UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
-v.-	:	S1 15 Cr. 093 (VEC)
SHELDON SILVER,	:	
Defendant.	:	

- -X

THE GOVERNMENT'S SENTENCING MEMORANDUM

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The United States of America respectfully submits this memorandum in advance of defendant Sheldon Silver's sentencing proceeding, which is scheduled for May 3, 2016 at 2:00 p.m.

I. PRELIMINARY STATEMENT

For more than twenty years, Sheldon Silver held a position of unparalleled power in New York. By the time of his arrest in January 2015, Silver had occupied one of the three most powerful offices in New York State government – Speaker of the New York State Assembly – for decades. As the evidence at trial conclusively proved, Silver repeatedly abused that position of power and public trust during the span of more than a decade for private gain. He enriched himself with millions of dollars in bribes and kickbacks, confident that his power and his repeated lies – to the press, the public, his staff, members of the Assembly, and others – would enable him to operate with total impunity.

Silver exploited the vast political power entrusted in him by the public to serve himself. He preyed on others' dependence on him for favorable official action, and used the cover of his law license to secretly steer to himself millions of dollars worth of business that he knew nothing about and could not (and did not) perform, in exchange for official action that only he could

provide. There is no excuse or mitigating factor tempering the seriousness of Silver's crimes, which were motivated by greed and accomplished through exploitation of his enormous power and his willingness to lie and deceive at every turn.

While telling the public that "disclosure [is] the key" to preventing corruption (GX 4) and insisting that he "disclose[d] everything" (GX 5), Silver lied year after year on his mandatory disclosure forms, used an account in his wife's name to hide hundreds of thousands of dollars in crime proceeds, and lied to the public again and again about the nature and sources of his outside income. Silver further abused his power by resisting legislative reforms that would have shed greater sunlight on his ill-gotten gains and refusing to comply with the inquiries of the Moreland Commission to Investigate Public Corruption (the "Moreland Commission") that might have exposed his corrupt schemes.

Silver's crimes corrupted the institution that he led for more than 20 years. As a fixture in the legislative leadership, an entire generation of New York legislators served in an institution framed by his corrupt example. His crimes struck at the core of democratic governance – a man with unparalleled power over the affairs of New York State was secretly on the take, abusing all that power to enrich himself and prevent anyone from learning about his corrupt schemes. His crimes tainted an untold number of legislative actions.

The sentence imposed on Silver should reflect the unprecedented magnitude, duration, and scope of his abuse of power. It should reflect the immeasurable damage Silver caused to the democratic process and to the public trust. It should punish Silver for the vast harm he has caused and the position of trust that he exploited, deter other elected officials from the temptation towards corruption, and communicate to the public that the rule of law applies even to the most prominent of public officials.

The sentencing range advised by the United States Sentencing Guidelines (the "Guidelines" or "U.S.S.G.") appropriately reflects the severity of Silver's crimes. As set forth in the United States Probation Office's (the "Probation Office") Presentence Investigation Report, dated March 25, 2016 ("Presentence Report" or "PSR"), the applicable Guidelines range is 262 to 327 months' imprisonment. (PSR ¶¶ 47-67). The Guidelines range is high because the United States Sentencing Commission explicitly has recognized the "threat to the integrity of democratic processes" caused by public corruption offenses, U.S.S.G. Manual app. C (Amendment 666), and because of the many egregious aspects of the defendant's crimes, including Silver's role as a high level public official, his engagement in multiple corrupt schemes, the millions of dollars in bribe money Silver took in, and his laundering of his crime proceeds. (PSR ¶¶ 47-67).

While a sentence within the Guidelines range would not be unreasonable or unjust, in light of the egregiousness of Silver's conduct and the need for deterrence, the Government respectfully submits that the Court should sentence the defendant to a term of imprisonment substantially in excess of the 10 years recommended by the Probation Office and greater than any sentence imposed on other New York State legislators convicted of public corruption offenses. The Government further respectfully submits that the defendant must be required to forfeit all of his crime proceeds – which to date totals $5,179,106 – and that a substantial fine of at least $1 million is appropriate in this case, particularly in light of the defendant's significant remaining resources and his more than $70,000 per year pension, paid for by New York State taxpayers, that Silver obtained over the course of years during which he was violating the public trust.

II. THE OFFENSE CONDUCT IN THIS CASE

The Court is well aware of the trial record in this case, which overwhelmingly established that the defendant orchestrated two complex and long-running schemes to monetize his public position for private gain.[1] Relevant to sentencing, and as set forth in more detail below, the defendant's conduct demonstrated a brazen misuse of the enormous power he had amassed as Speaker of the Assembly and caused immeasurable damage to the public's trust in its government. Silver also abused his law license and damaged the legal profession by using his status as a lawyer to obtain and make it difficult to trace the corrupt source of his outside income. Through the two schemes, the defendant obtained nearly $4 million in bribes and extortion payments, and he ultimately succeeded through his laundering of those crime proceeds to obtain a total of over $5 million in ill-gotten gains.

A. The Asbestos Scheme

As the jury unanimously found, Silver engaged in a *quid pro quo* scheme to obtain valuable leads to unrepresented patients with mesothelioma and millions of dollars in resulting referral fees for himself in exchange for engaging in a series of official actions that benefited the provider of those leads. Silver exploited Dr. Robert Taub's devotion to his medical research and, through the use of his public position and access to State funds, induced Dr. Taub to send him lucrative mesothelioma cases, all the while keeping secret and deliberately deceiving the public, his Assembly staff, the partners at Weitz & Luxenberg ("W&L"), and others about how he obtained such cases and the nature and source of his outside income.

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[1] For a more detailed recitation of the facts proven at trial, the Government respectfully refers to its opposition to the defendant's post-trial motions pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure and related transcript and exhibit cites. Herein, the Government highlights the facts it respectfully submits are most pertinent to sentencing.

Once Silver had received a substantial *quid*, the lucrative leads and resulting referral fees that exceeded his annual income as Speaker, he took official action that benefited Dr. Taub, the provider of the *quid*, by directing his staff to disburse two consecutive $250,000 grants from the taxpayer-funded and Silver-controlled Health Care Reform Act Assembly Pool ("HCRA Assembly Pool") to Dr. Taub's mesothelioma research. Silver did not disclose to his Assembly staff or the distributor of the funds, the New York State Department of Health ("DOH"), the millions of dollars in financial benefits he was obtaining from Dr. Taub, and, as Silver well knew, neither his staff nor DOH had any way of figuring it out, given Silver's lies and secrecy concerning the sources of his outside income. Silver also never publicly disclosed that he had distributed the funds to Dr. Taub, even though the funding's stated purpose was to educate the public and perform research that helped those harmed during the attacks of September 11, 2001, which occurred in Silver's Assembly District.

