

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Hon. William J. Martini, U.S.D.J.
: :
v. : Crim. No. 07-578
: :
SHARPE JAMES and :
TAMIKA RILEY :

SENTENCING MEMORANDUM OF THE UNITED STATES

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PRELIMINARY STATEMENT

The guilt of these defendants for all the conduct charged in the indictment is now beyond dispute; a jury has found unanimously that they are guilty. Their lack of remorse and failure to take responsibility is self-evident. The only remaining issue for this Court is to set a sentence that insures justice is done.

Any variance from the Sentencing Guideline range set by the U.S. Sentencing Commission and established by the U.S. Congress is uncalled for given the conduct of the defendants. A significant variance will raise the question whether there are two systems of justice when it comes to sentencing: one system for the average New Jerseyan, and a different one for people of wealth, power, and influence -- people like convicted defendant Sharpe James.

A significant variance will lead many in the public to conclude that the special treatment accorded to Sharpe James when he was a powerful public official continues to be his privilege now -- when he stands before the Court as a convicted felon who disgraced his public office and lied to the public. Sharpe James and Tamika Riley took advantage of the public by conspiring to steal the property of the City of Newark. They now seek to take advantage of the power and privilege they once abused by asking this Court for a significant variance from the sentence that the Congress has determined their conduct deserves. But Sharpe James is not worthy of such deference, after corruptly placing his own interests above his constituents' interests. By these sentences, the Court must protect a disillusioned, victimized public, and ensure that wealth, power, and privilege does not result in the type of special treatment that is not afforded to common criminals.

This Court should sentence defendants within the range advised by the U.S. Sentencing Guidelines. The U.S. Probation Department determined, as set forth in James' Presentence

Report (PSR), that the advisory Guidelines range for James is **151 to 188 months (Level 34, approximately 12.6 to 15.6 years' imprisonment)**. That analysis was based on a two-level upward adjustment based on James' leadership role in the scheme. As discussed below, however, the appropriate role adjustment for James is four levels upward. Accordingly the appropriate advisory Guidelines range for James is **188 to 235 months (Level 36, approximately 15.6 to 19.6 years' imprisonment)**. For Riley, as set forth in her PSR, the advisory Guidelines range is **97 to 121 months (Level 30, approximately 8 to 10 years' imprisonment)**.

The United States of America, by and through its attorneys, Christopher J. Christie, United States Attorney, Judith H. Germano and Phillip H. Kwon, Assistant United States Attorneys, and Perry Primavera, Special Assistant United States Attorney, hereby submits this sentencing memorandum summarizing the United States' position as to the appropriate sentences to be imposed on defendants Sharpe James and Tamika Riley in this case. Because of the commonality of many of the issues, the Government has submitted a unified memorandum. The Government recognizes, however, that each defendant must be sentenced based on individualized factors and characteristics.

INTRODUCTION

On April 16, 2008, after hearing more than five weeks of testimony and other evidence in this case, an impartial Jury found defendants James and Riley guilty of all Counts presented in the First Redacted Indictment. Those resounding guilty verdicts showed that the Jury agreed with defendant James' own admission, uttered before a New Jersey Senate Committee on March

1, 2004, that it was “thievery” for a public official to direct land to his girlfriend and that such conduct was a violation of the “public trust.” Ex. 3704. In rendering its verdict, the Jury rejected James’ repeated denials and false representations to the public, wherein he claimed to have “no involvement whatsoever” in the process of Newark land transactions (Ex. 5112; see also, e.g., Ex. 5111). The Jury also found incredible the defense’s claims that James did not improperly steer property to Riley to benefit her directly and himself and others indirectly. They also rejected Riley’s baseless denials of her culpability in the land fraud scheme, housing assistance mail fraud scheme and tax offenses. Moreover, the Jury rejected both defendants’ excuses for, and efforts to conceal and justify, their criminal conduct. Since the Court is intimately familiar with the facts of this case, the Government does not reiterate them here. Instead, the Government incorporates herein the extensive trial record and its prior memoranda to the Court.

Notwithstanding the overwhelming trial evidence and unequivocal verdicts of Guilty on each and every Count presented to the Jury, defendants still fail to accept responsibility for the crimes they committed. In fact, defendants attempt to minimize, deny, conceal and distort the facts of this case and the severity, scope and nature of their criminal conduct. Moreover, both defendants present many of the same defenses and claims they so strenuously argued to the Jury. In doing so, they seek to have this sentencing Court act as a virtual thirteenth juror; one which they hope will finally vindicate these claims and defenses which were rejected by this Jury. The defendants have put forth nothing to warrant any downward variance from their respective Sentencing Guidelines ranges.

The public bestowed on James an enormous power, as Mayor of New Jersey’s largest

city for two decades and, since June 1999, also as a State Senator. Rather than apply that significant power as a dual office-holder in New Jersey to benefit the people he promised to serve, James violated his fiduciary duties in order to support his girlfriend and to benefit himself. Riley, for her part, improperly capitalized on her personal relationship with James to reap financial benefits at Newark's expense. Not only did defendants fail to disclose their actions, they also affirmatively lied to promote and conceal their scheme. Even now, they continue to deny the harm caused by their crimes.

Contrary to their denials and false assertions, defendants caused profound harm when they acted in concert to violate the public trust. It is one thing when a mayor publically gives an honoree the symbolic keys to the city. It is quite another thing, however, when, to promote and maintain an affair, James abused his power as Mayor by improperly and secretly giving his girlfriend part of the City itself. Defendants' illicit scheme deprived Newark of far more than Newark's real property. In addition to the economic harm, defendants' scheme deprived the City of Newark, the State of New Jersey, and their citizens of their right to the honest services of Mayor and State Senator James.

At its inception, the South Ward Redevelopment Program ("SWRP") was a laudable program, designed to revitalize Newark. James was entrusted by the public to oversee that program, and ensure it was executed fairly and in good faith, to the benefit of the people of Newark. Yet James improperly used his power as Mayor to bestow nine parcels of valuable Newark property to the asset ledger of his girlfriend, Riley, who was unqualified, inexperienced and financially incapable of redeveloping any properties. Entry into the SWRP became not a matter of qualifications and competence but of whom you knew. And the most important person

to know in that regard was James. This, at its core, is corruption.

Defendants also misled the City Counsel with lies and non-disclosures. Moreover, under James' policy of favoritism over fairness, legitimate, qualified and financially capable developers and investors were prevented from participating in the SWRP. Instead, these individuals (such as trial witnesses Shastri Persad, Alex Alvarez and Wendee Bailey) only could get Newark property by paying a premium cut to Riley in an inflated secondary market for the properties. Riley added no value for the profits she reaped; to Riley, the SWRP was easy money.

