

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 02 CR 506
)	The Hon. Rebecca R. Pallmeyer
LAWRENCE WARNER et. al.,)	

**UNITED STATES’ POSITION PAPER AS TO SENTENCING FACTORS AND
ITS CONSOLIDATED RESPONSE TO DEFENDANTS’ POSITION PAPERS**

The UNITED STATES OF AMERICA, through PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, submits the following position paper on sentencing factors and its consolidated response to defendants’ position papers:

Introduction

In voluminous position papers publicly filed on the eve of sentencing, defendants Ryan and Warner, neither of whom has expressed *any* acknowledgment of wrongdoing and both of whom continue to defend and minimize their “business as usual” conduct, seek the Court to depart substantially downward from the sentencing guidelines and impose limited sentences for the decade of criminality of which each stands convicted. As discussed in its prior submissions, while the government believes there are compelling reasons to upwardly depart from the sentencing guidelines due to the tangible and intangible consequences of the corruption sowed by the defendants, the government respectfully requests the Court to adopt the findings of the Presentence Investigation Report (“PSR”) and impose guideline sentences as to defendant Ryan (97-121 months) and defendant Warner (41-51 months). Moreover, as to defendant Ryan, the government respectfully submits that it would create an unreasonable sentencing disparity if Ryan, an elected constitutional officer holding the highest office in the state, received a lesser sentence than the 78-month sentence imposed by this Court on his right hand man, Scott Fawell, who typically acted at Ryan’s direction,

and in Ryan's interest, and who did not financially gain to the extent of Ryan, his family and friends.¹

After a five-month trial that was contested and litigated at every stage, the jury returned an unanimous verdict as to each and every count of the indictment against defendants Ryan and Warner. The crimes charged and proven at trial related to a decade of fraud, deceit and wrongdoing engaged in at the highest levels of state government. As to defendant Ryan, the proven conduct included a pattern of fraud in government contracts and leases; abuses of the campaign fundraising process and state resources for political gain; lies to the FBI, tax fraud and other deceptive behavior; and the gutting of the SOS-IG Department, a department critical to ensuring the safety of the driving public. Notably, this pattern of fraud and deceit continued, even after the federal investigation became public in September 1998 and Ryan entered the Governor's mansion.² As to defendant Warner, the proven conduct included a pattern of shakedowns of SOS vendors; steered SOS leases at buildings Warner secretly purchased; the procurement of do-little "consulting" contracts on the eve of the award of governmental contracts; manipulation of state contracts, leases and employees; and money laundering and structuring to hide his misdeeds. These efforts were engaged in jointly by Ryan and Warner for the primary purpose of financially enriching Warner, who in turn, lavished substantial financial benefits on Ryan, his friends and family.

Following the trial, after detailed submissions by both parties to the probation office, the

¹As the Court is aware, avoiding unwarranted sentencing disparities is among the factors the Court must consider under 18 USC 3553(a)(6).

²Even as Ryan claimed public support for the federal investigation, he lied to the FBI and authorized his first law firm, Altheimer & Gray, to represent dozens of employees with conflicting interests. When the investigation revealed misconduct in and near his office, Ryan and his attorneys then turned their attacks to the *bona fides* of the investigation.

probation officer conducted an independent assessment of the case and submitted its presentence investigation report (“PSR”) to the Court. The PSR concluded that the sentencing guidelines advised a 97-121 month sentence for Ryan and 41-51 months for Warner.³ Warner does not quarrel with the guidelines’ calculations, but nonetheless contends that the Court should impose a sentence well below the applicable 41-51 month guidelines’ range. Ryan does contest several conclusions of the PSR, including: 1) the finding of a fraud offense level of 20 (as opposed to a minimum offense level of 19) based on calculated loss; 2) the imposition of a two- point enhancement due to the offense “involving the conscious or reckless risk of death or serious bodily injury”; 3) the imposition of a two-point obstruction of justice enhancement for Ryan’s personal acts of lying and obstruction; and 4) any guidelines-based upward departure suggested by the government. Notwithstanding that the guidelines, even under Ryan’s own calculations, would call for a sentence of 57-71 months, Ryan argues that, based on an array of good acts and family health issues, he should receive a sentence of only 30 months.

Following the submission of the PSR, defendant Ryan and Warner separately filed their respective position papers, much of which rehash the arguments submitted privately to the probation department. In their combined 89 pages filed yesterday, both seek significant departures (extraordinary in the case of Ryan) from the now-advisory sentencing Guidelines. Both filings are replete with re-arguments of factual matters and defenses presented at trial, which arguments and defenses the jury soundly rejected.

