

G53TSILS

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 0093 (VEC)

5 SHELDON SILVER,

6 Defendant.

7 -----x

8 May 3, 2016  
9 2:00 p.m.

10 Before:

11 HON. VALERIE E. CAPRONI,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the  
Southern District of New York

16 BY: CARRIE H. COHEN,

17 ANDREW D. GOLDSTEIN,

HOWARD S. MASTER,

18 JAMES M. McDONALD,

Assistant United States Attorneys

19 STROOCK & STROOCK & LAVAN LP

Attorneys for Defendant

20 BY: JOEL COHEN

21 - and -

MOLOLAMKEN, LLP

22 BY: STEVEN F. MOLO

JUSTIN SHUR

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1 (In open court, case called)

2 MS. COHEN: Good afternoon, your Honor, Carrie Cohen,  
3 Howard Master and Andrew Goldstein, Assistant United States  
4 Attorneys for the government, our paralegal specialist Anthony  
5 Coccaro, and James McDonald as well with our office, and  
6 Investigator John Barry.

7 THE COURT: Good afternoon.

8 MR. MOLO: Good afternoon, Judge, Steve Molo and  
9 Justin Shur from Mololamken, and Joel Cohen from Strook for  
10 Mr. Silver, who is here today.

11 THE COURT: Thank you.

12 Mr. Molo, have you and your client read the  
13 presentence report dated March 25th, 2016?

14 MR. MOLO: We have, your Honor.

15 THE COURT: Have you discussed it with each other?

16 MR. MOLO: Yes, your Honor. With the exception of one  
17 issue that is going to be addressed concerning the forfeiture,  
18 Mr. Shur is going to address it on our part.

19 THE COURT: Mr. Silver, have you read the presentence  
20 report dated March 25, 2016?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: Have you had an opportunity to discuss it  
23 with your attorney?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: The presentence report will be made part

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1 of the record in this matter and placed under seal. If an  
2 appeal is taken, counsel on appeal may have access to the  
3 sealed report without further application to the Court.

4 I have received a lengthy submission from the defense  
5 that contained about a hundred letters. Let me assure anyone  
6 who wrote a letter on the defendant's behalf that I read your  
7 letter and I thank you for taking time do that.

8 I received a lengthy submission from the government.

9 I have also received from the public a number of  
10 letters, some of which were supportive of Mr. Silver and some  
11 of which were not. Whether they were supportive or not, they  
12 have all been posted on ECF and are available.

13 Let me just make sure, Mr. Molo, did you file your  
14 submission with the Clerk of Court?

15 MR. MOLO: Yes, we did.

16 THE COURT: And was the government submission filed as  
17 well?

18 MS. COHEN: We did, your Honor.

19 THE COURT: The next step in the sentencing is a  
20 calculation of the guidelines. For those of you who are here  
21 watching and have an interest in it, let me apologize a little  
22 to you for this part of sentencing. You are going to think  
23 that you just fallen into an arithmetic class, but you have  
24 not. But it's a necessary requirement to make sure that I have  
25 done the guidelines calculation correctly.

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1           So the presentence report reflects a guidelines level  
2 of 39, Criminal History Category I. I have applied the  
3 November 1, 2015 guidelines manual.

4           I find the correct guidelines calculation to be as  
5 follows: I start that all counts of conviction are grouped  
6 pursuant to 3D1.2D because all of the offenses of conviction  
7 have an offense level that are based on the amount of loss.

8           Pursuant to 3D1.3B, because the offense level for all  
9 the offenses is driven by the amount of loss, we use the crime  
10 with the highest offense level -- in this case that is Count  
11 Seven, money laundering -- as the base offense.

12           So the guidelines for 18 USC 1957 is found at 2S1.1,  
13 and it provides that the base offense level is the base offense  
14 level for the underlying crime that gave rise to the laundered  
15 funds. The guideline for extortion under official right yields  
16 the higher base offense level than honest services fraud, so we  
17 use that guideline, which is 2C1.1. 2C1.1 sets a base offense  
18 level of 14 because the defendant is a public official.

19           The offense involved more than one scheme, so pursuant  
20 to 2C1.B1, that's plus two.

21           The defendant obtained more than three and a half  
22 million dollars from the scheme but less than 9.5 million, so  
23 2C1.1B2 cross references to 2B1.1B1J, and that's plus 18.

24           The defendant was a high level elected public  
25 official, indeed one of the three most powerful politicians in

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1 New York, so pursuant to 2C1.1B3, that's plus four.

2 Because the defendant was also convicted of money  
3 laundering pursuant to 18 USC 1957, under 2S1.1B2A, I add one.

4 When you add all that up together, there are no other  
5 adjustments up or down, so that all adds up to 39.

6 The defendant has no criminal history, so he's in  
7 Criminal History Category I.

8 Level 39, Criminal History Category I, yields an  
9 advisory guideline range of 262 to 327 months, which, for those  
10 of you who don't have a calculator, is somewhere between 21 and  
11 27 years.

12 Let me tell you now I am not going to impose a  
13 guidelines sentence in this case. I think imposing a  
14 guidelines sentence would be Draconian and unjust, at least  
15 given this defendant's age.

16 Are there any guidelines arguments that I have not  
17 addressed, Ms. Cohen?

18 MS. COHEN: No, your Honor.

19 THE COURT: Mr. Molo?

20 MR. MOLO: No, your Honor.

21 THE COURT: I do not see a basis for a departure under  
22 the guidelines. Does either party object?

23 MS. COHEN: No, your Honor.

24 MR. MOLO: No, your Honor.

25 THE COURT: The only dispute that I am aware of is the

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1 amount of forfeiture specifically as to how much of what was  
2 paid to Silver as asbestos referral fees came from cases that  
3 had been referred by Dr. Taub and therefore forfeitable.

4 Are there any other factual disputes?

5 MS. COHEN: Your Honor, I'm not sure if it's a  
6 dispute, but we would like to address the Court on the  
7 appropriate guidelines for the fine.

8 THE COURT: We'll get to that.

9 MR. SHUR: Would you like me here or the podium?

10 THE COURT: I think where you are might be fine.

11 MR. SHUR: With respect to forfeiture, your Honor --

12 THE COURT: Are there any disputes other than  
13 forfeiture?

14 MR. SHUR: No.

15 THE COURT: I will hear from you then on forfeiture.

16 MR. SHUR: Your Honor, as you know, we submitted a  
17 supplemental sentencing brief which addressed forfeiture. I'm  
18 not going to belabor all of the points we made in the brief,  
19 but there is one issue I would like to address, which we  
20 believe the government hasn't shown that the amount that -- the  
21 dollar amount it attributes to the asbestos scheme was the  
22 result of referrals from Dr. Taub to Mr. Silver, and that  
23 amount, as you know, is roughly \$3 million.

24 I understand that in the government's recent letter to  
25 the Court dated April 28 the government stated that there was

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1 ample testimonial and documentary evidence at trial on this  
2 point. While the government proved generally the existence of  
3 referrals from Dr. Taub to Mr. Silver, and the government  
4 proved generally the fact that Mr. Silver received referral  
5 fees from Weitz & Luxenberg, there was insufficient evidence  
6 connecting the two.

7 There were basically two witnesses relevant to this  
8 point, Dr. Taub and Gary Klein who is a lawyer at Weitz &  
9 Luxenberg.

10 As you may remember, your Honor, Dr. Taub couldn't  
11 recall the names or the number of cases that he referred to  
12 Mr. Silver, and the guesstimate that he provided was well below  
13 the number that the government contends Dr. Taub referred to  
14 Mr. Silver. I believe the government's list includes 48 cases,  
15 and as you may remember, Dr. Taub testified that he believed it  
16 was closer to 25.

17 The other witness on this point, Gary Klein, had no  
18 personal knowledge of the cases that Dr. Taub referred to  
19 Mr. Silver. Instead, he relied on Weitz & Luxenberg records,  
20 mainly the Weitz & Luxenberg intake forms, which didn't make  
21 the connection either. The Weitz & Luxenberg intake forms --  
22 which is essentially a record indicating who the referral  
23 source is for a particular case -- the intake forms that we saw  
24 come into evidence for the cases where the government said  
25 Dr. Taub referred those cases to Mr. Silver did not indicate

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1 that Dr. Taub was in fact the original source.

2 I think it's reasonable -- or unreasonable, rather, to  
3 assume that while Taub's name isn't listed, he must have been  
4 the referral source. For one thing, there was evidence  
5 introduced at trial that Mr. Silver received referrals of  
6 cases, including asbestos cases, from sources other than  
7 Dr. Taub.

8 THE COURT: There was evidence that at least one  
9 referral came from someone else.

10 MR. SHUR: I believe there was more than one, your  
11 Honor. We saw an asbestos case referred to Mr. Silver from  
12 another law firm. There was another case that we saw that was  
13 referred from a friend and a former colleague from the  
14 assembly.

15 So the fact is that there is evidence that Mr. Silver  
16 received referrals, including asbestos cases, from sources  
17 other than Dr. Taub. And the intake forms, the only  
18 documentary evidence that we have, which would indicate who the  
19 referral source is for the particular cases, does not indicate  
20 that it was Dr. Taub.

21 In order to get over this obstacle, the government  
22 pointed to other Weitz & Luxenberg records other than the  
23 intake forms that were somehow associated with the case, some  
24 emails and other documents which referenced Dr. Taub in some  
25 manner for some but not all of the cases that they contend were



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1 referred to Mr. Silver by Dr. Taub. And the fact that  
2 Dr. Taub's name appears in some of that paperwork in some  
3 fashion, in email or some other document, is not necessarily  
4 evidence that Dr. Taub was the referral source.

