

A black and white photograph of the Golden Gate Bridge in San Francisco, viewed from a waterfront perspective. In the foreground, a heavy metal chain is attached to a post on a concrete pier, extending across the water. The bridge's towers and suspension cables are visible in the background against a hazy sky.

WINNING STRATEGIES SEMINAR

**“The Art of the Sentencing Memorandum” a.k.a.
“Strategies to Overcome Probation’s Sentence”**

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“The Art of the Sentencing Memorandum” a.k.a. “Strategies to Overcome Probation’s Sentence”

“An unfortunate byproduct of the guideline system has been the diminution of passionate sentencing advocacy by defense and government attorneys. In its place a hyper-technical accounting practice has arisen focusing battles on subsections and application notes, straining out issues such as minor versus minimal participant, organized versus manager, and the like. I often wonder what a criminal defendant and his family, the victim, or the public thinks when exposed to such legal proceedings, as if there were not already enough lawyer jokes.”

Honorable Robert Conrad Jr, Chief United States District Judge, Western District of North Carolina. Testimony before the United States Sentencing Commission in Atlanta, Georgia, on February 11, 1009

“The mandatory nature of the guidelines turned judges with I think years and years of experience in observing the human condition and determining a just sentence into glorified accountants and bookkeepers. During sentencings on many occasions I found myself apologizing to those in the audience observing the proceedings over the seemingly impersonal process in which we were engaged. It seemed that we were arguing over levels, points, and categories, rather than about lives, families, and loss of both the defendants and the victims who were in our courtroom.”

Honorable B. Lynn Winmill, Chief United States District Judge for the District of Idaho. Testimony before the United States Sentencing Commission in Stanford, California on May 28, 2009.

I. Some General Principles For Sentencing Memorandum Writing¹

A. Your Report Does Not Have to Look or Read like an "Official" Court Document or a Welfare Department Case Form

1. Remember, the goal is persuasion. Reports that look and sound like every other bureaucratic document that gets thrown into a case file do a poor job of persuading the court to treat our clients fairly. Make your report look like something that will persuade a judge.
2. There is no such thing as a "required" form for a defense sentencing report. The fact that your office has "always" used a particular form is not a good reason for continuing to use it if it is not persuading judges to impose the sentence you want.

B. Use Your Sentencing Report to Tell a Persuasive Story

1. People, even judges, are persuaded by a good story. Your chances of getting what you want are increased if your sentencing report tells a persuasive story about your client and the case that lead the judge to believe that it is doing the right thing by accepting your sentence recommendation.
2. When you write your report, consciously think about what makes a good story. Focus on these elements before you begin to write:
 - a. Who are the characters in your story, and how will each character be portrayed?
 - b. Where will your story be set? Usually there will be more than one setting, such as: your client's childhood home; his cell in jail; the place where the crime took place; the mental institution where your client spent most of his life; etc.
 - c. In what sequence will you tell your story? What is the beginning, where does it move to after the beginning, and how does it end?

¹ These materials were developed by Ira Mickenberg, Esq., 6 Saratoga Circle, Saratoga Springs, NY 12866, (518) 583-6730, iramick@worldnet.att.net. They were subsequently modified by Jason Hawkins.

3. Use your theory of defense paragraph as a guide for writing your report.

II. Some General Principles For Persuasive Writing

A. Remember that good legal writing has two goals:

1. Persuasion
2. Clarity

B. Persuasive Writing

1. Know what your theory of defense is for sentencing. A sentencing theory of defense may be defined as:

A paragraph of four or five sentences that summarizes the factual, emotional, and legal reasons why the court should impose a favorable sentence. It tells your client's story of mitigation, rehabilitation, or reduced culpability, and it resolves any problems or questions the judge may have about imposing the sentence you want.

2. Having an sentencing theory of defense will allow you to consciously decide what is important to your case. This is crucial to writing your brief, because you can choose your words intelligently only if you know what you are trying to accomplish with them. For example:

- a. What facts are you trying to emphasize?
- b. What facts are you trying to downplay?
- c. What emotions are you trying to elicit in the reader?
 - 1). Disbelief.
 - 2). Frustration over an injustice.
 - 3). Anger.
 - 4). Sympathy.