In seeking to excuse their scheme, defendants disregard fundamental economics. Injecting Riley into the transactions meant that Riley's purchasers had to pay substantially more for the land than if they had been able to purchase the property directly from Newark. The developer's higher cost flowed through to the ultimate home buyer in two ways: less expensive (and thereby lower quality) building materials; and/or an increase in the asking price for the property. The fact that eight of the Newark properties sold to Riley ultimately were developed and resold does not negate that economic harm. Nor does it negate the distorted competition, market inefficiency and deterred investment that defendants' scheme fostered.

Moreover, as shown by Joanne Watson's testimony, defendants' scheme deprived Newark of the contractual ability to enforce its desired standards for the homes that were being built. In furtherance of the fraud, Riley made certain false promises to Newark that the properties would be rehabilitated in a particular way. When she instead flipped them to others, Newark was not a party to the subsequent sale and, therefore could not enforce, if it so chose, the standards it required under the SWRP. After the first two properties, Riley made no assurances, contractual or otherwise, that the Newark property she acquired would actually be rehabilitated.

The lasting harm from defendants' criminal conduct transcends strict financial calculation. Unlike the homes that ultimately were sold, there can be no fair asking price for depriving any City, especially one seeking to rebuild itself, of its right to have trust and confidence in the process of its government. To restore that trust, a fair and just sentence in accordance with the U.S. Sentencing Guidelines must be imposed.

Rather than recognize the harm caused by their crimes, defendants argue that their good works somehow excuse their reprehensible conduct. Yet any laudable acts by defendants fail to condone or mitigate their violation of the public trust when they misapplied and misappropriated City assets to foster and maintain an intimate, personal relationship, and then lied about their scheme. Defendants urge this Court to vary from the U.S. Sentencing Guidelines on a perverse theory that helping, with one hand, to improve Newark somehow bestowed upon them the right, with the other hand, to pilfer Newark's land. Defendants' theory has no merit.

Defendants' were brazen in carrying out and covering up their crimes. Now, at the sentencing stage, that brazen behavior continues unabated, even before this Court. Defendants, without sufficient legal or factual basis, ask this Court to bestow upon them special and favored treatment, and urge that the U.S. Sentencing Guidelines -- established to provide fair and uniform sentences -- not be applied to them. The Court must reject such a request.

**THE COURT SHOULD SENTENCE DEFENDANTS TO NO LESS THAN
THE APPLICABLE GUIDELINES RANGE SET FORTH IN THE PSRs**

**I. With One Exception, The Advisory Guidelines Ranges Were Correctly Calculated
By Probation in the Presentence Reports**

This Court should sentence the defendants to imprisonment terms within the advisory

Guidelines ranges. No Guidelines departures are warranted and no discretionary variances by this Court are appropriate. Thus, James should be sentenced to a term of imprisonment within the range of **188 to 235 months** (Level 36). (At a minimum, the Court should impose a Guidelines sentence no less than the Guidelines range set forth in the PSR, of 151 to 188 months (Level 34). See James PSR at ¶ 193 (finding Total Offense Level is 34).) Riley should be sentenced to a term of imprisonment, as set forth in her PSR, within the range of **97 to 121 months** (Level 30). See Riley PSR at ¶ 212 (finding Total Offense Level is 30).

After United States v. Booker, 543 U.S. 220 (2005), sentencing involves a three-step process. Courts are required to:

- (1) calculate a defendant's Guidelines sentence precisely as they would have before Booker;
- (2) formally rule on departure motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation; and finally
- (3) exercise their discretion by considering the relevant factors, under 18 U.S.C. § 3553(a), in setting the sentence they impose.

United States v. Ali, 508 F.3d 136, 142 (3d Cir. 2007).

In calculating a defendant's advisory Guideline range “precisely as [it] would have before Booker,” Ali, 508 F.3d at 143, this Court should “engage in precisely the same exercise in judicial fact finding as it did” before Booker, United States v. Miller, 417 F.3d 358, 363 (3d Cir. 2005). The Court must expressly rule on “any disputed portion of the presentence report or other controverted matter ... or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing.” United States v. Leahy, 445 F.3d 634, 663 (3d Cir. 2006), quoting Fed. R. Crim. P. 32(i)(3)(B).

“[A]s before Booker, the standard of proof under the guidelines for sentencing facts continues to be preponderance of the evidence.” United States v. Dragon, 471 F.3d 501, 506-07 (3d Cir. 2006).

A. James Should Receive A Four-Point Upward Adjustment For Aggravating Role

The only Guidelines argument that defendants make is James’ claim that the PSR improperly imposes a two-point upward adjustment for his aggravating role in the offense pursuant to U.S. Sentencing Guideline (“U.S.S.G.”) § 3B1.1; defense claims that this adjustment is not proper. James Sent. Mem. at 12. Not only should James receive an aggravating role adjustment as the PSR recommends, it should be calculated at a four-point upward adjustment, not the mere two points set forth in the PSR. Accordingly, the only proper adjustment to James’ Guidelines Level would be to increase it from a Level 34 to a Level 36, and James therefore should be sentenced to a term of imprisonment within the range of **188 to 235 months**.

A four-point enhancement for leadership role is appropriate: “If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.” U.S.S.G. § 3B1.1(a). The Third Circuit has held that the factors sentencing courts must consider when imposing a leadership role enhancement include, among others: (1) the degree of control and authority exercised over others; (2) the exercise of decision-making authority; (3) the nature of participation in the commission of the offense; (4) the recruitment of accomplices; and (5) the nature and scope of the illegal activity. United States v. Gricco, 277 F.3d 399, 358 (3d Cir. 2002).

James was the ultimate authority as Newark’s Mayor and Chief Executive Officer, and he used that control and authority to promote his scheme with Riley. He had and exercised his

decision-making authority to enable Riley to obtain Newark properties under their scheme. As Regina Bayley testified, the Department of Housing and Economic Development (DEHD) was James' "baby." The testimonial and documentary evidence showed that, once the legitimate, qualifications-based process broke down, James was very involved in who got what Newark properties. In addition to scheming with Riley, James recruited others to do his bidding (thereby helping him to conceal his role) in a corrupt scheme that spanned years and passed through multiple layers of Newark's government.

James ruled with an iron fist and those under him feared punishment and retaliation if they did not do precisely what he ordered. The emotional testimony of Basil Franklin, as he was brought to tears during his testimony, demonstrated the power and threat that James wielded and, evidently, continues to possess over some, including Franklin.