5 We heard of from a number of witnesses, including Gary  
6 Klein and Dr. Taub, that Weitz & Luxenberg would track the  
7 treating physician for a particular client or a particular  
8 case, because in some instances they would need to obtain  
9 medical records from the doctor, in other instances they would  
10 need to have a doctor testify as a witness at trial. And we  
11 heard that Dr. Taub was often the treating physician for a  
12 particular client or case that was being handled by Weitz &  
13 Luxenberg, but he was not the referral source for that  
14 particular case. In fact, we saw a spreadsheet where you saw  
15 Dr. Taub receiving fees for medical records or asserting as an  
16 expert witness where he wasn't the referral source for that  
17 particular case. So the treating physician and referral source  
18 are two different things.

19 So the only evidence that we have of Dr. Taub being  
20 the referral source of these particular cases that the  
21 government identified was the fact that his name is referenced  
22 on some of this documentation which could be attributable to  
23 being simply that they were tracking the treating physician,  
24 and the fact that his name appears on a particular document  
25 isn't evidence that he was the referral source.

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1           For those reasons, Judge, we respectfully submit that  
2 the government has not met its burden with respect to  
3 forfeiting the dollar amount it attributed to the asbestos  
4 claim, and any forfeiture order that the Court imposes reflects  
5 a discount in the dollar amount carving out that roughly \$3  
6 million figure that the government is attributing.

7           Thank you, Judge.

8           THE COURT: Thank you.

9           Government?

10          MR. MASTER: Yes, your Honor.

11          The Court should reject defense's highly selective  
12 reading of the evidence here. Mr. Shur references Gary Klein  
13 and Dr. Taub's testimony. I will return to those two witnesses  
14 in a moment, but Mr. Shur neglects to reference testimony from  
15 the firm's two managing partners, Perry Weitz and Arthur  
16 Luxenberg, both of whom stated that Sheldon Silver himself told  
17 them he was getting the cases from Dr. Taub.

18          I quote Arthur Luxenberg at page 1183 of the  
19 transcript.

20          "Q. Did there come a time after learning about Sheldon Silver  
21 bringing in mesothelioma cases to the firm when you spoke to  
22 Sheldon Silver about the source of those cases?

23          "A. Yes.

24          "Q. And who did Sheldon Silver say was the source of those  
25 mesothelioma cases?

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1 "A. Dr. Taub."

2 Charles Ferguson, the attorney who actually ran the  
3 firm's asbestos practice and actually received all those  
4 mesothelioma leads from Sheldon Silver, the ones that resulted  
5 in the more than 3 million in referral fees, testified on page  
6 1147 of the transcript.

7 "Q. Did there come a time when you learned that Sheldon Silver  
8 was bringing certain asbestos cases to the firm?"

9 And again your Honor, to pause, there was ample  
10 testimony that he brought no asbestos cases with him, he had no  
11 skill in evaluating those cases, and therefore he only began  
12 bringing those cases in when he developed the corrupt  
13 relationship with Dr. Taub.

14 "Q. What was the source of those cases?"

15 "A. I believe they were Dr. Taub.

16 "Q. How did you learn -- withdrawn.

17 From whom did you learn that Dr. Taub was the source  
18 of those cases?

19 "A. From Mr. Silver."

20 So the defendant himself admitted to multiple  
21 witnesses that he was bringing these cases in from Dr. Taub.

22 Now Gary Klein in his testimony said specifically that  
23 the firm did not track doctor referrals. So the effort to  
24 prove essentially that Dr. Taub was not the source of these  
25 referrals based on Gary Klein's testimony just fails because

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1 the firm's records do not track that, and his only personal  
2 knowledge was the records themselves.

3 The firm did, however, track the cases that were  
4 referred through attorneys to Sheldon Silver, and that evidence  
5 showed that only a very small amount of the well over \$3  
6 million in referral fees came from attorneys to Sheldon Silver,  
7 that is, had other sources of referrals.

8 I believe Mr. Shur referenced a former colleague,  
9 Mr. Engelbright, who was the source of one referral, and I  
10 believe there was testimony at trial that that referral netted  
11 him approximately \$50 in referral fees. So if you just look at  
12 the evidence from the firm itself, it amply supports the more  
13 than 3 million amount.

14 Dr. Taub himself testified about timing and  
15 circumstances of the referrals that corroborated the records  
16 that came from Weitz & Luxenberg, and he himself also said that  
17 he did not specifically track the names and the specific  
18 numbers of referrals. But again, his testimony was consistent  
19 with the amounts that were found based on the analysis that the  
20 government's summary witness performed, and that's at  
21 Government Exhibit 1509, finding more than \$3 million came from  
22 Dr. Taub. That government exhibit specifically excluded every  
23 other referral source, including the ones from other lawyers,  
24 the one from Mr. Engelbright, and it was based not only on  
25 records of the firm but it was specifically corroborated by

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1 records of Columbia University and New York Presbyterian  
2 Hospital that were admitted by stipulation into evidence.

3 So your Honor, we believe for these reasons,  
4 particularly in view of the standard here, which is  
5 preponderance, the government has amply supported its  
6 forfeiture.

7 THE COURT: Thank you.

8 By a preponderance of the evidence, I find that Silver  
9 received \$3,057,901.07 in referral fees from Weitz & Luxenberg  
10 for mesothelioma clients sent to Silver from Dr. Taub.

11 Gary Klein, the managing attorney for Weitz &  
12 Luxenberg, testified that the firm's computer systems track  
13 referrals of cases by attorneys inside and outside the firm.  
14 Government Exhibit 441 which was introduced through Klein, is a  
15 list of all clients as to whom Silver received referral fees.

16 Klein also testified that he generated a separate  
17 report from the computer that lists specifically the asbestos  
18 cases in which a referral fee was paid to Silver. That list is  
19 at Government Exhibit 522. Klein also testified that referral  
20 fees were paid with an attached report identifying the client  
21 who corresponded to the fee. Those checks and reports were at  
22 Government Exhibit 514-1 through 155.

23 FBI Special Agent Deanna Pennetta compared the Weitz &  
24 Luxenberg payments to Silver with New York Presbyterian  
25 Hospital records listing Dr. Taub's patients. She generated a

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1 list of Dr. Taub's patients for whom Silver had received  
2 referral fees and the amount that Silver received for those  
3 patients. That information appears on Government Exhibit 1509.  
4 That table shows that Silver received \$3,057,901.07 in referral  
5 fees for 48 individuals who were patients of Dr. Taub.

6 The defendant argues there is insufficient evidence to  
7 support that forfeiture amount because Dr. Taub treated  
8 patients who retained Weitz & Luxenberg regardless of whether  
9 he recommended them to the firm, and because Silver received  
10 asbestos referrals from other sources. The defense, however,  
11 only points to one asbestos referral given to Silver by a  
12 source other than Dr. Taub -- one or two, perhaps -- but the  
13 fees associated with those clients were not included in the  
14 amount the government seeks to forfeit.

15 Moreover, even if Dr. Taub treated patients who  
16 retained Weitz & Luxenberg without his referral, Silver would  
17 not have received referral fees for those individuals.  
18 Moreover, as the government points out, Silver himself  
19 indicated that his mesothelioma clients came via Taub.

20 In short, by a preponderance of the evidence, the  
21 Court concludes that the referral fees that the government  
22 seeks to forfeit are the result of the mesothelioma scheme for  
23 which defendant was convicted, and therefore, properly  
24 forfeitable.

25 I would also note that the government has argued that

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1 the forfeiture should be reduced by the amount of taxes that  
2 Silver paid on the income. The statute itself, 18 USC  
3 981(a)(2)(B), precludes a deduction for income taxes paid on  
4 forfeitable funds.

5 In short, I find that the amount subject to  
6 forfeiture -- this is the total amount subject to forfeiture --  
7 is \$5,179,106.12, representing the proceeds of the crimes for  
8 which Mr. Silver was convicted.

9 Would the government like --

10 MR. GOLDSTEIN: On that final number, your Honor,  
11 because some of the accounts that the defendant moved some of  
12 the money into have been frozen but not liquidated, that amount  
13 has increased slightly from the 5.179 million number to  
14 approximately \$5.39 million, and that number was in the letter  
15 that was in the proposed forfeiture order.

16 THE COURT: You're right. I apologize for that. So  
17 that was net of the earnings since the time of the forfeiture.

18 Does the government want to be heard on sentence?

19 MR. MASTER: Your Honor, before we do that, we did  
20 have a proposed correction to the presentence report's  
21 provision and fines. And this is just in an abundance of  
22 caution based on our ongoing review of the applicable law to  
23 avoid any Apprendi issues associated with the fine.

24 PSR paragraphs 122 and 124.

25 THE COURT: What page is that on?

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1 MR. MASTER: That is on page 26 of the presentence  
2 report. They reference a maximum fine as over \$10 million for  
3 each count, and that's based on a provision of the applicable  
4 statutes that allow for the maximum fine to be increased from  
5 the default statutory maximum of \$250,000 for each count to a  
6 greater amount reflecting the amount of gross pecuniary gain in  
7 the case of most of the offenses, and in the case of the money  
8 laundering offense, the amount of property involved in the  
9 offense.

10 Your Honor, in an abundance of caution, and again to  
11 avoid any Apprendi issues, the government is only going to seek  
12 a statutory maximum fine based on the default number in each  
13 statute, which would be \$250,000 for each crime of conviction,  
14 and that would be a total of \$1.75 million. That's the total  
15 statutory maximum of the amount of the fine. That's in  
16 paragraph 122. So we request -- I assume the defense doesn't  
17 object to that, but we request that that be amended.