3. Write about facts. In most cases, there is little debate over the law. The real issue is whether the facts of your case fit within the relevant legal boundaries.
 - a. The facts about your client's life, and the facts about the crime for which he has been convicted should be used to persuade, not just provide background information. Select and emphasize those facts which advance your argument.
 - b. Use facts to create the mood in which your brief will be read. For example, If you want the reader to feel sympathy for your client, select facts and use language which will make him or her appear sympathetic.
 - c. If you discuss sociological principles, be sure that you quickly follow up by explaining what about the facts of your case makes those principles relevant.
4. Remember principles of primacy and recency. People are most persuaded by what they hear first and what they hear most recently. Applying this to persuasive writing means that:
 - a. You must put the best stuff first. This is so essential that it must be done, even if it means rearranging the order or form you usually follow when writing a report. Don't save the best material for later, or for a "surprise." If you wait, there is a good chance that either the judge won't get around to reading it, or that he or she will have already decided the issue against you after reading the weaker material you led with.
 - b. End on a high note -- even if it means looping back to the strong information you started the report with.
5. Use active, not passive language.

Active: She went to the office at 9:00 A.M.
Passive: She had gone to the office at 9:00 A.M.

Active: He took the money from the drawer.
Passive: He had taken the money from the drawer.
6. Use graphic language to support your case.

Dull: The officers forcibly entered the room.
Graphic: The police smashed through the door.

Dull: She threatened appellant with a gun.

Graphic: She held a gun to appellant's head.

or: She stuck a gun in appellant's face.

BUT: Be sure that you only use graphic language where it will help you. Don't use it to enhance the prosecution's case.

7. Use dull, conclusory language when describing facts you want to minimize.

ex: Dull (but good): Appellant held a gun.

Graphic: Appellant brandished a 9mm automatic.

Dull (but good): Appellant was found with the complainant's personal property.

Graphic: Appellant was grasping the victim's wedding ring and life savings.

8. Avoid "social worker-talk" and "cop-talk."

- a. Using institutional language legitimizes the behavior of the police and the court system. This should be avoided in your writing, because the default position of those systems is harshness in sentencing.

- b. Using institutional language suggests that everything that happened in your case was normal and routine. Your job, however is to create exactly the opposite feeling -- to convince the court that your case is not routine, and should be treated differently from the many defendants who get maximum sentences.

- c. Remember that institutional language is designed to give the impression that your client is a bad person.

ex: Cop-talk: They apprehended the alleged perpetrator.

Normal speech: They arrested somebody.

Cop-talk: They proceeded to the vehicle.

Normal speech: They went to the car.

9. Use language that humanizes your client.

- a. Refer to your client by his or her name.

- b. Don't always refer to your client as "defendant."

- c. Try to include factual details which make your client seem to be a decent person.

ex: Instead of: Ms. Smith was on her way to work.

Humanize: Ms. Smith was walking to her job at Ace Motors, where she had been a salesperson for three years.

Instead of: Mr. Jones went home.

Humanize: Mr. Jones went to his apartment on Laurel Road, where he lived with his wife and three children.

- 10. Don't obviously and unrealistically sugar-coat things.
 - a. You don't have to minimize the seriousness of the crime unless the facts support your claim.
 - b. Avoid unrealistic and unbelievable claims that your client is a wonderful person.
 - c. Avoid assertions that are so trivial that the court will automatically dismiss them.

C. Clear Writing

- 1. In general, shorter is better.
 - a. Short sentences enable you to communicate in a way that is easier for most people to understand.
 - b. If a sentence is too convoluted or difficult to understand, try to divide it into two or three separate sentences.
 - c. Short paragraphs allow the reader to absorb information in amounts they can handle.
- 2. Decide how you are going to organize your story.
 - a. Every story can be told from various perspectives. For example:
 - 1). Chronologically, according to the events of the incident.
 - 2). Chronologically, according to the events of your client's life.

