UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 11 CR 401
	)	Hon. John W. Darrah
EUGEGE KLEIN	)	

GOVERNMENT'S (I) MEMORANDUM IN SUPPORT OF PRESENTENCE INVESTIGATION REPORT CALCULATIONS; AND (II) SENTENCING MEMORANDUM

The UNITED STATES OF AMERICA, by ZACHARY T. FARDON, United States Attorney for the Northern District of Illinois, hereby submits (i) a memorandum in support of the presentence investigation report sentencing calculations; and (ii) a sentencing memorandum concerning defendant Eugene Klein. The government respectfully represents as follows:

MEMORANDUM IN SUPPORT OF PRESENTENCE INVESTIGATION REPORT CALCULATIONS

I. The Presentence Investigation Report Correctly Calculates the Loss Amount.

A. Background

1. The Defendant's Circumvention of the SAM and the Plan to Steal Calabrese's Violin.

The defendant was charged in an two-count indictment with one count of conspiring to defraud the United States, in violation of Title 18, United States Code, Section 371 (Count One); and one count of attempting to take action with respect to property for the purpose of preventing the government from taking custody of such

property, in violation of Title 18, United States Code, Section 2232(a) and 2 (Count Two).

The charges spring from the defendant's relationship with mob hitman and federal inmate Frank Calabrese, Sr.[1] Due to Calabrese's proclivity for violence and a threat to a federal prosecutor, the Attorney General imposed Special Administrative Measures ("SAM") pursuant to federal regulation 28 C.F.R. § 501.3 upon Calabrese beginning in November 2008, and the SAM continued in effect throughout 2011. Pursuant to the SAM, Calabrese's communications were limited to immediate family members. All of Calabrese's communications with immediate family members were monitored by federal law enforcement.

Defendant Klein was employed by the Federal Bureau of Prisons as a chaplain at the United States Medical Center for Federal Prisoners in Springfield, Missouri (the "prison"). In or around March 2009, Calabrese was designated to serve a life sentence at the prison. Because of his employment as chaplain, Klein was allowed to meet with Calabrese on a regular basis to provide religious ministry.

Calabrese and defendant Klein were both advised of the imposition of the SAM upon Calabrese and both understood that they prohibited Klein from passing any information or messages to and from Calabrese either orally or in writing. Defendant Klein was also aware that Individual A and Individual B, two of Calabrese's associates, were not immediate family members of Calabrese, and Klein knew the SAM prohibited

1 Unless otherwise specified, references herein to "Calabrese" are to Frank Calabrese, Sr.

him from passing any messages between Calabrese on the one hand and Individual A and Individual B on the other.

Sometime in early March 2011, Calabrese asked defendant Klein to contact Individual A, Calabrese's friend in Chicago, Illinois. At first, defendant Klein refused but then asked Calabrese what he wanted defendant Klein to tell his friend. At that point, knowing that the SAM prohibited the passing of any messages to and from Calabrese, Calabrese and Klein agreed that Klein would contact Calabrese's associate, Individual A, for the purpose of passing messages back and forth between Calabrese and Individual A. Specifically, Calabrese provided Klein with a series of questions to ask Individual A about a house located in Williams Bay, Wisconsin, that had formerly belonged to Calabrese and had been seized by the government for sale in order to satisfy Calabrese's restitution obligations to the families of his murder victims. After receiving these questions from Calabrese, Klein contacted Individual A via a telephone number provided to him by Calabrese and Klein asked Individual A the questions Calabrese had provided him. Individual A stated there was no way they could get into the house in Wisconsin. Individual A then stated that maybe they could get together and talk about it someday.

Klein thereafter met with Calabrese at the prison and informed Calabrese of the response Klein had received from Individual A. Thereafter, Calabrese provided Klein with a letter that included directions on how to locate a violin hidden in the house in Williams Bay, Wisconsin. Calabrese provided this letter to Klein by concealing it within religious reading material and passing it to Klein through a slot in the door to

Calabrese's prison cell. The letter began with the words "Things to ask [Individual A] and [Individual B]. When they out by the house up north that is for sale." In addition to providing instructions on how to locate the violin and a plan to obtain entry to the residence in order to take the violin, the letter also included personal instructions and messages Klein was to give to Individual A and Individual B. Defendant Klein was told by Calabrese that the violin hidden in Calabrese's residence had belonged to Liberace and was worth millions of dollars. Klein knew hundreds of thousands of dollars and valuables had been recovered from Calabrese's other home in an earlier search by law enforcement.

