

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

NATHANIEL THOMAS OAKS,

Defendant

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CRIMINAL NO. RDB-17-0288

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GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by its undersigned attorneys, submits this memorandum in connection with the sentencing in this matter.

INTRODUCTION

A corrupt public official “endangers the very fabric of a democratic society, for a democracy is effective only if the people have faith in those who govern, and that faith is bound to be shattered when high officials ... engage in activities which arouse suspicions of malfeasance and corruption.” *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 562 (1961). Nathaniel Oaks is just such an official.

Oaks repeatedly betrayed the trust placed in him by the citizens of Maryland, both before and during the FBI’s undercover investigation that led to the charges in this case. He routinely

traded on his public office and influence, accepting money and other benefits that he knew were bestowed upon him by individuals seeking his official favor and action. He never reported these benefits on his annual financial disclosure forms. And even after he was confronted by the FBI about his fraud and bribery offenses and had agreed to cooperate, Oaks continued to engage in criminal conduct. He secretly tipped off a target of the ongoing investigation, thereby destroying the viability of that investigation and obstructing justice.

For these reasons, as set forth more fully below and as will be presented at the sentencing hearing, the government recommends that the defendant be sentenced to a term of imprisonment of 60 months and three years of supervised release. The government further recommends that the defendant be ordered to pay a fine that falls within the final advisory guideline range of \$30,000 to \$300,000.

PROCEDURAL BACKGROUND

On November 15, 2017, a special grand jury returned a Superseding Indictment against the defendant, Nathaniel T. Oaks, charging him with three counts of wire fraud in violation of 18 U.S.C. §1343, one count of honest services fraud in violation of 18 U.S.C. §§ 1343 and 1346, five counts of the Travel Act in violation of 18 U.S.C. § § 1952(a)(3) and (b)(2), and one count of obstruction of justice in violation of 18 U.S.C. § 1512(c)(2).

On March 29, 2018, the defendant entered a plea of guilty to Counts Three (wire fraud) and Count Four (honest services fraud) pursuant to the plea agreement between the parties. The sentencing hearing is scheduled for July 17, 2018, at 11:00 a.m.

STATEMENT OF FACTS¹

At all times relevant, the defendant, Nathaniel T. Oaks, was a Maryland State Delegate who represented the 41st District in Baltimore City. As a State Delegate, Oaks owed a duty of honest services to the citizens and to the State of Maryland in the performance of his public duties. Oaks was required to adhere to certain state laws, including Section 9-201, Md. Crim. Law, which prohibited him from demanding or receiving a bribe, fee or reward to influence him in the performance of his duties or to neglect or fail to perform his duties. Pursuant to Maryland's Public Ethics law, Oaks was also required to disclose, among other things, certain gifts received such as free meals.

A. Oaks' Corrupt Relationship With Henley.

On September 21, 2015, a cooperating witness (the "CW") introduced Oaks to an FBI confidential human source using the name "Mike Henley," at a dinner at Ruth's Chris restaurant in Baltimore. Henley was posing as a wealthy businessman and developer from out of town. During the dinner, Henley told Oaks that he was interested in finding various business opportunities. Oaks agreed to assist Henley with business development in Maryland.

In the following months, Henley and Oaks discussed in various telephone conversations and in person meetings possible development and business-related opportunities for Henley in Maryland. Oaks soon made it clear that he was interested in receiving corrupt payments from Henley.

¹ For ease of reference, the entire statement of facts, stipulated to as part of the plea agreement, is repeated here verbatim.

Approximately three months into their relationship, on December 15, 2015, Oaks mentioned his personal finances to Henley for the first time. During a telephone conversation that day, Henley made a comment about purchasing airline tickets at the last minute. Oaks responded “I can’t afford to do it like that.” Henley then joked about Oaks having “pots of money” and “all kinds of retirement money” to which Oaks replied “I can always use some improvement.” When Henley suggested that Oaks should go see one of Oaks’ close associates who could make Oaks rich, Oaks stated “You gotta have some money to get money and I ain’t got no money.” Later the same day, in another telephone conversation, Henley jokingly cautioned Oaks that politicians should never tell developers that they are in need of money. Oaks responded “I ain’t got no money.”

On January 19, 2016, Henley told Oaks during a dinner meeting that he really wanted to do business in Baltimore; that he planned to take calculated risks; and that he would take care of the people who took care of him. Soon afterward, Henley and Oaks had the following exchange while in the presence of one of Oaks’ close associates who was engaged in a telephone conversation at the time:

- Oaks: And I’m fine. I’m not, I’m not looking for anything. I’m not saying I’m not accepting it. I’m just saying I’m not looking for nothing. I want to make sure that we place (unintelligible)...
- Henley: Wait a minute. Wait a minute. I need to know. You ain’t looking for nothing? Because if, if we cut a deal and I make me some money, don’t come back, don’t jump in the back of the truck. The truck gone.
- Oaks: No. No. First of all... No. First of all, if, if, if that’s where I am, then you already gave me what you wanted to give me whether it is something or isn’t something.

On February 1, 2016, Henley and Oaks discussed a possible housing project in Baltimore that Henley said could include grant funding from the Department of Housing and Urban Development (“HUD”). Henley told Oaks that he had a contact at HUD in Chicago, later identified by Henley as “John,” who was helping him to get approved under HUD’s Choice Neighborhood program. Henley then told Oaks to “put your thinking cap on man and help me make some money around here.” Oaks responded “I hear you. I hear you.” When Henley told Oaks that he was serious, Oaks stated “I’m there for you my man.” On February 25, 2016, Henley told Oaks that he had received the pre-approval from HUD to proceed with a housing development in the Greater Baltimore area pursuant to HUD’s Choice Neighborhood program (“the Project”).