18 So we believe there may be a guidelines implication  
19 associated with that more conservative position, because the  
20 guideline now is triggered by the default statutory maximum  
21 based on the government's position of \$250,000 per count, then  
22 the government believes that the guidelines call for  
23 referencing the fine table in the sentencing guidelines. As  
24 applicable here, the guidelines maximum, based on the  
25 defendant's offense level, would be \$250,000.



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1 THE COURT: Total?

2 MR. MASTER: Total. Maximum based on the sentencing  
3 guidelines, so based on Section 5E1.2C3 of the guidelines.

4 Again, this is not an issue that was raised by the  
5 defense, it's an issue that the government believes, in an  
6 abundance of caution, is a position that is the most  
7 conservative position to take in this matter. The government  
8 is still seeking a fine of greater than one million dollars  
9 here in view of the factors that were set forth in Section  
10 3553(a) and also in the government's sentencing submission.

11 THE COURT: Okay. Well, then let me go back to my  
12 statement that I didn't see a grounds for a departure.

13 I do see a grounds for a departure on the fine. I'm  
14 accepting the government's representation that when they  
15 recalculate the fine under the guidelines that the maximum fine  
16 under the fine table -- and I don't have my guidelines book  
17 with me, although I see several of them -- is \$250,000 total.  
18 So I do see a grounds for an upward departure from that fine  
19 amount.

20 Does the defense want to be heard on that?

21 MR. SHUR: Judge, if you could clarify the basis for  
22 the upward departure.

23 THE COURT: The upward departure -- Actually I see a  
24 grounds for a variance.

25 MR. SHUR: No objection, Judge.

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1 THE COURT: All right. Now would the government like  
2 to be heard on sentence?

3 MR. MASTER: Yes, your Honor.

4 With permission, your Honor, I'm going to begin by  
5 responding to some issues raised by the defense in its  
6 sentencing submission which was filed simultaneously with our  
7 own, and Ms. Cohen will address the basis for our ultimate  
8 sentencing recommendation.

9 I'm going to focus my remarks on the defendant's  
10 letter, which is attached as Exhibit A to his sentencing  
11 submission. I'm sure your Honor has read it carefully.

12 And your Honor, with respect to this letter, I think  
13 it's a remarkable document. After trumpeting that he would be  
14 vindicated up until the very moment of the jury's verdict, the  
15 defendant now claims in his letter to offer an apology. But  
16 your Honor, what does the letter apologize for?

17 The defendant could have admitted to the criminal  
18 conduct that was proven to a jury of his peers beyond a  
19 reasonable doubt at trial, but he did not. He doesn't do  
20 anything of the sort. He could have admitted that he got more  
21 than \$3 million just now in referral fees as a result of a quid  
22 pro quo relationship with Dr. Taub. That's what he admitted to  
23 his colleagues at Weitz & Luxenberg before his conduct became  
24 the subject of a prosecution. But he didn't. Instead, he  
25 tried in his sentencing submissions, and even now, to contest

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1 the basis for the government's proposed guidelines level and  
2 here to seek a return of some of his ill-gotten gains.

3 This is the case, even though as the government just  
4 indicated and as the Court found, that the proof is  
5 straightforward, that Dr. Taub was the source of more than \$3  
6 million in ill-gotten gains of the defendant. How is that  
7 consistent with an apology?

8 Instead of saying that he, quote, worked hard to make  
9 sure that the assembly remained the people's house, which is  
10 what he says in his letter, the defendant could have admitted  
11 that he betrayed the people he served. He corrupted the  
12 people's house. He betrayed his fellow assembly members, and  
13 he betrayed his staff when he used all the power and all the  
14 money that came with being a leader of the people's house, the  
15 power to grant or withhold benefits, legislation, the public's  
16 money, to advance not the people's interests but his own  
17 personal financial interests in violation of his duty of honest  
18 services, his duty to carry out his responsibilities as the  
19 speaker faithfully.

20 Instead of accusing the government of trying to harm  
21 him and his reputation by, quote, choosing to focus its  
22 spotlight on him -- that's page at 30 of the defendant's  
23 sentencing submission -- he could have admitted that he himself  
24 is to blame for the investigation and the prosecution that  
25 revealed the truth and resulted in his downfall. After all, he

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1 is the one who put himself here.

2 Really, what did he think would happen when he made  
3 all of those millions of dollars, more than any other member of  
4 the state legislature, when he did it corruptly, and when he  
5 covered it up with secrets and with lies? What did he think  
6 would happen when all of those state legislators, referenced in  
7 the government's submission and the defense submission that the  
8 defendant certainly knew a lot about, were getting convicted  
9 for similar conduct, even while he persisted with his corrupt  
10 scheme and his lies? Your Honor, even today, after a long  
11 trial and with months to gather letters in support, and to  
12 write his own letter, he hasn't produced a single person who  
13 knew the truth, who knew who was going on here. Why? Because  
14 he lied. Because he covered it up. How did the defendant  
15 think this would all end up?

16 Your Honor, the defense also, in that same portion of  
17 its submission, attacks the government's motives and its  
18 investigation. But to the extent that investigation revealed a  
19 complicated and deeply flawed character based on, among other  
20 things, the recordings that the defendant himself had his staff  
21 make, that is consistent with the evidence of the crimes that  
22 were presented at trial.

23 Your Honor, a second point concerning the letter and  
24 the submission. The defendant, consistent with the regular  
25 practice of disgraced powerful politicians sentenced before

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1 him, asks for leniency based on two things. Sheldon Silver  
2 claims a lifetime of good works, and of course the Court can  
3 and should take those good works into account, and I'm sure it  
4 will when imposing sentence. But again, the Court should  
5 remember that this is an individual who was entrusted with  
6 literally billions of discretionary dollars of the people's  
7 money over the years. He spoke for a body of 150 legislators  
8 who also were sworn to act for the people for the public good.  
9 He had a huge assembly staff to carry out his wishes, and he  
10 had power given to him by the assembly and by the state laws  
11 and constitution that gave him tremendous power. And he served  
12 close to 40 years as legislator, 20 as its most powerful  
13 legislator.

14 Of course he did some good with all of that power and  
15 all of those resources. It was his job to do so after all.  
16 That's what he was paid an ample salary by the people to do.  
17 That's what he took an oath to do. And again, it would be hard  
18 not to do some good with all of that public money and all of  
19 that power, all of those people, and that entire legislative  
20 body behind him.

21 And here, your Honor, I think the argument is  
22 particularly troublesome, insidious even, because the good  
23 deeds that he is relying on, or at least many of them, the ones  
24 related to legislation and use of his power as speaker, they  
25 rise from the very power that he abused in this very case, the

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1 power to withhold or dispense discretionary funds to people  
2 like Dr. Taub, the power to control legislation that matters to  
3 entities such as the real estate firms that were paying him,  
4 the power to grant financing and give support for causes,  
5 things that were relevant to both schemes. That is the power  
6 that he exploited illegally in this very case.

7 Your Honor, the government respectfully submits that  
8 that, too, must be kept in mind when considering Silver's good  
9 deeds here. And if I may, I would now turn the microphone over  
10 to my colleague.

11 THE COURT: Thank you.

12 Ms. Cohen.

13 MS. COHEN: Your Honor, the defendant here held a  
14 position of unparalleled power for 20 years. He was one of the  
15 three most powerful politicians in this state. His convictions  
16 caused unparalleled damage to our political systems, to the  
17 public's belief in our state government.

18 As your Honor can see from many of the letters  
19 submitted to the Court in advance of the sentencing by the  
20 public, Silver's criminal conduct inflicted massive damage on  
21 the people's trust in their government. The defendant  
22 exploited his vast political power to line his pockets with \$4  
23 million in bribes and kickbacks, then he laundered part of  
24 those crime proceeds to net himself another million dollars.  
25 Enormous, unprecedented greed, unprecedented corruption. There

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1 is no mitigation or excuse tempering the seriousness of his  
2 crimes of conviction, and the defendant does not offer any.

3 The defendant committed his crimes here with the  
4 confidence that the systems he himself put in place and helped  
5 maintain would conceal and cover up his crimes; secret slush  
6 funds with no disclosure, limited disclosure of his outside  
7 income to the public, all of that combined with the defendant's  
8 repeated lies to his staff, to his fellow assembly members, and  
9 to the public, about how he earned all that outside income; and  
10 the use of his law license, your Honor, to cover up his scheme,  
11 to use his law license as a shield for his corruption. All of  
12 those things the defendant thought would enable him to operate  
13 with impunity. And for many years it did, until his crimes  
14 were uncovered and justice was done.

15 Your Honor, justice here now requires a significant  
16 sentence of imprisonment on the defendant, a sentence that will  
17 reflect the unprecedented magnitude, duration, and scope of the  
18 defendant's corruption, the defendant's abuse of his power, and  
19 his betrayal of the public trust, a sentence that will reflect  
20 the massive damage caused to the public by his crimes.

21 Your Honor, in our sentencing memorandum we addressed  
22 both the guidelines and why they are high for public officials,  
23 and that the guidelines are a starting point, and we  
24 acknowledge that. And one of the things your Honor asked the  
25 government to present to the Court, and one of the factors that

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1 your Honor has to look at at sentencing, are sentences imposed  
2 on similarly-situated defendants.

3 Your Honor, here, if you look at all the sentences  
4 imposed in federal court on defendants within this state and  
5 outside, that also demonstrates that a significant term of  
6 imprisonment is warranted. And it's hard to find in New York  
7 State a similarly-situated public official. There have been  
8 many of the defendant's fellow assembly people and state  
9 senators who have been convicted of public corruption crimes,  
10 but your Honor, the government respectfully submits none of the  
11 conduct in those cases approaches the level of conduct of the  
12 defendant's schemes here and the damage that caused to our  
13 institutions.