On or about April 3, 2011, Klein traveled to Barrington, Illinois. Upon his arrival in Barrington, Klein met with Individual A, had dinner with Individual A, and orally disclosed the portion of the letter concerning the violin. Thereafter, the defendant stayed at Individual A's residence.

After his arrival in Illinois, the defendant, Individual A and Individual B took additional steps to recover what they believed was a valuable violin hidden in Calabrese's former residence in Williams Bay, Wisconsin. Klein admitted in his confession on April 8, 2011, that he, Individual A and Individual B devised a plan to recover the violin mentioned in Calabrese's letter when Klein met with Individual A and Individual B in Illinois. Specifically, Klein confessed that the three men had planned to arrange for an appointment to look at the Williams Bay residence (which had been put up for sale by the government) by posing as buyers of the residence. Klein explained that once inside (as suggested by Calabrese's note), Individual B was to

distract the realtor while Klein and Individual A looked for the violin. Furthermore, Klein admitted that he, Individual A and Individual B discussed putting the violin up for sale anonymously, and confessed that he planned to use the money to hire Calabrese a new attorney and keep the remaining money from the sale for his personal use. Klein also said that he understood that Calabrese wanted him and Individual A to have the money generated from the sale of the violin, not the government. Klein also admitted in his statement on April 21, 2011, to law enforcement that Individual A had told Klein that, based on a television program Individual A had seen on the Discovery Channel, Individual A believed that the violin could be worth as much as $26 million. Faced with the prospect of a multi-million dollar payday, Klein admitted calling the real estate agent hired by the government to sell the house, in an attempt to gain entry and search for the violin. (Phone records confirm that Klein used a telephone number associated with Individual B to place this call.) It was only then that Klein was informed by the real estate agent that the house was already under contract and that he realized he would not be able to gain entry through this subterfuge. Klein then returned to Missouri.

2. The Defendant's Plea and Guidelines Calculations.

On February 11, 2015, the defendant pleaded guilty to Count One of the indictment, which charged him with conspiring to defraud the United States, by obstructing and impeding the administration and enforcement of the SAM.

Guideline 2C1.1, the guideline both parties agree applies to the offense of conviction, requires the Court to take into account "the value of anything obtained or to

be obtained" by the defendant, "or the loss of the government from the offense, whichever is greatest." The government and the United States Probation Office both concluded that Klein's offense level should be enhanced by 16 points because he intended to cause a loss of at least $1 million to the government through the theft and sale of the violin. This is a conservative figure based on what Klein thought the violin he was trying to steal was worth.

The defendant argues that his effort to seize the violin is not relevant conduct, and even if it was, that the Court should not consider the intended loss arising from this conduct. For the reasons discussed below, the defendant is wrong on both counts.

B. Defendant Klein's Effort to Seize the Violin is Relevant Conduct to the Offense of Conviction.

Relevant conduct is taken into account in determining the applicable sentencing guidelines. USSG § 1B1.3. Relevant conduct includes all acts "that were part of the same course of conduct or common scheme or plan as the offense of conviction." *Id.* The Seventh Circuit has explained that in order for conduct to be part of a common scheme or plan, the conduct must be "substantially connected . . . by at least one common factor, such as common victims, common accomplices, common purpose, or similar *modus operandi*." *United States v. Baines*, 777 F.3d 959, 963 (7th Cir. 2015). To be part of the same course of conduct, offenses must be part of a "single episode, spree or ongoing series of offenses." *United States v. Zehm*, 217 F.3d 506, 511 (7th Cir. 2000). Courts assessing whether offenses are part of a course of conduct focus on whether the offenses were similar, regular, and close in time. *Id.*

Either standard is easily satisfied in this case. First, similar parties were involved in the effort to violate the SAM and in the effort to obtain the violin from Calabrese's residence. Klein and Calabrese were involved in the commission of both criminal acts, and Individual A was both the recipient of Calabrese's messages and assisted Klein in formulating a plan to enter the Calabrese residence to steal the violin. Second, the victim of both offenses was the same: The United States was identified as the victim of Klein's effort to circumvent the SAM, and was also the intended victim of the plan to steal the violin. Third, the offenses occurred contemporaneously, and in the same geographic areas. Fourth, the two offenses shared a common purpose: Klein circumvented the SAM as a means of advancing his and Calabrese's plan to seize the violin from Calabrese's residence. This Court should therefore find that Klein's effort to seize the violin constitutes relevant conduct.[2] The government respectfully requests that the Court explicitly identify these factors in its decision. *See United States v. Duarte*, 950 F.2d 1255, 1263 (7th Cir. 1991) (noting district court must make of record factors that support finding of relevant conduct).