The corrupt nature of the scheme was highlighted by proof that Silver cut off State funding to Dr. Taub only because changes in laws, regulations, and funding sources would have required that any additional grant to Dr. Taub be publicly disclosed and accompanied by disclosure of the financial benefits that Silver was obtaining from Dr. Taub. Not content to end his criminal conduct, as it had proven far too lucrative, Silver found other ways to use his official position to benefit Dr. Taub. Again, Silver enlisted the unwitting help of his State-paid Assembly staff to continue to provide official actions benefiting Dr. Taub, and thus keep the lucrative leads and resulting referral fees coming his way. Silver helped Dr. Taub's daughter and son secure jobs; Silver approved State funding to an organization affiliated with Dr. Taub's wife; and Silver caused the New York State Assembly to issue an official resolution – a form of legislation that required a vote on the floor of the Assembly – and an official Assembly

proclamation honoring Dr. Taub.

Certain aspects of the Asbestos Scheme were particularly egregious and damaging to the public trust. First, Silver cynically exploited the tragic events of 9/11 to get rich. He obtained millions of dollars in referral fees in exchange for funding Dr. Taub's research, knowing that the research's purported connection to 9/11 would help shield it from scrutiny. Silver did nothing to promote the research or any benefit it might provide to victims of 9/11, and he cut Dr. Taub off when the funding, and its connection to Silver's private financial gain, was at risk of being revealed to the public. Second, Silver repeatedly lied to the public, his press officer, and others during the course of more than a decade about the source of his outside income, including the more than $3 million that he obtained as a result of the leads sent to him by Dr. Taub. Among other things, Silver falsely told the public that he obtained cases because people in the community came to him based on his lengthy experience as a lawyer, and that he spent hours each week reviewing potential cases referred to him in this manner, when the reality was that he spent minutes receiving multi-million dollar leads associated with people who never met or spoke with him from Dr. Taub, who sent them to him as part of a *quid pro quo*. Third, as set forth above, Silver exploited more than a dozen taxpayer-funded State employees who unknowingly facilitated the scheme, and he perpetrated it without detection for more than a decade as a result of his power and his lies.

B. The Real Estate Scheme

The Real Estate Scheme reflects similar greed and betrayal of the public trust. As the jury unanimously found, for more than 15 years, Silver used the power of his office and others' dependence on favorable official action from him to get two real estate developers to send their tax certiorari business to a law firm, Goldberg & Iryami, P.C. (the "Goldberg firm") in exchange

for hundreds of thousands of dollars in kickbacks paid to him by that firm.

To the public, Silver portrayed himself as a champion of tenants who obtained none of his copious outside income – more than any other member of the Assembly, despite his numerous responsibilities as Speaker – from the real estate industry, nor anyone else with any business before the State. In reality, Silver directly solicited fungible real estate tax certiorari business from real estate developers who were dependent on him for favorable official action, and who were afraid to alienate Silver in view of his control over their business interests.

Silver's more than $800,000 in actual and accrued profit from the Real Estate Scheme came as a result of Silver's direct solicitation of The Witkoff Group, Inc. ("Witkoff") and Glenwood Management, Corp. ("Glenwood"). Glenwood, as Silver knew, was particularly dependent on favorable State legislation and official action for its profitability and survival, including State legislation governing rent regulation and a tax abatement program known as "421-a" that periodically expired, requiring regular renegotiation with, and approval by, the State Legislature. Silver played a dominant role in these negotiations: he was personally involved in, and personally had to sign off on, any legislation covering these subjects – otherwise he could use his near-total control over the Assembly to keep the legislation from coming to a vote. In addition, Glenwood depended on the State for tax-exempt financing, which had to be approved by an entity called the Public Authorities Control Board ("PACB") to which Silver appointed himself as one of three voting members. Silver similarly was aware of Witkoff's dependence on favorable official action, given Witkoff's ownership of 421-a buildings and other buildings in Silver's Assembly District.

As he had done with the Asbestos Scheme, Silver covered up the *quid pro quo* Real Estate Scheme with secrets and lies. Even while Silver was confirming in a secret side letter that

he purportedly was representing Glenwood, one of the most active participants in the State political process, he insisted to the public that he derived no outside income from anyone with business before the State. Among other things, Silver falsely stated that his clients were "little people" and that he did not represent "corporations" or "entities that are, uh, um, you know, involved in the legislative process" or "had an impact on anything we do legislatively." (GX 1A, 2, 4). Silver also lied about how he got the business: Silver falsely represented that he got business because people in the community knew him and came to him based on his experience as a lawyer, and that he spent hours each week evaluating such cases, never revealing the business he got from major real estate developers by directly soliciting them. (*Id.*; *see also* GX 275). Moreover, Silver's annual financial disclosures never revealed that the Goldberg firm served as a source of outside income, despite forms that required Silver to list "EACH SOURCE" of outside income, and Silver never revealed in those disclosures that he derived any outside income connected to the real estate industry at all. (GX 2009 (summarizing disclosure forms)). Silver persisted in these lies even while he stated publicly that "disclosure [was] the key" because, among other things, it "prevents activities that may be in conflict" with an official's obligations to the public. (GX 4).

Several aspects of the Real Estate Scheme were particularly harmful. Among other things, Silver betrayed the trust that fellow legislators placed in him as their Speaker by concealing his corrupt scheme from them even while he served as the Assembly's lead negotiator on real estate legislation – negotiations that included one of the very entities, Glenwood, that was paying him. Silver also betrayed the trust that the people of the State placed in him as one of three voting members of the PACB, a position to which Silver had appointed himself, by concealing from the PACB and the public the fact that he was receiving hundreds of thousands

of dollars in Glenwood's largesse at the same time he was approving more than $1 billion in financing for Glenwood. (GX 1522). Silver again enlisted his press officer in facilitating unknowingly his fraudulent scheme, never disclosing to his press officer that he had made any money from the real estate industry whatsoever, much less money from the State's largest corporate or individual donor, who regularly sought favorable specific official actions from him. Silver also subjected Witkoff to legal and reputational risk, hiding the corrupt arrangement from Witkoff until the Goldberg firm received a grand jury subpoena, at which time Jay Arthur Goldberg tried to pretend that Witkoff had known about the arrangement.

C. The Money Laundering Scheme

The jury's verdict also reflected that Silver maximized the value of his ill-gotten gains by laundering it through investment vehicles not available to the general public. Jordan Levy, a private investor who was friends with many politicians, testified that Silver, alone among all of his politician friends, asked Levy to invest his funds in private high-yield investment vehicles. Testimony and exhibits introduced at trial reflected that Silver funded these investments by taking money that he made from the Asbestos and Real Estate Schemes, depositing the money into a federally-insured bank account, and sending the money, including transactions in increments of greater than $10,000, to the vehicles as directed by Levy.

