

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Cause No. 1:19-CR-360-JRS-TAB
DENNIS TYLER,)	
)	
Defendant.)	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by counsel, John E. Childress, Acting United States Attorney for the Southern District of Indiana, and Tiffany J. Preston, Assistant United States Attorney, hereby files its Sentencing Memorandum in support of a sentence of imprisonment for defendant, Dennis Tyler.

I. INTRODUCTION

Dennis Tyler was the Mayor of Muncie, Indiana for 8 years. As Mayor, he promised to put the interests of the people of Muncie above his own. Instead, Mr. Tyler accepted a \$5,000 gratuity in exchange for official acts, namely, steering work to a paying contractor who charged more than an honest competitor. In doing so, Mr. Tyler chose to serve himself and the interests of insiders who were willing to buy their way into a rigged system. He now joins a dishonorable list of corrupt politicians who have contributed to the growing erosion of public trust and confidence in government.

On November 10, 2021, Mr. Tyler will stand before this Court to be sentenced. His sentence must reflect the seriousness of his criminal acts, deter others in similar positions from abusing their positions of public trust, and promote respect for the law so as to restore faith in the local system of government. Consistent with the plea agreement, the United States asks this Court to sentence former Mayor Dennis Tyler to a term of imprisonment within the applicable Guidelines range to be calculated by this Court at sentencing.

II. PROCEDURAL BACKGROUND

On November 13, 2019, the Grand Jury returned a single-count Indictment charging Dennis Tyler with one count of theft of government funds in violation of 18 U.S.C. § 666(a)(1)(B). On November 18, 2019, Mr. Tyler was taken into custody, made an initial appearance, and was released with conditions under the supervision of pretrial services. On May 25, 2021, the parties filed a Petition to Enter Plea of Guilty and Plea Agreement. Mr. Tyler is scheduled to be sentenced by this Court on November 10, 2021, at 1:00 p.m.

III. RELATED CASES

Mr. Tyler was charged as part of a series of investigations by the Federal Bureau of Investigation (“FBI”) and the United States Attorney’s Office targeting systemic public corruption in Muncie, Indiana. The related cases are as follows:

United States v. Craig Nichols, 1:17-cr-00021-TWP-DML (sentenced to 24 months’ imprisonment)

United States v. Tracy Barton, 1:18-CR-0234-JRS-DLP (sentencing pending)

United States v. Jeff Burke, 1:18-CR-285-SEB-DLP (sentencing pending)

United States v. Rodney Barber, 1:19-CR-190-JMS-DML (sentencing pending)

United States v. Phil Nichols, Nikki Grigsby, Jess Neal, and Tony Franklin,
1:19-CR-0231-JRS-DLP (sentencings and one trial pending)

IV. THE PRESENTENCE INVESTIGATION REPORT

The United States Probation Officer filed an exhaustive 19-page Presentence Investigation Report (“PSR”). As set forth in the PSR, Mr. Tyler’s Adjusted Offense Level is 15. Two levels are subtracted for acceptance of responsibility for a total of 13. Based upon a total offense level of 13 and a criminal history category of I, the anticipated Sentencing Guideline range of imprisonment is 12 to 18 months. The Government does not object to the findings or calculations in the PSR. The defense has not filed objections to date.

As set forth in the plea agreement, the Government has agreed to recommend a sentence at the low end of the Guideline range as it is calculated by the Court at the time of sentencing.