The defendant asserts that there isn't a sufficient connection between Klein's violation of the SAM and his efforts to seize the violin. PSR Obj. at 3.[3] But as

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2 Further confirming the fact that the two offenses constitute part of a common scheme or plan is the fact that the defendant never objected to their joinder prior to the trial date. See Fed. R. Crim. P. 8(a) (permitting joinder of offenses "based on the same act or transaction, or are connected or constitute part of a common scheme or plan.").

3 References to the presentence investigation report appear as "PSR at ___." References to the Government's Version of the Offense appear as "Gov't Version at ___." References to the defendant's objection to the presentence investigation report appear as "PSR Obj. at ___." References to the defendant's sentencing memorandum

discussed above, there is an obvious and close connection between the two offenses. After all, the violation of the SAM was a means to further Klein's effort to seize the violin. Count One of the indictment specifies that Klein was given messages by Calabrese to pass to Individual A for the specific purpose of formulating a plan to seize the violin. Indictment at 6-7. Klein met with Individual A and Individual B for the purpose of passing messages from Calabrese, and Klein also planned the seizure of the violin with Individual A and Individual B upon his arrival in Illinois.

The defendant cites *United States v. Seals*, 813 F.3d 1038 (7th Cir. 2016), in support of his claim that Klein's efforts to seize the violin do not constitute relevant conduct, but the *Seals* case is not in the same ballpark as this one. Defendant Seals was convicted of a bank robbery that occurred on February 14, 2013. *Id.* at 1041. More than a month later, on March 20, 2013, after attempting to execute a traffic stop on a vehicle, the police conducted a high-speed chase, which ended when the vehicle crashed. *Id.* Two unknown individuals fled the vehicle (which had a gun inside), while a third individual (who was not Seals) remained behind. *Id.* The police did not identify the two individuals who fled the vehicle, though they found Seals' identification within the car. *Id.* At sentencing, the government tried to hold Seals accountable for the high-speed chase and the gun found within the vehicle as relevant conduct to the bank robbery, even though there was no demonstrated connection between the robbery and the high-speed chase that occurred one month later. On appeal, the Seventh Circuit reversed because the district court had made no findings that the bank robbery

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appear as "Def. Memo at __."

that occurred a month earlier was in fact connected to the behavior underlying the two sentencing enhancements—the possession of a firearm and the reckless flight during the car chase. *Id.* at 1046-47. Moreover, the district court failed to even find that Seals actively participated in the car chase that occurred one month after the robbery. *Id.*

The peculiar facts of *Seals* demonstrate why it is totally irrelevant. Klein was involved in the circumvention of the SAM; he passed questions given to him by Calabrese to Individual A for the purpose of formulating a plan to recover Calabrese's violin; he traveled to Illinois in order to steal the violin; he met with Individual A and Individual B upon his arrival and shared the contents of Calabrese's letter with them (which included the location of the violin and a plan to distract the realtor); and he formulated a plan to steal the violin with Individual A and Individual B, as suggested by Calabrese. His participation in the relevant conduct at issue and its connection to the offense of conviction was direct and undeniable; the relevant conduct was closely connected in space and time; the participants and victim were the same; and both offenses shared a common purpose.

