UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 19 CR 623
	)	Hon. Robert W. Gettleman
THOMAS CULLERTON	)	

GOVERNMENT'S
SENTENCING MEMORANDUM

The UNITED STATES OF AMERICA, by JOHN R. LAUSCH, JR., United States Attorney for the Northern District of Illinois, hereby submits its sentencing memorandum concerning defendant Thomas Cullerton. The government respectfully represents as follows:

On March 8, 2022, defendant Thomas Cullerton pleaded guilty to one count of embezzlement of the assets of a labor organization, in violation of Title 29, United States Code, Section 501(c). For the reasons discussed below, the government respectfully requests that the Court impose a sentence within the applicable guidelines range of 12 to 18 months, and enter an agreed upon judgment of restitution and forfeiture both in the amount of $248,828.

A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant.

On or about March 1, 2013—several weeks after defendant Thomas Cullerton was sworn in to office as an Illinois State Senator—he was put on the payroll of the Teamsters union as an organizer. Organizers employed by the union were expected to work

approximately 40 hours per week, doing such things as attracting new membership through organizing campaigns, supporting union picket lines, and attending union events.

Over the course of a three year period while employed as an organizer, Cullerton collected a salary, allowances, and bonuses, and the union made monthly pension and health and welfare benefit payments for the benefit of the defendant. Cullerton and his family also made medical claims that were paid for. The defendant received more than $248,828 in payments and benefits from the union.

But Cullerton failed to do honest work for the pay he received. Indeed, he was a ghost payroller who invariably did little to nothing over this three year period. The defendant's immediate supervisors tried to get Cullerton to work, but he was, in the words of one supervisor, "never available." The defendant felt comfortable telling another high level supervisor within the union to "talk with his secretary to schedule union events on his calendar," but didn't bother to show up for work in any event. While other organizers provided detailed reports to their supervisors of their activities, Cullerton did not. The defendant's immediate supervisors at the union eventually gave up trying to get Cullerton to work; indeed, some of the defendant's supervisors did not even realize that he remained on the union payroll for three years because he was usually never around. So rare was the defendant present for work that the union did not even bother to keep track of his use of vacation time—because he was effectively on a permanent vacation.

Week after week, for years on end, the defendant as a ghost payroller made a conscious decision to pocket money that did not rightfully belong to him, thereby illegally

depleting the assets of the Teamsters and its associated benefit plans. Cullerton was not fired even though he failed to show for work. John Coli, Sr., the former president of Teamsters Joint Council 25 who has agreed to cooperate with the government,[1] explained that Cullerton was hired as a favor to Senator A, at Senator A's request. Coli knew it was wrong to pay Cullerton because he was a ghost payroller. Only when Coli became concerned that the Independent Review Board, an investigative body within the International Brotherhood of Teamsters, would find out Cullerton was a ghost payroller, did he give the order for Cullerton to be fired.

The defendant, who was a State Senator at the time of his illegal conduct, clearly realized that he would be able to get away with pocketing this money without doing any work simply because he was an elected official. His exploitation of his position was apparent to those at the union as well; indeed, one union employee noted that "the general sense people on the staff had was that Thomas Cullerton had a no-show job simply because he was an Illinois State Senator." The defendant clearly believed that the rules applicable to other employees, namely, that they show up for work, did not apply to him by virtue of his public office.

The defendant's conduct not only drained the coffers of organized labor, but undermined the confidence of union membership and the public in the integrity of labor

[1] Coli has been convicted of multiple offenses arising from his abuse of his former position as president of Teamsters Joint Council 25, including his receipt of concealed quarterly cash payments of $25,000 from a company employing members of his union. *See United States v. Coli*, 17 CR 470 (N.D. Ill.) (Pallmeyer, J.) [ECF#51]. In addition to taking these under the table payments, Coli also engaged in other criminal acts, including but not limited to filing false income tax returns and unlawfully receiving income and other benefits from entities that provided goods and services to the Teamsters. *Id.*

organizations. The rank and file members count upon their leadership to wisely utilize the resources of the union; crimes like this breach the trust members must place in their leadership to do the right thing.

Cullerton's character is such that even after being fired for doing effectively nothing for the Teamsters, he went on to get another do-nothing job, this time with a video gaming company. Specifically, Cullerton was purportedly hired as a "salesman" for a video gaming company in or around 2017. While all other salesmen were put on commission, Cullerton was made the first and only employee of the video gaming company and put on a salary of $1,000 a week, which was later doubled to $2,000 a week.[2] Even though his salary was doubled by the video gaming company, Cullerton brought in little if any business for the video gaming company. He was kept on their payroll only until the current investigation went overt.

B. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense.