In defendants' conspiracy, James exercised unrestrained control and authority over those both knowingly and unknowingly involved in the scheme. Also, James made the ultimate decisions regarding whether and when Riley would get Newark property. He gave an order and it was followed. Indeed, he did not need to get involved in the step-by-step actions of the DEHD because he knew that once he gave an order to steer property to Riley, it would be executed. When there was delay in fulfilling that order, Riley complained to James and, showing his power and involvement, Riley was propelled forward in her efforts within days. Then, when James decided to cut off Riley from receiving property because of a falling out in their personal relationship (the "Stop Order"), he possessed and exercised the unbridled control and authority over Newark's employees and assets to stop her transactions. Indeed, James was so powerful that once James gave the "Stop Order," Riley did not close on even one of the Failed Phase III

properties, although those sales had already been approved by the City Council and Riley had a fully executed contract with Newark for those properties. It was only until after James and Riley reconciled, and James again used his authority and control over the scheme and its participants to lift that Stop Order, that Riley was once again able to obtain Newark property under the SWRP. Contrary to James' claims that he had only passing involvement in the scheme, there was ample evidence, including Riley's calendars and agenda sheets, showing that Riley regularly updated James, whom she called "The Boss," regarding her Newark property transactions. Gov't Ex. 8000-Series.

James was an "organizer or leader of a criminal activity that . . . was otherwise extensive." U.S.S.G. § 3B1.1(a). The Commentary to U.S.S.G. § 3B1.1 provides guidance regarding when an organization is "otherwise extensive" to warrant a four-point enhancement:

In assessing whether an organization is 'otherwise extensive,' all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive.

U.S. Sentencing Guidelines Manual, § 3B1.1, cmt. n. 3 (2007). The offense conduct was "otherwise extensive." It involved the repeated and systematic ceding of Newark properties to Riley, continuing from approximately 1999 to approximately 2006, through to the end of James' final term as Mayor. Also, the offense conduct involved countless participants, both knowing and unknowing, for the scheme to continue.

For example, James exercised tremendous control and authority over various individuals in Newark government. This includes, for example:

(1) Johnny Jones, through whom James issued the Stop Order, and with whom he went to Franklin's home on a weekend night so James could reprimand Franklin in a parked car, under cover of night, chastising him for purportedly disclosing to Riley that it was James

who issued that Stop Order. Indeed, James directed Jones to bring Franklin out of his home and into the waiting car, thereby allowing James to conceal his presence for this bizarre meeting, and Jones complied. Also, it was under Jones' signature that Franklin received the odd, conspicuously vague, reprimand letter related to that incident;

(2) Basil Franklin, who served as James' pawn in dealing with Riley to ensure that she got Newark properties as James directed; and

(3) Alfred Faiella, who acted as James' intermediary and mouthpiece in communicating James's order to assist Riley in getting Newark properties, thereby enabling James to conceal and later try to deny, including at trial, his direct involvement and culpability.

James led a scheme that used the services of many who answered to him at City Hall, including (in addition to those already mentioned above) Corporation Counsel and her staff, DEHD employees, and James' secretaries, as well as the City Clerk, City Council and their staff. The scheme also extended beyond City Hall, to include others such as James Ezeilo and Barbara Daniels, the attorneys Riley enlisted to assist her in closing the subsequent sales of the Newark properties and her purchasers, including Wendee Bailey, Alex Alvarez and Shastri Persad, who paid a premium to Riley because she, and not they, had the requisite "hook" to obtain property under the SWRP. Accordingly, because there is ample evidence to show that James was an organizer and leader of a criminal activity that was "otherwise extensive," James should receive a four-point enhancement for his role in the offense.

B. Riley's Guidelines Calculation Understates Her Conduct

In seeking a substantial decrease to her sentence, Riley argues that the range established by the Sentencing Guidelines overstates her culpability in this case. In fact, the exact opposite is true: the sentencing range significantly undervalues Riley's actual culpability. This is so because of the way the Guidelines' grouping rules work.

Riley was convicted of three separate sets of crimes: the Newark land fraud (Counts 1

through 5); the Section 8 housing fraud (Counts 6 to 9); and tax fraud and tax evasion (Counts 10 to 13). With respect to the land fraud, the PSR properly calculates the offense level to be 30. Under the grouping rules of the Guidelines, because the offense levels of the housing fraud and the tax fraud/evasion counts are 11 and 16, respectively, they are not counted for purposes of determining the total offense level.

Accordingly, Riley's sentencing range ignores the two other sets of crimes she committed. Following the Guidelines, she will be sentenced as if she never even committed those crimes. In light of this, the Sentencing Guidelines, if anything, severely undervalue Riley's full level of culpability. To properly acknowledge the entire scope and breadth of her criminal activity, Riley should not only be sentenced within the Sentencing Guidelines range, she should be sentenced at the top of that range. As the Application Notes to the grouping rules advise:

If there are several groups and the most serious offense is considerably more serious than all of the others, there will be no increase in the offense level resulting from the additional counts. Ordinarily, the court will have latitude to impose added punishment by sentencing toward the upper end of the range authorized for the most serious offense.

U.S. Sentencing Guidelines Manual, § 3D1.4, cmt. (2007)

C. The PSR Ranges Are Correct Because Riley Obtained More Than \$400,000

Defendants erroneously suggest that they should receive a more lenient sentence because there was no "loss" from their crimes to support the Guidelines analysis set forth in the PSR. That argument contravenes the provisions of the Guidelines and governing case law.

The applicable Guideline here, § 2C1.1(b)(2), directs the sentencing court to look to the loss calculation table in § 2B1.1:

[i]f the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or others acting with the public official, or the loss to the government from the offense, *whichever is greatest*

(emphasis added).

In this case, the proper measure of harm is the value of the benefit directly received by Riley. Pursuant to Application Note 3, the value of the “benefit received” means “the net value of such benefit.” The Third Circuit has also held that net benefit is not the same as net profit. See United States v. Pena, 268 F.3d 215, 219, 221 (3d Cir. 2001) (in corruption case, rejecting defendant’s argument that the “net benefit” calculation requires a showing of net profit).

The net value of the benefit in this case exceeds \$400,000, the threshold amount that triggers an offense level increase of 14. See § 2B1.1(b)(1)(H). This is true, even if, as defendant Riley asserts, the costs, including transactional costs, are deducted from the gain. The net gain figures in the following table were derived by Robert Strich, the IRS Revenue Agent who testified at trial. In his analysis, Agent Strich relied on the actual gains that Riley derived from each transaction, which had already incorporated any transactional costs that she may have incurred. See Govt. Exhibits 7101 to 7105.