C. The Presentence Investigation Report Correctly Used Intended Loss to Determine the Loss Amount.

The defendant also argues that the intended loss amount should not be so high because Calabrese's violin may have been stolen before Klein ventured up to Chicago to steal it. PSR Obj. at 4. Alternatively, the defendant also suggests that the violin might not have been as valuable as he supposed it was. *Id.*

This argument simply ignores the rules for calculating intended loss. Loss is calculated by taking the greater of actual loss or intended loss. USSG § 2B1.1 (application note 3(A)). Intended loss means the pecuniary harm the defendant purposely sought to inflict, and it includes pecuniary harm that "would have been impossible or unlikely to occur." *Id.* For purposes of calculating the loss amount under the guidelines, it does not matter whether the violin had already been removed, or was not as valuable as Klein supposed it was. Indeed, as the Seventh Circuit recently explained, "'intended loss analysis, as the name suggests, turns upon how much loss the defendant actually intended to impose' on the victim, regardless of whether the loss actually materialized or was even possible." *United States v. Yihao Pu*, 814 F.3d 818 (7th Cir. 2016)[4] (quoting *United States v. Higgins*, 270 F.3d 1070, 1075 (7th Cir. 2001) and citing *United States v. Middlebrook*, 553 F.3d 572, 578 (7th Cir. 2009) ("[T]he true measure of intended loss [is] in the mind of the defendant."). Accordingly, the fact that the violin may have been stolen from the house before Klein got to Chicago, or may not have been as valuable as Klein was led to believe does not affect the loss calculation. Indeed, the defendant recognizes this, because he cites a case that directly contradicts his position on the intended loss amount in his separate sentencing memorandum. *See* Def. Memo at 3-4 (citing *United States v. Coffman*, 94 F.3d 330,

4 The defendant makes a frivolous argument that the Seventh Circuit's decision in *Yihao Pu* somehow demonstrates that the government has miscalculated intended loss in this case. PSR Obj. at 5-6. The defendant misapprehends this decision. *Yihao Pu* stands for the proposition that the cost of development of trade secrets cannot be used as a surrogate to determine the intended loss from the theft of those trade secrets. That holding has absolutely nothing to do with the facts of this case. Here, the defendant was told the violin he wished to steal had a value exceeding $1 million, and he well knew that if he were successful, he would deprive the government of this property.

336-37 (7th Cir. 1996) ("the place for mitigation on the basis of a large discrepancy between intended and probable loss is, under the guidelines, in the decision whether to depart downward, rather than in the calculation of intended loss"). This objection is frivolous.

II. The Presentence Investigation Report Correctly Found Klein Was Not Entitled to Acceptance of Responsibility.

The government and the United States Probation Office both concluded that the defendant was not entitled to acceptance of responsibility. As the government noted in its version of the offense, three grounds supported denying the defendant acceptance of responsibility: (1) the defendant did not admit his involvement in the plan to steal the violin from Calabrese's residence; (2) the defendant's last minute plea, on the morning the trial was to begin, with the government's witnesses for the day looking on, did not evince genuine acceptance as much as a calculated decision to minimize his exposure, *see United States v. Franklin*, 902 F.2d 501, 505-06 (7th Cir. 1990); and (3) the defendant's post-plea trivialization of the charges against him through his attorney at a press conference, where counsel said the defendant had been charged in "a conspiracy over nothing" and suggested the defendant was being punished for his "good deeds." Gov't Version at 15-17. The United States Probation Office agreed that the defendant's last minute plea was not the product of true remorse, and that he had falsely denied all of the facts that constitute relevant conduct. PSR at 13.

As to the first point, it appears the defendant is still contesting the facts underlying his plan to steal the violin. Because it appears the defendant is frivolously contesting this relevant conduct, he is not entitled to acceptance.

Second, defense counsel also provides a thoroughly unconvincing excuse for the defendant's last-minute plea. Defense counsel claims that the defendant is entitled to acceptance because it only dawned on defense counsel the day before trial (after the case had been pending for almost four years) that his theory of the defense could not be effectively presented at trial. PSR Obj. at 8. For the reasons already explained in the Government's Version of the Offense and the presentence investigation report, this explanation is thoroughly contradicted by the record in this case. The defense was on notice much earlier that the Court had rejected the theory of defense espoused in the defense's pretrial motions. This Court first denied the defendant's motion to dismiss the indictment on January 14, 2013—more than two years before the scheduled trial date. R. 86. A second motion to dismiss premised on the very same argument was denied on September 5, 2013—again, more than a year before trial. R. 106. Once again, this Court rejected the defendant's theory of defense on February 3, 2015. In doing so, this Court specifically mentioned that it had already resolved the issue and wondered why it was being raised again:

> We've been going around and around on the issue of whether or not it would be proper for the defense to admit—to offer evidence that the SAMs didn't present a substantial risk of death or bodily injury. . . . We keep going back and forth on that. I did some further research on it. I've got the CFR cite where they talk about it, and I read your papers again. It

> seems like we put the argument to bed and then it resurfaces again.