The laundering scheme included further evidence of Silver's efforts to conceal the source and extent of his ill-gotten gains. As Levy testified, Silver disclosed to him only that he was looking for lucrative private investments because he had come into some "extra money," without ever disclosing his receipt of asbestos- or real estate-related fees to Levy. Moreover, Silver asked that one of the investment vehicles be split in half, with half placed in his wife's name, so that the public would not see the amount of his investment, and thus the wealth he had amassed

from the schemes.

* * *

In sum, the defendant abused his power and exploited others who reported to him or who were dependent on him for favorable official action to obtain close to $4 million in bribes, kickbacks, and extortion payments, and to obtain an additional $1 million in proceeds from the laundering scheme. He facilitated and concealed the schemes through repeated lies, defiantly insisting that his outside income bore no relation to his official position even while he knew that the truth was the opposite. Silver acted with impunity during the course of a more than a decade, continuing to engage in official acts benefiting those who were benefiting him personally, and continuing to lie to the public, until he got caught. As set forth above, there is no excuse for or mitigating aspect of his conduct, and no explanation for it other than greed.

III. THE GUIDELINES CALCULATION

The defendant was convicted of engaging in schemes to defraud the citizens of the State of New York of their right to his honest services using the wires and mails, in violation of Title 18, United States Code, Sections 1341, 1343, and 1346 (Counts One and Two of the Indictment (the Asbestos Scheme) and Counts Three and Four of the Indictment (the Real Estate Scheme)). Silver also was convicted of extortion under color of official right, in violation of Title 18, United States Code, Section 1951 (Count Five of the Indictment (the Asbestos Scheme) and Count Six of the Indictment (the Real Estate Scheme)), and of engaging in prohibited monetary transactions involving the proceeds of the Asbestos and Real Estate Schemes, in violation of Title 18, United States Code, Section 1957 (Count Seven of the Indictment).

The applicable Guideline for Counts One through Six of the Indictment is Section 1B1.11 and for Count Seven of the Indictment is Section 2S1.1. Counts One through Seven are grouped

because, among other things, the offense level for these Counts is determined largely on the basis of the total amount of harm or loss, *see* U.S.S.G. § 3D1.2(d), and because the money laundering guideline, U.S.S.G. § 2S1.1, incorporates the offense level applicable to the honest services fraud and extortion offenses (Counts One through Six of the Indictment), *see* U.S.S.G. § 3D1.2(c). Pursuant to U.S.S.G. § 2S1.1(a)(1), the base offense level for Count Seven, the money laundering charge, is the offense level applicable to the underlying offense(s) from which the laundered funds were derived because the defendant committed the underlying offenses and the offense level for those offenses can be determined. Here the underlying offenses are covered by U.S.S.G. § 2C1.1. (PSR ¶ 49).

Pursuant to U.S.S.G. § 2C1.1(a)(1), the base offense level is 14 because the defendant was a public official. The following specific offense characteristics increase the offense level as follows:

- Pursuant to U.S.S.G. § 2C1.1(b)(1), because the offense involved more than one bribe or extortion from more than one entity, the base level is increased by two levels.

- Pursuant to U.S.S.G. §§ 2C1.1(b)(2) and 2B1.1(b)(1)(J), because the defendant obtained more than $3.5 million but less than $9.5 million, the base offense level is increased by 18 levels.[2]

[2] This calculation is conservative, as it does not include the millions of dollars in gain obtained by W&L or the Goldberg Firm as a result of Silver's conduct, nor does it include the millions of dollars in tax exemptions and other benefits obtained by Glenwood and others as a result of Silver's favorable official actions, even though either such measure could have been used to calculate Silver's Guidelines level. *See* U.S.S.G. § 2C1.1(b)(2) (Guideline level based on the "greatest" of, *inter alia*, "the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or others acting with a public official").

The Guidelines calculation also is conservative because it does not incorporate the arguably applicable upward departure under U.S.S.G. § 5K2.7. *See* U.S.S.G. § 2C1.1 cmt. 7 ("In a case in which the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. See [U.S.S.G.] §5K2.7 (Disruption of Governmental Function)."). Here, the defendant's conduct arguably merits an

- Pursuant to U.S.S.G. § 2C1.1(b)(3), because the defendant was an elected high-level public official, the base offense level is increased by four levels.

- Pursuant to U.S.S.G.§ 2S1.1(b)(2)(A), because the defendant was convicted under Title 18, United States Code, Section 1957, the base offense level is increased by one level.

(PSR ¶¶ 50-60).

The resulting adjusted total offense level is 39. (PSR ¶ 57). The defendant has no prior convictions, so his Criminal History Category is I. (PSR ¶¶ 61-64). Based on a total offense level of 39 and a Criminal History Category of I, Silver's Guidelines range is 262 to 327 months' imprisonment. The Probation Office recommends a below-Guidelines sentence of 120 months' imprisonment (on each count to run concurrently). (PSR at 33).

The Probation Office also calculates a Guidelines fine range of $25,000 to more than $7 million. It recommends a fine of $1,000,000, as well as forfeiture in the amount of $5,179,106.12, a mandatory special assessment of $700, and two years of supervised release (on each count to run concurrently). (PSR at 33).

The applicable Guidelines range is high, but it is based on the Sentencing Commission's considered assessment of the high level of culpability of public officials who abuse the public trust, and the severity of the harm caused by their crimes. Indeed, approximately ten years ago, the Sentencing Commission increased the offense levels applicable to public corruption offenses. *See* U.S.S.G. Manual app. C (Amendment 666). In doing so, the Commission stated, in relevant part:

> This amendment increases punishment for bribery, gratuity, and "honest services" cases while providing additional enhancements to address previously unrecognized aggravating factors inherent in some of these offenses. This amendment reflects the

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upward departure in view of the systematic and long-running abuse of his office and the loss of confidence in government caused by his conduct, among other factors.

> Commission's conclusion that, in general, public corruption offenses previously did not receive punishment commensurate with the gravity of such offenses. . . . The higher alternative base offense levels for public officials reflect the Commission's view that offenders who abuse their positions of public trust are inherently more culpable than those who seek to corrupt them, and their offenses present a somewhat greater threat to the integrity of governmental processes.

(*Id.*). The significant recommended Guidelines range in this case reflects the considered judgment of the Sentencing Commission, and is the product of the Commission's stated belief that lenient sentences for public corruption defendants do not adequately reflect the "gravity of such offenses." (*Id.*). Accordingly, the Court should give the recommended Guidelines range careful consideration as "the starting point and the initial benchmark" for the appropriate sentence in this case. *Gall* v. *United States*, 552 U.S. 38, 49 (2007); *see also* 18 U.S.C. § 3553(a)(4) (requiring consideration of applicable Guidelines range in determining appropriate sentence).

