



Should a Victim's Public Figure Status Count in Sentencing?

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On April 30, 2010, David Kernell, son of a Democratic Tennessee lawmaker, was found guilty by a federal jury of obstruction of justice and unauthorized access to a computer for hacking into then-Vice Presidential candidate Sarah Palin's Yahoo! e-mail account. Kernell was acquitted on a charge of wire fraud, and the jury deadlocked on a charge of identity theft, which prosecutors reserved the right to retry.

Attorneys for the 22-year-old college student maintained that the hack was merely a college prank. In fact, after posting snapshots of the contents of Palin's e-mail and personal information online, Kernell admitted that the hack was relatively simple. By his account, the hack involved a simple reset of Palin's password using her date of birth, zip code and personal information obtained through a Google search to answer the security question to her Yahoo! account. When Kernell learned of a possible FBI investigation into his behavior, he deleted the records and documents that pointed to him. Kernell now faces up to 20 years in prison on the obstruction charge alone, which is a felony. The misdemeanor count of unauthorized access to a computer is punishable by up to one year in jail. A sentencing date has not been set.

In his blog, *Sentencing Law and Policy*, Professor Douglas Berman [poses](#) the following question: "Should the politics surrounding this matter serve as an aggravating or mitigating factor at sentencing?" Certainly Palin thinks so. Palin has taken to her Facebook page on more than occasion to speak out about the incident, going so far as comparing it to Watergate. However, is this comparison warranted, given that the e-mails revealed nothing of significance and certainly nothing that would have harmed Palin's campaign? Palin clearly suffered injury as a result of Kernell's actions, i.e. the invasion of her privacy and the disruption to her life that ensued as a result of the posting of her personal information, but that seems to be all that she suffered.

The interest level in this case has certainly been heightened by the high-profile status of the victim, but given that the e-mails revealed nothing of political significance and did not affect the campaign, Palin should receive the same treatment as any other victim of computer crimes. As a victim, she has the right to participate and be heard in the proceedings, which was granted to her in this case, and "the right to be treated with fairness and with respect for the victim's dignity and privacy." 18 U.S.C. §3771(8). That being said, however, computer crimes go unpunished every day. As much as we want to our justice system to treat all victims equally, Palin is who she is, and federal prosecutors are using Kernell to set an example.

Crime in the Suites is authored by the [Ifrac Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

*The commentary and cases included in this blog are contributed by Jeff Ifrac and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrac and Jonathan Groner, the former managing editor of the *Legal Times*. We look forward to hearing your thoughts and comments!*