- 3). From the perspective of individual characters.
 - b. Select an organizational form which best compliments your sentencing theory of defense.
 - c. Once you have chosen a perspective from which to tell your story, stick with it. Try not to flip back and forth between other organizational forms.
3. Avoid meaningless language. Many words have specific meanings, but are instinctively used by sentencing advocates and lawyers as filler, when they have nothing of substance to say. Some of these words are:
Clearly, Mere, Obviously, Generally, Certainly
4. Be sure to do reality testing on everything you write. Before filing something, always ask yourself, "Would someone outside the criminal justice system understand and believe this?"

Whenever possible, have someone from outside the criminal justice system read your report. Ask him or her questions about the clarity and organization of your facts and arguments -- then listen to the answers and make changes accordingly.

A Sample of a Persuasive Sentencing Memorandum

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** Mark's guideline range was 70-87 months, but the Court varied downward and sentenced him to 30 months imprisonment **

**United States District Court for the Northern District of Texas
Dallas Division**

United States of America,
Plaintiff,

v.

No. 3:05-CR-220

Mark Manners,
Defendant.

Defendant's Sentencing Memorandum

1. Introduction

Q. Now, once - - do you consider yourself a pretty good talker, persuading people to do things?

A. Yes, I'm a very good talker. I have persuaded people to do things that were wrong. Absolutely.²

* * * * *

Q. This very first time that he's approaching you, you disclosed to Mr. Manners how is it that the business work, right?

A. In a round about way, yes.

Q. But you told him flat out this is a fraud, right?

A. I told Mr. Manners when he participated as a borrower on a house, that's how we originally started, that even though he would be putting some information in there that was not true, and that he would be signing as owner occupied, that as long as the payments are made, no harm, no foul. That's what I told Mr. Manners.

² [Volume 4, Transcript of Jury Trial, p. 167]

Q. So you disclosed to him that this is going to be something fraudulent that you were going to be doing, right?

A. It's something that he wouldn't do at his own bank.

Q. Did you tell him this was a fraud?

A. I told him that as long as we made the mortgage payments - -

Q. Sir, let me see if you listen to my question.

A. I'm listening, sir.

Q. Did you tell him that this was a fraud? Yes or no.

A. No, I didn't use those words.³

These answers were elicited at trial from Charles Burgess on both direct and cross-examination. These statements of Charles Burgess shed some light on the question that the Court will likely be pondering prior to passing sentence - How does someone like Mark Manners, a person of steady character who served with distinction in the military and worked in the White House, end up in federal court convicted in a mortgage fraud scheme? I submit to the Court that the answer is Charles Burgess - a person with Svengali like ability to convince others to commit acts which are completely and totally out of character.

³ [Volume 6, Transcript of Jury Trial, pp. 26-27].

2. The Law

The Court must still consider the sentencing guidelines, but under United States v. Booker the Guidelines are “merely one sentencing factor among many, and the calculated guideline range must be considered in conjunction with the other § 3553(a) factors.”⁴ The guidelines do not have “quasi-mandatory status.”⁵ The federal sentencing statute requires a “sentence sufficient, but not greater than necessary” to meet certain goals, including consideration of “(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant ... (3) the kinds of sentences available ... (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.”

To comply with the Fifth Circuit’s instructions in United States v. Mares, the court, if it elects to impose a non-guideline sentence,

should carefully articulate the reasons [the court] concludes that the sentence [it] has selected is appropriate for that defendant. These reasons should be fact specific and include,

⁴ United States v. Reinhart, 442 F.3d 857, 864 (5th Cir. 2006), cert. denied, 127 S.Ct. 131 (2006) (citing United States v. Booker, 125 S.Ct. at 756-757).

⁵ United States v. Reinhart, 442 F.3d at 864.

for example, aggravating or mitigating circumstances relating to personal characteristics of the defendant, his offense conduct, his criminal history, relevant conduct or other facts specific to the case at hand which led the court to conclude that the sentence imposed was fair and reasonable.⁶

3. Applying the Factors of 18 U.S.C. § 3553(a) to Mark Manners

A. The History and Characteristics of the Defendant

1). Mark Manners's Childhood

Mark Manners was born in 1969 in Worcester, Massachusetts to Robert and Laura Manners. Mark's parents divorced when he was very young and he lived with and was raised primarily by his mother. Mark grew up in a household with no constant father figure and his father died when Mark was twelve years old.