V. A SENTENCE OF IMPRISONMENT AT THE LOW END OF THE GUIDELINE RANGE IS REASONABLE AND APPROPRIATE UNDER TITLE 18, UNITED STATES CODE, SECTION 3553(a)

The Government provides the following summarized account of Mr. Tyler’s criminal conduct, some of which is described in the PSR. For any evidence discussed below that is not described in the Stipulated Factual Basis set forth in the plea agreement or contained in the PSR, the government offers such information by way of factual proffer, to which Special Agent Glenn Carlson of the FBI would testify if

called at Sentencing. All of the data supporting the proffered information has been disclosed and made available to defense counsel.¹

A. The Nature and Circumstances of Mr. Tyler's Offenses Justify a Sentence of Imprisonment at the Low End of the Applicable Guideline Range

1. Mayor Dennis Tyler of Muncie, Indiana

Dennis Tyler was the Mayor of Muncie, Indiana. He was elected in 2011, and served as Mayor until December 2019. According to initial data from the 2020 census, there are approximately 65,000 people who call Muncie home. Between 2015 and 2019, and according to census data, the average income for a resident of Muncie was approximately \$33,000, and there was a poverty rate of nearly 31 percent. The local hospital, Ball State University, the school district, and the City government and its agencies are among Muncie's largest employers.

Muncie is a small, close-knit, midwestern city that is full of hardworking people. It isn't a large metropolis governed by a vast bureaucracy. The people of Muncie place their trust in a small group of government officials—many of whom are on a first-name basis with their constituents. Dennis Tyler was no exception. He has lived in Muncie for nearly all his life. Mr. Tyler's wife, one of his two children, his step-child, and five of his 12 grandchildren all live in Muncie. He was also no stranger to public service. From 1965 to 2007, Mr. Tyler was a member of the Muncie City Fire Department. From about 2006 to 2011, he was a member of the Indiana General

¹ To date, Mr. Tyler has not objected to the Government proceeding by proffered information.

Assembly in the House of Representatives. In 2012, he was elected to the position of Mayor, and held that position for 8 years.

Pursuant to City Ordinance, and upon his election in 2012, Mr. Tyler swore an oath to support the constitution, and promised to faithfully discharge all of his duties. On January 2, 2012, Mr. Tyler gave one of his first speeches as the elected Mayor. During that speech, he recognized a number of City employees by first name, and acknowledged his long-time friend Phil Nichols (former Chairman for a political party in Delaware County and charged in a separate indictment). Mr. Tyler told his crowd of supporters that he intended to do things the “right way.” He spoke of the difficulties Muncie faced at the time. He said that the people of Muncie were losing jobs, were underemployed, and faced declining opportunities. He promised to work within the resources the City had available to get things done without placing an undue burden on Muncie’s citizens, and they trusted him.

As Mayor, and pursuant to Indiana Code, Mr. Tyler was the city executive and head of the executive branch. Mr. Tyler’s powers and duties included supervising subordinate officers, signing bonds, deeds, and contracts of the city, and approving licenses issued by the city. Mr. Tyler was further responsible for overseeing Muncie’s departments and agencies. But, Mayors are more than their duties. As a Mayor, Mr. Tyler held a special responsibility. He was the leader of his community, and was charged with creating and maintaining a positive public image for Muncie, and with embodying the morals and values the citizens of Muncie held dear. Given his longstanding personal ties to the community, those citizens also happened to be Mr.

Tyler's neighbors, friends, colleagues, and family—people who knew him on a first-name basis. Mr. Tyler didn't just owe a duty to serve those Muncie citizens he knew well; he owed a duty to the people of Muncie whom he didn't know at all.

2. Dennis Tyler's Offense Conduct

Person A was the owner of Company A. Company A was incorporated in Gaston, Indiana, and performed demolition, excavation, and construction services in Muncie. In early 2014, Person A was desperate for work, and approached his longtime friend Tracy Barton for help. At that time, Tracy Barton² was Muncie's Superintendent of Sewer Maintenance and Engineering for the Muncie Sanitary District ("MSD"). He was appointed to the position by Mr. Tyler in 2013. In early 2014, Barton knew that MSD would soon be hiring contractors to perform a number of services associated with the recertification of Muncie's levee system. Barton promised to steer work in Company A's direction when MSD began the work. Barton also knew that as Mayor, Mr. Tyler was currently spearheading a number of projects on the horizon for the City of Muncie. Those projects included the Walnut Commons, the Dicks Sporting Goods, and the Nebo Commons Projects. Barton knew that Mr. Tyler would be willing to steer work on those projects in Company A's direction, and decided to approach then Mayor Tyler to see what he would do.