By March 2016, Henley had made it known to Oaks through various comments that he made regular \$5,000 cash payments to the CW to compensate him for assisting with Henley’s business development matters in Maryland. Also by this time, Henley had made two “payments” to the CW while in the presence of Oaks. The “payments” were in the form of white, letter-sized envelopes that the FBI had filled with items to make it appear as though the envelopes contained cash.

On March 2, 2016, Henley and Oaks spent the better part of the day together in Baltimore, eventually reaching a tacit agreement that Henley would pay Oaks to help his business interests as opportunities arose. Henley told Oaks that he did not hire lobbyists and it was agreed that they needed to be careful to conceal their business relationship around “all others.” Also during the conversation on that day, Oaks confided to Henley that he had accepted

free hotel rooms, meals and drinks from others, specifically mentioning a lobbyist and a bail bond business owner.

On March 16, 2016, Henley and Oaks further discussed Henley's financial arrangement with the CW and the concept of similarly compensating Oaks. At one point in the conversation, Henley stated "But he [the CW] can't make the, the stuff you can do for me. And, and there ain't even no question about that right?" Oaks responded "I agree with that." Later in the conversation, Henley asked Oaks how much he wanted to be paid as follows:

Henley: The relationship with you make sense because I know number one, you gonna be quiet. Number two, we gonna try and get stuff done. We ain't trying to just be flashy, flamboyant, or talking.

Oaks: Right.

Henley: And so, I would need your help and I'm gonna take, I'm gonna compensate you. You gonna tell me how you want to be paid. I'm not gonna do you like I did [the CW]. The reason [the CW]... You saw the env, the envelope with [the CW]. That was protecting me.

Oaks: I see. I know (unintelligible).

Henley: You know what I'm saying?

Oaks: I gotcha.

Several times during that conversation, Henley asked Oaks how much Oaks specifically wanted to be paid for assisting Henley. Each time, Oaks was either non-responsive or evaded the topic by speaking in code, including at one point telling Henley that he had "chewing gum" in his mouth. Throughout his interactions with Henley, Oaks often used coded language such as this to convey to Henley that he did not want to openly discuss getting paid for assisting Henley

in his capacity as a State Delegate. At no point, however, did Oaks indicate any reluctance or hesitation in accepting payments from Henley.

Oaks and Henley also discussed on multiple occasions the need to be careful in order to avoid detection by law enforcement. In that same March 16, 2016 conversation, for example, the following exchange occurred:

Henley: Well, if you trying to speak in code to me, I got it loud and clear.

Oaks: Okay.

Henley: You don't need...

Oaks: Okay.

Henley: That's why we need to work out no trail.

Oaks: That's right. That's right. And we will de...we will determine what, what, what's what.

Henley: (Unintelligible) yeah.

Oaks: Can't nobody come back say I got you on tape. You ain't got me on tape saying a mother fucking thing but mother fuck.

Henley: See, that's why I know you all right. (Laughs). That's why I know you all right. That's why I'm comfortable. Cause we...This ain't just...Nobody ain't trying to just slap us on the wrist on nothing like this.

Oaks: No. No. Hell no.

Henley: They trying to slap something on our wrists.

Oaks: (Unintelligible). That's right.

By the end of that March 16, 2016 conversation, Oaks agreed to send a letter on his official legislative letterhead letter to Henley's contact at HUD in support of the Project in

exchange for compensation. Henley concluded the meeting by telling Oaks “When I come back, we take care of our business” followed by “I’ll take care of you” to which Oaks responded “Bring me that letter when you come.”

On April 1, 2016, Henley and Oaks further discussed the letter to HUD. Henley told Oaks that he needed to “embellish” some things in the letter to which Oaks responded “Yeah. I like, I like that word.” When Henley asked Oaks if they could trust the person in Oaks’ office who would be typing the letter, Oaks responded “Probably trust her as much as anybody you have met so far.”

A week later, Henley met with Oaks and gave him a draft of the letter, which was addressed to HUD’s Chicago Regional Office and contained various false statements about Oaks’ relationship to Henley and Oaks’ involvement and knowledge of the Project. Oaks reviewed the letter and had his assistant type it on Oaks’ Maryland House of Delegates letterhead. Oaks then signed the letter and faxed it to a number in Chicago that Oaks believed was associated with HUD.

On April 28, 2016, an FBI Undercover Employee, posing as a HUD official who was verifying the contents of Henley’s HUD file for the Project, contacted Oaks by telephone about the letter. Oaks verified the contents of the letter, stated he had signed the letter, and confirmed that he had faxed the letter to Chicago.

Also on April 28, 2016, Henley discussed with Oaks additional ways that Oaks could assist Henley. At one point in the conversation, Oaks stated “If there’s something on the State level, I can do it myself.” When Oaks mentioned the topic of hiring consultants during the

conversation, Henley responded: "I'm hiring you cause of who you are and what you represent" followed by "I ain't hiring you...nobody as no consultant. You...I hire you cause you can make it happen if you want to make it happen" to which Oaks responded "Right."

At another point in the conversation, Henley and Oaks talked about the risk associated with their relationship and they agreed they should minimize what they say on the phone and in text messages. Henley also asked Oaks to tell him how much he expected to be compensated for assisting Henley with matters such as the letter to HUD by stating "But the only thing we gotta work on, and we, you can think about it. Do you, what kind of deal you want? Do you want the same deal, I'm talking about monetarily, as [the CW], or you got your own number?" Oaks did not respond. Toward the end of the conversation, Henley and Oaks then had the following exchange:

Henley: I'm gonna do what I do with ah, [the CW], and then we'll move it up. We ain't gonna never go down. (Unintelligible)...

Oaks: I'm fine with that.

Henley: All right.

Oaks: Whatever you do, I'm fine with.

Henley: All right.

Oaks: And the (unintelligible) fine.