Mark's mother had a history of severe heart problems which rendered her disabled. Growing up Mark and his mother's only source of income were the paltry Social Security disability benefits she received. Mark and his mother lived on the financial fringes of life and received little financial support from his father. As a result, Mark grew up in the inner city projects of Worcester.

With little money to live on, at the age of fourteen Mark went to work during the summers seeking to subsidize the disability benefits his mother was receiving. A year later, at the age of fifteen, Mark's mother passed away from a heart attack. Having no contact with any aunts or uncles, Mark was shuttled off to live with his maternal

⁶ United States v. Mares, 402 F.3d 511, 519 (5th Cir.), cert. denied, 126 S.Ct. 43 (2005).

grandmother, Laura DuVarney, in West Boylston, Massachusetts.

2). *Education*

With a less than ideal home life, Mark faced an uphill battle at school and did not distinguish himself. He graduated from West Boylston High School in June 1987 ranked 57th in a class of 83. However, Mark did have an interest in computers and began taking courses at Worcester Junior College. In April 1989 Mark graduated from Worcester Junior College with an 3.13 grade point average and an associate degree in computers and information systems.

3). *Military Service*

With few job prospects in Worcester, Mark enlisted in the United States Air Force on March 9, 1990. Mark flourished in the Air Force and had a distinguished military career receiving two commendation medals, multiple service awards, an award for outstanding unit, an honor flight award, and a presidential service award. While in the Air Force Mark was able to continue his education and received an associate degree in applied science for computer science technology on March 29, 1993.

Mark's progression in the Air Force ultimately landed him a prestigious assignment with the communications agency unit at the White House which required a top security clearance. Mark's duties included providing communications and computer support for the President, Vice President and upper staff. Mark's assignment entailed traveling to sites where the President would be speaking and set up communications.

After eight years of service to his country, Mark retired from the Air Force and was honorably discharged on September 4, 1998. He rose from being classified as an E-1 basic airman upon entering the service to an E-5 staff sergeant at the time of his discharge.

4). *Employment*

Following his eight years of service in the Air Force, Mark held various jobs in the boom and bust computer industry. From 1998 until May 2000, Mark performed contract IT work for Decisions Consultants Incorporated (DCI) in Addison, Texas. DCI assigned him to work at Nortel Networks. Mark performed so well that Nortel ultimately hired Mark away from DCI. He worked in the information technology section at Nortel Networks from May 22, 2000, until August 27, 2001, when the economic bust in the information technology sector caused Nortel to lay off Mark Manners along with 30,000 of its other employees.

After the layoff from Nortel, Mark Manners worked for a brief period of time at Concentrx doing contract work on their web-based applications. From January to November 2002, Mark worked in software development for aircraft repair scheduling at Omega Airlines software.

It was in November 2002 that Mark fell under the spell of Charles Burgess. It was then that for a period of 10 months Mark Manners's life spun wildly out of control and brings him before this Court today.

B. The Nature and Circumstances of the Offense

As the Court presided over the ten (10) day jury trial I will not rehash in detail those facts presented to the jury, but I believe it is safe to say that this has been an extraordinarily unique case. What we know from the testimony is that Charles Burgess is an unrepentant liar and able to persuade people to do things that are wrong.⁷ It was Charles Burgess, not Mark Manners, who recruited normal law-abiding people to be straw purchasers of these properties.⁸ There was testimony that Charles Burgess, Mark Manners and un-indicted co-conspirator Katy Wilson⁹ would then create false documents to be used in support of obtaining the loans for the houses.¹⁰ Finally, there was testimony that without the cooperation of Andrew Siebert, the whole scheme would have not been possible.¹¹

One of the factors the Court can consider in passing sentence is Mark Manners's role in the offense.¹² While according to Charles Burgess, Mark Manners participated extensively in the creation of documents used to obtain the loans, it is also clear that he was substantially less culpable than Charles Burgess. Mark Manners knew nothing of the

⁷ [Volume 4, Transcript of Jury Trial, p. 167]

⁸ [Volume 4, Transcript of Jury Trial, p. 167].