Yet, notwithstanding the voluminous submissions to the Court seeking below-guidelines

³The calculations arrived at by the probation department match identically those calculated by the government, following the government’s supplemental submission in which it revised its position on the amount of loss.

sentences, **neither submission contains a single sentence affirmatively acknowledging the proven misconduct or expressing remorse for the wrongdoing each engaged.** While such positions are certainly consistent with each defendant's posture throughout the investigation and prosecution of the case—that each did nothing wrong and merely conducted business as usual — it certainly is not a basis for the Court departing downward from the Sentencing Guidelines. To the contrary, the first among the 3553(a) factors is the need to consider “the nature and circumstances of the offense and the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1). The “nature and circumstances of the offense” in this case is grave; this case isn't about one or two discreet bad acts -- these defendants aggressively pursued a decade-long scheme to abuse the taxpayers' trust.

The “history and characteristics” of these defendants, in addition to those characteristics cited in the defendants' submissions, is also reflected by their years-long refusal to (i) relent from that pattern of wrongdoing, and/or (ii) accept any responsibility (or even acknowledge the slightest bit of remorse) for their misdeeds. Notwithstanding the defendants' scorched-earth posturing in this case, the Court should not ignore, much less reward, the defendants' egregious misconduct and arrogance.

Downward Deviations from the Guidelines Are Not Warranted In This Case

Given both defendants' requests for the Court to impose sentences substantially below the applicable guidelines ranges, it bears repeating that this Circuit has repeatedly, and recently, described the significance of the guidelines and the consideration Courts must make when deviations from the guidelines are granted.

While it is true that the Sentencing Guidelines are now advisory, the Supreme Court's

remedial majority opinion in *Booker* repeatedly emphasized the importance of the Guidelines in carrying out Congress's directive to consider the Guidelines range, § 3553(a)(4), and to avoid unwarranted disparity, § 3553(a)(6). *United States v. Booker*, 543 U.S. 220, 260-65 (2005). Consistent with *Booker*'s directive to consider the Guidelines, in *United States v. Mykytiuk*, 415 F.3d 606 (7th Cir. 2005), the Seventh Circuit held that, on appellate review, "any sentence that is properly calculated under the Guidelines is entitled to a rebuttable presumption of reasonableness." *Id.* at 608. Even where a deviation from the Guidelines range is warranted, "[t]he farther the judge's sentence departs from the guidelines sentence . . . the more compelling the justification based on factors in section 3553(a) that the judge must offer in order to enable the court of appeals to assess the reasonableness of the sentence imposed." *United States v. Dean*, 414 F.3d 725, 729 (7th Cir. 2005).

The Seventh Circuit's post-*Booker* cases show that the Guidelines continue to serve as an important guide in sentencing, and emphasize that their importance is justified in light of the "eighteen years' worth of careful consideration" invested in the Guidelines. *Mykytiuk*, 415 F.3d at 607, 608. In *United States v. Castro-Juarez*, 425 F.3d 430, 436 (7th Cir. 2005), the Court vacated the sentence that was more than double the advisory range, despite the district court's detailed reliance on criminal history, history of violence, and the recitation of § 3553(a) factors, especially because even a "loose comparison" to *pre-Booker* departures for aggravated criminal history did not suggest a sentence of double the advisory range. *Id.* Likewise, in an opinion vacating a sentence *below* the advisory range, the Seventh Circuit held that "wholesale conclusions that are nothing but disagreements with the guidelines are impermissible." *United States v. Wallace*, — F.3d —, 2006 WL 2338021 (7th Cir. August 14, 2006). In *Wallace*, the district court imposed a sentence of

probation where the low-end of the advisory range was 24 months' imprisonment, and the district court relied in part on its disagreement with the Guidelines' determination that intended loss, if greater than actual loss, properly reflects the seriousness of the crime. *Id.* at *7. Thus, although district courts may deviate from the advisory range for reasons that were not grounds for departure pre-*Booker*, deviations should be based on "individualized" rather than "common" factors. *Id.* at *6.

While the government does not seek to dispute some of the personal matters presented by Warner and Ryan in their respective sentencing submissions, the government respectfully submits that none of the factors, when viewed in the context of the offenses proven and all the relevant facts and circumstances, merit the deviations proposed by the defendants.