When Henley again asked Oaks how much he wanted to be paid, Oaks placed a Tootsie Pop with a chocolate-colored wrapper in his mouth. Henley then held up five fingers to signify a \$5,000 payment to Oaks, an amount commensurate with what Henley had told Oaks he had been

paying the CW. In response, Oaks shook his head from side to side and then made an upward motion with this thumb, indicating that he wanted to be paid more than \$5,000.

1. The First Corrupt Payment In Furtherance of the Scheme to Defraud HUD

On May 11, 2016, Oaks came to Henley's hotel room in Baltimore where Henley paid Oaks \$5,300 in cash. During the meeting, Henley specified that he was paying Oaks \$5,000 for the false letter Oaks had sent to HUD on April 7, 2016, and for the telephone call with the HUD official handled by Oaks on April 28, 2016. Henley cautioned Oaks not to put the \$5,000 cash into his bank account to which Oaks agreed, replying "Oh no!" After that payment, it was determined that Henley had inadvertently given Oaks \$5,300 instead of \$5,000. During a telephone conversation two days later, Henley and Oaks discussed the \$300 overpayment using coded language. Oaks told Henley "The score was off by three. I won by three."

On several occasions leading up to that May 11, 2016 meeting, Oaks had told the Henley that he feared the FBI was monitoring his telephone conversations. As a result, Oaks had been reluctant to talk openly to Henley on his cellphone about the details of their corrupt arrangement and the \$5,000 payment to Oaks for the HUD letter. Therefore, on June 15, 2016, the Henley and Oaks went to an AT&T store in the City where Henley purchased a prepaid cellular telephone ("the prepaid cellphone") for Oaks to use when talking to Henley over the phone about their corrupt dealings going forward.

2. The Second Corrupt Payment in Furtherance of the Scheme to Defraud HUD.

In July 2016, Henley told Oaks that he had an opportunity to receive additional funding from HUD, in the form of a grant, by incorporating certain energy efficient fixtures into his low-

income housing development project in Baltimore. Henley told Oaks that the grant from HUD was strictly contingent on Henley obtaining matching funds from the state and/or local government where the project was to be constructed. Henley told Oaks that he needed Oaks to issue a second false letter to HUD that would misrepresent that Oaks had already secured such matching funds from the State of Maryland for the project. Oaks agreed to issue such a letter and in exchange, Henley agreed to make another cash payment to Oaks.

On July 21, 2016, Henley met with Oaks in Maryland and paid him \$5,000 in cash in accordance with their agreement that Oaks would issue the second false letter to HUD. Later that day, during a meeting with the Henley, Oaks directed his assistant to type a letter addressed to HUD's Chicago Regional Office on Oaks' Maryland House of Delegates letterhead. The letter falsely stated that Oaks' office was sponsoring legislation which had already been pre-filed for the 2017 session of the Maryland General Assembly which would secure state funding for the Project. Subsequently, Henley and Oaks went to a FedEx Office location and had the letter faxed to a number in Chicago that Oaks believed was associated with HUD.

3. The Corrupt Payment In Exchange for An Official Act.

During or about early September 2016, Henley told Oaks that his bank was threatening to pull its financing from Henley's housing project in Baltimore because the project was not progressing fast enough. Henley told Oaks that he needed to show the bank proof that he had strong political support for the project so the bank would stay in the deal. In order to show the bank that he had such political support for the project, Henley asked Oaks to pre-file a bond bill request with the Maryland Department of Legislative Services ("DLS") for the 2017 session of the

Maryland General Assembly which, if enacted, would provide funding for Henley's low-income housing project in the amount of \$250,000. After several telephone conversations with Oaks about the bond bill matter, Henley met with Oaks on September 22, 2016, and paid him \$5,000 in cash in exchange for Oaks agreeing to pre-file the bond bill. After the payment to Oaks, Henley drove with Oaks to Annapolis where Oaks submitted a request to DLS to draft the bond bill.

On October 13, 2016, Oaks called Henley on the prepaid cellphone. During the call, they discussed the status of an email that was supposed to be issued by DLS as a follow up to the submission by Oaks of the bond bill request on September 22, 2016.

On November 3, 2016, Oaks told Henley during a conversation on the prepaid cellphone that he had personally gone to DLS that day to obtain a legislative reference ("LR") number for the bond bill, which is an internal reference number used by DLS. Oaks provided Henley with LR-680 as the legislative reference number for the bond bill.

On November 21, 2016, Henley received a forwarded email from Oaks. The email forwarded to Henley from Oaks, via interstate wire through a server located outside of Maryland, was an email dated November 17, 2016 that had been sent to Oaks from a DLS employee (hereafter "the email"). The subject of the email was "Draft of LR0680." The body of the email stated "As requested, I am forwarding a copy of proposed legislation (see attachment) drafted by the Department of Legislative Services. It is a draft copy provided for informational purposes only. Please contact the Department of Legislative Services at 410-946-5350 if you have any questions or wish to make any changes to the draft." Attached to the email was a three-page draft of a Bill by Oaks entitled "Creation of a State Debt – Baltimore City – Multifamily

Housing Development at Druid Lake Park.” The Bill, if enacted, authorized the creation of a State Debt not to exceed \$250,000 with the proceeds to be used for the Project, contingent on the receipt of matching funds from the grant recipient.

B. Oaks’ First Confession and Agreement to Cooperate.

On January 9, 2017, Oaks arrived at a hotel room in downtown Baltimore for what he thought was a meeting with Henley. Instead, two FBI agents were waiting in the room. The agents identified themselves and invited Oaks into the room. After advising him that he was not under arrest and was free to leave at any time, the agents told Oaks that he had been under investigation for about the past two years and that Henley worked for the FBI. The agents further advised Oaks that they knew about the three cash payments that Henley had given to Oaks and they then showed him video clips of the three different payments. After watching the videos, Oaks stated that he was “in a predicament” and that he wanted to cooperate with the FBI.

