

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	No. 08 CR 00888-5
)	Judge James Zagel
JOHN HARRIS)	
)	
Defendant.)	

DEFENDANT HARRIS' POSITION PAPER ON SENTENCING

Defendant JOHN HARRIS respectfully submits this Position Paper pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure and Local Criminal Rule 88.8 in advance of his sentencing, which is scheduled for March 16, 2012

I. Introduction

On July 8, 2009 John Harris entered a plea of guilty, pursuant to a plea agreement, to Count IV of the first superceding indictment charging him with Wire Fraud which carries a maximum sentence of twenty (20) years. A second superceding indictment was filed on February 4, 2010. Again, pursuant to a plea agreement with the prosecution on May 14, 2010, the Defendant entered a plea of guilty to Count 23 of the second superceding indictment charging him with Conspiracy to Solicit funds in violation of Title 18, United States Code, Section 371. A violation of this section carries a maximum penalty of five years incarceration. The plea of guilty to the first superceding indictment was vacated.

John Harris has taken full responsibility for his conduct and he does not wish to diminish his offense in any way. Nevertheless, given the circumstances of the offense, as discussed more

fully below, Mr. Harris' character, personal history, and his extensive cooperation with the government,¹ it is respectfully suggested that a period of incarceration is not warranted and would be "greater than necessary". A sentence of probation would accomplish the goals of sentencing set forth under 18 U.S.C. §3553(a).

II. Mandatory Sentencing Factors of Section 3553(a)

There no longer is any question that the primary touchstone for sentencing is the statutory structure set forth at 18 U.S.C. § 3553(a)² which is a mandatory provision of law as opposed to the advisory Sentencing Guidelines. Section 3553(a) contains an overreaching provision instructing district courts to 'impose a sentence sufficient, but not greater than necessary' to accomplish the goals of sentencing under that provision." *Kimbrough v. United States*, 128 S.Ct. 558, 570 (2007). As a result, the applicable advisory Guideline range is only one of many factors listed in 18 U.S.C. § 3553(a) that the Court must consider. *Gall v. United States*, 128 S.Ct. 586,

¹As the Court was advised at Mr. Harris' plea, it is anticipated that the Government will file a motion for downward departure in light of Mr. Harris' extensive cooperation with the prosecution.

² In relevant part, § 3553(a) provides:

"[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) . . . [t]he court, in determining the particular sentence to be imposed, shall consider –

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
 - (2) the need for the sentence imposed –
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
 - (3) the kinds of sentences available;
 - (4) the kinds of sentence and the sentencing range established for –
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines
- * * *
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
 - (7) the need to provide restitution to any victims of the offense."

596-97 (2007) (a sentencing court “may not presume that the Guidelines range is reasonable” but instead “must make an individualized assessment based on the facts presented”); *see also Nelson v. United States*, 129 S.Ct. 890, 892 (2009) (“the Guidelines are not only *not mandatory* on sentencing courts; they are also not *presumed reasonable*.”) (emphasis in original); *Rita v. United States*, 127 S.Ct. 2456, 2467 (sentencing court does not enjoy the benefit of “reasonableness” presumption when determining whether a Guidelines sentence should apply).

The Court’s choice to sentence inside or outside the guideline range is discretionary; and, as long as all of the factors of § 3553(a) have been considered, the District Court’s “freedom to impose a reasonable sentence outside the range is unfettered.” *United States v. Dean*, 414 F.3d 725, 795 (7th Cir. 2005). Indeed, it is the District Court’s duty to “make its own reasonable application of §3553(a) factors, and to reject (after due consideration of) the advice of the Guidelines” if the result they suggest does not comport with the sentencing court’s view of an appropriate sentence. *Kimbrough*, 128 S.Ct. at 577 (Scalia, J., concurring).