02/03/15 Tr. at 6. Despite being rejected three times, on February 8, 2015, defense counsel filed an unsolicited "Trial Memorandum" with the Court, R. 131, in which the defense (yet again) claimed that vagueness concerns meant the Court should impose a new subjective intent requirement on the government—an intent requirement specifically prohibited by Circuit precedent. R. 134. Yet no plea was entered until February 11, 2015, the first day of the scheduled trial, after all the government's witnesses were assembled in the courthouse and ready to testify against the defendant. The defense understood the implications of this Court's repeated rulings well before the morning the trial was to commence, chose to ignore them, and then decided to plead guilty only at the last minute, not because of genuine remorse, but because the defendant saw the writing on the wall.

Similarly untenable is defense counsel's claim that, by waiting until the morning of trial to plead guilty, he saved the government the time and expense of trial. PSR Obj. at 8. This statement overlooks the considerable expense associated with preparing this case for trial. The defendant didn't pay for the travel of government witnesses, who flew in from out of town; he didn't pay for their hotel rooms; and he didn't pay for the costs incurred and the time diverted by prosecutors, agents, paralegals and support staff in preparing for trial. The taxpaying citizens of this district are the ones that bear the cost that the defendant dismisses in one sentence. He is not entitled to acceptance of responsibility under these circumstances.

Finally, for the reasons specified in the Government's Version of the Offense, the defendant is not entitled to acceptance based on efforts to trivialize the offense immediately after entry of his plea. Gov't Version at 16-17. These statements, taken in conjunction with his last-minute plea, clearly demonstrate the defendant has not accepted responsibility.

SENTENCING MEMORANDUM

I. The Defendant Should Receive a Guidelines Sentence of Sixty Months.

A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant.

The offense of conviction was most serious. As described at length in the government's version of the offense, Calabrese had been sentenced to life in prison for a string of murders he committed on behalf of the Chicago Outfit. Not only had he committed murder for the mob, but there was evidence that he threatened the life of a federal prosecutor assigned to prosecute him. For these reasons, Calabrese was placed under SAM.

The defendant, an employee of the Federal Bureau of Prisons, a bureau within the United States Department of Justice, knew why Calabrese had been placed under the strictest conditions of confinement available in the federal prison system. The defendant was one of the select few individuals trusted to meet alone with Calabrese and to abide by the SAM, which were imposed to ensure that Calabrese did not take steps to harm others. The defendant betrayed that special trust. He violated that special trust to satisfy his own greed: the prospect of seizing a valuable violin that did

not belong to him was all that it took to compromise the rigorous security measures imposed on Calabrese.

Klein's betrayal strikes at the core of our system of justice. If the government cannot trust its own employees within the United States Department of Justice to maintain institutional security and guard against a mob killer from communicating with the outside world, then there is little hope of effectively preventing hardened criminals and their associates from engaging in further acts of violence. What makes the defendant's conduct even more reprehensible is the fact that the defendant—an employee within the United States Department of Justice—knew that the property he tried to steal for his own benefit was intended for seizure by the United States, so that the United States could use this property to ultimately provide restitution for the families of Calabrese's many murder victims. Klein believed benefitting himself was more important than seeing to it that the families of the dead were given compensation.

The defendant's clear disregard for others and for the trust placed in him is also highlighted by the fact that (as discussed in greater detail in the Government's Version on page 14) he revealed information to Frank Calabrese, Sr., about the location of his brother, Nicholas Calabrese—knowing that Nicholas Calabrese had cooperated against his brother and that Nicholas Calabrese was in grave danger as a result of his cooperation. For the breach of the trust placed in him, for his breach of security, and for his efforts to personally enrich himself without regard to security and the needs of Calabrese's victims, the defendant should receive a guidelines sentence of sixty months.

B. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense.

A guidelines sentence is needed not only to reflect the evident seriousness of the crime here, but to promote respect for the law and provide just punishment. It is clear that the defendant does not respect the law and believes the offense he committed to be trivial.