Oaks then gave a voluntary interview to the agents in the hotel room. He confessed that he had accepted the first two cash payments from Henley in exchange for issuing two letters to HUD on his official House of Delegates letterhead and that he knowingly made false statements in both of those letters in an effort to assist Henley with his housing project. Oaks also confessed that he accepted the third cash payment in exchange for filing a request for legislation with DLS which, if enacted, would have directly benefitted Henley’s housing project.

As the interview progressed, Oaks told the agents about his contacts and activities with a variety of individuals, including an individual identified as Person #1 in Count Ten of the Superseding Indictment. In particular, Oaks admitted that he had accepted free round trip airline

tickets to Las Vegas in 2015 and 2016 from Person #1, and that he allowed Person #1 to pay for a party that Oaks had hosted at a local restaurant in August 2016. Oaks told the agents that he believed that Person #1 would be willing to make corrupt payments to him and other politicians in order to advance Person #1's business interests.

At one point during the interview, Oaks told the agents that he wished to speak to an attorney before continuing. An attorney from the Criminal Justice Act panel arrived at the hotel room a short time later. After meeting in private with that attorney, Oaks agreed to continue the interview with the attorney present. Oaks then identified additional benefits that he had received from Person #1. Specifically, Oaks said that Person #1 had helped to pay for a birthday party for Oaks at a restaurant in October, 2015, and that he had paid for a hotel room for Oaks in Las Vegas for two or three nights in May, 2016. Oaks admitted that he did not include any of the payments or benefits that he received from Person #1 on his annual financial disclosure forms. Finally, Oaks indicated that Person #1 was actively pushing for certain legislation in the upcoming legislative session that would be favorable to the bail bond industry.²

Oaks agreed to cooperate with the agents as they investigated whether Person #1 would pay Oaks or any other politicians in exchange for official acts, including support for the bail bond legislation. Oaks signed an FBI form in which he authorized the agents to use recording devices for the purpose of recording any contacts that he might "have with [Person #1] and others as yet unknown." The FBI agents advised Oaks that he must record every single contact

² Person #1 had ownership interests in a bail bond business and a company that provided home health care services.

with Person #1, whether in person or on the telephone. They explained to Oaks that the recordings would be evidence and therefore it was critically important that every single contact be preserved to preclude a defense attorney down the line from accusing Oaks or the government of selectively recording only certain contacts. Finally, the agents told Oaks that if he had an unexpected contact with Person #1 where he was unable to record the contact, he must immediately contact the FBI agents so that they could document the contact. Oaks indicated that he understood these instructions. At the direction of the agents, he then recorded a telephone call to Person #1, while still in the hotel room with the agents and his attorney, and scheduled a meeting with Person #1 for later in the week.

In a subsequent interview conducted shortly after the hotel encounter on January 9, 2017, Oaks provided more details about his corrupt relationship with Person #1. Oaks told the agents that he typically spoke to Person #1 at least once a month; that the majority of his conversations with Person #1 concerned Person #1's business interests; and that Person #1 occasionally had asked him to arrange meetings with various legislators and other state employees on issues relating to those business interests. Oaks indicated that at Person #1's request, he had agreed to talk with the legislator who was the head of the Baltimore City Delegation in the Maryland General Assembly about the pending bail bond legislation. Finally, Oaks admitted that Person #1 always paid for Oaks' meals when they dined out together and confirmed that Person #1 had paid for his hotel room and flight expenses to Las Vegas on more than one occasion.

Over the course of the next several months, as the covert public corruption investigation continued, Oaks recorded his telephone and in person contacts with Person #1 as directed by the

FBI agents. Those contacts dealt largely with the pending bail bond legislation and Person #1's efforts to persuade legislators to agree to vote in favor of that legislation. At the direction of the government agents, Oaks agreed in those conversations to help Person #1 by contacting various legislators and drumming up support for the legislation. In the course of these same conversations and with Oaks acting at the direction of the government agents, Person #1 gave money to Oaks for his car repairs and agreed to help Oaks avoid paying certain taxes on his personal income tax returns, first by providing false receipts and then by promising to "loan" Oaks the money to pay the taxes after the legislative session ended.

The payment from Person #1 to Oaks for his car repair bill took place in February, 2017, just barely a month after Oaks began cooperating in the investigation. During a lunch meeting on February 9, 2017, in which they also discussed the bail bond legislation, Oaks told Person #1 that he needed \$2,750 to pay his mechanic for repairs on one of his vehicles. Person #1 agreed to provide the money, stating "I'll see you next week. You need to get your car out?" Person #1 also told Oaks that he planned to come to Annapolis the next day in order to see Oaks get sworn in as a State Senator.

On Thursday, February 23, 2017, Person #1 and Oaks met for lunch at a restaurant in Annapolis. During this meeting, Person #1 told Oaks to "slide your hand under the table." He then handed Oaks, under the table, an envelope containing \$2,600 in cash. Shortly thereafter, Oaks asked: "We good on the ... this twenty-seven?"³ Person #1 replied: "Yeah." Later in the

³ The amount in the envelope was only \$2,600, although, as previously indicated, Oaks had asked Person #1 to give him \$2,750.

same meeting, Oaks agreed to talk with certain legislators about the bail bond legislation. After the lunch meeting, Oaks provided the envelope of cash received from Person #1 to the government agents.

Several weeks later, during a lunch meeting on March 17, 2017, after discussing various aspects of the bail bond legislation, Oaks told Person #1 that he needed advice, because he had taken too many health care deductions on his tax returns. Person #1 immediately offered to provide Oaks with fake receipts from his home health care business to cover those deductions. Oaks accepted that offer.