⁹ Katy Wilson was given immunity from prosecution in this case. [Volume 8, Transcript of Jury Trial, p. 200].

¹⁰ [Volume 4, Transcript of Jury Trial, p. 177].

¹¹ [Volume 4, Transcript of Jury Trial, p. 177].

¹² See also USSG § 3B1.2 .

mortgage industry or how the process worked. Indeed he was duped by Charles Burgess to believe that there was no harm in what was taking place as long as the borrowers kept paying on their mortgages.¹³ Mark Manners was not a necessary component of the fraud as evidenced by the fact that Charles Burgess continued to commit fraud long after Mark Manners had left the company. It certainly appears that Katy Wilson was equally as active as Mark Manners and Charles Burgess were in the creation of these documents and Katy Wilson received immunity. At worst, Mark Manners was a minor participant in this criminal activity.

What we also know is that Mark Manners eventually disassociated himself from Charles Burgess. As stated earlier, after Mark Manners's disassociated himself from Charles Burgess, Burgess continued his fraudulent practices. Indeed, years after Mark Manners extricated himself from Charles Burgess's clutches, Charles Burgess engaged in the exact same fraud with regard to the Oxford Estate properties - conduct which the Government now admits Charles Burgess falsely denied on the witness stand.¹⁴

Mark Manners has no prior arrests or convictions and, according to the testimony of his friend and former co-worker on his behalf, he has led an exemplary life, except for his involvement with Charles Burgess. Indeed, the testimony at trial by Michael Price, a man who has known Mark Manners since his days in the Air Force, confirms that it

¹³ [Volume 6, Transcript of Jury Trial, pp. 26-27].

¹⁴ [Government's Response to Defendants' Motion for New Trial, p. 4].

would be totally out of character for Mr. Manners to be involved in any kind of fraud.¹⁵

While Mark Manners might not qualify for a formal downward departure for aberrant behavior under the guidelines,¹⁶ it is still a factor the Court can consider under 18 U.S.C. § 3553(a). In committing the offense the only significant planning was conducted by Charles Burgess. As stated previously, prior to meeting Charles Burgess, Mark Manners had no knowledge of and was never involved in the mortgage industry. Furthermore, it is clear from everything presented to date that this marked deviation by Mark Manners from what was an otherwise law-abiding life.

C. The Need for the Sentence Imposed—

- 1). *To Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense*

A sentence with minimal prison time and well below the suggested guideline range in this case will reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. This is especially so in light of the fact that Katy Wilson received immunity from prosecution for performing the same conduct which Mark Manners allegedly participated in. The government cannot reasonably argue that immunity for Katy Wilson is appropriate while a sentence of 70 months is appropriate for Mark Manners. Such a stance does not promote respect for the law, it only promotes respect for the awesome power the Government has in deciding who is

¹⁵ [Volume 8, Transcript of Jury Trial, p. 276].

¹⁶ See USSG § 5K2.20.

going to be charged and who gets to walk free.

2). *To Afford Adequate Deterrence to Criminal Conduct*

After November 1, 2001, the guideline ranges for defendants convicted of serious fraud and related white-collar crimes were substantially increased. Since then the media has reported on lengthy sentences received by a number of white-collar defendants. The public in general, and potential white-collar criminals in particular, have become aware of the substantial risk of imprisonment for lengthy periods if they commit crimes of this nature.

In cases where a corporate officer enriches himself at the expense of the corporation or where his conduct resulted in the demise of the corporation, a lengthy sentence of the magnitude contemplated under the guidelines might be necessary to provide general deterrence. In this case, however, when Mark Manners's conduct is compared to others, a lengthy sentence is not necessary for that purpose.