14 If you focus on the New York public officials, your  
15 Honor, many of whom who served with the defendant and were  
16 convicted of public corruption crimes while the defendant was  
17 committing his crimes of conviction, they all got significant  
18 terms of imprisonment. We provided a thorough analysis of  
19 their cases and why the defendant's case here deserves an even  
20 more significant term of imprisonment.

21 Make no mistake, your Honor, the government is asking  
22 that the Court impose a sentence on this defendant that is  
23 higher than any sentence imposed on other New York convicted  
24 state officials.

25 We are also asking, your Honor, that you impose a



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1 fine, an above-guidelines fine of at least a million dollars.  
2 And the defendant, as set forth in the PSR, has ample resources  
3 to pay such a fine, including his state-funded annual pension  
4 of \$70,000 a year.

5 Your Honor, looking at the 3553(a) factors in addition  
6 to similarly situated defendants and not wanting unwarranted  
7 sentencing disparities, your Honor has to look at the nature  
8 and circumstances of the offense. There's no more serious  
9 public corruption offense than the crimes of this defendant's  
10 conviction. His bribery and kickback schemes were multifaceted  
11 and nefarious. They were sustained over time, facilitated and  
12 concealed through his official power. No excuse, just pure  
13 greed. And then he tried to hide his crime proceeds through  
14 investing them in the private investment vehicles, including  
15 putting some of that money in his wife's name so the public  
16 wouldn't know it belonged to him.

17 History and characteristics of the defendant is  
18 another factor your Honor has to consider when sentencing this  
19 defendant. And here, as Mr. Master talked about, the defendant  
20 has a lifetime of public service. Undeniably he helped others  
21 in his district and elsewhere, as he was supposed to do as an  
22 elected official.

23 His health, his age, those are mitigating factors that  
24 the Court also must consider at sentencing. But if we could  
25 address one other point the defense raised in its submission,

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1 that there is a lack of discernible harm -- and that's a quote  
2 from the defendant's submission here -- your Honor, nothing  
3 could be farther from the truth.

4 The defendant here caused specific and massive harm;  
5 harm to the people's faith in their government, harm to our  
6 rule of law, and harm to our democracy. The defendant was not  
7 only an elected assembly member for his district, but the  
8 leader of the entire New York State Assembly for decades. He  
9 thus betrayed the honest services he owed to all citizens of  
10 this state and to his fellow assembly members. The harm he  
11 caused spills way out beyond his district throughout our entire  
12 state.

13 Deterrence is another factor your Honor must look to  
14 in sentencing this defendant. There's a great need for  
15 deterrence here, especially given the breadth of corruption  
16 within our New York State legislature. Numerous letters  
17 submitted to the Court, including the letter that is Docket  
18 Number 187 submitted on the defendant's behalf, asked for  
19 leniency from the Court saying that the defendant was faced, in  
20 that letter, with, quote, a climate of corruption, and so of  
21 course he couldn't help himself. That argument echoes  
22 arguments made during the trial by the defense that this is  
23 just how things are done in Albany.

24 Your Honor, the defendant's sentence here needs to  
25 combat such cynicism about our government, send a message that

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1 corruption is not tolerated, is not the way business is done in  
2 Albany, or at least that it shouldn't be, and that no one,  
3 including Sheldon Silver, is above the law.

4 Your Honor, the defense also argues to this Court in  
5 its closing part of the sentencing submission that this Court  
6 will not sentence a defendant with as rich a record of doing so  
7 much for others as the defendant. Your Honor, the government  
8 respectfully submits that the defendant here has an  
9 unparalleled rich record of corrupting his public office, a  
10 rich record of using his power as an elected official to enrich  
11 himself, and a rich record of corruption, deceit and lies, a  
12 rich record of massive harm to our public trust in their  
13 government and the public's faith in our elected officials.

14 For all these reasons, and for the reasons set forth  
15 in our sentencing submission, we urge this Court to impose a  
16 significant term of incarceration greater than that imposed on  
17 any other New York convicted public official, as well as at  
18 least a one million dollar fine and forfeiture in the amount of  
19 5.3 plus million dollars.

20 THE COURT: Thank you, Ms. Cohen.

21 Mr. Molo, Mr. Cohen.

22 MR. MOLO: Yes, your Honor. I'm going to address  
23 first some of the issues at sentencing and factors that the  
24 government addressed, and Mr. Cohen is going to speak to some  
25 of the letters and some of the specific issues concerning

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1 Mr. Silver.

2 THE COURT: I need you to speak into the microphone so  
3 everyone can hear you.

4 MR. MOLO: I would like to begin by thanking the Court  
5 for the courtesy that we have been shown throughout these  
6 proceedings by not just you, your Honor, but your staff, in  
7 what has been an extraordinary case based on everything about  
8 it, the facts here. The media attention that the case has  
9 received is virtually unprecedented.

10 I believe that a sentencing is perhaps the most  
11 fundamental administration of justice, and many judges I know  
12 find it difficult and challenging because at the end of the day  
13 what you are doing is deciding a person's fate, albeit a fate  
14 that is driven by the actions that have been taken that are  
15 before it. But the Court must consider every convicted person  
16 as an individual, and it must consider every case as a unique  
17 study in human failings. And those aren't my words, those are  
18 the words of the Supreme Court of the United States that  
19 recognizes the unique moment we are in right now in the  
20 criminal justice process in this case.

21 Hopefully, through assessing the individual and the  
22 life that he's lived, through evaluating the unique  
23 characteristics of the underlying conduct -- and I take  
24 exception with some of the descriptions that the government  
25 gave, and I will address it in a moment -- and considering the

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1 broader issues, like respect for the law and deterrence, the  
2 Court will fashion a sentence that is, as the case law and the  
3 statute requires, sufficient but not greater than necessary to  
4 comply with the purposes of sentencing; in other words, a  
5 sentence that tempers justice with mercy.

6 The case is extraordinary I think for four reasons  
7 that I want to address here. We addressed all the factors in  
8 our brief, and I will not go over all those again, but I want  
9 to touch on four points.

10 The first is the extraordinary nature of the man that  
11 Mr. Silver is. The second is the extraordinary nature of the  
12 case because of the comparative sentence that the government  
13 wants here when you look at the sentences that have been given  
14 to other public officials for crimes that were in some ways  
15 similar. And it's also extraordinary because of the  
16 circumstances of the underlying conduct, as well as it's  
17 extraordinary because of the opportunity -- I think in many  
18 respects the unique opportunity in this case for the Court to  
19 fashion a sentence that imposes an appropriate level of  
20 punishment that sets out an appropriate means of deterrence,  
21 but yet still allows the public to benefit from the talents  
22 that Mr. Silver has which are truly unique among people that I  
23 think any of us know here in New York.

24 And first let me touch on the extraordinary nature of  
25 Mr. Silver as a person. Again, Mr. Cohen is going to address

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1 this in more detail, but at 72 he faces health challenges. He  
2 experienced a fall from grace that is fairly, I think, called  
3 as precipitous as any fall that anyone could have imagine. And  
4 yet he's maintained the love and respect not only of his family  
5 and those closest to him, but also of many in the community,  
6 some of whom really don't know him all that well who wrote  
7 letters to the Court on his behalf. Mr. Cohen will talk about  
8 the breadth of those letters, but I think that it's  
9 extraordinary to see that these were people from all walks of  
10 life describing acts great and small that Mr. Silver did that  
11 benefit them.

12 He's a man -- I think those letters paint a man who  
13 could fairly be described as compassionate. Time and again he  
14 did so much and extended himself to so many so often. His  
15 extraordinary responses to September 11 and Hurricane Sandy,  
16 granted, part of that as part of his legislative duties, but I  
17 think the facts as described in detail at a very personal level  
18 in the letters show it went beyond that. It ranged from that  
19 to helping a young dying man, who he did not know who was not a  
20 constituent, preserve his dignity in the last days of his life.  
21 These letters describe a person who is thoughtful, who has a  
22 great capacity for empathy, and whose actions and whose life  
23 really, beyond whatever was expected of him in his official  
24 duties, are an extraordinary picture of someone who has done  
25 service for others.

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1           The second thing I want to talk about is the  
2 extraordinary nature of the case in light of the underlying  
3 facts. I heard Ms. Cohen talk about "unprecedented" in its  
4 harm to people of the State of New York. And I do not for a  
5 moment want to minimize the seriousness of the integrity of  
6 government, the importance of government officials providing  
7 honest and faithful services to the people who elect them, and  
8 my goal is not at all to minimize that. And while the Court  
9 knows I'm a zealous advocate, I understand the jury rendered  
10 its verdict, and I'm not here to reargue the facts.

11           However, I ask the Court to respectfully take into  
12 account that Dr. Taub's patients who were sent to Weitz &  
13 Luxenberg did receive excellent representation, the record is  
14 replete with that, that Dr. Taub used the grant money that he  
15 received to do research that benefited the people not only of  
16 the State of New York but other people who suffered from this  
17 terrible disease of mesothelioma, that the real estate  
18 developers received skilled and experienced representation, and  
19 the 2011 state legislation benefited tenants, that it was in  
20 fact far more favorable than what Glenwood wanted. So I don't  
21 mean to minimize the fact of the conviction and what Mr. Silver  
22 has been convicted of, but I would just respectfully ask the  
23 Court to consider those facts as well.

24           The case is also extraordinary, as I said before,  
25 because of the sentence that the government seeks. The Court

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1 wisely asked the government and we as well to submit  
2 information on sentences of other public officials, not only in  
3 New York, but public officials in other states as well. And I  
4 think it's telling to look at sort of the conduct and the  
5 sentence that was arrived at in those cases both in terms of  
6 his position, which the government relies extensively on, that  
7 Mr. Silver held as one of the senior leaders of New York State  
8 government, as well as the scope of the conduct that had  
9 occurred, comparing that to the conduct here.