C. The Obstruction of Justice.

Later in the day on March 17, 2017, Oaks and Person #1 both attended a St. Patrick's Day party at a bar in Annapolis. Oaks approached Person #1 in the bar, stated "what we talked about, just say no," or words to that effect, and then walked away. Oaks did not tell the FBI about this contact.

Over the next few days, Oaks and Person #1 spoke several times about the invoices and the timing of when Person #1 could deliver them to Oaks. But on March 20, 2017, Person #1 met Oaks at a restaurant in Annapolis and told Oaks that he had changed his mind about the fake invoices. Person #1 explained to Oaks that instead, he would give Oaks a promissory note and lend him the money at the end of the legislative session to pay for the additional taxes. Person #1 told Oaks that because there would be no actual prescribing doctor, the paper trail associated with the fake invoices would be an issue, so this was a "safer move."

On March 29, 2017, Person #1 told Oaks that he would be at a caucus meeting in Annapolis the following morning and that he needed every vote he could get out of that caucus to support the bail bond legislation. Oaks stated that he understood and would talk to the people that Person #1 had named for Oaks to approach.

Prior to the start of the caucus meeting on the morning of March 30, 2017, Oaks approached Person #1 in the hallway outside of the meeting room and said "I'm going to ask you for something, just say no," or words to that effect. Oaks did not tell the FBI about this contact with Person #1.

Later that same day, Oaks and Person #1 met at a restaurant in Annapolis. When Oaks mentioned his tax problem, the following conversation took place:

Oaks: Well, I still have some issues myself.., ah.., with this ah..., Internal Revenue.

Person #1: I can't do anything good for you there. Okay? I wanna be very clear with that.

Oaks: Okay.

Person #1: Very clear.

Oaks: No...

Person #1: I can't do any good for you, on that part. (Small Pause). You're always my friend.

Oaks: Yeah. You... I... I know that and I., and..., and I., and I value that..., ah..., that's why I'm comin' at you because I., you know..., this is...

Person #1: I got it.

Oaks: ...it's big.., it's big...

Person #1: I., I understand it., um...

Oaks: ...and (Unintelligible)...

D. Oaks' Second Confession.

Upon listening to the March 30 recording later that evening, the investigating agents immediately noted a marked change in the demeanor of both Person #1 and Oaks and that Person #1 had abruptly changed his position with regard to helping Oaks with his alleged tax problem. The following day, the agents confronted Oaks about the conversation. Oaks confessed that he had warned Person #1 not to commit the conduct they had discussed. He admitted that he intended to tip off Person #1 so as to prevent him from engaging in unlawful conduct. Oaks further admitted that he had intentionally not disclosed to the FBI agents his contacts with Person #1 at the St. Patrick's Day party on March 17 and in the hallway outside the caucus meeting on March 30.

As a direct result of Oaks' deliberate and intentional conduct in tipping off Person #1, the covert investigation into Person #1's corrupt acts relating to Oaks and possibly other politicians was no longer viable. Accordingly, the FBI agents confronted Person #1 about his dealings with Oaks the following week. Person #1 told the agents that he and Oaks had been friends for approximately 25 years and that he had given Oaks and at least one other elected official thousands of dollars in cash over a number of years. Person #1 admitted to the agents that he had given Oaks the \$2,600 in cash on February 23, 2017, and that he needed Oaks to vote in favor of the bail bond legislation. Person #1 stated that he could call on Oaks when he needed help and that due to Oaks' official position, Oaks could give Person #1 access to other important elected

officials. Person #1 also admitted that he knew it was wrong for him to give cash payments to Oaks and other politicians and that he should not have done so. Person #1 also confirmed that Oaks had tipped him off as described above.

ARGUMENT

I. The Advisory Sentencing Guidelines Calculations.

The advisory guideline calculations in this case are undisputed. The offenses of wire fraud and honest services are grouped pursuant to U.S.S.G. § 3D1.2(d) and the applicable guideline factors are as follows:

14	Base offense level, U.S.S.G. § 2C1.1
+14	Loss, U.S.S.G. § 2C1.1(b)(2); 2B1.1(b)(1)(H)
+4	Elected public official, U.S.S.G. § 2C1.1(b)(3)
<u>-2</u>	<u>Acceptance of responsibility, U.S.S.G. § 3E1.1(b)</u>
30	Final adjusted offense level

The defendant's Criminal History Category is I. Accordingly, his final advisory guideline range is 97 to 121 months.

II. The § 3553 Factors.

A. The Nature and Circumstances of the Offenses

The defendant's offenses of wire fraud and theft of honest services are very serious offenses that warrant equally serious punishment. This is not a case where the defendant engaged in a singular criminal act, committed out of desperation or the exercise of poor judgment. Rather,

Oaks knowingly exercised his position and influence as an elected official in exchange for personal financial gain over a lengthy period of time. The fact that Oaks was caught in a government sting does not lessen the severity of his offenses nor does it warrant a more lenient sentence for his conduct.⁴

This is also not the first time that Oaks has been charged and convicted of criminal conduct relating to his public office. While serving as a member of the House of Delegates in the late 1980s, Oaks “received monetary advances for the same expenses from both his campaign committee and the State of Maryland ... In short, Oaks was paid twice; once by his campaign committee and once by the State.” *Oaks v. State*, 83 Md. App. 1, 4-5, 573 A.2d 392, 393 (1990). Oaks then signed his campaign finance report, falsely certifying to its accuracy. He was convicted, following trial, of theft over \$300, perjury, failure to file a campaign report, and misconduct in office. *Id.* The Court of Special Appeals then reversed Oaks’ convictions for perjury and failure to file a campaign report on purely legal grounds, finding that “*even though the report submitted by Oaks [] was false*, its falsity was immaterial since the report as submitted was not required” under state law. 83 Md. App. at 7, 573 A.2d at 395 (emphasis added). The Court upheld Oaks’ convictions for theft over \$300 and misconduct in office. 83 Md. App. at 11, 573 A.2d at 397.