Ryan's Objections to the PSR Should Be Overruled

Ryan advances three primary objections to the PSR: 1) the fraud loss adopted in the PSR is overstated; 2) a two-point "conscious disregard" enhancement is inappropriate; and 3) a two-point obstruction enhancement amounts to "double counting." While the government does not here repeat all of its arguments to the probation department on these issues, several points bear noting.

Fraud Loss Calculated in PSR is an Accurate Estimate

Ryan takes issue with the \$603, 348 fraud loss estimated in the PSR. At its core, Ryan's argument relies, almost exclusively, on the view that his expert, Hugh Edfors, had better credentials and was thus more reliable than the government's expert, Linas Norusis. Such a resume-based comparison completely ignores the fundamental lack of credibility in Edfors' slick presentation, the jury's verdict on the relevant counts [the jury convicted on Count 3 (Joliet lease), Count 6 (South Holland lease) and Count 8 (Bellwood lease)] and the manifest weight of the evidence showing the

fraud and deception attending the aware of these leases.

Based on its prior submissions on the issue, which the government seeks to incorporate by reference, the government contends that, under any objective analysis, the loss amount relating to the leases, exceeds \$400,000, the threshold for the 14-point enhancement found by the probation officer. With that said, the government agrees that the dispute on the fraud loss amount should be decided by the Court based on the credibility of the respective presentations and the corroborative evidence provided in support.⁴

Conscious Disregard Enhancement Should be Imposed

Ryan also objects to the probation officer's conclusion that a two-point enhancement should be assessed due to the fact that the offense involved the conscious risk of death or serious bodily injury. In advancing his objection, Ryan 1) reargues the evidence in the hope of minimizing Ryan's participation and knowledge in IG related matters; and 2) concludes that, because the probation officer and the Court did not impose the enhancement for Fawell, it should not be assessed here.

As argued in its earlier submissions, Ryan's personal knowledge of IG investigations relating to SOS corruption, as well as his personal and direct reporting relationship with Dean Bauer, qualify him for this enhancement and distinguish him from Fawell. Beginning with Ryan being *personally* put on notice through ASA Quinn's comments in 1992, through the *personal* knowledge he obtained from Roger Bickel of fundraising improprieties connected to the Libertyville

⁴The defense criticizes the probation officer's decision to completely discount the conclusions of Edfors as to the Joliet property. This decision was appropriate in that the Edfors' conclusion—that the state paid below market rates—was not credible, given all the underlying facts, as well as the testimony of Norusis and Baker.

investigation; through the knowledge he *personally* received from IG Agent Sonneveld in April 1994 of fundraising pressures leading to employee misconduct; through the IG memo he received from Fawell in December 1994 which specified concerns of the IG department impeding fundraising; and perhaps most importantly, through the almost daily communications Ryan (not Fawell) had with Bauer throughout Bauer's tenure, Ryan had intimate personal knowledge of the IG department's fundraising-based inquiries. In addition, even after the IG Department was disbanded and the allegedly "more professional" Jack Pecoraro was put in place through Fawell's recommendation, Ryan reversed Fawell's recommendation and *personally* re-installed Dean Bauer, a co-schemer who repeatedly and proudly told his subordinates that their job was to "protect George Ryan."

As to the CFR fundraising apparatus, it was Ryan who personally congratulated, on an annual basis, the Drivers Services employees (such as Marion Seibel) who sold the most CFR tickets. Spurring these low-salaried employees on to continue their fundraising prowess was a conscious choice Ryan made, and it was Ryan himself who routinely dipped into his campaign fund for personal benefit, and who stood to gain, and did gain, from their overzealous fundraising activities.

These facts, which were presented at trial, provide a more-than-sufficient basis for the Court to impose the enhancement. *See e.g. United States v. Vivit*, 214 F.3d 908, 920 (7th Cir. 2000) (Enhancement for risk of injury is properly applied when defendant's fraudulent conduct created a risk that others would suffer serious bodily injury). It is important to note that, contrary to the arguments advanced by Ryan, the standard for imposition of this enhancement is *not* whether the defendant purposely intended the risk, but is, rather, whether the "offense" involved the "conscious

or reckless” risk of death or serious bodily injury. In the wake of the serious allegations of the unholy alliance of fundraising tickets and the licensing process of which Ryan had personal knowledge, his decision in 1995 to disband the IG Department (and thereafter re-install co-schemer Bauer) succeeded in gutting any good faith investigations of SOS employees that might impinge on the CFR operation. This decision, and co-schemer Bauer’s intentional conduct, led to a very real risk of death and bodily injury, which risk came to pass when unqualified individuals obtained fraudulent CDLs from SOS employees who were committing illegal acts as they sought to maximize CFR fundraising efforts.