3). *To Protect the Public from Further Crimes by Mr. Manners*

A Guideline sentence of 70-87 months is wholly unnecessary to protect the public from future crimes, especially in light of the fact that the Mark Manners has zero criminal history points. He thus poses the lowest possible risk of recidivism, and creates the lowest possible need to protect the citizenry under 18 U.S.C. §§3553(a)(2)(B) and 3553(a)(2)(C).¹⁷ Indeed, as an offender without a single criminal history point, he

¹⁷ See U.S. Sentencing Commission, *A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factor Score*, at 5 (2005) (“scoring at the minimum

presents only a little more than 10% risk of recidivism the first 24 months after release; by contrast, the other offenders in his criminal history category (those with one criminal history point) have twice his recidivism rate.¹⁸ Other than the wildly variant recidivism statistics among offenders in Category Six, the increase in recidivism rates after offenders acquire their first criminal history point represents the single steepest increase in recidivism accompanying the addition of a single criminal history point.¹⁹ It thus cannot be said that a Guideline sentence, which assumes a rough equivalence between his risk of recidivism and that of offenders with a criminal history point, adequately accounts for his extremely low risk of recidivism.

4). *To Provide the Mark Manners with Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner*

Mark Manners is not in need of any particular educational or vocational training. Indeed he has the two associate degrees in the valuable field of computer science. If anything a lengthy prison sentence will put him further technologically behind in the changing field of computers and make it even more difficult to find a job when he is released from prison.

Furthermore, Mark Manners is not in need of any medical care or drug

value of zero on the CHC indicates a very low recidivism risk.”)

¹⁸ See U.S. Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at 7 (2004).

¹⁹ See U.S. Sentencing Commission, *Measuring Recidivism*, at 7 (2004).

treatment. Any sentence the Court considers should take into account the fact that Mark Manners will not qualify for the Residential Drug Abuse Program because he has never abused drugs or alcohol. As such, Mark Manners is not eligible for a one year reduction off of his sentence. So, in essence, Mark Manners is facing greater punishment than a person in the exact same circumstances who uses illegal drugs. Such a result is untenable.



5).

The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct

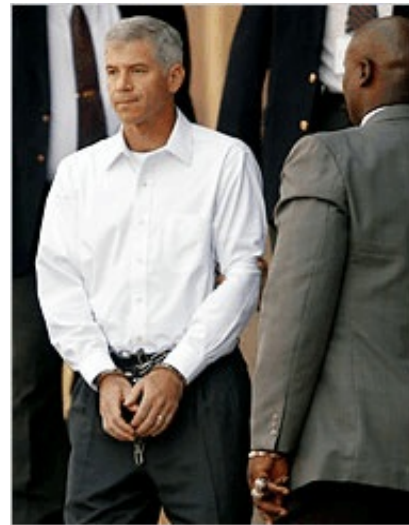
One of the more difficult and relevant factors that this Court has to consider is the need to avoid unwarranted sentencing disparities. Here is a man with

no criminal history who, according to the PSR, is looking at a Sentencing Guideline range of 70-87 months based upon a loss amount of \$1.8 million.

If one compares this case to the Enron collapse, a prison sentence of 70–87 months is inexplicable. Enron was the nation’s seventh-largest corporation, with a market value in excess of \$68 billion. **More than 5,000 jobs and \$800 million in pensions were lost** when the company filed the second-largest bankruptcy in U.S. history. On April 21, 2005, two former Merrill Lynch & Co. executives, Daniel Bayly and James Brown were sentenced to prison for helping Enron Corp. manipulate earnings. After a jury convicted them of disguising a \$7 million loan to Enron as

a sale of three Nigerian energy barges to Merrill Lynch, Bayly, received 30 months imprisonment. James Brown, 52, who led the strategic asset lease and finance group, was sentenced to 46 months and a year of supervision.²⁰ Their convictions have been overturned. On September 15, 2006, Judge Werlein sentenced Timothy Despain, a former assistant treasurer at Enron, to four years probation and a \$10,000 fine for his role in deceiving credit rating agencies while working at the collapsed energy giant.