⁴ In his recently filed sentencing letter, the defendant argues at great length that this Court should not impose a guideline sentence because the loss calculations, while accurate, are artificially inflated in multiple ways because the case arose out of a government sting operation. While the government does not agree with the defendant’s arguments as to the loss, those arguments are essentially irrelevant, since the government is not recommending a guideline sentence.

That State trial and criminal conviction obviously did not deter Oaks from engaging in improper conduct once he regained his seat in the General Assembly in 1994. It just made him more careful. In his interactions with Henley, Oaks went to great lengths to lessen the possibility that law enforcement would learn of his corrupt actions. Among other things, Oaks:

- Repeatedly told Henley that he believed that the FBI was listening to his conversations because he was a public official. *See, e.g.*, Transcript Excerpt (“Tr. Ex.”) dated 11/20/15, at 1; Tr. Ex. dated 4/1/16, at 7; Tr. Ex. dated 4/2/16; attached hereto as Exhibits 1, 2 and 3 respectively;
- Avoided having explicit conversations about money or accepting payments from Henley, especially when on the telephone. *See, e.g.*, Tr. Ex. dated 12/7/15, attached as Exhibit 4; Tr. Ex. dated 12/15/15, attached as Exhibit 5; Tr. Ex. dated 4/28/16, attached as Exhibit 6, at 1-2; 38-41; Tr. Ex. dated 5/11/16, attached as Exhibit 7;
- Spoke in code when the conversations turned to illicit payments and agreements. *See, e.g.*, Ex.7; Tr. Ex. dated 3/16/16, attached as Exhibit 8, at 12-13;
- Agreed that he and Henley had to be careful about what they said and did “around all others.” Tr. Ex. dated 3/2/16, attached as Exhibit 9, at 22;
- Refused to answer directly when Henley asked him how much he wanted to be paid. *See, e.g.*, Ex. 6 at 42; Tr. Ex. dated 4/7/16, attached as Exhibit 10;
- Used a “burner phone,” given to him by Henley after the first bribe payment, so that he could talk more openly with Henley about their illicit activities. *See, e.g.*, Tr. Ex. dated 6/16/16, attached as Exhibit 11, at 5-12;

- Insisted that he did not want to receive the cash bribe payments in an envelope, because an envelope, as he explained to Henley, could be used as evidence against him later, just like the infamous evidence on Monica Lewinsky's dress. Ex. 6 at 16, 41-46;
- Assured Henley that he knew that he should not put the bribe money that he accepted from Henley into his bank account. Ex. 11 at 6; Tr. Ex. dated 12/14/16, attached as Exhibit 12, at 1-2;
- Agreed that Henley should not name the alleged housing project after Oaks, because a well-known local investigative reporter might start looking into the relationship between Oaks and Henley, Tr. Ex. dated 7/22/16, attached as Exhibit 13, at 1-3.

In addition, Oaks' own words leave no doubt that he *routinely* engaged in wrongful conduct as a public official long before he ever met Henley in September of 2014. For example, Oaks boasted to Henley that he received free meals, drinks and other benefits from various sources, including a prominent lobbyist and restaurant owners. *See, e.g.*, Ex. 6 at 35-37. As Oaks bluntly stated in one such conversation, "I like to service my friends that service me." Ex. 2 at 5.

Calling the lobbyist "my guy" and "my mother f---ing man," Oaks told Henley that he had stayed in a hotel suite paid for by the lobbyist at least three different times in Las Vegas. Ex. 9 at 14-15. Oaks described how he and the lobbyist concealed the fact that the lobbyist paid for most of the cost of expensive meals and bottles of wine by having Oaks charge just a very small token amount on his credit card each time, while the lobbyist paid the rest. *Id.* at 11, 17. As Oaks cynically put it: "'cause I pay for my own and I don't pay for my own." *Id.* at 18.

Oaks further admitted to Henley that he had accepted the Ravens season tickets through Bruce Crockett in the summer of 2014. He acknowledged that he accepted the tickets in exchange for his help getting PMSI's minority re-certification application expedited with the City of Baltimore in the spring and summer of 2014. Ex. 11 at 15-18; Tr. Ex. dated 9/16/16, attached as Exhibit 14, at 1-2.

Oaks also made it clear that he fully embraced bribery and various corrupt practices as standard operating procedures in his life as a public official. For example, when Henley told Oaks that he was moving the owner of PMSI into a lesser role in trying to get contracts with the City and State "[b]ecause he [the owner] feel like that this is more politics than he wanna play...", Oaks immediately responded; "everybody's got to play." Ex. 9 at 3-4. In that same conversation, Oaks responded "exactly," when Henley commented that if a person wanted something from Oaks, the person should come "bearing gifts." *Id.* at 6. Then a bit later, Oaks cautioned: "and when you planning on playing, you gotta watch who you gettin' in bed with." *Id.* at 9. And, when discussing why it was necessary for citizens to pay public officials, Oaks stated: "you spread it [money] out a little bit, then you don't feel bad saying like man I tried. You ain't really try if you keep all the capital and not helping somebody else." *Id.* at 13.

Near the end of the undercover investigation, having received a total of \$15,300 in cash from Henley, Oaks and Henley then had the following exchange:

Source #1: Tell.,. tell me this.,. tell me this. Don't go hurt my feelings. Tell me., just tell me the truth 'cause I know you already clean. You've been clean before I got there. I wanna know have I made a difference like you were trying to make a difference with me. How many new suits have I purchased? 'Cause I know I done bought some shoes and some high dollar belts. I know you bought those...

Oaks: Well...

Source #1: ...belts boy.

Oaks: Nah, you probably..., you probably helped me more in my social life with..., with dealing with some of them other folk that..., that..., that thought that ah..., they wasn't gettin' attention that they needed and they subsequently have been ah..., compensated very well.

