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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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