Obstruction Enhancement Is Appropriate

In his recent submission, Ryan contends, as he did in his probation submissions, that it would be impermissible “double counting” to enhance his offense level for his obstructive conduct because, he reasons, the obstructive conduct is already factored into the offense level for the underlying offenses. Ryan claims that because he was denied his lengthy special verdict form, he cannot determine what the jury resolved on the false statement allegations. However, Ryan’s speculation is not a basis to deny the enhancement. As the cases make clear, there is no double counting for applying an obstruction of justice enhancement to Ryan’s sentence because criminal liability for the conspiracy and mail fraud counts does not *necessarily* include obstructive conduct. In the Seventh Circuit, “[t]he bar on double counting comes into play only if the offense itself *necessarily* includes the same conduct as the enhancement.” *United States v. Senn*, 129 F.3d 886, 897 (7th Cir. 1997) (emphasis in original). *See also United States v. Bragg*, 207 F.3d 394, 401 (7th Cir. 2000) (rejecting a “double counting” challenge because criminal liability for the underlying conspiracy to violate the Clean Air Act did not necessarily result in an upward adjustment for an aggravating role). In this

case, none of the racketeering and mail fraud counts necessarily require proof of obstructive conduct. Accordingly, as in the Fawell case, the Court should overrule the objection and impose the two-point enhancement for the obstructive conduct.

As to Both Defendants, The Court Should Impose Guidelines' Sentences

Ryan Does Not Merit a 30-Month Sentence

In his submission, Ryan recommends that the Court impose a sentence of 30 months. Ryan's recommendation falls far below the guideline range, even as calculated by Ryan, and moreover, would be unreasonable, given all of the facts and circumstances here, including the undeniable fact that Ryan has failed to acknowledge his criminal acts or apologize for his conduct. The PSR sets out a guidelines calculation of 97-121 months, and the government agrees that this is the appropriate calculation for the decade of serious criminal offenses he and his co-schemers committed. Whether the Court ultimately finds the guideline range to be as calculated by the PSR and the government, by defendant Ryan, or somewhere in between, there is simply no way, in the government's view, that it would be reasonable to sentence Ryan to a term of imprisonment less than the term (78 months) imposed on Fawell. First, Ryan personally benefitted substantially more than Fawell from the criminal activity. The benefits, as established at trial, included numerous free vacations, gifts and loans to family members, as well as hundreds of thousands of dollars filling the CFR coffers. Fawell's personal benefit from the scheme did not come close to the magnitude of the benefits that Ryan received. Second, Fawell's criminal conduct, as extensive as it was, was the outgrowth of a corrupt scheme initiated and condoned by Ryan. Ryan effectively "trained" Fawell in how to cheat the State when, as Lieutenant Governor, Ryan put Fawell on the payroll while Fawell was doing campaign work. Indeed, throughout the period of the scheme, Ryan was a high-

level State official who betrayed the public trust and deprived the citizens of Illinois of his honest services by engaging in the charged scheme. While Fawell was also a public official, he was never elected, let alone a Constitutional officer. In short, Ryan was Fawell's boss and mentor both governmentally and criminally. Third, Ryan's betrayal of trust, as an elected constitutional officeholder in the highest position in state government, was more egregious than Fawell's and is thus deserving of a more severe sentence.

In sum, whatever the Court ultimately determines the guideline range to be, given the relative culpability of Ryan and Fawell; Ryan's greater responsibility as an elected official with considerably more experience than Fawell; and the more substantial benefits that flowed to Ryan as part of the scheme, any reasonable sentence for Ryan must exceed the sentence imposed on Fawell.⁵

The Court Should Reject Warner's Request for a Below-the-guidelines Sentence

While defendant Warner lodges no objections to the PSR guidelines, he nonetheless requests a sentence below the applicable guidelines range. In so doing, Warner again minimizes and recasts his misconduct. In essence, he reiterates his claim -- made during, before, and after trial -- that "The offense we are dealing with is Larry Warner being hired by four companies as a lobbyist/consultant and having a financial interest in three buildings leased to the Illinois Secretary of State's Office in