Source #1: Wait a minute. Wait a minute. I spend my time...

Oaks: (Laughs).

Source #1: Let me..., let..., let's get that...

Oaks: Wait a minute, I got...

Source #1: Let's..., let's...

Oaks: ...I got my...little evil woman... I., I got locked out of my..., my ah..., lady's house and now she's comin' down and she gonna come with an attitude and I'm not (Unintelligible)...

Source #1: Well wait a minute, I got an attitude too. Let me tell you this before we close, I (Unintelligible)...

Oaks: I., I ain't closin'. I ain't closin'.

Source #1: Wait a minute., (Unintelligible)...

Oaks: I'm a., (Unintelligible)...

Source #1: I'm a take my time payin' you..., do [the CW] ...

Oaks: (Laughs).

Source #1: ...for a year and a half.

Oaks: (Laughs).

Source #1: Some kind of way.

Oaks: Oh yeah, oh yeah.

Source #1: So I set my sights...

Oaks: And.., and I, in return, I (Unintelligible)...

Source #1: I (Unintelligible)... I.., I... Wait a minute, I hadn't got..., I hadn't got (Unintelligible)...

Oaks: You enriched.., you enriched my life.

Source #1: Okay.

Oaks: You enriched my life. Okay? You have made...

Source #1: Why? Take... Wait a minute.

Oaks: You have made things better w...

Source #1: All right. takin' a penitentiary chance..., by takin' a penitentiary chance...

Oaks: (Laughs).

Source #1: and then you gonna ingratiate everybody else with the money.

Oaks: No. Well you know that's ah.., the.., that's the g.., that's the beauty of life making others feel warm.

Ex. 12 at 9-10.

One of the most egregious aspects of Oaks' behavior in this case – and one never mentioned in the defendant's sentencing letter - is that he continued to engage in criminal conduct even *after* he learned that the FBI had recorded him taking bribes and *after* he agreed to cooperate with the FBI in the ongoing corruption investigation. It was barely two months after his initial encounter with the FBI that Oaks intentionally and deliberately derailed that investigation by secretly tipping off the target, thereby obstructing justice.

B. The History and Characteristics of the Defendant.

Oaks is an educated and experienced legislator who chose to engage in very serious criminal conduct over an extended period of time. He is no different than other elected officials who commit similar crimes. 18 U.S.C. § 3553(a)(1).

The defendant argues in his sentencing letter that he should receive a lenient sentence because of his many years of public service and dedication to his constituents. Under the circumstances of this case, however, Oaks' past legislative efforts and "good deeds" in the community do not outweigh the important other sentencing factors, which include the need to reflect the seriousness of the offense, to promote respect for the law, and to provide adequate deterrence.

For one thing, it was part of Oaks' job as an elected representative to engage in good deeds that helped the public. As the Third Circuit has recognized, "[c]onceptually, if a public servant performs civic and charitable work as part of his daily functions, these should not be considered in his sentencing because we expect such work from our public servants." *United States v. Serafini*, 233 F.3d 758, 773 (3rd Cir. 2000). There is nothing extraordinary or mitigating about the fact that Oaks, at least in some respects, performed good works that "reflect[] merely the political duties ordinarily performed by public servants" *Id.*

In addition, it was Oaks' status as a public official that formed the basis for the charges in this case in the first place. Likewise, it was his status as a public official that resulted in the elevated base offense level under the Sentencing Guidelines. *See* U.S.S.G, § 2C1.1(b)(3). The defendant's

attempt to rely on that very same status as a reason for this Court to impose a lesser sentence is both illogical and unfounded.

The defendant has submitted to the Court letters of support and requests for leniency from constituents, officials and various other members of the community. The government does not question the sincerity of those letter writers, as Oaks was a well-known politician who represented his District in the General Assembly for many years. But, politicians distribute countless benefits during their time in office, and most politicians who get caught selling their offices can be expected to assemble an array of friends and political allies to tell the sentencing judge that they were really good people. Oaks is no exception. The letters submitted on his behalf are fully consistent with what one would expect for a defendant who is a politician.

Oaks' conversations with Henley, however, reveal Oaks' true character, which is that of a profoundly corrupt politician. In addition to the many examples already cited above, that corrupt character is perhaps most starkly revealed in the following exchange, where Henley explained to Oaks how he paid cash in the past to the CW:

Source #1: And I had already told him. I said [CW], we ain't gonna do nothin' out on the street. We... You gonna either come to my.., my room. I ain't comin' to your house. I ain't comin' to nobody pre-planned place. I.., *I do my "dirty deals" where I'm comfortable, right...*

Oaks: That's right.

Source #1: ...and then...

Oaks: *And I'm proud of you for that.*

Ex. 6 at 18 (emphasis added).

C. The Need for Deterrence, Promote Respect for the Law and Impose Just Punishment

“The need to deter others is under federal law a major element in criminal sentencing.” *United States v. Milo*, 506 F.3d 71, 76 (1st Cir. 2007). A significant sentence is needed to promote respect for the law and to deter others who may be tempted to immerse themselves, as Oaks did, in what another judge in this District once famously coined a “culture of corruption.” Anything less than a strong sentence of imprisonment for this defendant would greatly undermine that goal.

Oaks’ repeated comments during his interactions with Henley about the FBI, the need to be careful, his obviously corrupt attitude that he was entitled to free meals, drinks, trips and other payments because of his official position, and his obstruction of justice proves that there is a particularly compelling need for deterrence and respect for the law in this State. A strong sentence will send a very clear message to the community, and in particular, to all public officials that, in Maryland, corruption will not be tolerated and punishment will amount to more than just a mere slap on the wrist. *See, e.g., United States v. Brock*, 501 F.3d 762, 774 (6th Cir. 2007) (Upward variance sentence reasonable where defendant had little respect for the law, as evidenced by his statements bragging about being a criminal who “fractured a few laws” and “broke a lot of them,” including committing arson and attempting to bribe a state official), *abrogated on other grounds by Ocasio v. United States*, 136 S.Ct. 1423 (2016).