A guidelines sentence in this case is appropriate. The defendant engaged in criminal conduct over the course of three years, pocketing union money every several weeks. Time and again, he embezzled funds that he was not entitled to. The amount he embezzled from the union was significant—close to a quarter of a million dollars. This

[2] The owner of the video gaming company advised law enforcement that defendant Cullerton's salary was doubled as a mistake, in that Cullerton, who had brought in no business, was only supposed to receive a one-time "birthday bonus" that was a "nice thing to do" even though Cullerton had not produced any clients for the company. No effort was made to recoup the purportedly excess payments made to Cullerton after they were discovered. This silly and unbelievable explanation for the payments made to the defendant—and his continued willingness to pocket money under such circumstances—speaks volumes about his character.

was no momentary lapse of judgment, but an ongoing course of conduct that merits punishment within the applicable guideline range.

What is further aggravating is that the defendant exploited his position as a public official in order to keep a job and take payments he was not entitled to. As the Seventh Circuit has explained, defendants who are able to make "a decent living without resorting to crime are more rather than less culpable than their desperately poor and deprived brethren in crime." *United States v. Stefonek*, 179 F.3d 1030, 1038 (7th Cir. 1999) (citation omitted). There was no reason why the defendant had to cheat in order to earn money, but he chose to do so anyway.

In addition, as a public official, the defendant should be held to a higher standard of conduct than others and this should be factored into the sentence he receives. When a public official elects to brazenly break the law, and take advantage of their position as a public official to do so, the sentence imposed must promote respect for the law and send the clear message that public officials must obey the law just like all others. *See, e.g.*, *United States v. Munoz*, No. 21 CR 272 (N.D. Ill. March 17, 2022) (Kness, J.) [ECF#55 at 72-74] (Alderman sentenced to thirteen months in prison for embezzling funds; exploitation of his position as a public official to embezzle funds was a "very aggravating factor" in determining sentence); *United States v. Acevedo*, No. 21 CR 134 (N.D. Ill. March 23, 2022) (Kennelly, J.) (noting defendant, who was a former public official, had a particular responsibility as a person who makes laws, to comply with the law). For these reasons, the government submits that a sentence within the applicable guideline range is appropriate.

C. The Need for the Sentence Imposed to Afford Adequate Deterrence to Criminal Conduct.

This case has received considerable public attention. The sentence handed out by this Court will no doubt be watched closely and will receive significant public attention as well. The sentence this Court imposes should therefore send an unmistakable deterrent message to public officials in this State (as well as their associates) that those involved in ghost payrolling schemes will receive a meaningful term of imprisonment. Judges in this district have repeatedly recognized that stiff sentences imposed on public officials can have a deterrent effect on other similarly situated officials. For example, in *United States v. Moreno*, 12 CR 459 (N.D. Ill. Feb. 19, 2014), District Judge Feinerman made the following observations in explaining his imposition of a sentence of 132 months upon a public official:

> Political officials do think. They do have jobs. They have spouses and children and parents. They have reputations. They have responsibilities. They are rational actors. They're super-rational actors. They, by and large, in their political lives and in their personal lives will respond to incentives. And the fact that we continue to have in this city, county, and district political corruption cases—and state, shows that the cost-benefit calculation has been skewed. The benefit—in other words, the benefits for these people are outweighing the costs. The benefits of whatever money they're getting outweighs the cost. And the cost is the criminal penalty that could be imposed multiplied by the risk of getting caught. And the Court can't do anything about the likelihood of getting caught. That's up to the FBI and the U.S. Attorney and law enforcement.
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> But the Court can do something about—about the sanction that is imposed; and in that way, the Court—and by the Court, I don't just mean me, I mean all the judges that deal with this—can affect the cost benefit calculus. And the way to do that is to impose more severe penalties than have

> been imposed in the past. The Sentencing Commission recognized that this was necessary several years ago. Other judges in this building have recognized that it's necessary, and this judge recognizes that it's necessary.

Accordingly, the sentence this Court imposes should be within the guidelines range in order to act as a strong deterrent to other public officials that seek to take advantage of their positions. *See also United States v. Arroyo*, 19 CR 805 (N.D. Ill. May 25, 2022) (Seeger, J.) (noting that federal courthouse in Chicago was a "beehive" of activity when it came to public corruption prosecutions and that there was a heightened need for just punishment because public officials are watching and listening to sentences imposed on other public officials).

D. The Need for the Sentence Imposed to Protect the Public from Further Crimes of the Defendant.

As the defendant will no longer be able to be employed by a union, or exploit his position as a public official, there is likely little need to protect the public from further crimes of the defendant that involve the embezzlement of union funds or the exploitation of public office.

E. The Kinds of Sentence Established by the Sentencing Guidelines and the Need to Avoid Unwarranted Sentencing Disparity.

The government respectfully recommends that the Court impose a sentence within the applicable guideline range for another reason: Sentencing within the advisory Guidelines enhances the fairness, integrity and public reputation of judicial proceedings. The legislative history of the Sentencing Reform Act of 1984 explains why this is so. Prior to the adoption of the Guidelines, Congress studied the state of federal criminal sentencing and the indeterminate sentencing scheme then in place.