	PROPERTIES	PURCHASE PRICE	RESALE PRICE	AMOUNT RECEIVED	NET GAIN
Phase I	47 Parkview Terr. 51-53 St. James Pl. 47 St. James Pl. 829-831 S. 12th St.	\$16,000	\$25,000 \$25,000 \$155,000 \$130,000	\$47,325 \$86,770 <u>\$39,047.18</u> \$173,142.18	\$157,142.18
Phase II	380-382 Avon Ave. 740 S. 15th St. 592 Bergen St.	\$18,000	\$15,000 \$15,000 \$50,000	\$12,647.50 \$12,647.50 <u>\$47,525</u> \$72,820	\$54,820
Phase III	590 Bergen St. 86-88 W. Alpine St.	\$12,000	\$100,000 \$150,000	\$93,700 <u>\$137,840</u> \$231,540	\$219,540
	Total	\$46,000	\$665,000		\$431,502.18

To support defendants' claim that no increases to their offense levels are warranted because Newark did not suffer any loss, James provides the Court (under cover letter written by Michelle Jones, the wife of Johnny Jones) with some handwritten calculations from the City to show that the tax rolls were actually increased. James Sent. Mem. Ex. 2. But as made clear by § 2C1.1, this Court must look to the greater of the value obtained or the loss to the government. Moreover, that James should seek to exploit whatever increase in tax revenues the fully redeveloped properties provide is disingenuous. Such increases in the tax rolls (assuming the accuracy of the figures themselves) certainly did not result in anything either James or Riley did. Those properties were redeveloped, and therefore able to get back onto the tax rolls, by others who had to purchase them from Riley, who herself added virtually nothing to the redevelopment process.

The proper measure under the Guidelines is the value obtained by Riley, which exceeds

\$400,000. The PSRs correctly provide that, based on this number, an upward adjustment of 14 levels is appropriate pursuant to U.S.S.G. §2C1.1(b)(2), which incorporates the Table set forth in U.S.S.G. §2B1.1(b)(1)(H).

Accordingly, the advisory Guidelines range for James is **188 to 235 months** (Level 36), which includes a four-point upward adjustment for his leadership role. (At a minimum, if the Court were instead to follow the PSR, which recommends only a two-point upward adjustment for James' role, then the advisory Guidelines range for James would be 151 to 188 months (Level 34).) The advisory Guidelines range for Riley is **97 to 121 months** (Level 30).

II. No Variance Is Warranted In This Case

A. The § 3553(a) Factors Support a Sentence Within the Advisory Guideline Range

Finally, the Court must consider the factors set forth in 18 U.S.C. § 3553(a) to determine if it wishes to “tailor” the sentence. Booker, 543 U.S. at 245; Miller, 417 F.3d at 364.¹ The Court then must “reasonably appl[y]” the § 3553(a) factors to the circumstances of the case to determine a reasonable sentence no greater than the maximum statutory penalties provided for the offenses on which the defendants were convicted. United States v. Cooper, 437 F.3d 324,

¹ The Court must impose a sentence sufficient, but not greater than necessary, “(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.” 18 U.S.C. § 3553(a)(2). In determining that sentence, this Court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1), “the kinds of sentences available,” § 3553(a)(3), the Guidelines and Guideline range, § 3553(a)(4), the Guidelines’ policy statements, § 3553(a)(5), “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” § 3553(a)(6), and “the need to provide restitution to any victims of the offense,” § 3553(a)(7).

330 (3d Cir. 2006). The Court must ensure that “the record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a).” Goff, 501 F.3d at 254, 256. The record must also disclose “the exercise of independent judgment, based on a weighing of the relevant factors, in arriving at a final sentence.” United States v. Grier, 475 F.3d 556, 571-72 (3d Cir. 2007) (en banc).

Here, sentences within the advisory Guidelines ranges are supported by the § 3553(a) factors.

i. The Court Should Give Considerable Weight to the Advisory Guidelines Ranges

First, this Court should give considerable weight to the advisory Guidelines ranges. “The fact that § 3553(a)[(4)] explicitly directs sentencing courts to consider the Guidelines supports the premise that district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” Gall v. United States, 128 S. Ct. 586, 597 n.6 (2007); United States v. Langford, 516 F.3d 205, 211-12, 214 (3d Cir. 2008) (the Guideline range is the “natural” and “critical” “starting point for the entirety of the § 3553(a) analysis”). Furthermore, the Sentencing Commission based the Guidelines on § 3553(a), writing the Guidelines to “carry out these same § 3553(a) objectives,” resulting in “a set of Guidelines that seek to embody the § 3553(a) considerations, both in principle and in practice.” Rita v. United States, 127 S. Ct. 2456, 2463 (2007); Cooper, 437 F.3d at 331.

In addition, “[t]he Guidelines as written reflect the fact that the Sentencing Commission examined tens of thousands of sentences and worked with the help of many others in the law enforcement community over a long period of time in an effort to fulfill this statutory mandate.” Rita, 127 S. Ct. at 2464 (emphasis added); accord Gall, 128 S. Ct. at 594 (the Guidelines are “the

product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions”). The Commission not only “developed Guidelines sentences using an empirical approach based on data about past sentencing practices, including 10,000 presentence reports,” but it also ““modif[ied] and adjust[ed] past practice in the interests of greater rationality, avoiding inconsistency, complying with congressional instructions, and the like.” Kimrough v. United States, 128 S. Ct. 558, 567 (2007). Moreover, the Commission has a “key” and “important institutional role: It has the capacity courts lack to ‘base its determinations on empirical data and national experience, guided by professional staff with appropriate expertise,’” “to formulate and constantly refine national sentencing standards.” Id. at 574. Accordingly, courts must give “respectful consideration to the Guidelines.” Id. at 570. Indeed, the Third Circuit has emphasized that “[t]he federal sentencing guidelines represent the collective determination of three governmental bodies -- Congress, the Judiciary, and the Sentencing Commission -- as to the appropriate punishments for a wide range of criminal conduct.” Cooper, 437 F.3d at 331 n.10.

The Sentencing Guidelines are based on the United States Sentencing Commission's in-depth research into prior sentences, presentence investigations, probation and parole office statistics, and other data. U.S.S.G. § 1A1.1, intro, comment 3. More importantly, the Guidelines reflect Congress's determination of potential punishments, as set forth in statutes, and Congress's on-going approval of Guidelines sentencing, through oversight of the Guidelines revision process. See 28 U.S.C. § 994(p) (providing for Congressional oversight of amendments to the Guidelines). ***Because the Guidelines reflect the collected wisdom of various institutions, they deserve careful consideration in each case. Because they have been produced at Congress's direction, they cannot be ignored.***

United States v. Goff, 501 F.3d 250, 257 (3d Cir. 2007) (emphasis added); accord United States v. Langford, 516 F.3d 205, 212 (3d Cir. 2008). “[O]ne of the reasons that the Guidelines are of significant assistance in sentencing is that they incorporate the results of research into what may

be called the ‘heartland’ of sentencing considerations and incarceration periods for typical offenses and offenders.” Goff, 501 F.3d at 260. Accordingly, the Guidelines should be given considerable weight. United States v. Lloyd, 469 F.3d 319, 322-24 (3d Cir. 2006) (it was “entirely consistent with our opinion in Cooper” for the District Court to give the Guidelines “‘great weight’”); see United States v. Ausburn, 502 F.3d 313, 326 (3d Cir. 2007) (“[T]he advisory range continues to hold significant sway in most cases even after Booker.”); Goff, 501 F.3d at 257 n.12 (the Guidelines are “plainly important”).

