

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 08-10345-DPW
)	
CHARLES "CHUCK" TURNER)	

Government's Sentencing Memorandum

"You achieve progress by standing up for the truth . . . "
Chuck Turner at a rally outside Boston City Hall, November 24, 2008.¹

"I have a strong moral sense but it is not formed by American laws. . .
I am willing to pay the consequences of the choices I make."
Chuck Turner in an interview with the *Boston Herald*, July 26, 2002.

The United States of America, by and through Assistant United States Attorneys John T. McNeil and James P. Dowden, respectfully submits this sentencing memorandum to assist the Court in sentencing Defendant Turner. The government currently intends to recommend a sentence consistent with the applicable guideline range without either an upward or downward departure. Including the enhancement for testifying falsely at trial, the guideline range in this case is 33-41 months incarceration to be followed by not more than 36 months of supervised release.² Neither this defendant nor his criminal conduct warrant a downward departure or deviation from the guideline range. Likewise, neither an upward departure nor an upward

¹See *Boston Globe*, Nov. 25, 2008.

²A two level enhancement is applicable to defendants who engage in perjury at trial. See USSG § 3C1.1, cmt. n. 4(B); *United States v. Shinderman*, 515 F.3d 5, 18 -20 (1st Cir. 2008); *United States v. Dunnigan*, 507 U.S. 87, 92-94 (1993). The enhancement is applicable even if: the perjury is unsuccessful, see *United States v. Austin*, 948 F.2d 783, 789 fn.10 (1st Cir. 1991); the perjury is no more than a "self-serving cock and bull story," see, *United States v. Akitoye*, 923 F.2d 221, 228 (1st Cir.1991); or the perjury is "a hopelessly transparent, naive and misguided effort to mislead . . . which stood no chance of success." *Austin*, 948 F.2d at 788 - 789.

deviation is necessary to achieve the purposes outlined in 18 U.S.C. §3553(a).

As the government will argue at the hearing scheduled for January 25, 2011, the sentence to be imposed in this case must speak as much to the defendant's perjury at trial as to the conduct charged in the indictment. Turner's false testimony was the product of a profound contempt for the Court as an institution. Turner's sentence must not only be an adequate deterrent to elected officials who engage in extortion under color of official right, it must also reflect the gravity of perjury in a federal criminal case. The sentence must condemn Turner's effort to undermine the judicial process.

The government anticipates that the defendant will move for a downward departure or deviation from the applicable guideline range. While the government will address any such motion orally at the sentencing hearing, there are two features of this case which are not adequately addressed in the Presentence Report. Each should play a significant role in the Court's rejection of Turner's request for a sentence below the guideline range. Each reflect that Turner is particularly undeserving of a sentence below that range.

I.

Turner's conduct has been the antithesis of acceptance of responsibility. Instead, his conduct has affirmatively promoted disrespect for the law, has demeaned the seriousness of his offense, has debased his public office, and has eroded the public's trust in law enforcement and the criminal justice system. See 18 U.S.C. §3553(a)(2). Turner's calculated and persistent attacks on local and federal law enforcement agencies, designed to deflect attention from his own corrupt conduct, have been corrosive to respect for important public institutions and the rule of law. From the day he was confronted with his crime, Turner has engaged in an incendiary

campaign of misinformation, obfuscation and blame.³ His campaign has been divisive in its intent and in its effect.⁴ It has falsely promoted distrust not only of federal and local law enforcement, but of the criminal process, this Court, and the jury which found him guilty. As the trial revealed, Turner's vitriolic campaign was ultimately an act of profound narcissism, in which he sacrificed the best interests of his community in a fraudulent attempt to claim the mantle of an honest public servant.

While downward departures or deviations are occasionally warranted for first-time federal felons, at a minimum such deviations should be reserved for those who acknowledge the seriousness of their crime, who admit their guilt and truly accept the wrongfulness of their conduct, and who put their public office before their self-interest. Turner has done none of this. In fact, he has done just the opposite. While his public campaign has pandered to a few faithful supporters, he could hardly have done more to promote the public's cynicism about elected officials and to erode trust in the rule of law. His post-indictment conduct has amplified the

³See, e.g. *Boston Globe*, November 22, 2008 (Turner: "The FBI is, from my perspective, an evil institution"); *Boston Globe*, December 11, 2008 (Turner: "I've seen some grainy photographs. I don't know if that's me. They doctor photographs. . . ."); *Boston Herald*, December 13, 2008 (Turner characterizing his prosecution as a "witch hunt"); *Boston Herald*, September 24, 2009 (Turner disparaging the charges as "a trumped up case"); *Boston Herald*, June 3, 2010 (Turner calling the indictment in this case "a charade"); Turner Press Release dated October 7, 2010 (Turner claiming that his attorneys would "expose the corruption that is at the foundation of [the government's] charges against me.").

⁴ Shortly after the verdict, Turner claimed, "I'm not the first innocent person who's going to be sent to jail." *Boston Globe*, October 30, 2010. The following day, during a rally at which Turner described the U.S. Constitution as an "illegal document" he railed, "[I]et's understand that this is the attempt of the government to destabilize a community of color that's on the move." See *Dorchester Reporter*, October 20, 2010. In an attempt to retain his City Council seat, he argued that, "[t]he purpose [of the government] was to take us down because they saw the power of communities of color rising up . . ." *Boston Globe*, December 2, 2010.

crimes for which he was charged. He has sought to undermine the integrity of the judicial process. As a result, Turner is uniquely undeserving of a downward departure or deviation.

II.