Therefore, the Court’s mandate is to “impose a sentence sufficient, *but not greater than necessary* to accomplish the sentencing goals of §3553(a).” *Id.* To ascertain such a sentence, the courts are directed to consider certain relevant factors, including: (1) the nature and circumstances of the offense, (2) the history and characteristics of the offender, (3) the need to provide just punishment for the offense, (4) the need to afford adequate deterrence, and (5) the need to protect the public from further crimes of the defendant. 18 U.S.C. § 3553(a)

A. Nature and Circumstances of the Offense

Mr. Harris has acknowledged his full and complete responsibility for his conduct through his guilty plea, his execution of the plea agreement and, most importantly, his truthful testimony

before this Court during the two trials of Defendant Rod Blagojevich. As AUSA Carrie Hamilton stated to probation officer Sarah Kieckhafer, the benefit Defendant Rod Blagojevich, attempted to obtain, with Defendant Harris' assistance, was the income associated with positions at either HHS, "Change to Win", or with a not-for-profit organization. Additionally, the probation report correctly concludes that:

"there is no evidence that Defendant Harris was involved in the instant offense for his own financial gain or to gain something of value. Rather, it appears that he was acting merely at the direction of Defendant Rod Blagojevich, who was his superior and boss. Furthermore, there is no evidence that Defendant Harris created the conspiracy or was actively involved in the conspiracy aside from merely taking directions from Defendant Blagojevich." (Lines 391-396).

The evidence in this case also reveals that Mr. Harris took steps to attempt to deter the misconduct of Defendant Rod Blagojevich by the following actions:

- Harris, as well as William Quinlan, told Blagojevich that he should not attempt to make a deal over the Senate appointment which resulted in any personal benefit to him.
- Harris refused to follow Blagojevich's instruction to shakedown or threaten the Chicago Tribune.
- Harris refused to make the request of Illinois Senate President Emil Jones to trade his campaign fund for the appointment as a United States Senator.
- Harris is recorded on tape telling Blagojevich that he could not accept campaign contributions in exchange for the appointment of Representative Jesse Jackson, Jr.

as a United States Senator.

- Harris refused to follow the instruction of Blagojevich that he cut off certain institutions from receiving state business when the banks failed to assist the former Governor's wife in obtaining employment.

In considering the nature of circumstances of John Harris' conduct pursuant to 18 U.S.C. 3553(a), the Defendant requests that the Court consider the degree of harm caused by the Defendant's conduct relating to the potential employment sought by Governor Blagojevich in which John Harris had involvement. The prosecution and the Defendant entered into a written plea agreement wherein the parties agreed that John Harris engaged in conduct in an attempt to assist Rod Blagojevich obtain a job with the Service Employees International Union (SEIU) in exchange for an appointment of a particular candidate to fill the Senate seat of Barack Obama. Harris also engaged in conversations with Governor Blagojevich regarding his efforts to obtain either a cabinet position or a position with a private foundation. No evidence exists that Harris was in any way involved in Blagojevich's effort to obtain contributions from persons supporting the candidacy of Representative Jesse Jackson Jr.

In the written plea agreement, the prosecution and defense used their best efforts in an attempt to affix a dollar amount to the value of the potential employment Governor Blagojevich sought with SEIU and the private foundations. In calculating the advisory sentencing guidelines, the parties agreed that the pecuniary value of the intended loss foreseeable to the Defendant was more than \$400,000 and less than \$1,000,000. The Defendant continues to acknowledge his agreement however, the Defendant requests that the Court consider the lack of harm to society associated with his conduct rather than technical numerical considerations.

In regard to the attempts of Governor Blagojevich to obtain employment, it is noteworthy that Probation Officer Sarah Kieckhafer, concluded in her presentence investigation the following:

“However, it is this officer’s assessment that said values are not only highly speculative, but there may not be a preponderance of the evidence to support that Defendant Rod Blagojevich could have actually obtained said positions or even that either he, Defendant Harris, or other confidants believed Defendant Blagojevich could obtain said positions.....”

Accordingly, it is this officer’s assessment that the ‘value of anything to be obtained’ by Defendant Blagojevich is undefinable.....” (Lines 323-340 of probation report)

Accordingly, Defendant Harris requests that the Court consider the lack of harm to society in determining the appropriate sentence to be imposed on the Defendant rather than mathematical calculations derived for guideline purposes.

None of the arguments presented by counsel in connection with sentencing are intended to minimize Mr. Harris’ personal regret, embarrassment and sincere contrition for his conduct.

B. History and Characteristics of the Defendant

During the two trials of former Governor Blagojevich, this Court has been in an excellent position to assess the character of John Harris. John Harris’ life contains numerous examples of exemplary achievements attained through hard work, dedication and honesty. Simply stated, he is a good person.