i. The Walnut Commons Project

The Walnut Commons Project was an approximately \$8.3 million housing development that was intended to house Veterans who were experiencing

² Mr. Barton has been charged in a separate indictment.

homelessness. Funding for the project came from the Indiana Housing and Community Development Authority, the City of Muncie Office of Community Development, Meridian Health Services, and Federal Home Loan Bank of Indianapolis. The Office of Community Development was an agency/department of the City of Muncie and overseen by Mr. Tyler. The Walnut Commons Project was funded in part by a Home Investment Partnership Program grant through the U.S. Department of Housing and Urban Development (HUD).

Mayor Dennis Tyler welcomed the community to the Walnut Commons ground breaking ceremony on May 29th (see photo below), and read a Mayoral proclamation stating that the City of Muncie was committed to ending homelessness and saw permanent supportive housing as one of the most critical elements to a comprehensive strategy.

06/04/2014



Supportive Housing for Veterans Breaks Ground in Muncie, IN

Barton did not have direct control over the Walnut Commons Project, but Mr. Tyler did. So, Barton approached Phil Nichols and then Mayor Dennis Tyler, to see if they could steer contract work to his friend, Person A. As mentioned above, Phil Nichols served as the Chairman for a political party in Delaware County (“the political party”) from approximately 1990 through approximately 1998. Though Phil Nichols had no official position or title within the political party after approximately 1998, he maintained a private office at the political party’s headquarters and continued to exert influence and control over multiple official acts performed by certain Muncie public officials. Phil Nichols and Mr. Tyler were, at least at one time, close confidants and political allies. At Barton’s request, Mr. Tyler agreed to steer work on the Walnut Commons Project to Company A.

CPM was the general contractor for the Walnut Commons Project. After Barton approached Mr. Tyler, Mr. Tyler, through Arron Kidder (who acted as the Mayor's Chief of Staff), instructed CPM's owner and its Developer to hire local contractors, including Company A. However, Company A was not an approved vendor, and that was a problem. Barton and Person A began working with Mr. Tyler to push out vendors who were approved, and steer the work to Company A. Indeed, a telephone seized during a search warrant at Company A included records of text messages between Person A's Cellular Phone and Barton's Cellular Phone. On or about March 4, 2014, Person A sent a text message to Barton. Person A explained that he was worried that the Walnut Commons job was going to be awarded to his competitor (redacted, but known). He said, "The [REDACTED] company that I bid it to assured me they had the job and I had good #s. Called them yesterday to follow up and the tell me they lost It. Found out that cpm outa indy has it now and just now submitted them my #s and they said they would look at them. Just received anonymous call that they have verbally given it to [REDACTED] from Anderson" Then, on or about March 5, 2014, Barton sent a text message to Person A reading "I sent Dennis [Mayor Dennis Tyler] a text that you are going to contact cpm... He wants me to let him know what u find out ASAP.... K?" According to Barton, he sent that text to Person A because Barton had been communicating with Mr. Tyler in an effort to have Mr. Tyler help Person A get work. Barton then directed Person A to contact CPM so that Person A could submit a bid for the Walnut Commons Job.

On or about March 7, 2014, Person A sent a text to Barton reading “[CPM] jus called and wanted to review my #s. They said for some reason they lost the one I had sent and asked for another copy.” Barton responded “10-4 . . . I will let Dennis [Mayor Dennis Tyler] know. . . Funny”. On the same day, CPM received Company A’s quote via fax. On or about March 13, 2014, the Developer sent Tyler an E-mail that read:

