he was caught for a second time, he attempted to bribe the witnesses against him. That is the true picture of the defendant's history and characteristics. It is more than reasonable that he spend 37 months in prison as a result of his actions.

D. A sentence of 37 months is necessary to provide adequate deterrence.

The defendant's sentence must provide adequate individual and general deterrence. The defendant has been under home confinement since he was indicted in September 2016. Presumably, the defendant will claim that he is no longer a threat to his community. This is not necessarily the case. First of all, but for the investigation by the JDDC, there is no reason to believe that the defendant would not still be serving as a District Court judge or that he would not still be engaged in his criminal scheme. Second, as of April 2016, the defendant was taking nude photographs of Person D and offering Person D money to lie to investigators. This shows that the defendant was actively engaged in criminal obstruction of justice up until just months before he was indicted and removed from his community. The fact is that many of the individuals who were impacted by the defendant's scheme still live in or around Cross County and many of them are still in vulnerable positions due to drug use, financial problems, or criminal conduct. The defendant's sentence should serve as a personal deterrent to prevent him from contacting these individuals or other vulnerable young men. A sentence of 37 months imprisonment is appropriate for that purpose.

A sentence of 37 month is also appropriate and necessary to serve as a general deterrent to other judges and individuals in positions of power who would use that power for their personal benefit. The fact that the defendant could brazenly accede to the bench after escaping criminal liability for his conduct as a prosecutor is indicative of the need for a strong message that such

abuses of power will end not only with professional ruin but also with imprisonment. The defendant's victims went unheard for decades due to their vulnerable positions. Few of them will speak at sentencing, mostly for the obvious reason that they do not want their identities as victims of the defendant to become public. A strong message by the Court is needed on their behalf and on behalf of the community as a whole, and that message can only be fully and effectively communicated with an appropriate sentence of incarceration.

As prosecutors, the undersigned attorneys are acutely aware that there are few times in a person's life when they are as vulnerable as when they are facing criminal charges. This is particularly true for individuals, like many of those described in the Indictment, who are already in a precarious situation due to their financial or social status. The defendant clearly recognized the unique power that he held over these individuals. He recognized it, and he exploited it. The defendant's sentence must serve as a warning to others who may be similarly inclined.

IV. RESTITUTION

In light of the issues discussed in Paragraph 20 of the PSR, although restitution in this case is mandatory, to determine the complex issues of fact related to the victims' losses would "complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process." 18 U.S.C. § 3663A(c)(3)(B). Accordingly, the United States is not seeking restitution in this matter.[6]

However, in light of the harm caused by his offenses, the defendant should be ordered to pay a fine within the $10,000 to $100,000 range called for in the Guidelines. In light of the defendant's financial position, and with due consideration to his age and employment status, the

[6] Forfeiture does not apply in this case because although the defendant caused loss to the various entities listed in the Indictment, he did not personally receive or obtain illegal proceeds. *See Honeycutt v. United States*, 137 S. Ct. 1626 (2017).

United States submits that a fair fine for the defendant would be $50,000. This amount is sufficient to account for the damage he has done and the fact that he will not be required to pay restitution, but not so severe as to be unduly punitive.

V. CONCLUSION

For the reasons stated, the United States requests that the Court impose a term of incarceration of 37 months, three years of supervised release, and a fine of $50,000.

Respectfully submitted,

ANNALOU TIROL
Acting Chief, Public Integrity Section
Criminal Division
United States Department of Justice

/s/ Peter Halpern
Peter Halpern
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Trial Attorneys

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorney of record for the defendant.

Dated: February 14, 2018

/s/ Peter Halpern
Peter Halpern
Trial Attorney