The pre-sentence report prepared by Sarah Kieckhafer accurately relates John’s close relationship with his wife and three sons, his educational achievements, military service to our

country, and work record. Every aspect of John's background demonstrates to this Court that he is a person of high character and morality. John's involvement with former Governor Blagojevich is an aberration in the life of a man who exemplifies character and dedication.

With the help of loving parents and tuition advanced by the United States Army, John was able to obtain a degree from Northwestern in 1984. In exchange for the Army paying John's tuition and books, John agreed to a 4-5 year enlistment in the Army. After John finished college, the Army permitted him to attend Loyola University Law School where John obtained his degree in 1987.

John then went on active duty with the United States Army from January of 1988 to September of 1992. In May of 1990, John was deployed to the Middle East where he was stationed in Turkey serving as a Judge Advocate General officer and military intelligence oversight officer until his return from the Gulf War in July of 1991.

Among the commendations, medals, awards and evaluations John received from the Army include the following:

- Two Meritorious Service Medals
- The Army Commendation Medal
- The National Defense Service Medal
- The Southwest Asia Service Medal
- An Army Service Ribbon
- An Overseas Service Ribbon
- An Army Lapel Button
- Performance evaluations which revealed "absolutely outstanding" performance and ranked him as the "top 5% of all captains in the Army."

John Harris has submitted over forty (40) letters written by citizens familiar with his character. The Defendant recognizes that the Court will read these letters in advance of the sentencing hearing, however, we would like to draw the Court's attention in several observations:

- (a) “Based upon my experience ..., I consider John to be one of the finest, hardest-working, and selfless public servants that I have ever known.”

Robert K. Collins

- (b) “Mr. Harris’ counsel was always analytical, thoughtful and completely dedicated to doing what was legal, ethical and right for the City of Chicago and for the taxpayers ...”

Mary Dempsey

- (c) “I have an opinion concerning John’s capacity for integrity, truth and veracity – the very highest.”

Michael Graham

- (d) “...the man standing in front of you, ..., has and will always be ... a man of integrity ... a man of ethical fortitude ... a man worthy of your greatest consideration and leniency.”

Clayton Harris III

- (e) “There is little doubt in my opinion, and many others, that John Harris enjoys a very fine reputation among his former colleagues at the City and State.”

Edward Hurley

- (f) “He always performed and functioned with the integrity that I expected ... my respect for John remain[s], if not increased.”

William Kinehan

- (g) “He never has made excuses nor elected to shift blame to others ... I believe John still has much to contribute to his community ...”

Frank Kruesi

- (h) “In my experience over the course of many years, he consistently conducted himself in a highly ethical and honorable way, always putting the interests of the public ahead of any other considerations.”

Thomas Lanctot

- (i) “I have known few men in my time who are as committed to family, community and country as John Harris.”

John Millner

(j) “John Harris is a gentleman.”

Larry Mulcrone

(k) “I never doubted then – or now – John’s tireless work ethic, moral compass or dedication to doing the best job possible for the citizens of Illinois.” “I would be honored to have the opportunity to work with John again ...”

Maureen O’Donnell

(l) “I believe John began his rehabilitation shortly after his arrest.”

Robert Repel

(m) “...I have no doubt the positive impacts that resulted from his work has made us a better city and state.”

Gerald Roper

(n) “John has been and remains a person of high character and integrity.”

John Schmidt

(o) “John has displayed that he fits the profile of somebody I want working on my crew.”

Kevin Shaffrey

(p) “Had the former Governor just listened to John more, I just know in my heart that the outcome for the administration would have been better.”

Mary Stewart

(q) “I feel compelled to tell the court what it probably already knows. John Harris is a good and decent man who made an error in judgment and who has already paid a very dear price.”

Larry Trent

C. Just Punishment and Adequate Deterrence

The twin goals of incarceration are retribution and deterrence. Warehousing an individual of ability and character like Mr. Harris serves neither interest. John Harris has already been punished greatly for his conduct in assisting his boss, the former Governor, in attempting to secure a personal advantage for himself. Following his arrest, John immediately resigned his

position with the State of Illinois. John was left without a job and a wife and three (3) small boys to support. John also voluntarily surrendered his law license and agreed to the suspension of his ability to practice law.

As he awaited trial, John needed to find a job. He needed to work. He did not attempt to support his family by appearing on reality shows. He got a job as an apprentice electrician helper working outside on high power lines.

John was arrested, indicted, and had his name linked to the corrupt former Governor of Illinois. He will also be a convicted felon. John's reputation will forever be tarnished.

