- 2 DCMN BURRELL
- 3 MARKUP TO CONSIDER POSSIBLE
- 4 IMPEACHMENT OF UNITED STATES
- 5 DISTRICT JUDGE SAMUEL B. KENT
- 6 Tuesday, June 9, 2009
- 7 House of Representatives,
- 8 Task Force on Special Impeachment,
- 9 Committee on the Judiciary,
- 10 Washington, D.C.

11

12

13

14

15

16

17

18

19

The task force met, pursuant to call, at 10:19 a.m., in Room 2141, Rayburn House Office Building, Hon. Adam B. Schiff [chairman of the task force] presiding.

Present: Representatives Schiff, Jackson Lee, Delahunt, Cohen, Johnson, Pierluisi, Goodlatte, Sensenbrenner, Lungren, and Gohmert.

Staff Present: Alan Baron, Lead Counsel; Kirsten Konar, Counsel; Mark Dubester, Majority Counsel, Harold Damelin, Minority Counsel; and Jessica Klein, Clerk.

PAGE 2

20| Mr.

Mr. SCHIFF. This Judiciary Task Force on Judicial Impeachment will come to order.

Pursuant to notice, we will now consider Articles of Impeachment against U.S. District Judge Samuel B. Kent for recommendation to the full committee.

A proposed resolution containing the Articles of Impeachment was distributed to members of the task force earlier. After our meeting today, if articles are approved for recommendation by the task force, I plan to file an impeachment resolution with the ranking member that contains those articles and would invite any of my colleagues on the task force to be original cosponsors of that resolution.

The Clerk will now report the proposed resolution containing the articles.

The CLERK. A draft resolution, Impeaching Samuel B.

Kent, judge of the United States District Court for the

Southern District of Texas, for high crimes and misdemeanors.

Resolved, That Samuel B. Kent, a judge of the United

States District Court for the Southern District of Texas, is

impeached for high crimes and misdemeanors, and that the

following Articles of Impeachment be exhibited to the Senate:

Articles of Impeachment exhibited by the House of
Representatives of the United States of America in the name
of itself and all of the people of the United States of
America against Samuel B. Kent, a judge of the United States

3

48

49

15	District Court for the Southern District of Texas, in	
16	maintenance and support of its impeachment against him fo	ρr
۱7	high crimes and misdemeanors.	

[The information follows:]

****** INSERT 1-1 ******

Mr. SCHIFF. Without objection, the draft resolution is considered as read and open for amendment. We will proceed through the proposed resolution article by article.

I now recognize myself for the purpose of making an opening statement.

This task force meeting has been convened as part of our continuing inquiry into whether U.S. District Court Judge Samuel B. Kent should be impeached by the U.S. House of Representatives. In August, 2008, a Federal grand jury returned a three-count indictment against Judge Samuel B. Kent after a Department of Justice criminal investigation. A superseding indictment filed in January, 2009, added three additional counts for a total of six counts charged.

According to the indictment, Judge Kent is alleged to have committed acts constituting abusive sexual contact and attempted aggravated sexual abuse in 2003 and 2007, against Ms. Cathy McBroom, a deputy clerk occasionally assigned to Judge Kent's courtroom.

Judge Kent is also alleged to have committed acts constituting aggravated sexual abuse and abusive sexual contact from 2004 through at least 2005 with Ms. Donna Wilkerson, Judge Kent's secretary. Aggravated sexual abuse is a crime punishable under 18 USC 2241 by up to life in prison.

Finally, the indictment charges Judge Kent with one

count of obstruction of justice for corruptly obstructing, influencing, and impeding an official proceeding by making false statements to the Special Investigative Committee of the U.S. Court of Appeals for the Fifth Circuit regarding his unwanted sexual contact with Ms. Wilkerson.

On February 23, 2009, the day his criminal trial was set to begin, Judge Kent pled guilty to obstruction of justice.

As a part of his plea, he admitted to engaging in nonconsensual sexual contact with Ms. McBroom without her permission in 2003 and 2007.

Judge Kent also admitted to engaging in nonsexual contact with Ms. Wilkerson without her permission from 2004 through at least 2005.

Finally, he admitted that he falsely testified before the Special Investigative Committee of the Fifth Circuit regarding his unwanted sexual contact with Ms. Wilkerson. In particular, Judge Kent admitted making false statements with regard to his repeated nonconsensual sexual contact with Ms. Wilkerson.