“Timothy DeSpain, 41, could have faced up to five years in prison but prosecutors said he was very helpful in their efforts to build other Enron cases and seemed genuinely contrite.”²¹ On September 18, 2006, David Delaney, former CEO of Enron Energy Services was sentenced to 2.5 years after selling more than \$4 million in Enron stock in 2000 and 2001 when he knew he and



others were hiding the extent of the company's financial chaos from investors.²² Most recently, Andrew Fastow, the former chief financial officer of Enron, whose billion dollar schemes to defraud made him a symbol of corporate corruption, was sentenced to 72 months by U.S. District Judge Sim Lake.

While not discounting the seriousness of the offense, in this particular case

²⁰ <http://www.bloomberg.com/apps/news?pid=10000087&sid=aIU60hm5CZ1A>

²¹ <http://www.chron.com/disp/story.mpl/front/4189635.html>

²² <http://www.chron.com/disp/story.mpl/front/4195055.html>

none of the companies which are listed as victims have declared bankruptcy. Nor am I aware that anyone's job was lost as a result of the fraud committed in the case. A guideline range sentence of 70-87 months is particularly egregious in this case when one looks at the sentences handed down and agreed to by prosecutors 240 miles to the South in one of the largest frauds ever committed.

6). *The Need to Provide Restitution to the Victims*

The fact of the matter is that it will be difficult for the victims in this case to ever recover any significant restitution. Moreover, due to the potential length of the sentence Charles Burgess faces, it is unlikely that he will ever pay a dime of restitution. The one person that has a substantial chance to pay some restitution is Mark Manners. Were the Court to fashion a sentence well below the suggested guideline range of 70-87 months, the better chance that Mark Manners will have to find a job because his computer skills will not have deteriorated. Thus he will provide the victims with best chance of receiving some minimal restitution.

Respectfully submitted this 26th day of September, 2007.

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Certificate of Service

I, Jason D. Hawkins, hereby certify that on September 26, 2007, a copy of the foregoing motion was hand delivered to the United States Attorney's Office, attention William L. Martin, at 1100 Commerce Street, 3rd Floor, Dallas, Texas, 75202.

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Dear Mr.:

As you know your sentencing is currently scheduled for before Judge. I have been trying hard to think about a way to better present you to the Court so that it will be more lenient in sentencing than it otherwise might be inclined to be. As you well know, your criminal history category played a dramatic role in determining what your sentence was the last time. We need to try and express why the Judge should overlook your past actions and be willing to give you a break.

I think in general that it is best for the Judge to hear from the person who is being sentenced so I am trying a new tactic. What I want for you to do is answer the following questions on the enclosed paper and return it to me as soon as possible. The questions are the following:

- 1). What are your best accomplishments?
- 2). What are your best attributes?
- 3). What have you done that you are most proud of?
- 4). What are your short term goals?
- 5). What are your long term goals?
- 6). Why are you a better person now?
- 7). How does giving you leniency reflect the seriousness of your offense?
- 8). How would leniency promote your respect for the law?
- 9). How will giving you leniency promote other people's respect for the law?
- 10). What is a just punishment for your offense and why?
- 11). Will giving you leniency cause other people not to break the law as you did?

- 12). Why will giving you leniency protect the public from further crimes by you?
- 13). Do you need educational or vocational training?
- 14). How would leniency provide you educational or vocational training?
- 15). Do you need medical care? How would leniency provide you with medical care?
- 16). Why should the Judge give YOU a break?

Please remember that you are writing these answers to the Judge who will be sentencing you. If you deny responsibility for any of the facts related to your arrest and conviction it will not help you and I will not submit it. What I plan to do is submit your appropriate answers to the Court in a pleading that I file prior to the sentencing.

Sincerely,

Jason D. Hawkins
Assistant Federal Public Defender

cc:

Sentencing Resources

Some of the following are available at the Office of Defender Services Training Branch website, <http://www.fd.org>

** David Hemingway and Janet Hinton, Departures and Variances, September 1, 2009, http://www.fd.org/pdf_lib/DeparturesandVariances2apt.jgh.pdf **

Sherry Allison (R&WS) and James Langell (AFPD), Analyzing Presentence Reports and Common Sentencing Issues in Illegal Reentry Cases, available at http://www.fd.org/pdf_lib/psr%20illegal%20reentry.pdf

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