III. John Harris's Cooperation

The Court has observed the testimony of John Harris during the two trials of Defendant Blagojevich. The testimony in the two trials lasted in excess of ten (10) days. At no time during cross-examination was Mr. Harris ever impeached as to any aspect of his trial testimony.

John's cooperation with the government began shortly after his arrest on December 9, 2008. Within three (3) days of his arrest, John authorized his attorney to meet with the prosecutors to discuss possible cooperation with the government. John engaged in over twenty-five (25) proffer sessions with the government commencing on December 19, 2008. Each of these sessions lasted between 3-5 hours. In early April of 2009, John testified before the Grand Jury. Pursuant to a plea agreement, John entered a plea of guilty on July 8, 2009 to the charge of wire fraud. The government requested his cooperation in entering into a new plea agreement and subsequent plea of guilty to Count 23 of a second superceding indictment.

Prior to testifying in each of the trials involving former Governor Blagojevich, John spent countless hours preparing to ensure that his testimony would be accurate. His trial preparation included numerous meetings with the prosecutors as well as time spent reviewing countless

tapes of telephone conversations, transcripts and other documents. The timeliness, level of cooperation, and importance of Mr. Harris' testimony to the government cannot be overstated in this case. This is truly a case where the level of cooperation of an individual was extraordinary.

IV. Comparison with others involved in the same or related conduct

One of the factors to be considered in sentencing is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct". §3553(a)(6). U.S. v. Newson, 428 F.3d 685,688 (7th Cir. 2005). The probation report makes reference to the related case of Joseph Cari in 05 CR 691 which was pending before the Honorable Judge Amy St. Eve. Mr. Cari was charged with the offense of Attempt to Commit Extortion in violation of 18 U.S.C. §1951 which carried a maximum of twenty (20) years incarceration. Mr. Cari testified in two trials as a government witness, one of which was the initial Rod Blagojevich trial before this Court.³ Mr. Cari's Position Paper as to Sentencing Factors indicates that he voluntarily meet with the government five times over a ten month period. (Attached as Exhibit A). Joseph Cari was sentenced to three (3) years probation and fined \$50,000.

A strong and persuasive argument exists that the sentence imposed on Mr. Harris should be lower than the sentence which Mr. Cari received. John Harris' level of cooperation was greater than that of Mr. Cari. Mr. Harris engaged in less serious misconduct than did Mr. Cari. The balance of mitigation factors, including Mr. Harris' military service, also favor a lower sentence for Mr. Harris.

This Court has also heard testimony that persons such as John Wyma, Doug Schofield,

³ Mr. Cari also testified in the trial of Antoin Rezko 05 CR 691.

Robert Greenlee, Fred Yang and Patti Blagojevich encouraged or aided former Governor Blagojevich in his attempts to obtain personal benefit in exchange for the Senate seat appointment. None of these individuals have faced consequences for their conduct. It can be argued that each of these individuals is as culpable or more culpable criminally than John Harris.

IV. Conclusion - The Appropriate Sentence

Since his arrest over three (3) years ago, John Harris has conducted himself in an exemplary fashion consistent with a person who has taken responsibility for his own misconduct and done everything possible to assist the government in obtaining a just result in the prosecution of Rod Blagojevich. This Court has had the opportunity to see and hear John Harris testify under oath during the two trials of former Governor Blagojevich. As a result of his testimony, this Court is in an excellent position to have formed an informed opinion of John Harris' character and to determine whether John Harris needs to be punished any further.

John Harris is an outstanding person who made tragic mistakes when he made the decision to follow the instructions of his boss by participating in efforts to obtain personal benefits for the former Governor. John Harris did not receive any personal benefit for his efforts. At no time was there an intent on John's part to obtain anything for himself. Unlike others who were involved with Governor Blagojevich, John Harris will be forever a convicted felon. John will forever have to bear the burden of explaining to his three (3) sons and future employers what he did and why he was prosecuted in a criminal case which received national media exposure. John has already paid a great price for his misconduct.

We are requesting that the Court place John Harris on a period of unsupervised probation.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'T. Ekl', written over a horizontal line.

Terry A. Ekl

Terry A. Ekl
Ekl, Williams & Provenzale. LLC
901 Warrenville Rd.
Lisle, Illinois 60532
(630) 654-1624