Turner will likely rely on the letters submitted by friends and constituents praising his efforts as a public servant and calling for a probationary sentence. Unlike the letters submitted in the Wilkerson case, this collection of letters, while undoubtedly heartfelt by the writers, are not extraordinary nor should they serve as the basis for a downward departure or deviation. These letters are consistent with those any public official is likely to receive after serving a community for a number of years, and are within the heartland of the applicable guideline. *See, e.g. United States v. D'Amico*, 496 F.3d 95, 107 (1st Cir. 2007) *vacated on other grounds*, 552 U.S. 1173 (2008) (rejecting a substantial downward departure based on “good works as a city councillor” because it was defendant’s “job to respond to the needs of his constituents and to make positive contributions to his community. He was compensated for these efforts, and were essential to [his] reelection and prospects for other office.”); *United States v. Wright*, 363 F.3d 237, 249 (3rd Cir. 2004)(“the political duties ordinarily performed by public servants - the sort of duties that are generally needed to stay in office - cannot qualify. It is, rather, only when an individual goes well beyond the call of duty and sacrifices for the community that a downward departure may be appropriate.”)(internal quotations and citations omitted); *see also*, U.S.S.G. § 5H1.11 (public service and employment-related contributions not ordinarily relevant) .⁵

⁵Moreover, as Turner sought to introduce at trial through a recording between Ms. Wilkerson and Mr. Wilburn on June 5, 2007 (the first payment meeting), there is substantial doubt about Turner’s effectiveness as a public servant. Wilkerson and Wilburn seemed to

More importantly, Turner's most recent legal maneuvering belies the core assertion in the letters submitted – that he is a selfless public servant, motivated by the public good. On January 10, 2011, Turner filed a motion for a preliminary injunction in *Charles H. Turner, et al. v. City of Boston, et al.*, 1:10-cv-12276-MLW (D.Mass.) [D.7]. This motion was designed in part to prevent the City of Boston from holding a special election to fill the empty City Council seat for District 7.⁶ That seat has been vacant – and the district unrepresented – since the City Council voted 11-1 to expel Turner on December 1, 2010. The same day Turner filed the preliminary injunction motion, he filed a motion to continue his sentencing hearing in this case from January 25, 2011 until mid-March 2011. [D.340].

capture the larger public sentiment about Turner:

WILKERSON: 'Cause I think Chuck is crazy.

WILBURN: No, he is crazy. Chuck Turner. He is crazy. I mean he's living in the nineteen sixties. He thinks Chairman Mao is still alive. Communist Manifesto. You know? (Laughs)

WILKERSON: He drives me batty. He really does.

WILBURN: You know Chuck, the lit...? The guy with the beard?

SERRET: Yeah.

WILKERSON: He would be good, if you needed somebody who, you needed to go pick up a ruckus and just protest for you, I would hire him. You want to get something done? He's not the p..., that's not his, he doesn't know...

WILBURN: Yeah.

WILKERSON: That's not what he does.

⁶The preliminary election is currently scheduled for February 15, 2011 and the final election for March 15, 2011. See Exhibit 1.

Because Massachusetts law requires an elected official to vacate his office if sentenced to a term of imprisonment, *see* M.G.L.c. 279 §30, the combined effect of these simultaneous motions was to prevent Turner's civil suit from becoming moot, while also depriving the electorate in District 7 of representation on the City Council for an additional period of time. In other words, a delay in his sentencing date would preserve his civil claim, while also denying District 7 representation, and throwing into question any special election held before he was sentenced.

If Turner is what he claims – a selfless public servant deserving of a substantial downward departure or deviation – he would not have sought to deprive his former constituents of representation on the City Council while he delayed and otherwise maneuvered his criminal sentencing. If Turner were the public servant he claims to be, at a minimum, he would have welcomed an expedited process for representation for citizens in dire need of responsive government.

Respectfully submitted,

CARMEN M. ORTIZ
United States Attorney

Date: January 20, 2011

By: /s/ John T. McNeil
JOHN T. McNEIL
JAMES P. DOWDEN
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I, John T. McNeil, Assistant United States Attorney, do hereby certify that this document, filed through ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that paper copies will be sent to those indicated as non registered participants on this date.

/s/ John T. McNeil _____

JOHN T. McNEIL

Assistant U.S. Attorney

Exhibit 1

Offered by COUNCIL PRESIDENT MICHAEL P. ROSS



CITY OF BOSTON IN CITY COUNCIL

ORDER OF COUNCIL PRESIDENT MICHAEL P. ROSS FOR A SPECIAL PRELIMINARY MUNICIPAL ELECTION

- WHEREAS,* Pursuant to Chapter 233 of the Acts of 1993, as amended (the "charter"), section 15A, the city clerk did on December 8, 2010, notify the city council of a vacancy in the office of district seven city councilor in the city of Boston; and
- WHEREAS,* Pursuant to said section 15A of the charter, the city council shall at the first council meeting occurring after such notification, forthwith adopt an order calling for a special preliminary municipal election for the purpose of nominating a district city councilor for the unexpired term of said vacancy; and
- WHEREAS,* Pursuant to said section 15A of the charter, the special municipal election for the purpose of electing a district city councilor for the unexpired term of said vacancy shall be held twenty-eight days following the special preliminary municipal election; *NOW, THEREFORE BE IT*
- ORDERED,* That the date of the special preliminary municipal election for district seven city councilor is hereby fixed as February 15, 2011; *AND BE IT FURTHER*
- ORDERED,* That the date of the special municipal election for district seven city councilor is hereby fixed as March 15, 2011.

Filed on: December 14, 2010