The defense has made frequent comments to the media confirming this view. The defense told the media after Klein was indicted that the charges were the result of the United States Attorney's Office being unable to find a rabbi or nun to prosecute[5]—as if to foolishly suggest that the United States Attorney's Office relishes the opportunity to charge members of the clergy. That was not all. Immediately after the defendant pleaded guilty, his defense attorney claimed (with the defendant by his side) that the charged offense was a "conspiracy over nothing," and that the defendant was being punished for his "good deeds."[6] This Court should take this demonstrated lack of remorse and disregard for the law into account in its sentencing determination in order to promote respect for the law. *See United States v. Stewart*, 686 F.3d 186, 164-74 (2d. Cir. 2012) (affirming district court's decision to take comments

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5 http://abc7chicago.com/archive/8205903/ (reporting comments of defense counsel as follows: "This is a great day for the Northern District of Illinois. Apparently [the United States Attorney], having run out of governors to prosecute, has now decided to prosecute the clergy. And apparently he couldn't find any rabbis or nuns, so today we have a priest.").

6 http://chicago.suntimes.com/news/catholic-priest-pleads-guilty-to-helping-imprisoned-chicago-mob-killer/

defendant made to press into account at sentencing (including comment that she could do sentence imposed at prior sentencing "standing on her head") because the comments trivialized her conviction for violating Special Administrative Measures and indicated a lack of remorse on the defendant's part).

C. The Need for the Sentence Imposed to Afford Adequate Deterrence to Criminal Conduct.

The need for general deterrence in this case is substantial. This case has received considerable attention from the media and has been reported on widely. Many employees of the Federal Bureau of Prisons that work as guards, clergy and support staff are well aware of this case and are following its progress. They know that the defense has minimized the defendant's misconduct in repeated comments to the media, and that the defense has suggested the case is much to do about nothing.

Some of the most dangerous inmates in the federal system—killers, gang leaders, mobsters, terrorists—remain under SAM today. A very clear message needs to be sent to all of those within the United States Department of Justice that bear a similar position of trust as the defendant did—who are under a duty not to pass messages for SAM inmates—that there will be stiff consequences for those that violate this trust. For this reason, a guideline sentence of sixty months is appropriate in this case.

The defendant argues that there is no need for general deterrence in this case because there are few instances where this crime has been prosecuted. He is incorrect. First, as noted above, there is a strong need to ensure that individuals in a similar position of trust are aware that there are severe consequences for breaching

SAM. Second, crimes like the one the defendant engaged in are very difficult to detect, and for this reason, there is a *greater* need for general deterrence. Because the likelihood of being caught committing a crime like this one is so slim (the defendant and others like him, are, after all, allowed to have unmonitored communications with SAM inmates), there must be a strong enough deterrent to prevent others who are similarly situated from being tempted to commit the crime. Senior District Judge Grady discussed this principle in a similar case several years ago, involving a Deputy United States Marshal who had been convicted of disseminating law enforcement sensitive information about Nicholas Calabrese[7] to an associate of the Chicago Outfit:

> The question of deterrence has to be considered in connection with the likelihood of detection. Many offenses are not particularly difficult to discover, or at least they're—they're not virtually impossible to discover. But how likely is it that a Deputy Marshal in the Witness Protection Program who discloses information about the program or about a protected person is likely to be detected in doing so?
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> Consider what happened here. As [the prosecutor], I believe, pointed out, it was a totally fortuitous circumstance that the government happened to be taping [mobsters] at Milan Prison. Without that taping, [the defendant] would not have been caught. To this day, he wouldn't have been caught.
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> If information is given to the mob, who is going to tell the government about it? The mob? That's absurd. They want to preserve that—that source of information. They don't want to compromise it. Who else is going to tell? The defendant himself, the Deputy Marshal himself? Of course not. How about the intermediary . . . .? Did [the intermediary] tell

7 As noted earlier, like the Deputy United States Marshal, defendant Klein also disseminated law enforcement sensitive information concerning Nicholas Calabrese to Frank Calabrese, Sr., who was a made member of the mob. Judge Grady sentenced the Deputy United States Marshal to four years in prison for this conduct.

