

## Breaking Down Ex-Speaker Hastert's Plea Deal

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On Wednesday, former U.S. House Speaker Dennis Hastert appeared in district court in Chicago and pled guilty to one count of violating bank reporting laws. Hastert's defense counsel had "indicated two weeks ago that he was planning to plead guilty, though the details of the deal weren't known at the time and the politician maintained the right to withdraw from the agreement until he entered his formal plea [this] morning." Jessica Corso, Ex-Speaker Hastert Pleads Guilty to Hush Money Charge, Law 360 (Oct. 28, 2015). Today the deal was revealed: In exchange for his plea, one of the charges against Hastert — making false statements — has been dropped, and federal prosecutors have apparently recommended that he serve no more than six months in prison.



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In May, Hastert was indicted in connection with his alleged agreement to pay an unknown individual \$3.5 million "to compensate for and conceal his prior misconduct" against that unknown person. The indictment does not say what the former representative did that led him to pay the bribe, but it alleges that Hastert first withdrew cash in amounts of \$50,000 and then, following questioning by bank representatives, structured his withdraws — reducing his payments to under \$10,000 each — to evade the banks' reporting requirements. He did this at least 106 times over a two-year period. Then, when questioned by the FBI about his conduct, Hastert allegedly lied, informing agents that he had withdrawn the cash and kept it "because he did not feel safe with the banking system." For this conduct, he was charged with two counts: structuring and making false statements to the FBI.

Hastert pleaded not guilty to both charges but over the last few months his attorneys have been negotiating a plea deal, apparently seeking to avoid a trial that would disclose embarrassing secrets dating back to Hastert's days as a high school wrestling coach in Illinois. While the plea deal certainly has its upsides for Hastert, his future remains uncertain:

### Possible Disclosure of the Underlying Misconduct

Though the plea deal avoids a trial, some detail regarding Hastert's alleged misconduct may still come to light. As part of the sentencing process, the government and defense counsel will provide the court with relevant information about Hastert's background and the charged offenses. Furthermore, both parties have the ability to call witnesses at the sentencing hearing, including the individual whom Hastert was bribing. Thus, there is still a possibility that some details regarding the alleged misconduct will be

revealed.

### **A Potential Period of Incarceration**

While one of the charges against Hastert has been dropped and the government has recommended a sentence of no more than six months imprisonment, Hastert faces up to five years' incarceration and a \$250,000 fine. Hastert, however, has numerous arguments in favor of a nonincarceration sentence under the factors set forth in 18 U.S.C. § 3553, including the following:

- This was a nonviolent offense committed by an individual who has otherwise shown positive personal characteristics throughout the course of his life. See *United States v. Autery*, 555 F.3d 864 (9th Cir. 2009) (court's sua sponte variance to probation not unreasonable in part because of defendant's positive characteristics "such as his having no history of substance abuse, no interpersonal instability, no sociopathic or criminalistic attitude, his motivation and intelligence, and his support of his wife and child"); *United States v. Pauley*, 511 F.3d 468, 474 (4th Cir. 2007) (affirming district court's downward variance, which was based, in part, on defendant being a good father and teacher, which the court noted was a valid consideration under 3553); *United States v. Willis*, 479 F. Supp. 2d 927, 932 (E.D. Wis. 2007) (finding the guideline-recommended term failed to account for defendant's "significantly positive personal characteristics," including a solid work record).
- Given his personal characteristics (including his age — 73) and his disposition, Hastert is someone who does not pose a risk to the public and who is very unlikely to reoffend. *United States v. Lucania*, 379 F. Supp. 2d 288, 297 (E.D.N.Y. 2005) ("Post-Booker courts have noted that recidivism is markedly lower for older defendants."); S.S.C., *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at 11-12 (May 2004) (observing that: recidivism rates decline as age increases; and individuals are less likely to recidivate if they had stable employment the year prior to their instant offense).
- There is evidence that probation or a very short sentence would have a strong deterrent effect. *United States v. Qualls*, 373 F. Supp. 2d 873, 877 (E.D. Wis. 2005) ("Generally, a lesser period of imprisonment is required to deter a defendant not previously subject to lengthy incarceration than is necessary to deter a defendant who has already served serious time yet continues to re-offend."); see also Richard Frase, *Punishment Purposes*, 58 *Stanford L. Rev.* 67, 80 (2005); Elizabeth Szockyj, *Imprisoning White Collar Criminals?*, 23 *S. ILL. U. L.J.* 485, 492 (1998).
- A sentence of probation would be consistent with the sentences imposed for defendants with similar criminal backgrounds convicted of similar criminal conduct. See 18 U.S.C. § 3553(a)(6).

### **The Collateral Consequences**

Regardless of the sentence he serves, like most white collar offenders, the "collateral consequences" of

Hastert's conviction will be harsh and will last the duration of his lifetime. Once powerful and well liked, Hastert's name — like many a politician before him — has been completely sullied. Likewise, Hastert's lucrative lobbying career is almost certainly over: as a convicted felon, congressmen and congresswomen will almost certainly refuse to meet with him. *United States v. Vigil*, 476 F. Supp.2d 1231, 1235 (D.N.M. 2007) (finding variance appropriate where defendant in public corruption case was already collaterally punished by loss of his position, loss of his reputation, and media coverage of his case).

Hastert is set to be sentenced on Feb. 29.

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