10 I want to highlight three cases. The first is the  
11 McDonnell case, which was just argued before the Supreme Court  
12 of the United States.

13 THE COURT: Very different facts.

14 MR. MOLO: I don't disagree they were very different  
15 facts. As I say, there's no perfect analogy, but I want to  
16 point out that in the McDonnell case he was the governor of  
17 Virginia, arguably superior to someone who is speaker of the  
18 assembly, but nonetheless a very, very senior government  
19 official in his state, received lavish gifts, his wife was  
20 taken on shopping sprees to New York, all for the purpose of  
21 supposedly introducing the person providing the gifts and  
22 benefits to the state government to get some favorable  
23 treatment. After a jury trial he was sentenced to two years.

24 The Robert Ney case, which we mentioned, he was 61 at  
25 the time of sentencing. The Robert Ney case. Mr. Ney was a



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1 United States Representative. He was not a speaker, he was not  
2 a person who was in that senior capacity, but he was part of  
3 what was one of the broadest, most extreme, most outrageous  
4 bribery schemes in the history of the United States involving  
5 the Abramoff scandal. And he was 53 years old at the time  
6 sentencing, and I concede he pled guilty, he did not go to  
7 trial. And the conduct there involved trips to Scotland, trips  
8 to the Pacific, thousands of dollars in gambling trips that he  
9 received in exchange for changing the specific language in the  
10 congressional record and also in the statute, and he received  
11 two years of imprisonment and three years supervised release.

12 Lastly I want to point out Joe Bruno. And Mr. Bruno's  
13 situation is very analogous to Mr. Silver's in the sense of the  
14 position that they occupied. Mr. Bruno was the leader of the  
15 senate and Mr. Silver was the speaker of the assembly. In the  
16 Bruno case, when it was all said and done, the allegations were  
17 that he received \$280,000 in bribes. And following a trial in  
18 which he was convicted, he was sentenced to two years.  
19 Mr. Bruno was 81 at the time that he was sentenced.

20 Now again, I acknowledge -- we acknowledge the  
21 seriousness of the charges here, the seriousness of the conduct  
22 which was the basis for the conviction, and Mr. Silver's  
23 position within the assembly and within New York government.  
24 That said, I think a comparison of these sentences at two  
25 years, compared to what the government is seeking, which is not

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1 I guess spoken in words of the Bruno conviction and sentence,  
2 resulted in a 168-month sentence, I believe, so they're asking  
3 for more than that. And I have to say that a sentence of  
4 anything that approaches that, whether ten years, whether five  
5 years, certainly a sentence like that is equivalent to life  
6 imprisonment for a man who is 72 years old who is dealing with  
7 the issues of prostate cancer.

8 The case is also extraordinary because it provides  
9 this Court with a really unique opportunity to fashion a  
10 sentence that both benefits the public as well as punishes  
11 Mr. Silver and serves the other purposes that are recognized as  
12 purposes for -- that the Court should address at sentencing.

13 We're aware the given guidelines are significant, and  
14 that we appreciate that the Court has already stated that you  
15 are not going to impose a guidelines sentence. But those  
16 numbers are driven by the amount of money that was at issue in  
17 the case. And I don't want to suggest that I came in here  
18 thinking that we were going to come in and the Court was going  
19 to give Mr. Silver a strong scolding and we would walk and he  
20 was told never to do this again.

21 THE COURT: Good.

22 MR. MOLO: I recognize the possibility of  
23 incarceration is a very real one as we came here, but I invite  
24 the Court to really consider if there is going to be any  
25 incarceration, what is really needed to serve the purpose here

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1 and what is the benefit that is truly rendered to society?

2 No one can question the punishment that has already  
3 been inflicted on Mr. Silver as a result of this prosecution.  
4 I mean this is an extraordinary fall from grace. And I  
5 understand that that accompanies any criminal prosecution for  
6 anyone who has been in any kind of life, for that matter, but  
7 someone in such a public life and someone in a life that has  
8 done so much good for so many, it is particularly, particularly  
9 punitive. So he has suffered from that punishment already. At  
10 the age of 72, the statistics that we provided to the Court,  
11 there are very few people in prison. The population that's  
12 over the age of 70 is very small.

13 The Court is required by the statute to consider  
14 available sentences, available sentences. And what is  
15 available to the Court here, whatever it decides to do, whether  
16 it does decide to impose any term of incarceration or not, is  
17 to impose community service accompanied with house arrest or  
18 other sort of restrictions under supervised release, which  
19 would allow the public to continue to benefit from the truly  
20 unique talents that Mr. Silver has. He has proven himself as  
21 not just a public official who was effective, but a public  
22 official who went above and beyond.

23 I will be very honest, your Honor, I thought I knew my  
24 client well before we started this trial. When I started  
25 seeing this material that came in from the people who wrote

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1 letters on his behalf and started to pull together some of the  
2 things he had done in his public record, it was amazing to me.  
3 I think it would be very difficult for anyone to identify  
4 someone who rivals Mr. Silver's record of service, service in  
5 the small ways, service in the big ways. And that just doesn't  
6 happen. It happens because someone has a talent for it, and it  
7 happens because someone has worked at it.

8 And so to deprive the public of the benefit of that  
9 going forward I think would be a mistake. And I think that the  
10 Court can embrace this opportunity to fashion a sentence that  
11 considers available sentences, considers alternatives, that it  
12 would not just simply be to send him to prison, which is what  
13 the government is asking for.

14 Punishment, deterrence. We're not asking that there  
15 be no restriction on Mr. Silver's liberty, even in a sentence  
16 involving community service and so forth. We offered a  
17 specific alternative to the Court. The letter from the Fortune  
18 Society, which is a tremendous organization which serves the  
19 purpose of helping people transition from the criminal justice  
20 system back into the public life and to lead a good life. And  
21 frankly, given the community contacts that Mr. Silver has and  
22 given his ability to help people and deal with people in these  
23 very, very personal times of their lives when they're  
24 struggling with issues, he's not just there passing massive  
25 legislation and thinking great thoughts, he is someone who got

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1 his fingernails dirty and really worked with the community.

2 The Fortune Society is a great alternative. If the  
3 Fortune Society is not acceptable to the Court, and they said  
4 they would be happy to have Mr. Silver work with them, we're  
5 prepared to sit down this afternoon with the probation office  
6 and anyone else, or the government for that matter, and find  
7 another alternative. And there are others that would be out  
8 there, but this is one that we thought was particularly well  
9 suited, and they offered in their letter to provide that  
10 opportunity to Mr. Silver.

11 As I said, Mr. Cohen will address the Court about the  
12 letters and about Mr. Silver as the person. In the end, we ask  
13 that your sentence be just. We ask that your sentence be fair.  
14 We ask that you take into account this extraordinary man,  
15 unique things that he has done and has to offer, as well as the  
16 extraordinary circumstances of this case.

17 Thank you.

18 THE COURT: Thank you.

19 Mr. Cohen.

20 MR. COHEN: Thank you, your Honor. I appreciate you  
21 giving me the opportunity to speak, as well as Mr. Molo. I  
22 will try to deal with other things, but I may overlap somewhat,  
23 and please bear with me.

24 Unlike Mr. Molo and Mr. Shur, I have known Mr. Silver  
25 for 20-some-odd years. They have known him barely a year. And

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1 I observed him from close by and from afar, and I observed that  
2 he has weathered many storms as a controversial, sometimes,  
3 politician. In the 1990s he literally held up the budget of  
4 New York against the Republican governor, the Republican  
5 majority leader of the senate, in order to preserve rent  
6 regulation. He did that himself. The government sort of  
7 suggested at trial he's been in the hip pocket of real estate,  
8 but he did that because that was the need for him to do for the  
9 people he represented. And he weathered that storm and the  
10 other storms.

11 But I say to you, and it's difficult to do it with  
12 Mr. Silver and his family sitting here, he won't weather this  
13 storm. Whatever leniency your Honor will seek to give him  
14 today, whatever leniency we may seek from the Court of Appeals,  
15 your Honor, we made no mistake about it that we're going to  
16 seek to appeal the conviction, whatever leniency we have from  
17 you, your Honor, he is already crushed. He has been devastated  
18 by everything that has occurred over the last year and a half  
19 from the day that the charge was first brought.

20 Every single day we read about Mr. Silver in every  
21 portion of the community in every part of his life every single  
22 day. If another man gets prosecuted or another woman gets  
23 prosecuted, they talk about Mr. Silver every single day. He is  
24 crushed. And I hesitate to say it again with his family here,  
25 his obituary has already been written. It's already there.

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1 This is going to be the story about him, notwithstanding  
2 everything he has done.

3 The government expresses about the letters that we  
4 have amassed that basically yeah, he was supposed to do these  
5 things, that's what his job is as a legislator. The  
6 government, the prosecutors -- I was a prosecutor when I was  
7 their age. I felt the same way, every defendant is all bad,  
8 there's no black and white, there's no shades of gray, the  
9 defendant is all bad. And that's the way I prosecuted, and  
10 maybe that mentality is necessary for prosecutors to do the job  
11 that they have to do effectively.

12 But your Honor of course has a different role, and I  
13 don't have to preach to you about that. You have to separate  
14 the wheat from the chaff. You have to look at the two sides of  
15 the individual, and the story about Mr. Silver has two sides to  
16 him. And let me begin with a proverb from the Bible, and you  
17 don't have to believe in religion to believe in the proverb  
18 love the neighbor as yourself. The conventional meaning of  
19 love your neighbor as yourself is the way you treat him is the  
20 way you want to be treated. Makes sense.