Both the Supreme Court and Third Circuit have emphasized that “‘a within-guidelines range sentence is *more likely* to be reasonable than one that lies outside the advisory guidelines range[.]” Goff, 501 F.3d at 257 (emphasis by Circuit); Cooper, 437 F.3d at 331-32. “[W]here judge and Commission both determine that the Guidelines sentence is an appropriate sentence for the case at hand, that sentence likely reflects the § 3553(a) factors (including its ‘not greater than necessary’ requirement),” and that “‘significantly increases the likelihood that the sentence is a reasonable one.” Rita, 127 S. Ct. at 2463, 2465, 2467.

ii. The Other § 3553 Factors Support a Sentence Within the Guidelines Range

Second, the other relevant § 3553(a) factors strongly support a sentence within the Guidelines range.

Try as defendants might to minimize their corrupt and fraudulent scheme, or to minimize their roles in that scheme, there can be no question that the crimes committed in this case were serious ones, and the Guidelines calculation here reflects “the seriousness of the offense.” 18 U.S.C. § 3553(a)(2)(A) (requiring sentence imposed to “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense”); Goff, 501 F.3d

at 257 (“[T]he Guidelines reflect a carefully considered assessment of the seriousness of federal crimes.”). Effective November 1, 2004, the U.S. Sentencing Commission amended U.S.S.G. § 2C1.1, the provision applicable to James and Riley, making it more stringent. In setting forth the reason for the Amendment, the Commission stated:

This amendment increases punishment for bribery, gratuity and “honest services” cases while providing additional enhancements to address previously unrecognized aggravating factors inherent in some of these offenses. This amendment reflects the Commission’s conclusion that, in general, public corruption offenses previously did not receive punishment commensurate with the gravity of such offenses.

U.S. Sentencing Guidelines Manual, supp. to app. C., (addressing Amendments effective Nov. 1, 2004 through Nov. 1, 2007), Amend. 666. In addition, the seriousness of defendant’s offense is shown by the “nature and circumstances of the offense.” 18 U.S.C. § 3553(a)(1).

Defendants’ conduct was a brazen and lasting violation of the public trust, spanning approximately seven years, from approximately 1999 through approximately August 2006. A fine example of James’ audacity and perception that he was above the law and indictment-proof is his statement on the floor of the New Jersey State Senate Committee on March 1, 2004. He stood before fellow state lawmakers and charged that it was “thievery” for a public official to direct land to his girlfriend. Yet that was the very thing that James himself had knowingly and willfully done before making that statement and continued to do thereafter. He then lied to the media and the public in the weeks leading up to his indictment, claiming to have “no involvement whatsoever” in the process by which individuals such as Riley obtained Newark land, Gov’t Ex. 5112, and, falsely clinging to the Faulkner Act like a fig leaf, claiming that it provided only for the City Council to have the power and authority to meet with developers and choose who could purchase Newark land. Gov’t Ex. 5111.

James, the leader of the scheme, was able to ensure the continued success of the scheme through the power derived from being the highest-ranking public official in New Jersey's largest City for two decades. Adding to James' power was his unique position as a dual-office holder in New Jersey, given his additional position as a State Senator. James wielded that power with impunity in Newark and beyond, using it to promote his scheme with Riley. Indeed, to solidify that he, and only he, was the gatekeeper in deciding who (including Riley) received Newark property, James went so far as to sponsor new legislation, Senate Bill 967. As enacted by the Senate at James' behest, that law -- in a state with approximately 324 municipal governments and 242 townships (as of the 2002 census) -- applied only to one jurisdiction: the City of Newark. Although not specific to his fraud with Riley, this legislation emerged from James' continuous quest for the very control and power that made their scheme possible.²

Another example of the seriousness of the offense is the way the defendants treated Basil Franklin. To execute the scheme with Riley, James chose Franklin, a public servant of the City of Newark for 26 years, as his pawn. In describing himself, Franklin stated: "I worked hard. I -- I did pretty much what I was told to do." March 7, 2008, Tr. at 209; "I follow instructions and I don't make waves." Id. Franklin later said he was described as "a loyal soldier" during his tenure under James. March 10, 2008, Tr. at 71. When Franklin was told James wanted him to help Riley, he did just that; when he was told to stop, he complied. Then, when Franklin

² This is evidenced by the testimony of James' own witness, Gayle Cheneyfield Jenkins. In describing that James sponsored Senate Bill 967 to "clarify" that only James, and not the City Council or any other body, could direct Newark's property transactions, former Councilwoman Cheneyfield Jenkins testified: "Senator Sharpe James did not like to not be able to have the political one-up-man on his [council], and we were a strong Council. So he took it further and went to the Senate where we couldn't meet him there." April 1, 2008, Tr. at 106.

revealed to Riley that there was a Stop Order on her getting Newark properties, Riley immediately understood its source: James. See Basil Franklin, March 7, 2008, Tr. at 198-202. Riley then ordered Franklin to “[p]repare the contract” and said she would confront James. Id. at 202. Soon thereafter, Franklin received a visit at his home on a weekend night. Johnny Jones appeared at Franklin’s door, refused an offer to enter his home and instead directed him to a dark car outside his home, stating: “No, come on outside, the Mayor is outside in his car, he wants to talk to you.” Id. at 203. Not only were James and Jones in the dark car, but also, in the back seat behind Franklin was a “pretty big guy” whom Franklin did not recognize. Before this weekend night, James had never before visited Franklin at home for any reason, and certainly not for a surprise meeting in a darkened car. Under these circumstances of surprise, threat and intimidation, James scolded Franklin for revealing to Riley that it was James who issued the Stop Order. Franklin soon thereafter received a written letter for his file, under Johnny Jones’ signature, threatening him with immediate suspension or termination in the event of a recurrence and stating: “You were advised to treat this matter confidentially and report your findings directly to me. . . . You put blame on your superiors and even named names as the source of this directive.” Gov’t Ex. 3503. In sum, Franklin was reprimanded for simply telling the truth.