IV. SENTENCES IN OTHER FEDERAL PUBLIC CORRUPTION PROSECUTIONS

The Court requested that the Government prepare and file with its sentencing submission a chart reflecting sentences imposed on other elected state and federal officials convicted in federal court of public corruption-related offenses (the "Sentencing Chart"); it is attached as Exhibit A.[3] The sentences set forth in the Sentencing Chart reflect that, nationally, public officials who seriously abuse the public trust over a substantial period of time, or using multiple

[3] The Sentencing Chart was compiled using information provided by the Department of Justice's Public Integrity Unit and gathered by the Government through public sources but because there is no central database of federal public corruption cases or sentences, it is possible that sentences inadvertently may not be included.

The Sentencing Chart does not include the many other New York State legislators who were convicted in State court or who were convicted of crimes that did not involve corruption. *See* New York Public Interest Research Group, "A Review of Albany's Ethical Failures," December 2015, available at http://www.nypirg.org/pubs/Albany_Ethics_Failures_2015_12.11.15.pdf (listing 41 state officials convicted since 2000) (last visited Mar. 29, 2016).

means and methods, consistently receive significant sentences approaching the Guidelines range applicable to their offense conduct. Indeed, averaging all the sentences on Exhibit A together, including the Guidelines (except for the one instance where the Guidelines range was life) and non-Guidelines sentences, the average sentence for public officials convicted of public corruption offenses is approximately a downward variance of between 20 and 25 percent from the applicable Guidelines range.

A. Sentences of New York Public Officials for Corruption Offenses

Focusing on the sentences of New York public officials reflects that during just the past several years – the very time when Silver was committing the crimes for which he is to be sentenced – numerous other New York State legislators have received substantial sentences after being convicted of federal public corruption-related crimes, although those crimes did not approach Silver's in their length, amount of corrupt gain, or extent to which the public's trust was violated. While the Court must sentence the defendant based on the conduct specific to this case and the defendant's individual circumstances, in order to fully take into account the seriousness of the defendant's offenses, the acute need to deter others who might be tempted to follow the defendant's path, as well as to avoid "unwarranted sentence disparities" with similarly-situated defendants, 18 U.S.C. § 3553(a)(6), a more detailed overview of several recent federal prosecutions and convictions of other New York public officials convicted of similar crimes is warranted.

1. *United States* v. *Carl Kruger*, 11 Cr. 300 (JSR)

Carl Kruger, a former State Senator who served for a brief period of time as Chairman of the Senate Finance Committee, fully accepted responsibility for his criminal conduct by pleading guilty to corruption charges resulting from his participation in two separate bribery conspiracies

involving approximately $500,000 in bribes that occurred over a four-year period of time, between 2007 and 2011. Kruger's principal offenses involved pressuring a hospital executive who depended on favorable legislation to award a contract to a hospice company that employed Kruger's consulting firm, and providing favorable official actions to other individuals and entities that were paying third parties connected to Kruger – offenses similar in nature to Silver's Asbestos and Real Estate Schemes, though far more brief and far less lucrative. After his guilty plea, Kruger requested a "very lenient sentence" and only a "short" period of imprisonment from Judge Rakoff, which the defense argued would account for the "good Carl Kruger [had] done as a senator, as a community member, and as a family man." 11 Cr. 300 (JSR), Docket #207 at 1-2, 71 (Kruger Sentencing Memorandum).

After calculating a Guidelines range of 108 to 135 months' imprisonment, based on a loss amount of between $400,000 and $1,000,000 and inclusive of acceptance of responsibility credit, Judge Rakoff largely rejected Kruger's sentencing arguments and imposed a sentence of 84 months' (7 years') imprisonment. In doing so, Judge Rakoff described the systemic harm wrought by public corruption and the concomitant need for stiff punishment:

> . . . without any need to do so, Mr. Kruger entered into extensive, long-lasting, substantial bribery schemes that, frankly, were like daggers at the heart of honest government. It's really difficult to overstate the evils that are wrought when a government official comes to bribery, let alone one of Mr. Kruger's power and province. We have only to look at other countries to see that once corruption takes hold, democracy itself becomes a charade, justice becomes a mere slogan camouflaging a cesspool of self-interest. When a legislator accepts bribes, he not only betrays his constituents' trust, he strikes a blow against every principle on which a democracy is founded.

(Sentencing transcript, attached hereto as Exhibit B, at 46-47).

Notably, the need for punishment was not overridden by Kruger's cited history of "good works" in office. Judge Rakoff acknowledged that "there is a great deal of good in Mr. Kruger's character and in the way he has conducted much of his life," as evidenced by "the many letters that the Court has received and in the evidence of his activities over many years inside and outside New York government." (Ex B at 46). But Judge Rakoff explained that, "whatever credit is due Mr. Kruger for his good deeds and whatever sympathy one might feel, as I do feel, for a fellow human being who, in the Court's view, feels genuine remorse[,] must be balanced against the huge harm that Mr. Kruger has done that make this country, and the principles for which it stands, the last best hope of democracy. And I think that balance weighs heavily in favor of a substantial sentence." (Ex. B at 47).

There are several important distinctions between Silver's crimes and Kruger's crimes, none of them favorable to Silver. First, as set forth above, Silver's crimes ran for far longer and resulted in millions of dollars more in ill-gotten gains. Second, unlike former Senator Kruger, Silver stood at the apex of power in New York State government, possessing near-unparalleled ability to grant or withhold favorable official action from the State. Silver betrayed the extraordinary public trust that came with extraordinary power not only through his ill-gotten gains, but by lying to the public and using his State-paid staff to carry out his schemes and unknowingly repeat his lies. Third, and perhaps most critically, unlike Kruger, here Sheldon Silver has accepted no responsibility and shown no remorse for his crimes, instead repeatedly trumpeting that he will be "vindicated" – if not by the jury of his peers that convicted him of all counts, then at some later point in time.