21 But there's another meaning, it comes from the Hebrew  
22 Bible, I'll help the reporter out later, the word is Kamohkha,  
23 like yourself, treat your neighbor like yourself because he's  
24 like you. The problems that you have in your life, the  
25 travails, tribulations, all the problems, weaknesses in health,

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1 weaknesses in education and weaknesses in how you live, the  
2 same problems you have he has, so treat him that way because  
3 he's like you.

4           The government is stingy in its view of what  
5 Mr. Silver did for the community, notwithstanding the letters  
6 that your Honor has seen, some of whom are repetitive because  
7 they come from different people whom he helped that way. But  
8 if you look at the letters, they talk about not only what he  
9 did as a legislator because that's his job as a member of the  
10 assembly, but he did it because he's a person who is empathic,  
11 who looks at people and cares about people, who does things for  
12 people day in and day out, not only on 9/11 when he rented a  
13 van and was riding along the esplanade in Battery Park giving  
14 food and medical supplies to people, or during Hurricane Sandy,  
15 but the kind of things he would do every day and every night in  
16 his office, and do it in a way to make things happen. He's not  
17 a glad-handing, back-slapping politician; he has droll voice,  
18 he's known for being Sphinx-like, but the truth of the matter  
19 is he gets the job done, and he got the job done in the  
20 assembly, unlike others.

21           The probation report says -- it's sort of interesting  
22 on page 35. And we disagree with some of the things in the  
23 probation report, but they did a professional job. It says on  
24 page 35 that he, Mr. Silver, had the power and the influence to  
25 be the voice of those who couldn't be heard, but instead



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1 attempted to reap the benefit of the scheme. We take issue  
2 with "but instead."

3 There is no question the government has a view of the  
4 evidence, your Honor has a view of the evidence. We have a  
5 substantially different view of the evidence. But the truth of  
6 the matter is he did all these things. These letters talk  
7 about the things that he did for his community in terms of rent  
8 regulations, in terms of education, in terms of criminal  
9 justice, all of the things, because he recognized that he was  
10 like his neighbor, he loves his neighbor as himself, and that's  
11 the kind of thing that shows up in every letter.

12 There's one letter in particular that I paid attention  
13 to. It's the letter -- I don't have the exact page -- by a  
14 gentleman that seemed to be a neighbor near Mr. Silver's home  
15 in Woodbridge, not a particularly close friend, and he called  
16 Mr. Silver in the middle of the night to say to Mr. Silver, my  
17 daughter, age 14 -- your Honor read the letter -- age 14 and  
18 her four friends are missing on a camping trip in Bear Mountain  
19 Park, can you help. Most people would, in the middle of the  
20 night, say call the state barracks, call the state police, call  
21 the state troopers and see if they can help you. No. He  
22 mobilized the effort. It kind of says the kind of things that  
23 he did, not just that day, he did it continually.

24 He helped somebody who had an infectious disease,  
25 helped a person he didn't know, not in his district, to get the

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1 kind of treatment that that person needed, and your Honor saw  
2 that in one the letters that your Honor read. But there were a  
3 lot of letters like that, and I don't want to go through them  
4 item by item in haec verba because your Honor has seen them.

5 If you pardon me for another the expression in the  
6 Talmud, it's: Don't judge another man until you reach his  
7 place. Common meaning of it: Don't judge another man until  
8 you walked a mile in his shoes. That's a nice meaning.  
9 There's a secondary meaning to it: Don't judge another man  
10 until you come to his place, where he lives. I'm not talking  
11 about judge like your Honor is judging Mr. Silver, but how to  
12 judge other people. Until you reach his place, to see the  
13 people he lives among, his community, his family, what they  
14 think of him, what do they express about him?

15 Now your Honor got some adverse letters from folks, we  
16 don't know who those folks are, but the letters from people in  
17 his community, whether it's the Jewish community, whether the  
18 Hispanic community or the Chinese community, many of those make  
19 up his constituency, they wrote the letters to your Honor.  
20 They told your Honor what they thought about the man and his  
21 ability to help them in dire times, in extremely dire times.  
22 The government said well, that's his duty, that's his duty as  
23 an assemblyman. There are ways to handle your duty, two  
24 different ways: Call the police or let me do something for  
25 you. And he showed that time and time again.

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1           And the government is cynical of letters. Believe me,  
2 I understand, and I was a prosecutor for ten years. I was just  
3 as cynical when I was their age. Maybe I'm still cynical. But  
4 I remember I prosecuted a man who was the head of the  
5 Republican party in Suffolk County. He was a very well liked  
6 guy who embezzled money from the Republican party coffers. And  
7 the case was tried before Judge George Pratt. Of course your  
8 Honor knows he later went on to the Second Circuit, an  
9 excellent judge. The case was tried non-jury, and he was a  
10 very likeable guy, everybody liked him, and he had friends, fat  
11 cat friends, not so fat cat friends, people in the community,  
12 business associates, people he broke bread with, and a lot of  
13 letters came in on his behalf as well.

14           And I sat in Judge Pratt's courtroom, and he sort of  
15 went through preparing for sentence with the parties in the  
16 courtroom, and Judge Pratt said he didn't really care about the  
17 letters from these big shots, he cared about the letter from  
18 the person who described how the defendant helped an old lady  
19 cross the street. Now we don't literally have a letter from an  
20 old lady crossing the street, but that's what you have time and  
21 time again in the letters that your Honor sees.

22           And I think that's what we want to express, that there  
23 are two sides to this man. Whatever your Honor views about the  
24 conduct in this case -- and again, we differ with your Honor,  
25 respectfully, but it's real. It's real. When the probation

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1 report says instead he used his power for some other purpose,  
2 he used his voice to help the little guy time and time again,  
3 you don't hear him doing things to help the big guy in terms of  
4 his legislation.

5 Judge Yates talked about -- he was his counselor the  
6 last four years preceding the charges in this case. He talked  
7 about a thousand bills that Mr. Silver was able to accomplish.  
8 We heard at the beginning of this case that there's three men  
9 in a room. Well, yeah, that's the way sort of government  
10 works. I mean when Ronald Reagan was President it was Tip  
11 O'Neill and he who made things happen. You can't have 500  
12 legislators walk into a chamber of the governor and make things  
13 happen. He had the voice of his house, the caucus of the  
14 Democratic party, and the house of the assembly, he made things  
15 happen as a result of that. He was effective in that. And not  
16 in a glad-handing, press release way that a lot of politicians  
17 do; they put five more beans into a can of beans and they have  
18 a press release about it. He didn't do that, he just did it,  
19 and all people knew of his willingness and ability to get  
20 things done on that level.

21 I would like to talk for a minute about the illness  
22 issue that is here. Like I said, I have sort of known  
23 Mr. Silver better than my colleagues for a long time. In April  
24 of last year when your Honor was first not clear when the trial  
25 was going to happen, Mr. Silver took me aside alone. My

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1 colleagues were not there.

2           And I said what's up? He said: I'll be out of pocket  
3 for two weeks. I think he hoped that I wouldn't even ask why  
4 are you going to be out of pocket two weeks, but he's a very  
5 private man, as your Honor knows. And he said to me: I'm  
6 going to need a procedure. And I said: For what? He told me  
7 prostate cancer. I probably said some platitude like it will  
8 all be better and the like.

9           And I wondered aloud, and he knew where I was going,  
10 this is probably going to get out, and maybe that's not worst  
11 thing in the world. He looked at me with disciplining eyes he  
12 hadn't done before or since, sort of reminded me of my father,  
13 actually, said: It's not getting out. And it didn't.

14           Procedure seems to have been successful. He's in  
15 remission. I'm sorry to say those are famous last words  
16 sometimes.

17           The case results in a conviction. We go to the  
18 probation department. I was sitting there with a colleague and  
19 Mr. Silver, and the probation officer dutifully asks about  
20 health issues and family and whatnot, and says how about  
21 siblings. Well, my brother died of cancer at age 70, prostate  
22 cancer, my father died of complications of prostate cancer.  
23 During all this time, while he was going through that, he never  
24 told me about that. I'm the guy, in some respects, closest to  
25 anybody other than his family, doesn't tell me what he's

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1 enduring until that time.

2           Why do I say this? The government made a big point at  
3 trial, didn't tell this guy this and that. This is personal, I  
4 understand, but that's an idiosyncratic part of his make-up.  
5 He doesn't talk to people about things they don't need to know.  
6 I guess I didn't need to know that. I did need to know it the  
7 day we sat down with probation, but I think it's a relevant  
8 fact in looking at the saga of the person from this side.

9           The government talks about remorse. They're unhappy  
10 about the letter. They're unhappy that well, he could have  
11 said I did this, this and this, and I'm guilty as charged,  
12 please send me to jail, take away all my money. They sort of  
13 can't take yes for an answer. I have never seen in my  
14 experience, and I have been around, sad to say, for a long  
15 time, a defendant convicted at trial actually write a letter of  
16 apology to the Court about what the result of the conduct has  
17 done to the community, which he does.

18           We shouldn't look at his remorsefulness and say:  
19 Well, it's not really remorsefulness, it's actually bad, it's a  
20 bad thing that he did by writing that letter. The government  
21 cites in terms remorse the case of the Supreme Court, which  
22 passed in front of me in the Court of Appeals, I think it's  
23 called Martinucci. Martinucci was a defendant who pled guilty  
24 to the crime of child molestation and at his sentence denied  
25 the very crime that he pled guilty to. They cite the Second

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1 Circuit for saying that's a sign of a lack of remorse.