> anybody that he had received information from Ambrose? Of course not.
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> What we're dealing with here is a very serious crime, a very serious breach of confidentiality that has virtually no likelihood of detection. So, what do you do to deter that breach of confidentiality? Impose probation, as the defendant suggests? No. That would be extremely unlikely to deter a crime that is very difficult to deter even with a prison sentence.
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> How about the loss of the job, Mr. Ambrose's loss of his job? Does knowledge that you'll lose your job if you leak information constitute a sufficient deterrent to leaking? Did it deter Mr. Ambrose? No, it didn't at all. Why? Because it never occurred to him that he might be caught. He thought that he was totally immune from detection.
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> * * * *
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> I wish that this were not so, because it would enable me to impose a lower sentence. I wish some reasonable argument could be made that the likelihood of detection of someone breaching the witness protection security is significant. There are individual cases where it could be significant, of course; but by and large, it would be an extremely rare circumstance where someone breaching the program would have any reason at all to think that he or she were going to be caught.
>
> So, what do you need to do to deter people from doing this? You need to make the sentence long enough that it serves as a counterbalance to the extreme unlikelihood of conviction. It's sort of a sliding scale. If the likelihood of conviction is high, perhaps you don't need as long a sentence to deter; but if you're talking about something that is very difficult to detect, you need to make it much more risky. Risky is the wrong word. You need to make it much more onerous for the defendant if he does get caught.

United States v. Ambrose, No. 07 CR 18 (N.D. Ill.) (Grady, J.) [Docket #222].

As in the case before Judge Grady—the first known episode nation-wide where the WITSEC program was compromised—this case presents the Court with a crime that is very difficult to detect. Because of the position of trust that he occupied, the defendant had unmonitored meetings with Calabrese within the prison, during which the two men formulated a plan to violate the SAM. It was only through fortuity that the defendant's criminal conduct was uncovered. Accordingly, the sentence in this case must send a message of deterrence to others who are tempted to engage in a form of fraud upon the government that is so very difficult to detect. That message should be that they can and will be sent to a federal correctional facility for such a crime.

II. The Defendant's Remaining Arguments in Mitigation are Unpersuasive.

The defendant argues that he should receive a sentence of probation. But the remaining arguments he relies upon are not sufficient to merit a variance from the guidelines sentence.

A. No Downward Variance is Merited Due to the Intended Loss Amount.

The defendant argues that the loss amount in this case overstates the seriousness of the offense. While the Seventh Circuit has held that a court may consider the variance between the intended loss and the realistic probability of loss when considering an appropriate sentence, *United States v. Portman*, 599 F.3d 633, 640 (7th Cir. 2010), the decision to do so rests within this Court's wide discretion. Indeed, in *Portman* itself, the district court refused to grant a downward variance based on this argument. A similar result is appropriate here.

First, the guidelines do not overstate the seriousness of the offense. As noted in the Government's Version of the Offense, taking into account a loss amount of $1 million initially yields a guideline range of 121-151 months. However, owing to the fact that the defendant has entered into a plea to an offense with a maximum term of imprisonment of 60 months (and the government has agreed to dismiss Count Two of the indictment at sentencing), the defendant's guideline range is capped at 60 months. The effect of the intended loss amount on the defendant's guideline range has therefore already been substantially discounted; an even further reduction is inappropriate.

Second, although no harm resulted, it is clear the defendant believed he had the opportunity to cause a loss in excess of $1 million, and his belief was not unreasonable. He knew that the government had seized a similar amount of hidden money and valuables from Calabrese's home in Illinois, so the amount at stake here was not unrealistic in light of the particular facts known to the defendant. This is not a case where the defendant's subjective belief of the value of the crime was improbable or irrational. For this additional reason, no further reduction to account for the actual probability of loss to the government is appropriate.

B. No Downward Variance is Merited Because of the Defendant's Personal History.

The defendant argues that certain personal events occurring more than 50 years ago serve to explain why he engaged in this crime. While those events are no doubt tragic and have had a profound effect on the defendant, they cannot begin to be a realistic excuse for his criminal behavior 50 years later. To be clear, the defendant

engaged in a clear and deliberate effort to circumvent the SAM in order to line his own pocket—he knew it was wrong, and resisted the impulse to pass messages until confronted with the prospect of reaping a windfall for himself. While he now seeks to paint himself as someone that was duped by Calabrese, the defendant made it clear in his confession to law enforcement that he was *not* taken in or fooled by Calabrese.