On May 11, 2009, Judge Kent was sentenced to a term of 33 months in prison and ordered to pay fines and restitution to Ms. McBroom and Ms. Wilkerson. Judge Kent is ordered to surrender himself on June 15 for incarceration.

The day after his sentencing, the House of Representatives passed Resolution 424 by unanimous consent

authorizing and directing this task force to inquire whether Judge Kent should be impeached.

On June 3, the task force held an evidentiary hearing to determine whether Judge Kent's conduct provides a sufficient basis for impeachment and to develop a record upon which to recommend whether to adopt Articles of Impeachment.

At the hearing we heard from Alan Baron, special impeachment counsel of the task force, who submitted a number of official documents related to this matter into the record. These included Judge Kent's plea where he pled guilty to obstruction of justice in violation of 18 USC 1512(c)(2). The task force then took testimony from the following witnesses, Ms. Cathy McBroom, a clerk who was occasionally signed to Judge Kent's courtroom; Ms. Donna Wilkerson, a secretary to Judge Kent; and Professor Arthur Hellman, from the University of Pittsburgh School of Law.

Ms. McBroom and Ms. Wilkerson both testified that they were sexually assaulted by Judge Kent on numerous occasions and detailed a number of these incidents to the task force. Professor Hellman provided expert testimony that concluded that making false statements to fellow judges, as well as abusing his powers of a Federal judge to sexually assault women, were independent grounds that would justify Judge Kent's impeachment and removal from office.

In particular, Professor Hellman noted that historical

precedent provides that the phrase "high crimes and misdemeanors," the constitutional standard to justify impeachment, generally describes acts that constitute an abuse of power or otherwise render a judge unfit to hold office. Professor Hellman, in his expert opinion, concluded that the facts in the record rose to a level as to warrant Judge Kent's impeachment.

As was mentioned during the hearing, the task force invited Judge Kent to testify, but he declined this offer. The task force received correspondence from Judge Kent that was made available to all members and entered into the record. The task force also invited Judge Kent's counsel to participate in the hearings, to present arguments on behalf of his client, as well as the opportunity to question any of the witnesses. Judge Kent's counsel also declined to appear or participate in the hearing.

Article I, Section 2 of the Constitution vests the sole power of impeachment in the House of Representatives.

Article III, Section 1, provides that the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Article II, Section 4 of the Constitution provides that all civil officers of the United States shall be removed from

office on impeachment and conviction of treason, bribery, or other high crimes and misdemeanors.

As we have learned, historical precedent indicates there are two categories of conduct that may justify impeachment, serious abuse of power and conduct that demonstrates an official is unworthy to fulfill the office that he holds.

Accordingly, I believe that the full record before us establishes that Judge Samuel B. Kent should be impeached for high crimes and misdemeanors.

Judge Kent, incident to his position as U.S. district judge, engage in deplorable conduct with respect to employees associated with the court. Such conduct is incompatible with the trust and confidence placed in him as a judge.

In particular, the record demonstrates the Judge Kent sexually assaulted Ms. Cathy McBroom and Ms. Donna Wilkerson, both employees of the court, on one or more occasions.

Furthermore, Judge Kent corruptly obstructed, influenced, or impeded an official proceeding when he made false statements to the Special Investigative Committee of the U.S. Court of Appeals for the Fifth Circuit.

Finally, the record demonstrates that Judge Kent made false and misleading statements about the nature and extent of his nonconsensual sexual contact with Ms. McBroom and Ms. Wilkerson to agents of the FBI and to representatives of the Department of Justice. These acts of sexual assault and

obstruction of justice are, as the judge who sentenced Mr.

Kent to incarceration stated, a stain on the justice system itself.

Were the House of Representatives to sit idly by and allow Mr. Kent to continue to hold the office of U.S. district judge while sitting in prison and after committing such high crimes and misdemeanors, it would be a stain on the Congress as well.

After seeking and receiving input from task force

Members, draft articles have been prepared for the task force

consideration today.

Before we proceed, we have an additional three documents to make a part of the record. They are the following: A certified copy of the judgment, a memorandum of interview signed by Alan Baron, special impeachment counsel for the task force, summarizing an interview with FBI Special Agent David Baker, and a Memorandum of Interview signed by Kirsten Konar, Esq., counsel assisting the task force, summarizing an interview with Ms. Donna Wilkerson.