2 This is remorse when what he says in the letter is  
3 very clearly a sign of remorse. Other than my family, serving  
4 my constituents is the most important thing to me. I've worked  
5 hard to make sure that the assembly remains the people's house.  
6 I wanted the assembly and all of its members to be accessible  
7 and available to people. What I have done is hurt the assembly  
8 in New York and my constituents terribly, and I regret that  
9 more than I can possibly express. Because of my actions, New  
10 York Ethics Rules will continue to be analyzed, evaluated and  
11 criticized. I worked hard for many years to make sure that the  
12 assembly and its members were respected as a vital legislative  
13 body. Because of me, the government has been ridiculed. I let  
14 my peers down. I let the people of the state down. I let my  
15 constituents, the people of lower Manhattan that I live among  
16 and fought for, they deserve better.

17 That's not an apology.

18 On a personal level, your Honor, I want to implore you  
19 to be as lenient as possible under the circumstances consistent  
20 with what Mr. Molo has told you about. It's interesting in  
21 that David Brooks wrote a book a few years ago -- he's a fine  
22 editorialist, columnist for The New York Times, called On the  
23 Road to Character. He talked about résumé values and eulogy  
24 values -- pardon me, résumé virtues and eulogy virtues. Résumé  
25 virtues, if you're a district attorney or prosecutor, all the

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1 convictions that you brought, great. If you're a legislator,  
2 all the kinds of things you did as legislator, budgets and the  
3 like, very important. The values that we have been talking  
4 about today, both Mr. Molo and myself, they're eulogy values,  
5 they're core values of a person that are far more important  
6 than the accomplishments one might make during the course of  
7 one's life. That's what is at stake for me today, your Honor,  
8 in terms of your Honor's very important and very difficult  
9 assignment to judge someone.

10 I think it's very important -- I understand the value  
11 of the deterrence. Specific deterrence is irrelevant here, but  
12 general deterrence isn't. But also important, it seems to me,  
13 is that good emerge in terms of the good that people do in the  
14 course of their life that emerge and help them when they're in  
15 crunch time, when basically the very liberty in life is on the  
16 line. If we allow good to happen and to show up and to be  
17 helpful to a person who was in that kind of circumstance, the  
18 good that they have done in the past, it helps good to prevail.

19 Thank you, your Honor.

20 THE COURT: Thank you, Mr. Cohen.

21 Mr. Silver, do you wish to make a statement?

22 THE DEFENDANT: Your Honor, I believe that my letter  
23 to the Court probably captured it best. Without question, I  
24 let down my family, I let down my colleagues, I let down my  
25 constituents, and I am truly, truly sorry for that.



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1 THE COURT: Thank you, Mr. Silver.

2 Mr. Silver, federal law requires me to consider the  
3 guidelines, but also to consider the nature and circumstances  
4 of the offense and the history and characteristics of the  
5 defendant. Federal law requires me to impose a sentence that  
6 is reasonable and no greater than necessary to accomplish the  
7 goals of sentencing, which include the need to reflect the  
8 seriousness of the offense, to promote respect for the law, to  
9 provide just punishment for the offense while avoiding  
10 unwarranted disparities from similarly situated defendants, to  
11 deter criminal conduct, to protect the public from the  
12 defendant, and to provide the defendant with needed educational  
13 or vocational training, medical care, or other correctional  
14 treatments.

15 I have considered the advisory guidelines and all of  
16 the required sentencing factors, including the sentences that  
17 have been imposed on many other corrupt New York politicians  
18 and corrupt politicians nationwide in recent history.

19 For New York politicians, the sentences, almost all  
20 imposed in either the Southern District or the Eastern  
21 District, ranged from six months of house arrest, which was  
22 imposed on a terminally ill defendant, to 14 years. Many of  
23 the sentences followed guilty pleas where the defendant  
24 acknowledged his guilt. None involved an official as high up  
25 in New York government as you are or you were, and none, as far

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1 as I can tell, yielded nearly as much in **ill-gotten gains** or  
2 lasted for nearly as long as the schemes for which you were  
3 convicted.

4 Although those factual distinctions reduce the value  
5 of those other sentences in evaluating the appropriate sentence  
6 to impose in this case, they are not entirely irrelevant data  
7 points when taking into account the sentencing goal of avoiding  
8 unwarranted sentencing disparities.

9 I considered all the very kind letters that your  
10 lawyers submitted on your behalf, as well as the ones, both  
11 supportive and not supportive, that I received directly.

12 I have to agree with the defense that the letters  
13 clearly and persuasively paint a picture of a gifted politician  
14 who went above and beyond the call of duty many times for  
15 friends, for friends of friends, and for constituents. Of  
16 course, as of the government says, constituent service is part  
17 of the job of a politician, but the reality is some do it  
18 better than others. It is clear that you did it quite well.  
19 And I took all of that into account when considering the  
20 history and characteristics of the defendant.

21 I have also considered Mr. Silver's health. He is,  
22 all in all, **a healthy 72-year-old man, albeit with prostate**  
23 **cancer that is in remission.**

24 The defense at trial and in **the sentencing pitch** in  
25 this case has been a mix of arguing that the government has

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1 criminalized conduct that is inherently part of a part-time  
2 legislature, and argue in any event that Silver is a good  
3 person who has done many good things in his life. And to use  
4 the defendant's words from his sentencing submission, this case  
5 "lacks discernible harm" caused by his corruption.

6 Silver, the argument goes, was as loyal a  
7 representative of tenants' rights before he started **extorting**  
8 **big landlords** as he was after he got the money. Silver really  
9 is concerned about the potential health effects of the asbestos  
10 release from the World Trade Center on September 11, so the  
11 grant to Dr. Taub really was in the best interest of his  
12 constituents regardless of any benefit that flowed to  
13 Mr. Silver.

14 I understand those arguments, but here's thing about  
15 corruption: It makes the public very cynical.

16 So for the HCRA grants, the defense argues the money  
17 was available for health-related grants. There might be  
18 mesothelioma risks as a result of the World Trade Center  
19 collapse, **Taub used the money appropriately, so macht nichts.**

20 The problem from the perspective of the taxpayer is  
21 that one has to wonder whether but for the quid pro quo  
22 arrangement between Silver and Taub, Silver might not have  
23 found better ways to spend a half a million dollars. **After**  
24 **all, mesothelioma is an incredibly rare cancer, whereas there**  
25 **are a lot of other diseases and conditions that are widely**

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1 prevalent in New York City; asthma, Type 2 Diabetes and  
2 hypertension, just to come up with three off the top of my  
3 head. Might Silver have funded research that had broader  
4 applications to more New Yorkers but for his desire to line his  
5 own pocket?

6 As to the actions taken that benefited Witkoff and  
7 Glenwood, at trial the defense made it sound like the Public  
8 Authorities Control Board, or PACB, which approved millions if  
9 not billions of dollars of bonds to be issued to benefit  
10 Glenwood, is simply a rubber stamp.

11 First, anyone who ever dealt with the PACB knows that  
12 that is not true as a factual matter. But second, the whole  
13 problem with having a corrupt member is that we will never know  
14 whether the corrupt relationship contributed to those deals  
15 being approved. Maybe if there had been an uncorrupted member  
16 from the assembly, some or all of those deals would not have  
17 been approved.

18 As to the rent law, the one thing we can know for sure  
19 that happened relative to the legislation is that Silver  
20 checked with Glenwood before he gave his final okay to the  
21 proposed legislation. So one landlord who funneled hundreds of  
22 thousands of dollars to Silver was privately consulted by the  
23 speaker of the assembly, one of the three most powerful people  
24 in New York State government, relative to incredibly important  
25 legislation.

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1           As Glenwood itself said, it spoke only for itself in  
2 that meeting, not for other landlords, including many smaller  
3 landlords. I am confident that the Real Estate Board of New  
4 York, or any real estate association that represented smaller  
5 landlords, would have loved to have a private meeting to  
6 discuss what they needed in the law from the speaker. But they  
7 didn't get that opportunity because they were not kicking back  
8 hundreds of thousands of dollars to the speaker.

9           In short, no one can say that the people of New York  
10 did not suffer tangible harm from Silver's corruption. But  
11 what this New Yorker can say is that whether or not there was  
12 any tangible harm, there was incalculable intangible harm to  
13 people of New York. Silver's corrupt action cast a shadow over  
14 everything he has done and has thrown into doubt every  
15 difficult decision any legislator has ever made.

16           Did Silver do nice things just to be nice, or did he  
17 do those things because somewhere there was something in it for  
18 him? Did a particular political decision get made because it  
19 was the best compromise available given competing interests, or  
20 did one side have a big heavy thumb on the scale because of  
21 secret payments being made to one of the politicians who was  
22 making the compromises? Did a lobbyist have preferred access  
23 because she was a better lobbyist than her competitors, or was  
24 it payback for a personal relationship? Did that result in a  
25 thumb on the scale for her clients rather than decisions being

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1 made on the merits? Those sorts of doubts end up corroding  
2 trust in government, and that, Mr. Silver, is discernible harm  
3 to the people of New York.

4 Certain facts, mostly from this trial but actually  
5 some from the letters that the defendant submitted, stick in my  
6 head that shed light to me on what is the fundamental question  
7 that I had to grapple with relative to Sheldon Silver's  
8 sentence. Is Sheldon Silver a basically good and honest person  
9 who just went astray, which is what the defense argues, or is  
10 he fundamentally corrupt, as the government argues?

11 I was struck by a letter from Judith Hope that was  
12 submitted by the defense. She was the chairman of the  
13 Democratic party in 1995. According to Ms. Hope, Mr. Silver  
14 stressed to her that there had to be a complete wall between  
15 government business and party business. That's a good thing.  
16 Mr. Silver specifically cautioned her never to ask him for any  
17 favors in his role as a member of the assembly, and he would  
18 never ask her for any favors as the head of the party. While  
19 he saw and avoided the risk of mixing Democratic party goals  
20 with government goals, he failed to take his own advice when it  
21 came to separating government work from his own personal  
22 financial gain.