⁵In the case of Ryan, should the Court accept Ryan's logic in fashioning a below-guidelines sentence, it would effectively be sanctioning a deviation in virtually any high level corruption case. That is, in high-level public corruption cases, it is, of course, common that the defendant (a) won't have a criminal history (elected officials rarely do); (b) are older (high-level elected officials tend to be more senior); and (c) have some community support (otherwise they wouldn't have been elected). As to the cited family circumstances, it cannot be disputed that incarceration of any duration causes innocent family members to pay a penalty. In that regard, this case is, unfortunately, quite unremarkable from the hundreds of cases in which the Court has pronounced sentence. To acknowledge the family hardships by reducing the respective sentences in this case would denigrate the seriousness of the offenses and unfairly set these defendants apart from other defendants facing sentences in this district and before this Court.

the context of his close personal relationship with George Ryan.” Resp. PSR at 6. Warner suggests that in light of that “offense,” extraordinary leniency is appropriate. *Id.*

Warner’s position, like that of Ryan, simply ignores the truth and the verdict. Despite Warner’s aggressive and persistent refusal to acknowledge wrongdoing, the evidence in this case, as reflected by the jury’s emphatic verdict, showed Warner to be a person who engaged in serious criminal acts, which acts affected an important governmental entity:

- He shook down honest businessmen – like Ed Wuttke, Aristotles Mpougas, and Jim Motter.
- He gave mandates to SOS executives and employees, like Jim Covert, Len Sherman, and Alex Nelson.
- He steered taxpayer lease dollars into his own pocket and concealed that fact by hiding his involvement and interest beneath layers and layers of paperwork.
- He brusquely overrode the interests of the public; when state employees, like Stu Hunt and Jim Covert, made decisions based on merit, he cast those decisions aside in favor of lining his own pockets.
- He pumped money at Ryan, at Ryan’s campaigns, and at Ryan’s cronies, like Don Udstuen (through Alan Drazek), who received over \$300,000, and Ron Swanson, who Warner paid \$36,000, on Ryan’s orders, for doing nothing in connection with Viisage.

And through that process, Warner personally pocketed about \$3.4 million: \$834,000 from Viisage; \$399,000 from ADM; \$1 million from IBM; \$8,200 from ATC; \$382,276 from 17 N state; \$171,000 from Bellwood; \$387,000 from Joliet.

To posit, as Warner has now repeatedly done, that his “offense” was just benefiting from his relationship with Ryan and that there was no real harm to what he did, is to exercise the same deviousness and arrogance that characterized his and Ryan’s scheme from its inception. The jury has spoken. Warner is and was not a misunderstood businessman; he is and was a criminal –

someone who knowingly and willingly engaged in a decade-long pattern of crimes for one principal reason: greed.

And the taxpayers *were* harmed. They were harmed when public servants like Stu Hunt and Jim Covert couldn't do their jobs because of Warner's crimes. They were harmed when 3M and other companies couldn't compete for the sticker's contract without making their own "metallic security" marks. They were harmed when SOS Department Director hiring decisions were made based upon Warner's financial future. They were harmed when leases were steered without competitive consideration. They were harmed by not knowing the truth with regard to Ryan, Warner, and the money flow, and thus not having the option of doing something about it.

In addition to diminishing his crimes, Warner speaks at length about the significant tragedies he has suffered, during childhood and in connection with his family and personal life. The Government does not dispute or belittle those tragedies; to the contrary, we sorrow for the losses of Warner and the suffering of his family. Those tragedies, however, do not change what Warner chose to do for almost 10 years.

For this decade, defendant Warner made his own choices. He chose to strong-arm vendors. He chose to bully public servants. He chose to deceive the taxpayers to protect his cash flow. He chose his corrupt relationship with George Ryan—despite any fidelity to family members.

Conclusion

For both Ryan and Warner, this is a case about years and years of bad acts; years and years of intentionally wrongful choices, and it's about arrogance and greed in making, sticking with, and defending those choices – even to this day. The sentence here needs to reflect the breadth and scope of that wrongdoing and *those* characteristics of the defendants as well. Only a sentence in or above

the applicable ranges will justly accomplish that result.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney certifies that in accordance with FED. R. CRM. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following documents:

**UNITED STATES' POSITION PAPER AS TO SENTENCING FACTORS AND
ITS CONSOLIDATED RESPONSE TO DEFENDANTS' POSITION PAPERS**

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