Similarly, in carrying out the fraudulent scheme, Riley basked in the power improperly bestowed upon her via her relationship with James. For example, she boasted to Shawn Craig of her “24-hour direct connect” to James; Shawn Craig, March 17, 2008, Tr. at 63; and she threatened to report Leroy Brantley to James if he failed to prioritize her requests and follow her orders. See Leroy Brantley, March 19, 2008. As noted above, she also ordered Franklin to prepare her contracts even after he told her he was prohibited from doing so. Basil Franklin,

March 7, 2008, Tr. at 202. Not only did Riley improperly capitalize on her relationship with James for her own private gain to obtain the properties, she then made false statements and promises regarding what she would, and did, do with the properties once she obtained them. Indeed, in flipping rather than rehabilitating all but two of the properties, Riley acted with an utter disregard for what would happen to Newark's land; the driving force motivating Riley was her own greed.

Riley, for her part, took the approach of exploiting, and then blaming, everyone who crossed her path during her scheme with James. She suggested that somehow everyone else but she was responsible for the boastful and blatant way in which she capitalized on her romantic involvement with the Mayor to reap more than \$400,000 in unearned benefits. Riley's aggressiveness in carrying out the scheme is evidenced, among other examples, by the fact that she, several times, sought to flip the Newark properties that she was getting through her relationship with James even before the sales were blessed by the City Council and before the contracts were signed. Also, on more than one occasion, Riley stood before the City Council and made shockingly false statements regarding her past development work and future intentions of improving Newark properties. Riley also sought to sweep under a carpet of lies and excuses her housing assistance mail fraud scheme, tax fraud and tax evasion.

With regard to both defendants, a sentence within the advisory Guidelines range is needed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). See United States v. Ricks, 494 F.3d 394, 401 n.13 (3d Cir. 2007) ("seriousness of the offense" "suggests the need for a sentence to 'reflect' to the public the seriousness of the particular crime committed"); Gall, 128 S. Ct. at

599 (it is a “legitimate concern that a lenient sentence for a serious offense threatens to promote disrespect for the law”); Goff, 501 F.3d at 258 (“Part of ‘just punishment’ is the avoidance of unwarranted sentencing disparities”). A Guidelines sentence is also supported by “the history and characteristics of the defendants.” 18 U.S.C. § 3553(a)(1).

To impose anything less than a sentence within the advisory Guidelines range would promote disrespect for the law, Gall, 128 S. Ct. at 599, and undermine basic tenets of our system of justice. Defendants’ crimes involved repeated lies, nondisclosures and fraudulent acts over many years. Particularly troubling is the intimidation and overreaching that defendants used to effectuate their scheme, such as nighttime meetings in a darkened car and threats to punish (or, in Riley’s case, to report) employees who were anything less than fully obedient to the mandates of their scheme. Defendants’ crimes reflected a deliberate way to deceive the people of Newark, both within City Hall and beyond, and the Citizens of New Jersey, to achieve their fraudulent goals. Their crimes cannot be excused and the serious nature of their conduct must not be minimized.

In their scheme, Defendants capitalized on and profited from favoritism and power. To impose in this case a sentence that is at all below the advisory Guidelines range would not adequately or fairly reflect to the public that such behavior cannot be tolerated. Ricks, 494 F.3d 394, 401 n.13. Instead, a below-Guidelines sentence would improperly suggest that defendants’ conduct could be justified or excused, thereby threatening to promote disrespect for the law. Gall, 128 S. Ct. at 599. Moreover, while departures and variances are appropriate in certain cases, that is not so here. All the factors of this case direct that defendants’ sentences should follow the sentencing considerations and incarceration periods set forth in the Guidelines and not

be a product of leniency or special treatment. See, e.g., Goff, 501 F.3d at 258.

A sentence within the advisory Guideline range is needed “to afford adequate deterrent to criminal conduct” by others. 18 U.S.C. § 3553(a)(2)(B). Our court system, particularly in the District of New Jersey, has seen far too many cases of public corruption over the past decade. To break this culture of corruption, public officials and those acting with them, when weighing the costs and benefits of engaging in corrupt and fraudulent conduct to achieve personal gain, must come to the conclusion that profits are not worth the possibility of spending a significant amount of time in prison. That conclusion can be encouraged by imposing significant sentences for such crimes within the ranges established by the Sentencing Commission.

As set forth above, the advisory Guideline ranges are also supported by the “pertinent policy statements” in the Guidelines, 18 U.S.C. § 3553(a)(5), under which no departures are warranted.

The importance of sentencing within the advisory Guidelines range in this case is underscored by the fact that the U.S. Sentencing Commission has made clear that public corruption offenses sentenced below the range required by the current version of U.S.S.G. § 2C1.1, which applies here, “did not receive punishment commensurate with the gravity of such offenses.” U.S. Sentencing Guidelines Manual, *supp. to app. C.*, (addressing Amendments effective Nov. 1, 2004 through Nov. 1, 2007), Amend. 666. This case calls for no less than a Guidelines range sentence to ensure national consistency “commensurate with the gravity of [defendants’] offenses.”

Finally, imposition of a sentence within the advisory Guideline range best serves “the need to avoid unwarranted sentencing disparities among defendants with similar records who

have been found guilty of similar conduct.’ 18 U.S.C. § 3553(a)(6). Congress “sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct” prior to the Guidelines. Rita, 127 S. Ct. at 2464. The Guidelines “help to ‘avoid excessive sentencing disparities,’” Kimbrough, 128 S. Ct. at 573-74, because “avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges,” Gall, 128 S. Ct. at 599. Accordingly, the Guidelines “remain an essential tool in creating a fair and uniform sentencing regime across the country.” United States v. Ricks, 494 F.3d 394, 400 (3d Cir. 2007). Sentencing within the Guidelines range avoids “creat[ing] a potential disparity in sentence for those convicted of [the same crime] in New Jersey, and across the country, based on little, if anything, more than the luck of which judge is assigned to a particular case.” Goff, 501 F.3d at 261.

Therefore, the United States asks this Court to impose a sentence within the advisory Guidelines ranges.

B. Defendants Have Not Shown a Variance Is Justified

Defendants have failed to show that analysis of the § 3553(a) factors justifies a sentence outside the advisory Guideline range. While this Court has the power under Booker to grant a “variance” and impose a sentence outside the Guideline range, “it is less likely that a within-guidelines sentence, as opposed to an outside-guidelines sentence, will be unreasonable.” Cooper, 437 F.3d at 331. Any variance must be based on “‘reasons that are logical and consistent with the factors set forth in § 3553(a).’” Cooper, 437 F.3d at 330. “[S]ignificant’ variances from the advisory Guidelines range must be ‘adequately supported by the record.’” Kononchuk, 485 F.3d at 204; Goff, 501 F.3d at 254. Requests for variances that are based on

grounds that are duplicative of factors already taken into account in the Guideline range, discouraged or forbidden bases for departure under the Guidelines, or not based on a showing that a particular case is “outside the ‘heartland’ to which the Commission intends individual Guidelines to apply.” Kimbrough, 128 S. Ct. at 575; Goff, 501 F.3d at 259-61 & nn. 16-17 (variance placed “undue emphasis” on discouraged factors, and on factors already taken into account in the Guidelines range); Lloyd, 469 F.3d at 324-25 (“it would be an unusual case” where a forbidden factor justifies a variance). Variances on such grounds contravene the research and reasoning that support the Guidelines and raise a real danger of unwarranted disparity.