23 The next fact that sticks in my head came from  
24 Dr. Taub's testimony. Dr. Taub testified that a mutual friend  
25 of theirs, Danny Chill, introduced him to Silver, told him that

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1 Silver wanted to him to refer mesothelioma patients to Silver  
2 at Weitz & Luxenberg, and then assisted Taub in drafting the  
3 first request for a HCRA grant. The fact that sticks in my  
4 head is that Silver subsequently told Dr. Taub not to tell  
5 Mr. Chill that Taub was continuing to refer mesothelioma  
6 patients to Mr. Silver. If this was all on the up and up, and  
7 Silver is basically an honest person, why did he want to hide  
8 the referrals from Mr. Chill?

9 Another fact that stuck with me was Steve Witkoff's  
10 testimony about his lunch with Silver when Mr. Silver asked  
11 Witkoff to send tax certiorari work to Goldberg & Iryami.  
12 Silver lied to Witkoff, portraying the request as asking for a  
13 mitzvah, help for a friend, indicating that Mr. Goldberg needed  
14 the business, never hinting that what was really going on was  
15 that Silver was going to get a piece of the business. Witkoff  
16 legitimately thought he was doing a nice thing for a friend of  
17 a politician; maybe not the best thing to do, but not  
18 necessarily corrupt either. If Silver is basically honest, why  
19 didn't he tell Witkoff from the get-go that Goldberg was going  
20 to be splitting his fee with Silver?

21 In this regard, another letter that the defense  
22 submitted jumped out at me. Ann-Margaret Carrozza is a trusted  
23 estates lawyer. She said that Silver occasionally referred  
24 clients to her. When she asked him if he wanted a referral  
25 fee, he, quote, dismissed it out of hand and told her he was

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1 only interested in her taking very good care of the people he  
2 sent over, close quote. That's a noble instinct, but it  
3 obviously was not in play vis-a-vis Witkoff's and Glenwood's  
4 tax certiorari work or Dr. Taub's mesothelioma patients.

5 Another fact that stands out in my head is what  
6 happened when Ms. Iryami insisted that their retainer agreement  
7 show that Silver was getting a piece of their fee. Did he  
8 withdraw from the arrangement at that point? No. Did he  
9 disclose the arrangement on his financial disclosures forms  
10 because there was nothing wrong with the relationship? No. He  
11 doubled down on the corruption and agreed with Glenwood that  
12 the arrangement could be documented in a secret side letter.  
13 What would the side letter accomplish? It would keep the  
14 arrangement secret because Glenwood was worried that retainers  
15 for tax certiorari work might have to be publicly filed, and  
16 they knew it would not be good for them or for Silver to know  
17 about the arrangement.

18 Mr. Silver, those are not the actions of a basically  
19 honest person. Those are the actions of a scheming, corrupt  
20 politician.

21 The final fact that jumps out -- the government  
22 mentioned this -- nothing that happened in the world of  
23 criminal prosecutions of Albany politicians seemed to have an  
24 iota of an impact on you beyond leading you to amend slightly  
25 what you disclosed on your financial disclosure form. One



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1 would think that the image of Mr. Silver's colleagues being  
2 arrested and led off to jail would have caused someone who was  
3 basically honest to reappraise what was going on. Instead, in  
4 the face of arrests and prosecutions, Silver stopped nothing.  
5 He lied to his own press officer and he lied to the press,  
6 holding himself as a paragon of virtue who had no business  
7 involvement with companies that had business with the state, a  
8 statement he knew full well to be absolutely false.

9 And then when the Moreland Commission started looking  
10 at outside employment of members, he threw up every roadblock  
11 he could to thwart the investigation, portraying his actions --  
12 which, by the way, used taxpayer funds -- as motivated by  
13 institutional concerns for the assembly when, as we know now  
14 all too well, they were actually the desperate actions of a  
15 politician who was trying to ensure that the corruption in  
16 Albany could continue unchecked. Those are not the actions of  
17 a basically honest person.

18 Mr. Silver, I have told you that I'm not going to  
19 impose a guidelines sentence, and I'm not, but I think it's  
20 important for you and your family to understand -- and I'm sure  
21 your lawyers have explained this to you -- why the corruption  
22 guidelines are so high.

23 Corruption is a crime that does not just victimize  
24 individuals or take money wrongfully from the public fisc. The  
25 guidelines are so high because corruption attacks the very

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1 heart of our system of government. There's so much money  
2 sloshing around government right now that it's very difficult  
3 to have confidence that any decision is being made on the  
4 merits. That doubt about whether our public servants are  
5 operating in our interests or whether their vote is available  
6 for purchase to the highest bidder is magnified every time we  
7 see another politician exposed as corrupt.

8 I hope the sentence I'm going to impose will serve as  
9 a general deterrent to others, that other politicians will see  
10 that corruption is going to be dealt with severely. I hope  
11 that the sentence I impose on you will make the next politician  
12 hesitate just long enough before taking a bribe or a kickback  
13 for his better angels to take over, or if there are no other  
14 better angels, and for some people there are not, then maybe  
15 his fear of living out his golden years in an orange jumpsuit  
16 will keep him on the straight and narrow.

17 Mr. Silver's crimes were motivated by greed and were  
18 able to continue for years because Silver had essentially  
19 unchecked power. The sentence I intend to impose will deprive  
20 him of most of his finances, or many of his finances, and his  
21 freedom for a substantial period of time, not only to serve as  
22 a general deterrent to others, but to provide just punishment  
23 for an exceptionally serious crime.

24 In addition to his substantial period of  
25 incarceration, I intend to impose a substantial fine.

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1 Mr. Silver's New York's pension, which he filed for just days  
2 after being convicted, has a present value of approximately  
3 \$850,000. I have taken that into account in setting the fine,  
4 as well as your liquid and not-entirely liquid assets,  
5 specifically your co-op and your country house.

6 I have also taken into account the government's notion  
7 that a fine above the statutory maximum on each crime will  
8 create Apprendi problems.

9 Mr. Silver, I sentence you to the custody of Attorney  
10 General for a period of twelve years on each of Counts One  
11 through Six, and ten years on Count Seven, all to run  
12 concurrent.

13 I impose a fine of \$250,000 on each count to run  
14 consecutive, for a total fine of 1.75 million. In setting the  
15 fine, I have considered the cost of the government of  
16 incarcerating you and supervising you during the period of  
17 supervised release. Because I find that the defendant has the  
18 ability to do so, he must pay at least 1.5 million of the fine  
19 not later than June 14, 2016.

20 Furthermore, during each month that Silver is  
21 incarcerated and on supervised release, he must pay a minimum  
22 of \$5,846 towards his fine. In addition, while incarcerated,  
23 he must pay 50 percent of his UNICOR earnings towards the fine.  
24 If he's not employed by UNICOR, he must pay an additional \$25  
25 per quarter from his BOP earnings towards his fine.

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1 I impose a term of two years supervised release on  
2 each count to run concurrent.

3 The mandatory terms of supervised release are that you  
4 may not illegally possess a controlled substance. You may not  
5 possess a firearm or a destructive device. You must cooperate  
6 in the collection of DNA.

7 I am waiving the mandatory drug testing because I find  
8 Mr. Silver poses a low risk of substance abuse.

9 In addition to the standard conditions of supervision  
10 which will be on the judgment and which the probation officer  
11 will explain, the defendant must provide the probation officer  
12 with access to any requested financial information. The  
13 defendant may not incur new credit card charges or open  
14 additional lines of credit unless he is in full compliance with  
15 the installment payment schedule reflecting payments on the  
16 balance of the fine.

17 The defendant must report to nearest probation office  
18 within 72 hours of release, and will be supervised in the  
19 district of residence.

20 The defendant must pay a special assessment of \$700.

21 Mr. Molo, are there any requests relative to  
22 designation?

23 MR. COHEN: Your Honor, we understand that your Honor  
24 can't order it, but recommend the Otisville prison camp.

25 THE COURT: Otisville camp?

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1 MR. COHEN: Yes.

2 THE COURT: Mr. Silver, as I'm sure your lawyers  
3 explained, I only have the power to recommend, I do not have  
4 the power to control your designation, but I am happy to  
5 recommend that you be designated to Otisville.

6 Mr. Silver, you must surrender to your designated  
7 facility not later than noon on July 1, 2016. If no facility  
8 has been designated by that time, you must surrender to MCC New  
9 York at that time.

10 Mr. Molo, you have told me that you wish to move for  
11 bail pending appeal.

12 MR. MOLO: Yes, your Honor.

13 THE COURT: Do you want to submit papers?

14 MR. MOLO: We would like to submit papers. We could  
15 do that within ten days.

16 THE COURT: I was going to say your papers are due  
17 May 13, any response is due May 20, and your reply is due  
18 May 25.

19 Mr. Silver, you have the right to appeal your  
20 conviction and sentence. If you're unable to pay the cost of  
21 an appeal, you may apply for leave to appeal in forma pauperis.  
22 The notice of appeal must be filed within 14 days of the  
23 judgment of conviction.

24 Anything further from the government?

25 MS. COHEN: Your Honor, just in an abundance of

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1 caution, earlier you said you would impose the forfeiture  
2 amount of the fine, \$5,393,976, but that also has to be part of  
3 your formal sentence.

4 THE COURT: I had already said I was going to do that,  
5 that was my intent to get that out of way at that point.  
6 There's been a draft submitted. I will double-check the  
7 arithmetic on that. It will be the amount I announced plus the  
8 earnings reflected in the government's submission.

9 Anything further from the defense?

10 MR. MOLO: No, your Honor.

11 THE COURT: Thank you all.

12 MS. COHEN: Thank you, your Honor.

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