Without objection, these three documents will be made a part of the record.

[The information follows:]

****** COMMITTEE INSERT ******

198 [The information follows:]
199 ******** INSERT 1-2 ******

•

[The information follows:]

201 ******* INSERT 1-3 ******

Mr. SCHIFF. We have also subsequently received FBI 302s and grand jury testimony that are available to members.

I now recognize the ranking member of the task force, Bob Goodlatte of Virginia, for an opening statement.

Mr. GOODLATTE. Thank you, Mr. Chairman, for holding this important markup.

Article III of the Constitution provides that Federal judges are appointed for life and that they shall hold their offices during good behavior. Indeed, the framers knew that an independent judiciary free of political motivations was necessary to the fair resolution of disputes and the fair administration of our laws.

However, the framers were also pragmatists and had the foresight to include checks against the abuse of the independence and power that comes with a judicial appointment. Article I, Section 2, clause 5 of the Constitution grants the House of Representatives the sole power of impeachment.

This is a very serious power that should not be undertaken lightly. The impeachment of a Federal judge is a very infrequent occurrence within the halls of Congress. In fact, no Federal judge has been impeached in the last 20 years. It is a power that Congress utilizes only in cases involving very serious allegations of misconduct.

However, when evidence emerges that an individual is

abusing his judicial office for his own advantage and the integrity of the judicial system becomes compromised, then the House of Representatives has the duty to investigate the matter and take the appropriate actions to end the abuse and restore the confidence in the judicial system.

This task force has taken the testimony of two women victimized by Judge Kent. The task force has also taken other expert testimony and has conducted its own investigation, including working with the Fifth Circuit, the Department of Justice, the FBI, and other parties to gather relevant evidence. These efforts have yielded information that paints the clear picture that Judge Kent has engaged in conduct, including obstruction of justice and repeated sexual assaults on court employees, which merit the very serious step of this task force recommending Articles of Impeachment against Judge Kent.

Specifically, by his own admission, Judge Kent lied to the investigative committee of the Fifth Circuit which was looking into the misconduct involving two court employees.

Judge Kent pled guilty to the felony of obstruction of justice charge and will serve 33 months in Federal prison beginning on June 15.

However, the evidence has shown that Judge Kent also separately lied to the Department of Justice and the FBI when questioned about the nature of his contacts with these women.

In addition, Judge Kent has admitted to engaging in nonconsensual sexual contact with at least two court employees.

At a hearing convened by this task force on June 3, 2009, we heard the stories of the two women that Judge Kent victimized. These stories filled in the gaps in Judge Kent's admission and showed the repeated violent sexual abuse of these two women.

It is worth noting again that Judge Kent was invited to appear at the hearing before the task force and explain why his conduct does not justify impeachment. His attorney was also invited to participate. However, both Judge Kent and his attorney declined to attend.

Based on the evidence that has been gathered by the task force during this investigation, we now present four Articles of Impeachment for the task force members' considerations.

The first article describes the repeated sexual assault on Donna Wilkerson, a court employee.

The second article describes the repeated sexual assault of Cathy McBroom, another court employee.

The third article describes the obstruction of justice with respect to Judge Kent's false statements during the Fifth Circuit special investigatory committee proceedings.

And the fourth article describes the false statements

Judge Kent made to the Department of Justice and the Federal

PAGE 15

Bureau of Investigation when they questioned him about his 277 278 conduct. It is my strong recommendation that the task force 279 recommend these Articles of Impeachment to the full Judiciary 280 Committee for further consideration. 281 282 Thank you, Mr. Chairman. Mr. SCHIFF. I thank the gentleman for his statement. 283 Are there other committee members that wish to be recognized 284 for an opening statement? 285 Ms. Sheila Jackson Lee of Texas. 286 Ms. JACKSON LEE. Thank you very much, Mr. Chairman. 287 think I will yield the majority of my remarks for our meeting 288 tomorrow, but I am interested in submitting several 289 statements on the psychiatric condition of Judge Kent into 290 the record, please. 291 Mr. SCHIFF. Without objection, those will be made a 292 293 part of the record. [The information follows:] 294

****** COMMITTEE INSERT ******

HJU160.000

295

296 Mr. SCHIFF. I thank the gentlewoman.

3.00

307.