Congress was not at all pleased with what it saw. Congress concluded that the sentencing system in place prior to the Guidelines was unjust, because there was a "shameful disparity" in the criminal sentencing scheme, a disparity that resulted in similarly situated defendants receiving sentences that varied wildly depending on the judge they appeared before and the district they were tried in. *See* S. Rep. No. 98-225 at 38, 65, *reprinted in* 1984 U.S.C.C.A.A.N. at 3221, 3248. Congress further noted that "[f]ederal judges mete out an unjustifiably wide range of sentences to offenders with similar histories, convicted of similar crimes, committed under similar circumstances." *Id.* at 38, 1984 U.S.S.C.A.A.N. at 3221. Congress pointed out that "[o]ne offender may receive a sentence of probation, while another—convicted of the very same crime and possessing a comparable criminal history—may be sentenced to a lengthy term of imprisonment. *Id.* This system of indeterminate sentencing was considered neither fair to the offender nor to the public, because a sentence that was unjustifiably high compared to sentences received by other defendants was unfair to the defendant, while an unjustifiably low sentence was unfair to the public. *Id.* at 39, 45, 1984 U.S.S.C.A.A.N. at 3222, 3228.

Indeed, this district was singled out by Congress in its report for its disparate sentencing practices. Congress noted that, in 1974, the average federal sentence for bank robbery was eleven years, but in this district, it was five and a half years. *Id.* at 41, 1984 U.S.S.C.A.A.N. at 3224. Congress also pointed to another study where fifty federal judges within the same circuit participated in a study where they were asked to indicate what sentence they would impose on a defendant, and the disparities in their decisions

was "astounding." *Id.* As Senator Edward Kennedy, one of the co-sponsors of the Sentencing Guideline legislation, put it, "[f]ederal criminal sentencing is a national disgrace. Under current sentencing procedures, judges mete out an unjustifiably wide range of sentences to offenders convicted of similar crimes." 129 Cong. Rec. 1644 (1984).

The Guidelines were thus promulgated in part to foster public confidence in federal judicial proceedings by ensuring that similarly situated defendants received similar sentences. In other words, the Guidelines were meant to ensure equal justice under law. *Cf.* U.S. Dep't of Justice, *Annual Report of the Attorney General*, 6, 7 (1938) ("there frequently occur wide disparities and great inequities in sentences imposed in different districts, and even by different judges in the same districts, for identical offenses involving similar states of facts," making "it difficult to maintain that equal, evenhanded justice is attained"). It was clear to Congress that respect for the law "cannot flourish among convicted defendants or the public when justice is undercut by unequal treatment." H.R. Rep. No. 1017, 98th Cong., 1st Sess. 31-32 (1983). It is for this reason that the Guidelines were implemented with bipartisan support—with Senators Edward Kennedy, Joseph Biden, Strom Thurmond, and Richard Lugar among the co-sponsors of the legislation.

Since the Guidelines were rendered advisory by the United States Supreme Court, there has been a trend back towards the sentencing regime decried by the sponsors of the Sentencing Guidelines. In a report issued in January 2019, the United States Sentencing Commission determined that the deviations between sentences within judicial districts continue to grow, and concluded that "[i]n most cities, the length of a

defendant's sentence increasingly depends on which judge in the courthouse is assigned to his or her case." *See Intra-City Differences in Federal Sentencing Practices: Federal District Judge in 30 Cities, 2005-2017* at 7, 27, 29.[3] Moreover, in Chicago, the average percentage difference from the guideline minimum for the period between October 1, 2011 and September 30, 2017 is -28.1%; in Phoenix, it is -10.1%; and in Dallas, it is -2.1%. *Id.* at 39, 42, 53. In other words, the current post-*Booker* approach has yielded disparate sentences based not only on the judge assigned the case, but on the district a defendant is charged in as well.

In a more recent study released by the Sentencing Commission in 2020, this district was consistently identified as being in the top ten districts in the Nation that were furthest below the overall average of sentences imposed in the Nation in fraud cases in the post-*Booker* period. *See Inter-District Differences in Federal Sentencing Practices* at 40 (chart depicting this district's ranking over several different periods).[4] There should not be a big-city sentencing discount in fraud and embezzlement cases such as this one; similarly situated defendants should receive similar sentences regardless of what city or State they receive their sentence in. Imposing a Guidelines sentence will serve the goal of ensuring similarly situated defendants receive similar sentences and prevent returning to the sentencing discrepancies that led to the Sentencing Guidelines in the first instance.

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[3] This report is available on the Sentencing Commission's website. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190108_Intra-City-Report.pdf

[4] This report is available on the Sentencing Commission's website as well. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200122_Inter-District-Report.pdf

CONCLUSION

For all the foregoing reasons, the government respectfully requests that the Court sentence the defendant within the applicable Guideline range, and enter an order requiring the payment of restitution and forfeiture of $248,828.

WHEREFORE, the government respectfully requests that the Court enter an order (i) sentencing defendant Cullerton as requested herein pursuant to the factors set forth in 18 U.S.C. § 3553; (ii) requiring payment of the agreed upon amount of restitution and forfeiture; and (iii) granting such other and further relief as may be just and proper.

Dated: Chicago, Illinois
June 7, 2022

Respectfully submitted.

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