Indeed, the better explanation for the defendant's conduct is his greed, as well as the fact that he found the prospect of associating with a convicted mob hitman like Calabrese to be glamorous and exciting. As noted in the Government's Version of the Offense, Klein sent an email to family members on March 6, 2011. In that email, Klein assigned family members the task of preparing a "book report" on Frank Calabrese, Jr.'s book (about Operation Family Secrets), so that the entire family could discuss it at an upcoming family gathering. *See* Government Version of the Offense, Exhibit 1. Klein also expressed excitement that a copy of that book would soon be available for him to read: "I just called the bookstore and my 2 [copies of the book, one of which he thereafter gave to Frank Calabrese, Sr.] are supposed to be in Tues. Frank [Calabrese, Sr.] will get his Ash Wed. when I give him ashes. God is good and the timing here is perfect!!" *Id.* Other emails recovered during the search of his email account reflect the defendant's excitement at the prospect of interacting with another inmate convicted of a sensational crime. The defendant's apparent fascination with high-profile criminal cases, together with his own avarice, better explains his willingness to betray his office, rather than any traumatic experience occurring five decades earlier.

The defendant also argues that his prior ministry to prisoners is a factor in mitigation. But a corrupt police officer does not get a get out of jail card because he has made legitimate arrests during the course of his career. A judge that fixes cases does not get probation because he has dispensed equal justice in other proceedings. A corrupt politician does not get probation because he has championed the passage of legislation that benefits many. Nor does an employee of the Federal Bureau of Prisons get to walk out the front lobby of the federal courthouse as a free man simply because he has provided ministry to others during the course of his career. As a priest, *that is precisely what Klein was supposed to be doing*. Indeed, it is what he was paid to do.[8] It is not a sufficient ground to mitigate criminal conduct—particularly when that criminal conduct concerns a serious betrayal of trust by a federal employee who worked within the United States Department of Justice. This Court needs to render a sentence that ensures respect for the law.

C. No Downward Variance is Merited Because of the Defendant's Age and Health.

The defendant argues that he should receive a downward variance based on his health, but there is little to suggest that he is in fact in poor health. He points to a procedure he had performed on his nose during the pendency of the case, Def. Memo at 12, but there is no evidence that the procedure was serious or that there have been any

8 As noted in the Government's Version of the Offense, Klein had the audacity to take paid sick leave during the time he traveled to Chicago to pass messages for Calabrese and steal the violin. He lied to staff at the prison and claimed he was taking care of his sick mother. In other words, he billed the government for the time he spent committing two federal crimes.

complications since that time. An internet search of several websites also reflects that this procedure is not a particularly serious one, contrary to the implication made in the defendant's sentencing memo.[9]

The defendant makes a boilerplate argument that he is over 50, so it will cost more to house him in prison. But the incremental additional cost of incarcerating the defendant does not justify a variance from the guidelines. There is no reason to think the defendant will be unable to cope within a prison environment. Indeed, until recently, he worked within this environment as a federal employee on a daily basis. Any such concern relating to his adjustment in this environment is better addressed by taking these factors into account in his designation, and in any case, this factor cannot overcome the factors in aggravation that are discussed above.

9 See, for example, http://www.webmd.com/cold-and-flu/endoscopic-surgery-for-sinusitis (describing endoscopic surgery for sinuses as "very safe" and capable of being performed in a doctor's office or clinic).

WHEREFORE, the government respectfully requests that the Court enter an order (i) overruling the defendant's objections to the presentence investigation report; (ii) sentencing the defendant to a term of sixty months in prison; and (iii) granting such other and further relief as may be just and proper.

Dated: Chicago, Illinois
April 11, 2016

Respectfully submitted.

ZACHARY T. FARDON
United States Attorney

By: /s/ Amarjeet S. Bhachu

AMARJEET S. BHACHU
JENNIE H. LEVIN
Assistant United States Attorneys
219 South Dearborn Street
Fifth Floor
Chicago, Illinois 60604
(312) 469-6212

CERTIFICATE OF SERVICE

Amarjeet S. Bhachu, an Assistant United States Attorney assigned to the instant matter, hereby certifies that the GOVERNMENT'S (I) MEMORANDUM IN SUPPORT OF PRESENTENCE INVESTIGATION REPORT CALCULATIONS; AND (II) SENTENCING MEMORANDUM was served on April 11, 2016, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s/ Amarjeet S. Bhachu

AMARJEET S. BHACHU
Assistant United States Attorney
219 South Dearborn Street
Fifth Floor
Chicago, Illinois 60604