Would other committee members like to be recognized? The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Yes. It has been referenced that Judge Kent was given the opportunity to be here. He was given notice. And I don't think this--everyone had mentioned what his letter says, My health does not presently allow me to travel to Washington.

This is a judge who had been found guilty of lying on multiple occasions, a judge who was found guilty of obstruction of justice for lying. He submits an unsworn letter knowing that his credibility is a very, very serious issue and just says, my health. No supporting documentation, nothing to go along with it.

And so I just wanted that noted for the record that as a Federal judge, knowing the importance of credibility, knowing that the evidence was he didn't have much in the way of credibility, he sends a letter without any support for the fact that his health did not allow him to travel. I just wanted to note that.

Thank you.

Mr. SCHIFF. I thank the gentleman. Mr. Pierluisi of Puerto Rico.

Mr. PIERLUISI. Just briefly, I just want to add that it is fair to assume that most individuals in Judge Kent's

position would have resigned their position immediately. Yet Judge Kent purported to resign effective June 1, 2010, nearly one year from now. And I say purported to resign, because Judge Kent could withdraw his letter of resignation at any time and continue to hold his position into the future, apart from all these allegations. So he basically gave us no choice but to do what we are doing here today.

Mr. SCHIFF. I thank the gentleman for his statement. Other members' statements may be made a part of the record and included in the record.

At this point we will proceed through the articles, and I would ask the Clerk to read the first article.

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

- (1) Judge Kent is a United States District Judge in the Southern District of Texas. From 1990 to 2008, he was assigned to the Galveston Division of the Southern District, and his chambers and courtroom were located in the United States Post Office and Courthouse in Galveston, Texas.
- (2) Cathy McBroom was an employee of the Office of the Clerk of the Court for the Southern District of Texas and served as a Deputy Clerk in the Galveston Division assigned

PAGE 18

to Judge Kent's courtroom.

HJU160.000

(3) On one or more occasions between 2003 and 2007,

Judge Kent sexually assaulted Cathy McBroom by touching her

private areas directly and through her clothing against her

will and by attempting to cause her to engage in a sexual act

with him.

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

Article II.

Mr. SCHIFF. If the Clerk could hold there.

Is there any discussion on the amendment or do any members have any amendments to offer to Article I?

Hearing none, the Clerk will please report Article II.

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

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

3₆₉

PAGE · 19

(3) On one or more occasions between 2001 and 2007,

Judge Kent sexually assaulted Donna Wilkerson by touching her
in her private areas against her will and by attempting to
cause her to engage in a sexual act with him.

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

Mr. SCHIFF. Are there any amendments to Article II? Hearing none, the Clerk will report Article II.

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

- (1) On or about May 21, 2007, Cathy McBroom filed a judicial misconduct complaint with the United States Court of Appeals for the Fifth Circuit. In response, the Fifth Circuit appointed a Special Investigative Committee (hereinafter in this article referred to as "the Committee") to investigate Cathy McBroom's complaint.
- (2) On or about June 8, 2007, at Judge Kent's request and upon notice from the Committee, Judge Kent appeared before the Committee.
- (3) As a part of its investigation, the Committee sought to learn from Judge Kent and others whether he had engaged in unwanted sexual conduct with Cathy McBroom and individuals other than Cathy McBroom.
 - (4) On or about June 8, 2007, Judge Kent made false

PAGE 20

statements to the Committee regarding his unwanted sexual contact with Donna Wilkerson as follows:

- (A) Judge Kent falsely stated to the Committee that the extent of his unwanted sexual contact with Donna Wilkerson was one kiss, when in fact and as he knew he had engaged in repeated sexual contact with Donna Wilkerson without her permission.
- (B) Judge Kent falsely stated to the Committee that when told by Donna Wilkerson his advances were unwelcome, no further contact occurred, when in fact and as he knew, Judge Kent continued such advances even after she asked him to stop.
- (5) Judge Kent was indicted and pled guilty and was sentenced to imprisonment for the felony of obstruction of justice in violation of section 1512(c)(2) of title 18 United States Code, on the basis of false statements made to the Committee. The sentencing judge described his conduct as a stain on the judicial system itself.