James contends that his age, past military service, family circumstances and education warrant a variance; both defendants also contend that their community service supports a variance. The Guidelines and governing law discourage these claims and defendants cannot show they are outside the “heartland” to justify a variance on this record. Guideline § 5H1.11 states: “Military, civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a departure is warranted.” Age and family circumstances are also discouraged factors under the Guidelines. U.S.S.G. §§ 5H1.1 (age), 5H1.6 (family ties and responsibilities). See, e.g., United States v. Sweeting, 231 F.3d 95, 104 (3d Cir. 2000) (reversing sentencing court’s downward departure that was based on a finding that the defendant was the sole financial supporter for her five children, one of whom suffered from Tourette’s Syndrome). Although Booker made the Guidelines advisory, the reasons the Guidelines wisely discouraged departures on these grounds -- to ensure that justice is dispensed even-handedly -- should similarly discourage variances on

such grounds after Booker. Thus, defendants' reliance on these discouraged factors does not justify a variance.

Moreover, the original Indictment in this case, returned on July 12, 2007, shows that James is not hindered by age, family circumstances or integrity, given his remarkable ability to live actively and travel extensively -- including for personal pleasure at Newark's expense. Accordingly, James is not hindered in the ability to serve a fair and just sentence within the Guidelines range. Indeed, while James and Riley may have done good acts, they were no better than those of a typical active politician and his avid supporter who participated in their community's activities. In lauding themselves for doing good for Newark, defendants overlook the fact that for a number of those years they were, at the same time, misappropriating Newark's property for their own selfish benefit and unjust enrichment. None of defendants arguments justify a variance.

Indeed, to this day, defendants continue to demonstrate their lack of contrition because they refuse to take responsibility for their actions and continue to blame others for the predicament in which they find themselves. James and Riley were corrupt and for years they abused the public trust that was bestowed on James. They did so without remorse or courtesy, using people in their path and threatening them when necessary to accomplish the goals of their scheme. They have refused to accept any responsibility for their corrupt behavior. They have shown absolutely no remorse for their actions or for the harm they have caused. In these circumstances, therefore, the Court should decline to vary from the advisory Guidelines ranges.

Riley, as she did throughout the trial, seeks to minimize her culpability in the land fraud scheme by pointing out that the properties were eventually developed by someone, although not

her. So in her view, because they were eventually developed by *someone*, despite the fact that she fraudulently obtained the properties for the paltry price of \$2,000 per lot specifically for her to redevelop the lots, she should now obtain the benefit of the work of others. In fact, Riley claims, not only does she have no culpability, she should be lauded because through her largesse, she “made it possible for the Wendee Bailey’s of the developer community to participate and prosper in the SWRP, even if they were not able to do so directly.” Riley Sentencing Letter at 7.

Riley’s claim that this Court should decrease her sentence because someone else redeveloped the properties, something she was supposed to do, is startlingly disingenuous. As she did at trial, Riley claims that she made sure that the properties were going to be redeveloped by selling the properties to genuine developers. First, this was not what she promised the City of Newark she would do, and this was in fact contrary to the very purpose of the SWRP. Riley engaged in precisely what the City of Newark wanted to prevent: land speculation. Newark, in developing the SWRP, recognized that flipping properties added virtually nothing in terms of value to the communities. Speculation invariably drives the costs of properties up without providing much in the way of tangible benefits, such as decent, well-designed, market rate housing for communities that were once largely ignored and neglected. The costs associated with land speculation drive up the prices of these properties, and these costs are ultimately borne by the potential end purchasers. They will pay the premium on the markup caused by the land speculation.

Riley implicitly argues that her actions alone could not have caused the ills associated with land speculation. But if it were appropriate to look the other way for Tamika Riley when she flipped the properties without redeveloping them, as she urges, then it must be appropriate to

do so with all others who engage in the exact same fraudulent conduct. If that were the case, then it indicates to Newark, and other cities and towns that make an effort to revitalize their communities and determine how that revitalization should be carried out, not to bother. This apathetic approach to governance and redevelopment is calculated to wrest control from planners and those fervently interested in good government and smart growth, and places such control over cities' growth into the hands of speculators and profiteers. Accordingly, it would be inappropriate to impose a below range, or even bottom of the range sentence, on Riley.

Importantly, Riley's sale of these properties to developers did not somehow manifest any intent or desire to ensure that they would be redeveloped as she claims. The properties Riley obtained from the City were in deplorable, uninhabitable condition. Who else was she going to sell these properties to? She certainly could not sell them to home buyers in the condition that they were in. The only ones who could purchase such properties and do anything with them were developers who had the necessary funds and wherewithal to rehabilitate the properties. So the fact that Riley sold the properties to the only people who could actually fix up the otherwise uninhabitable properties does not evince an intent or desire to have these properties rehabilitated.

Contrary to her unsupported claims, there is no evidence that Riley cared about what happened to the properties after she sold them for substantial profits. If she were concerned, she could have easily asked her attorneys to make redevelopment a contractual term of the sales. Riley never did so. Accordingly, the purchasers had absolutely no duty to anyone, either to the City of Newark or Riley, to redevelop the properties, that duty flowed directly and solely to Riley. There is also no indication that she ever raised the issue of requiring redevelopment with her attorneys or the purchasers or that she had any follow up communications to even see how

the redevelopments were progressing, if at all.

Riley further argues that she never had any intent to defraud the City of Newark of anything. In fact, she claims, every time she sought properties from Newark under the SWRP, she actually intended to redevelop them. If this case involved only the Phase I properties, her claim would perhaps possess a veneer of plausibility; not true, but potentially plausible. But this case involved three distinct phases. So what Riley seeks to have this Court believe is that after she failed to redevelop two of the properties in Phase I, she fully intended to do so with respect to the three Phase II properties she obtained less than a year later. She then asks the Court to further believe that despite her good intentions, she nevertheless had a change of heart and sold all three properties a scant one month later without any attempt at redevelopment.