2. *United States* v. *Malcolm Smith*, 13 Cr. 397 (KMK)

Malcolm Smith served as a New York State Senator and for a very brief period as Senate Majority Leader. Smith was convicted at trial of various corruption offenses that arose principally from his scheme to bribe Republican Party officials to be placed on the Republican ballot for the 2013 New York City mayoral race. Even though Smith requested a sentence of one year and one day, and even though Smith obtained no personal financial gain from the offense, Judge Karas sentenced him to a term of imprisonment of 84 months (seven years), only slightly below the Guidelines range of 97 to 121 months' imprisonment. In imposing sentence, Judge Karas noted that a sentence imposed in a public corruption case should be fashioned to give serious pause to other public officials, "who may be in [the defendant's] position going forward who have to say to themselves I don't want to face the consequences of not giving my constituents or the people of the State of New York my honest services." (Sentencing transcript, attached hereto as Exhibit C, at 25). Judge Karas also determined that a sentence of 84 months' imprisonment, close to the applicable Guidelines range, was appropriate notwithstanding the defendant's prior good acts, explaining:

> [I]n any of these public corruption cases there is that tension where presumably the person who has been elected or appointed to some sort of public service position is engaged in public service but if they have taken a bribe or offered a bribe or done something that corrupts the process, then the law takes into consideration the fact they they're public servants. That's what makes the crime so serious. It is that we are entitled to expect our public officials to only engage in selfless good deeds and to only legislate in the best interests of their constituents and to act in a way that is exemplary.

(Ex. C at 21-22).[4]

[4] In that case, Judge Karas also sentenced former New York City Councilman Daniel Halloran to 10 years' imprisonment for his participation in the scheme. *See United States* v. *Daniel Halloran*, 13 Cr. 297 (KMK).

By any measure, Silver's conduct was more serious than Smith's conduct. Unlike Smith, Silver abused the power of the office of the Assembly Speaker for millions of dollars in personal financial gain. Unlike Smith's scheme, which related to failed efforts to influence a single election in 2013, Silver's abuse of power was highly successful, and highly lucrative, over the course of more than a decade at the apex of power, and it corrupted State funding and legislation over a period of years.

3. *United States* v. *Anthony Seminerio*, 08 Cr. 1239 (NRB)

Anthony Seminerio, Silver's former colleague in the New York State Assembly, pleaded guilty to corruption charges relating to his receipt of approximately $1 million worth of bribes from hospitals through a consulting firm. Although the applicable Guidelines range was 135 to 168 months' imprisonment, Seminerio sought a sentence of home confinement, citing his advanced age, significant health issues, his acceptance of responsibility, and his long career in public service. In rejecting such arguments and sentenced Seminerio to 72 months' (six years') imprisonment, , Judge Buchwald explained that "[c]itizens are entitled to trust in the integrity of their government. Now is the time to impose a sentence which sends a message that such conduct is unacceptable because it destroys the fabric of our society. This is [a] message to people like you . . . who have a choice, who have options. This sentence must be a message to other public officials who see easy money and a setting in which the ethics rules do little to prevent temptation." (Sentencing transcript, attached hereto as Exhibit D, at 19).

Again, Silver's crimes were more serious by any measure, reflecting greater abuse of power over a longer period of time, greater financial gain, no acceptance of responsibility, and no analogous health circumstances.

4. *United States* v. *Efrain Gonzalez*, 06 Cr. 726 (WHP)

Efrain Gonzalez, a former New York State Senator, pleaded guilty to corruption charges involving the embezzlement of more than half a million dollars from nonprofit groups to cover his personal expenses. Judge Pauley found that the Guidelines range was 108 to 135 months' imprisonment, and sentenced the defendant to 84 months' (7 years') imprisonment. In doing so, Judge Pauley also observed the immeasurable damage caused by public corruption crimes:

> As an elected official for so many years, you understand better than anybody else in this courtroom that what you did was wrong . . . . In the end, you undermined the public's confidence in the integrity and altruism of their elected officials, and in this respect you have done incalculable damage.

(Sentencing transcript, attached hereto as Exhibit E, at 41-42). In response to Gonzalez's citation to his prior good acts, Judge Pauley explained that "[w]hile he undoubtedly performed some good and generous acts throughout his life and as a senator, as many of the letters that were submitted to the Court attest, he has brought public disgrace onto himself and the New York State Senate." (Ex. E at 40). Thus, "there is a compelling need to punish him for his venal acts and to ensure general deterrence among those who would try to use their public offices for personal gain." (Ex. E at 41).

5. *United States* v. *William Boyland, Jr.*, 11 Cr. 850 (SLT) (E.D.N.Y.)

William Boyland, Jr., a former New York State Assemblyman and a rank-and-file member and colleague of Silver's in the Assembly, was convicted at trial in the Eastern District of New York of 21 public corruption counts, stemming from four separate corrupt schemes, one of which was an FBI sting operation. The applicable Guidelines range was 235 to 293 months' imprisonment, and Judge Townes sentenced him to 168 months' (14 years') imprisonment, notwithstanding Boyland's record of community service, noting that he had "betrayed the trust of

his constituents. He violated his ethical duties as an Assemblyman." (Sentencing transcript, attached hereto as Exhibit F, at 7-9, 16-17). Silver's crimes were more serious by many measures, given Silver's greater abuse of power, his facilitation of the schemes through repeated and systematic deception of the public, the greater duration of the crimes, and the far larger amount of proceeds he obtained as a result of those crimes.[5]

B. Silver's Offenses Indisputably Were Among the Most Serious of Public Corruption Crimes in New York and Elsewhere

As established at trial, given Silver's virtually unmatched position of power, the duration of his misconduct, the multiplicity of his schemes, the extent of his ill-gotten gains, his repeated lies to the public about his outside income and how he earned it, and his continuation of illegal conduct in the face of the repeated warnings that came in the form of so many fellow legislators convicted before him, the magnitude of Silver's betrayal of the public trust exceeds the harm to the public manifested in the other cases discussed herein. In terms of the Guidelines, the 262 to 327 month range (driven largely by the extent of Silver's ill-gotten gains, his position of power, and the multiplicity of his schemes) exceeds that of all the foregoing public officials. Those New York officials with the Guidelines ranges closest to Silver were William Boyland, Jr. (235

[5] Also notable was the sentence imposed on former New York State Assemblyman and Silver colleague Eric Stevenson, a rank-and-file member, who was convicted at trial for accepting multiple cash bribes from businessmen in exchange for taking official actions in their favor. The bribes to Stevenson totaled approximately $22,000, and his conduct took place over the course of less than a year. In sentencing Stevenson to 36 months' (three years') imprisonment based on a Guidelines range of 51 to 63 months, Chief Judge Preska observed that "the crime of conviction was that of selling an assemblyman's core function for money. It was a betrayal of the responsibility bestowed on an elected official by his constituents for his own self-aggrandizement and not in the service of his constituents." (Sentencing transcript, attached hereto as Exhibit G, at 15). Chief Judge Preska took into account "the good works that [Stevenson] had done," but stated that "there is a need for an incarceratory sentence here to reflect the seriousness of the offense, particularly the betrayal of an elected official's core function. There is certainly a need for an incarceratory sentence to provide general deterrence to others who might be so minded." (Ex. G at 15-16).