III. The Government's Recommended Sentence of 60 Months of Imprisonment and a Fine Within the Advisory Guideline Range is Reasonable and Not More than Necessary To Comply With the Purposes of Sentencing.

In public corruption cases, courts often impose significant sentences of imprisonment and, in some cases, have even imposed upward variance sentences in order to recognize the particularly serious nature of the offenses. In *United States v. McClung*, 483 F.3d 273 (4th Cir. 2007), for example, the defendant was an Assistant State Superintendent of Schools who used his position to steer certain contracts in exchange for money and other benefits. The trial court concluded that the advisory guideline range of 51 to 63 months was not sufficient “to promote respect for the law because extortion is a more serious crime when committed by a high-ranking public official.” *Id.* at 275. The trial court further found that an upward variance sentence was necessary to “provide just punishment, and deter other public officials from dishonoring their office by sacrificing the public interest to private gain.” *Id.* at 277. The Fourth Circuit affirmed that sentence, finding that the trial court had sufficiently articulated its reasons for the variance and that the variance was reasonable. *Id.*

Similarly, in *United States v. Geddings*, 497 F.Supp.2d 729 (E.D.N.C. 2007), the defendant, who had been the state lottery commissioner, was convicted of honest services mail fraud for accepting payments or benefits from a company that was bidding for the state lottery contract. The trial court imposed a seven month upward variance, finding that the need for deterrence and the loss of public confidence in the management of the lottery commission created a unique harm. *Id.* at 741.

In a series of recent corruption cases in the Southern Division of this District, Judge Xinis similarly imposed sentences of imprisonment ranging from 12 months and a day to 60 months. *United States v. Son*, Cr. No. 17-533 (60 months imprisonment); *United States v. Campos*, Cr. No. 17-3 (54 months imprisonment); *United States v. Paig*, Cr. No. 17-205 (41 months imprisonment); *United States v. Lee*, Cr. No. 17-216 (12 months and 1 day imprisonment); *United States v. Sud*, Cr. No. 17-427 (24 months imprisonment). Son, Paig and Lee all testified as government witnesses at the trial of *United States v. Vaughn*, Cr. No. 17-125. Son and Paig nonetheless received significant periods of imprisonment.

Less recently, but of no less relevance, in *United States v. Bromwell*, Cr. No. 5-358, Judge Motz sentenced the defendant, former Senator Thomas Bromwell, to 84 months in prison and in *United States v. Johnson*, Cr. No. 11-75, Judge Messite sentenced the defendant, former Prince George's County Executive Jack Johnson, to 87 months in prison.

Here, the government believes that Oaks, like the other public officials sentenced in this District and elsewhere for public corruption offenses, should receive a significant sentence of imprisonment. One of the basic principles of democratic governance is that an elected representative should act solely in the interest of the public good. Oaks repeatedly undermined that principle through his criminal conduct. He deprived the citizens of Maryland of their right to his honest services as their elected representative and his behavior has unfairly tarnished the elected officials who are law-abiding and who serve their constituents with integrity. As Judge Dever from the Eastern District of North Carolina observed when sentencing a high-ranking public official in 2007:

How can citizens respect the rule of law when lawmakers feloniously trample the laws that they have sworn to uphold? To the cynic, the conspiracy adds currency to the false notion that every member of the ... General Assembly is for sale, and the only issue relates to negotiating the price. Such cynicism produces apathy about the political process and is a breeding ground for the destruction of our constitutional system. Engaged citizens who believe in our system of government participate in the life of our state and nation. Cynical and apathetic citizens do not.

The conspiracy also provides venom to the false notion that all politicians are corrupt. They are not. The overwhelming majority - regardless of political party - serve with honor. Yet when extensive corruption takes place (as here), toxins are unleashed on the body politic. The toxins permit the cynic to substitute reasoned debate with personal attacks on the motives of those who seek to serve honorably in public life.

Order, *United States v. Michael P. Decker, Sr.*, No. 5:06-CR-197-1D (U.S. District Court for the Eastern District of North Carolina, Western Division), attached as Exhibit 15, at 22.

As for the imposition of a fine, U.S.S.G. § 5E1.2(a) specifically provides that “[t]he court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine.” Here, the defendant has more than adequate resources with which to pay a fine within the applicable guideline range of \$30,000 to \$300,000. *See* Presentence Report at 18-19.⁵

⁵ The government further requests that the Court consider issuing a contribution order that would require the defendant to pay some or all of the costs of the legal representation that he received from the Office of the Federal Public Defender in connection with this case. Both the Probation and Pretrial Services Offices have indicated that there is no copy of a financial affidavit in their files for this defendant. There is no indication in the Court’s docket as to what representations the defendant may have made to the Court in order to qualify for appointed counsel after his privately retained counsel withdrew in late 2017 or early 2018. Based on the financial information provided in the Presentence Report, it appears that the defendant, rather than the taxpayers, can and should pay for at least some, if not all, of the costs of his representation.

CONCLUSION

For the reasons set forth above, the government respectfully submits that a 60 month term of imprisonment to be followed by three years of supervised release will reflect the seriousness of the offenses, promote respect for the law and afford adequate deterrence to criminal conduct. This time is sufficient, but not greater than necessary, to comply with the purposes of §3553. The government further requests that the Court impose a special assessment of \$200 and that it impose a fine between \$30,000 and \$300,000.

Respectfully submitted,

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By: _____/s/_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July, 2018, the foregoing Government's Sentencing Memorandum was electronically filed using CM/ECF.

_____/s/_____
Kathleen O. Gavin
Assistant United States Attorney