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

Mr. SCHIFF. Are there any amendments to Article III? Hearing none, the Clerk will report Article IV.

The CLERK. Article IV, Judge Samuel B. Kent made material false and misleading statements about nature and extent of his nonconsensual sexual contact with Cathy McBroom

421 and Donna Wilkerson to agents of the Federal Bureau of 422 Investigation on or about November 30, 2007, and to agents of the Federal Bureau of Investigation and representatives of 423 424 the Department of Justice on or about August 11, 2008. Wherefore, Judge Samuel B. Kent is guilty of high crimes 425 426 and misdemeanors and should be removed from office. 427 Mr. SCHIFF. Are there any amendments on Article IV? Hearing none, the question is on recommending to the 428 committee for adoption the Articles of Impeachment as 429 contained in the draft resolution. 430 We have agreed to do this by roll call vote. 431 432 name is called those in favor will say aye. Those opposed will say no. The Clerk will call the roll. 433 Ms. Jackson Lee. 434 The CLERK. 435 Ms. JACKSON LEE. Aye. 436 The CLERK. Ms. Jackson Lee votes aye. 437 Mr. Delahunt. 438 [No response.] The CLERK. Mr. Cohen. 439 Mr. COHEN. 440 Aye. 441 The CLERK. Mr. Cohen votes aye. 442 Mr. Johnson. Mr. JOHNSON. Aye. 443 The CLERK. Mr. Johnson votes aye. 444 The CLERK. Mr. Pierluisi. 445

446	Mr.	PIERLUISI.	Aye.
447	The	CLERK. Mr.	Pierluisi votes aye.
448	Mr.	Gonzalez.	
449	[No	response.]	
450	The	CLERK. Mr.	Goodlatte.
451	Mr.	GOODLATTE.	Aye.
452	The	CLERK. Mr.	Goodlatte votes aye.
453	Mr.	Sensenbrenn	er.
454	Mr.	SENSENBRENN	ER. Aye.
455	The	CLERK. Mr.	Sensenbrenner votes aye.
456	Mr.	Lungren.	
457	Mr.	LUNGREN. A	ye.
458	The	CLERK. Mr.	Lungren votes aye.
459	The	CLERK. Mr.	Forbes.
460	[No	response.]	
461	The	CLERK. Mr.	Gohmert.
462	Mr.	GOHMERT. A	ye.
463	The	CLERK. Mr.	Gohmert votes aye.
464	Mr.	Schiff.	•
465	Mr.	SCHIFF. Ay	e.
466	The	CLERK. Mr.	Schiff votes aye.
467	Mr.	SCHIFF. Do	es any other member wish to vote?
468	The	CLERK. Mr.	Delahunt.
469	Mr.	DELAHUNT.	Aye.
470	The	CLERK. Mr.	Delahunt votes aye.

GE 23

471	Mr. SCHIFF. Does any other member wish to cast his or				
472	her vote?				
473	The Clerk will report.				
474	The CLERK. Mr. Chairman, we have 10 ayes and zero nays				
475	Mr. SCHIFF. A majority have voted in favor of the				
476	Articles of Impeachment. As contained in the draft				
477	resolution, they are forwarded to the committee with our				
478	recommendation that they be adopted.				
47 9	There being no further business before the task force				
480	today, we are adjourned.				
481	[Whereupon, at 10:40 a.m., the task force was				
482	adiourned 1				

*	SPEAKER LISTING ************************************							
	CLERK.	2	17	18	19	20	21	22
		23						
	COHEN.	21						
	DELAHUNT.	22						
	GOHMERT.	16	22					
	GOODLATTE.	12	22					
	JACKSON LEE	.15	21					
	JOHNSON.	21						
	LUNGREN.	22	·					
	PIERLUISI.	16	22		•			
RPTS CASWELL1			•					
	SCHIFF.	2	4	12	15	16	17	18
		19	20	21	22	23		
	SENSENBRENNI	ER.	22					•

	INDEX OF INSERTS		
******	INSERT 1-1 ******	•	
		PAGE	3
*****	COMMITTEE INSERT ******		
	·	PAGE	9
*****	INSERT 1-2 ******	•	
		PAGE	10
* ******	INSERT 1-3 ******		
		PAGE	11
*****	COMMITTEE INSERT ******		
		PAGE	15

. •