This Court is then asked to believe that despite what occurred in Phase I and Phase II, Riley fully intended to redevelop the two Phase III properties she obtained in February 2005. This intent was evidently even more short-lived because she sold one property (590 Bergen Street) less than one month later for \$96,000 more than she had purchased it from Newark. Before the year was out, she sold the second property (86-88 West Alpine St.) for \$142,000 more than she purchased it. Neither was redeveloped.

Her claim that she bore no fraudulent intent, and indeed, that she intended to redevelop the properties each time that she received them from Newark, is meritless. Riley made this very same claim to the jury, and they rejected it in returning their guilty verdicts against her. And rightfully so. The evidence produced at trial proved that Riley did not have the intent to redevelop these properties; her only intent to was make as much money as she could in the shortest amount of time with the least amount of effort.

Evidence revealed that with regard to some of the properties, she had lined up buyers even before she had purchased them herself from Newark. Her claim of no fraudulent intent is further belied by the proposals she submitted to the DEHD. In three separate letters to the DEHD, for three separate projects, Riley claimed that the properties she was seeking each time constituted her “first project” and for that reason Riley could present no evidence of financial activity for her company.

That Riley had no fraudulent intent is also undermined by her false statements to the Newark City Council. In December 2004, after she had already flipped properties in Phase I and Phase II, Riley appeared before the Council and described herself as “one of the developers in Newark, New Jersey that’s actually just . . . making a difference.” In responding to a question from Donald Bradley as to whether she was going to redevelop the properties she was seeking, Riley responded, “Yes, sir.”

In April 2006, Riley falsely told the City Council that she had developed numerous properties:

[COUNCILWOMAN]: It’s very . . . there are very few African-American women that are involved in housing development, I think nationally as well as here in the City of Newark. Would you say that you found that you’ve had a very difficult time as a woman, an African-American woman being involved in development?

[TAMIKA RILEY]: Actually, Councilwoman, I, I think in the beginning when I first started, I want to say about 6 or 7 years ago, it was difficult. But what I did was I actually just . . . I put my guns on and just went after it and learned and got taught, I mean from the Council, from Economic Development. I mean, I’ve just actually just what I didn’t know, I asked the questions and I got a good team from architects . . . architects, from construction teams, just to really

know because I didn't have the experience. But I just went forward and just kept learning and just kept moving forward.

[COUNCILWOMAN]: How many pieces of property have you developed in the City of Newark . . . since you began your career?

[TAMIKA RILEY]: Ten.

[COUNCILWOMAN]: Ten?

[TAMIKA RILEY] Yes ma'am.

Gov't Ex. 5202 (video recording); 5202-A (transcript).

This case is not about heroism or tragedy, as Riley seeks to portray her life, and it is certainly not about a naive individual who was a victim of exploitation at the hands of others. This case is about fraud, multifaceted and sustained fraud.³ A further example of the depth of the fraud on the part of Riley is her conduct regarding 590 Bergen Street, a parcel of property that she sold twice to two different buyers. On May 8, 2002, she sold that property, along with the adjacent lot, to Wendee Bailey for \$50,000. As it turned out, 590 Bergen Street had not properly been deeded over to Riley by the City, so her subsequent flip of that property to Wendee Bailey was ineffectual. When Riley ultimately did receive that property from Newark, she failed to convey it to Bailey, as she had promised. Rather, Riley sold it a second time to

³ In support of her request for a decrease in her sentence, Riley has submitted, among others, a letter from her long time friend, Arthuree Lawrence. In the letter, Lawrence highlights Riley's work on the teen magazine she began called, "Beyond the Cover." As the evidence at trial revealed, however, Lawrence signed a letter, dated December 15, 2003, which falsely claimed Riley was "a consultant" for the magazine who earned \$8.75 per hour and was then "in our training session." This letter, along with a fraudulent pay stub, was sent to the Rental Assistance Program so that Riley could continue to fraudulently obtain Section 8 housing subsidies.

another buyer for \$100,000.

Despite perpetrating this fraud on Wendee Bailey, Riley sought to portray her as a malicious individual who exploited Riley. Indeed, to this day, Riley seeks to pass the blame for the numerous frauds she committed to virtually anyone who she came across in these property dealings. Before this Court, as she had before the jury, Riley seeks to portray herself as the victim of exploitation at the hands of her attorneys, her accountants, and the people to whom she sold the properties. Indeed, over the government's objection, Riley sought and received a jury instruction on a reliance on counsel defense regarding the fraudulent sale of the Phase III properties, despite the fact that she sought, and received, no such advice from counsel. The jury properly saw through this fallacious contention and rejected it.

Far from showing any remorse for her conduct, Riley blames others for failing to stop her from her own fraudulent conduct. As the jury properly found, Riley knew exactly what she was doing. She relied on nothing more than her innate sense of greed and entitlement. Nothing in Riley's background or this case justifies any downward variance to her sentence. To the contrary, a sentence near the top of the Guidelines range is fully appropriate.

Accordingly, the Court should decline to vary from the Guidelines, and should indicate its understanding of its discretion to engage in such variances. See United States v. Gunter, 462 F.3d 237, 248-29 & n.11 (3d Cir. 2006); United States v. Severino, 454 F.3d 206, 212-13 (3d Cir. 2006).⁴ In this case, the United States urges the Court to impose a sentence within the

⁴ If "the court is strongly inclined to impose a sentence outside (above or below) the advisory range" by variance, it should notify the parties in advance of sentencing. Ausburn, 502 F.3d at 327 n.26. Such notice, while not required, "will usually promote both fairness and the efficient administration of justice by allowing the parties to better prepare and focus their arguments to accord with the court's concerns." Id.; see Irizarry v. United States, 128 S. Ct. --,

advisory Guideline range.

DEFENDANTS ARE NOT ENTITLED TO BAIL PENDING APPEAL

Without providing any legal or factual basis, James suggests that he be afforded bail pending appeal. It would be a manifest injustice to afford such courtesies here. Under 18 U.S.C. § 3143(b), there exists a presumption that a person found guilty of an offense and sentenced to a term of imprisonment be detained unless certain factors are met by clear and convincing evidence and specific findings by the court. James cannot rebut that presumption and he, like many defendants before him, should be ordered to report to the Bureau of Prisons on a date certain following his sentencing. The same applies to Riley.

2008 WL 2369164, *5 (2008).

CONCLUSION

For the foregoing reasons, the United States respectfully submits that each defendant receives a sentence no less than the applicable Guidelines range set forth in the PSR. Accordingly, the advisory Guidelines range for James is **188 to 235 months** (Level 36), which includes a four-point upward adjustment for his leadership role. (At a minimum, if the Court were instead to follow the PSR, which recommends only a two-point upward adjustment for James' role, then the advisory Guidelines range for James would be 151 to 188 months (Level 34).) The advisory Guidelines range for Riley is **97 to 121 months** (Level 30).

Respectfully submitted,

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