to 293 months' imprisonment), Anthony Seminerio (135 to 168 months' imprisonment), Carl Kruger (108 to 135 months' imprisonment), Malcolm Smith (97 to 121 months' imprisonment) and Efrain Gonzalez (108 to 135 months' imprisonment). They were sentenced to 14, six, seven, seven, and seven years' imprisonment, respectively, despite having significantly lower Guidelines ranges and despite making arguments similar to Silver's argument to the Probation Office, and expected argument to this Court, that his good works in public service warranted leniency. Moreover, as discussed above, their conduct was less serious than proven here, and unlike Silver, all but Boyland and Smith pleaded guilty and accepted responsibility for their crimes.[6]

The significant sentences imposed by other federal sentencing judges in this Circuit and others and the compelling rationales articulated in support of them, which are equally if not more applicable here, animate the need for a significant incarceratory sentence for Silver. The defendant's crimes tragically demonstrated that corruption of public office for personal financial

[6] Sentences for public officials in other circuits vary widely based on the applicable Guidelines ranges, the nature and circumstances of the offense, local conditions, and other factors not relevant to the instant proceeding. One recent high-profile public corruption sentencing, that involving the former Governor of Commonwealth of Virginia, Robert McDonnell, for example, is readily distinguishable from this case. McDonnell received a sentence of only 24 months' imprisonment based on a Guidelines range of 121-151 months after having been convicted at trial of trading favors in return for $177,000 in loans, vacations, and gifts for himself and his co-defendant wife. (*See* Ex. A and *United States* v. *McDonnell*, No. 3:14-cr-12 (E.D. Va. 2015)). Among other things, McDonnell's conduct was far shorter and less lucrative than Silver's crimes, McDonnell did not initiate the scheme, and McDonnell's wife played a significant role in the offense and received many of the luxury goods. By contrast, Silver personally initiated and actively extorted the bribe payments through two separate schemes over the course of more than a decade, netting (when laundering conduct is taken into account) more than five million dollars for himself. Moreover, unlike former Governor McDonnell, Silver's criminal conduct arose in the context of a long and public history of corruption within New York State, and he blocked legislative and other efforts to increase transparency, as well as making numerous false statements and taking other steps to avoid discovery of his corrupt schemes.

benefits reached the very highest levels of New York State – a true "dagger[ ] at the heart of honest government," Ex. B at 46, even more damaging to the public trust than the crimes set forth above. The sentence in this case must account for the seriousness of the defendant's crimes and promote sorely-needed deterrence and respect for the law – particularly among elected officials, who should have no doubt that, if they flout the public's trust like Silver did, their conduct will be met with severe consequences.

V. APPLICATION OF THE RELEVANT SECTION 3553(A) FACTORS

It is difficult to overstate the seriousness of the defendant's public corruption crimes. Every time a public official commits a crime, his or her conduct taints the body in which he or she serves and the government as a whole. Such conduct undermines the core principle of a representative democracy that elected representatives should act solely in the interest of the public good and their constituents. It perpetuates the belief that New York's government is hopelessly corrupt. It unfairly taints those elected officials who are law-abiding and who serve their constituents with integrity. And it discourages many honest citizens who would otherwise seek out public service from doing so at a time when their service is sorely needed. In sum, elected officials who exploit the power and responsibility of representing the people by using their power as an opportunity for private gain do true violence to our system of governance. Also important is the harm Silver's crimes have caused to the legal profession and the popular notion that lawyers are inherently dishonest.

A. The Nature and the Circumstances of the Offense

The offenses of conviction were extremely serious. As set forth above, the defendant engaged in two long-running schemes in which he repeatedly sold one of the three most powerful offices in the State for millions of dollars in personal financial gain. He cynically

exploited 9/11, his near-unparalleled power over State funding and legislation, and his staff to carry out his crimes. He facilitated and concealed his crimes with repeated lies to the public during the course of more than a decade, despite knowing the importance of disclosure to the public trust and to prevention of misconduct. Silver acted with impunity to resist legislation and investigations such as the Moreland Commission that might have prevented or revealed his schemes until he was caught. The defendant's crimes were sustained, systematically carried out, and multifarious, involving two different schemes and using two different law firms, numerous private investment vehicles, and numerous different lies and methods of concealment.

To make matters worse, Silver committed these crimes during a time when numerous State legislators were being convicted of public corruption offenses and he publicly was claiming to be trying to prevent such crimes. Silver repeatedly told the public that he favored stronger laws and regulations to prevent public corruption in the State legislature while, in truth and in fact, he further abused his power by resisting legislative reforms and inquiries of the Moreland Commission that would have shed greater sunlight on his ill-gotten gains and might have exposed his corrupt schemes.

Importantly, there is no excuse or mitigating factor warranting imposition of a lesser sentence for Silver's criminal conduct. Silver engaged in a long-running abuse of power for no reason other than personal financial gain. Silver was financially stable by any objective standard, even without his criminal schemes, his children were no longer dependent on him, and he had no desperate need for the money, earning more than $120,000 as the Speaker, and another $120,000 just for agreeing to affiliate with W&L and occasionally appearing at the firm's New York office. The only apparent motivation for his crimes was greed and the belief that he could

get away with it undetected through abuse of official power and his law license, and through systematic lies.

Like all public officials, Silver took an oath swearing to provide the people of the State of New York with honest services – to subordinate his own personal interests to the public's needs. He renewed that oath many times while he was perpetrating the schemes. The nature and circumstances of the offenses of conviction support a severe punishment that reflects the degree to which Silver betrayed the public trust for private gain.

B. The History and Characteristics of the Defendant

Silver's history and characteristics do not support a lenient sentence. As no doubt every other public official convicted of criminal conduct has done at sentencing, Silver has asserted to the Probation Office, and is expected to assert to this Court, that his public service, including several official acts benefiting specific constituencies, merits leniency in this case. While Silver may cite his good acts as a politician to try to avoid otherwise-warranted punishment for his crimes, he fails to acknowledge the special position of trust and obligation that accompanied his position. Undeniably Silver has done good deeds in his political life – but he was supposed to do that. Service to the public is expected of a member of the New York State Assembly. Silver received a substantial salary, a large staff, and control over legislation and hundreds of millions of dollars in discretionary funds in order to ensure that he was able to carry out that expected service. Thus, Silver's provision of some honest services as part of his lengthy career in public service does not merit a reduction of the sentence that is warranted for his corrupt use of that same position, staff, and power to serve dishonestly, for his own private gain. *See United States* v. *Serafini*, 233 F.3d 758, 773 (3d Cir. 2000) (good works as a legislator "reflect[] merely the political duties ordinarily performed by public servants" and "if a public servant performs civic

and charitable work as part of his daily functions, these should not be considered in his sentencing because we expect such work from our public servants"); *United States* v. *Morgan*, No. 13-6025, 2015 WL 6773933, at *22 (10th Cir. Nov. 6, 2015) (finding that sentencing judge erred in sentencing the former President Pro Tem of the Oklahoma State Senate to probation for accepting a $12,000 bribe, in part, by giving undue weight to letters of support: "The number of letters was certainly impressive but not surprising. As the Government aptly points out: 'One does not become President Pro Tem without the confidence of many supporters, some quite influential.' The letters must be viewed in that light.").

In any event, Silver's service to the public was tainted in many respects, including and extending beyond his offenses of conviction. As set forth above, Silver may have provided important service to the community after 9/11, but he also exploited 9/11 to get millions of dollars in ill-gotten gains without detection by steering State grants referencing 9/11 to Dr. Taub in exchange for lucrative leads and referral fees.

In addition, while Silver may have helped certain needy members of his community, as more fully set forth in the Government's Motions *in Limine*, dated September 11, 2015, Silver engaged in concerted efforts over the course of decades to prevent development of much-needed low-income housing in the Seward Park Urban Renewal Area ("SPURA"), a large, barren site in Silver's District near his personal residence. When confronted with evidence of his involvement in preventing low-income housing from being developed at the SPURA site, Silver publicly tried to distance himself from his own actions by falsely representing to the public that his actions had been mistaken for that of another individual named Sheldon E. Silver, who in fact had no involvement in the defendant's continuing efforts to stop low-income housing at SPURA. Similarly, as reflected in the motions *in limine*, Silver used his power to try to obtain a reduction

from the City in local real estate taxes for the building in which he resided – tax burdens that would have been redistributed among other New Yorkers – without disclosing to the City that he stood to benefit financially from any reduction.

Moreover, while Silver may have used his official position to help certain members of the community, he also benefited some more than others based in part on his relationship to them and the benefits that they were providing him. As the evidence at trial showed, Silver pressed an entity that depended on him for discretionary funding, and that had never before received such a request from him, to hire Dr. Taub's son, without revealing that he was receiving millions of dollars in private benefits in exchange for that assistance. In addition, as set forth in the Government's Motion *in Limine*, dated October 12, 2015, Silver's assistance to women with whom he had extramarital relationships further demonstrates Silver's misuse of his office for personal benefit. In particular, Silver pressed a state agency that was particularly dependent on him, and that had never before received such a request from him, to hire one of the women, without revealing the nature of his relationship with that woman. Silver also gave preferential private access to a lobbyist who lobbied the defendant on a regular basis on behalf of clients who had business before the State, contributing substantially to the lobbyist's financial success, while concealing from his staff and the public his personal relationship with the lobbyist, and his personal motives for providing that access.

Each of these abuses of power further demonstrate Silver's willingness to use his position to further his personal interests, rather than to act in the best interests of all of the people of his Assembly District and the State.

In addition, through his conduct, Silver misused his law license both as a shield from disclosure (*see, e.g.*, GX 4 and 5 (statements by Silver that he could not disclose much about his

outside income because of attorney ethics rules)) and as a vehicle to commit fraud and extortion. The harm Silver caused to the legal profession and the reputation of attorneys in general also should be considered as part of Silver's history and characteristics.

The Probation Office also cites Silver's age, health, and family circumstances as mitigating factors. While many of the sentencing factors weigh heavily in favor of a significant term of imprisonment, the Government recognizes that Silver is 72 years of age, has had some recent health problems, and generally appears to have had a positive impact on family and friends. While the Court can and should take these circumstances into account, the described personal difficulties faced by an educated, accomplished professional, who had plenty of options other than illegal conduct, are not any more sympathetic than those of the many less-privileged defendants that are routinely sentenced to significant terms of imprisonment in this District, many of whom are of advanced age and have similar health concerns. Moreover, any of Silver's health concerns can be handled effectively by the Bureau of Prisons, which routinely deals with such issues.

C. The Need for the Sentence Imposed to Promote Respect for the Law and to Afford Adequate Deterrence

The need to promote respect for the law and deter other legislators from engaging in acts of corruption also requires a substantial sentence here, particularly given that political corruption has plagued the New York State Legislature in recent years, including through the conviction last year of Silver and his counterpart in the Senate, Dean Skelos.[7] *See* 18 U.S.C. § 3553(a)(2)(A).

[7] Indeed, in recent prosecutions by this Office, public officials have been caught on recorded conversations candidly discussing the sad state of affairs in New York government. *See, e.g.*, Assemblyman Stevenson ("Bottom line . . . if half of the people up here in Albany was ever caught for they do . . .they . . . would probably be [in jail], so who are they BS-ing?"); City Councilman Daniel Halloran ("Money is what greases the wheels – good, bad, or indifferent . . . That's politics, that's politics, it's all about how much . . . and that's our politicians in New York. They're all like that, all like that. And they get like that because of the drive that the money does

Given the harm caused by public corruption crimes, and the extent of the corruption problem in New York, Silver's sentence should communicate that these types of violations of the public trust will be met with significant sentences.

Silver's conduct here provides a powerful reminder of the dire need for greater deterrence. Silver persisted in corrupting his official position even after he watched numerous of his legislative colleagues brought down by criminal charges. As if that was not enough of an aggravating factor warranting significant punishment, even as Silver knew he was being investigated by the Moreland Commission for conduct related to his outside income – he did not stop the scheme, but rather took steps to stop that investigation and lie to the public about his outside income. In this light, Silver's conduct demonstrates, as Judge Pauley emphasized in sentencing former State Senator Gonzalez, "a compelling need to punish him for his venal acts and to ensure general deterrence among those would try to use their public offices for personal gain." (Ex. E at 40-41).

A significant sentence in this case also would promote deterrence and respect for the law by refuting Silver's repeated assertions that his conduct effectively was business as usual in Albany, and by showing that to the extent his conduct could be considered business as usual, that was so only because Silver set the rules of Albany – rules that allowed Silver and other corrupt legislators to act with impunity year after year, over and over again. A significant sentence is necessary to demonstrate that no one, not even one of the most powerful public officials in this

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for everything else. You can't do anything without the F'ing money."). Silver himself acknowledged awareness of convictions of New York State elected officials, including Seminerio, for engaging in similar conduct, but he was undeterred by those convictions from continuing to engage in criminal conduct. (*See* GX 3 (unredacted version reflecting Silver's awareness of Seminerio's conviction for corrupt receipt of outside income and concealment on disclosure forms)). These statements by public officials, including Silver himself, support the need for the sentence in this case to promote general deterrence.

State, is above the law. Indeed, the Second Circuit specifically has endorsed the sentencing court taking into account local deterrence under Section 3553(a). *See United States* v. *Cavera*, 550 F.3d 180, 195 (2d Cir. 2008) (*en banc*) (affirming sentence based, in part, on need for local deterrence of crime); *see also United States* v. *George Pabey*, (recounting recent public corruption convictions in the region and stating that the sentence for the former Mayor of East Chicago should send the "necessary message that corruption by elected public officials will not be tolerated and the epidemic of political corruption that has existed in this region of our state for at least the past three decades has got to stop").

Silver's repeated assertions that he will be "vindicated" at some later point, and his lack of remorse or acceptance of responsibility for the offense, also are relevant considerations when determining the sentence necessary to promote deterrence and respect for the law. *See, e.g.*, *United States* v. *Martinucci*, 561 F.3d 533, 535 (2d Cir. 2009) (lack of remorse is a pertinent sentencing factor under Section 3553(a)); *see generally United States* v. *Keskes*, 703 F.3d 1078, 1090-91 (7th Cir. 2013) ("A lack of remorse is a proper sentencing consideration 'because it speaks to traditional penological interests such as rehabilitation (an indifferent criminal isn't ready to reform . . .).'" (citation omitted)).

Thus, Silver's corrupt conduct and the institutional harm he has caused, as well as the compelling need for deterrence, are aggravating factors that call for a significant term of imprisonment.

D. Other Sentencing Factors

As set forth above, the Guidelines range in this case also is entitled to careful consideration under Section 3553(a)(4). As noted above, the Sentencing Commission purposefully raised offense levels applicable to bribery offenses because "offenders who abuse

their positions of public trust are inherently more culpable than those who seek to corrupt them, and their offenses present a somewhat greater threat to the integrity of governmental processes." U.S.S.G. Manual app. C (Amendment 666).

In consideration of all of these factors, the Government respectfully submits that while a sentence within the Guidelines range would not be unreasonable or unjust, in light of the egregiousness of Silver's conduct and the need for deterrence, the Court should sentence the defendant to a term of imprisonment substantially in excess of the 10 years recommended by the Probation Office and greater than any sentence imposed on other New York State legislators convicted of public corruption offenses.

VI. THE COURT SHOULD IMPOSE A SUBSTANTIAL FINE AND ORDER FORFEITURE

The Government respectfully submits that a fine of at least the $1 million recommended by the Probation Office should be imposed on Silver to reflect the fact that Silver stands to collect a lifetime pension of more than $70,000 per year from the ultimate victims of his crime, the people of the State of New York, and that he has ample means to pay a larger fine and has no dependents, as his children all are adults well-past college age and his wife has sufficient remaining funds.

Section 3572(a) of Title 18, United States Code, sets forth the factors to be considered by the district court before imposing a fine, in addition to the factors set forth in Section 3553(a). Such factors include: (1) the defendant's income, earning capacity, and financial resources; (2) the burden that the fine will impose upon the defendant and any of his dependents; (3) any pecuniary loss inflicted upon others as a result of the offenses; (4) whether restitution is ordered; (5) the need to deprive the defendant of illegally obtained gains from the offenses; and (6) the expected costs to the government of any imprisonment. 18 U.S.C. § 3572(a). Section 5E1.2 of

the Guidelines states that a district court "shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine." U.S.S.G. § 5E1.2(a). In determining the size of any fine, the district court shall consider:

> (1) the need for the combined sentence to reflect the seriousness of the offense (including the harm or loss to the victim and the gain to the defendant), to promote respect for the law, to provide just punishment and to afford adequate deterrence;
>
> (2) any evidence presented as to the defendant's ability to pay the fine (including the ability to pay over a period of time) in light of his earning capacity and financial resources;
>
> (3) the burden that the fine places on the defendant and his dependents relative to alternative punishments;
>
> (4) any restitution or reparation that the defendant has made or is obligated to make;
>
> (5) any collateral consequences of conviction, including civil obligations arising from the defendant's conduct;
>
> (6) whether the defendant previously has been fined for a similar offense;
>
> (7) the expected costs to the government of any term of probation, or term of imprisonment and term of supervised release imposed; and
>
> (8) any other pertinent equitable considerations.

U.S.S.G. § 5E1.2(d). The Guidelines further provide that, "[t]he amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive." *Id.* The defendant bears the burden of demonstrating an inability to pay a fine. *See United States* v. *Camargo*, 393 F. App'x 796, 798 (2d Cir. 2010); *United States* v. *Salameh*, 261 F.3d 271, 276 (2d Cir. 2001).

In this case, pursuant to 18 U.S.C. § 3571(b), the maximum fine is $10,358,212.24 (twice the gain) per count, which totals $72,507,485.68 over the seven counts of conviction here. (PSR ¶¶ 122, 124). At offense level 39, the fine recommended pursuant to Sections 5E1.2(c)(3) and 5E1.2(h)(1) of the Guidelines is in the range of $25,000 to $72,507,485.68. Here, the need to provide just punishment for the offense, to promote respect for the law, and to afford adequate deterrence to criminal conduct, and accounting for Silver's ample future income and financial resources, all weigh in favor of imposing a substantial fine of no less than the $1 million fine recommended by the Probation Office. (PSR at 33).

Silver has managed to amass a net worth, excluding seized funds, in excess of $2 million (including readily liquid assets of more than $1 million) during his tenure in the Assembly. (PSR ¶ 107 at 23). On top of that, the day after the jury rendered its verdict in this case, Silver applied to New York State to receive a pension of $5,846 a month totaling more than $70,000 per year for the rest of his life. (PSR ¶ 107 at 23). Imposing a fine that somewhat counteracts the pension income that even corrupt State legislators collect, serves the purpose of sending the strongest message possible that the community will not tolerate corruption by its highest-level public officials.[8]

Accordingly, the Government respectfully submits that the need for the sentence to reflect the seriousness of the offenses, promote respect for the law, deter others, and provide just punishment combined the defendant's ability to pay warrants the imposition of a substantial fine.

In addition, forfeiture of the defendant's ill-gotten gains is mandated under the applicable forfeiture statutes.

[8] Perhaps not surprisingly, efforts to pass legislation to prevent convicted elected officials from collecting State-funded pensions failed in the Assembly under Silver's leadership.

CONCLUSION

For the reasons set forth above, the Government respectfully requests that the Court impose a significant sentence and fine on Sheldon Silver that reflects the seriousness of his crimes, the immeasurable harm he has caused to the public trust, and the need to deter other public officials who might consider abusing their power for personal gain.

Dated: April 20, 2016
New York, New York

Respectfully submitted,

PREET BHARARA
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