Honorable Mayor Dennis Tyler,

We are disappointed we were not able to meet you last week, yet we are pleased we met with Arron Kidder and the Community Development team. We apologize for the miscommunication. It is my understanding the [REDACTED] from CPM Construction, General Contractor for Walnut Commons has scheduled a call with you next week to provide you with an update on local hiring. [REDACTED] is aware of the importance of this matter and has been very diligent in reaching out to local subs. I have attached also the information I provided Arron at our meeting last week. We anticipate breaking ground in April. We are extremely thankful for your help and financial support, including the City of Muncie HOME and off-site improvements. (remainder redacted)

On the same day, Terri Whitt-Bailey (Director of Community Development) responded to Developer A and included Mr. Tyler in the “To” line of the E-mail. In that E-mail Ms. Whitt-Bailey said, “A telephone conference call has been set up with [CPM] and Mayor Tyler for this Monday at 8:30 a.m. They can then discuss efforts to include more local contractors.” A copy of this same E-mail was sent from Mr. Tyler’s personal E-mail address, dennis[REDACTED].net to Aaron Kidder.

On Monday, March 17, 2014, after the 8:30 conference call, records provided by Company A contained an E-mail from Person A to Barton which included Company A’s quote to CPM for the Walnut Commons project totaling \$276,214.00. On the same day, and again, after the scheduled conference call, Barton forwarded Company A’s

E-mail directly to Mr. Tyler and no one else. In that E-mail, Barton discussed why Company A's bid was higher than other responsive bidders. According to Barton, prior to sending the E-mail, Mr. Tyler had expressed concern that Company A's bid was higher saying words to the effect, "That's gonna be a problem." In other words, Mr. Tyler was concerned that it would be harder for him to steer work to Company A if Company A was not more competitive. Barton explained that in an effort to push the deal through, he talked with Person A, and they justified the higher numbers by saying that his bid included a "Hercules Wall" (a retention wall) that wasn't included in the competitor's quotes.

On March 18, 2014, CPM sent an E-mail to the Mayor's Chief of Staff that included the Walnut Commons quote from Company A and a competitor. Both quotes included a risk management report from Dunn and Bradstreet printed by an employee of CPM. As shown below, the report for Company A included handwritten notes indicating that Company A did not meet CPM's minimum requirements. Indeed, and as shown below, the General Contractors' handwritten notes state that Company A's credit report was "NOT GOOD." CPM's owner stated that he pulled the credit report as part of his own assessment as to whether Company A should be hired for the job.

Live Report

D-U-N-S® Number [Redacted]

Endorsement/Bill [Redacted]

D&B Address [Redacted]

Ac [Redacted]

ion Type Single Loc [Redacted]

Web [Redacted]

Fax [Redacted]

Company Summary

Currency: Shown in USD unless otherwise indicated

Score Bar  *Not Good* *CPM, Inc Requirements - See [Redacted]*

PAYDEX®	↑	13	65	Paying 121 to 179 days past due
Commercial Credit Score Class	⬇	5	13	High Risk of severe payment delinquency.
Financial Stress Score Class	⬇	5	3	High Risk of severe financial stress.
D&B Rating		DS		The information available does not permit us to classify the company.
High Credit - Average		5,192.00		Average High Credit for payment experiences reported to D&B.
Credit Limit - D&B Aggressive		Unavailable		
Credit Limit - D&B Conservative		Unavailable		

According to the CPM’s owner, he didn’t want to hire Company A because their credit was awful (in his view) and Company A would need to buy a performance bond as a result. In other words, CPM didn’t feel that Company A was the most qualified bidder, and wanted to hire its competitor. The notes also show CMP’s math evidencing Company A’s additional expense (\$7,500) for the performance bond.

Included in the same March 18, 2014 E-mail, CPM’s owner stated that he intended to call the Mayor’s Chief of Staff about the quotes when he got back. On March 24, 2014, there were back and forth E-mails between the Developer and CPM detailing their efforts to try and get a hold of Mr. Tyler and/or his Chief of Staff to discuss the “local contractor issue.” On or about March 25, 2014, the Developer sent

an E-mail to Mr. Tyler's government E-mail account which read in part "Can you please let me know when I can reach you to have a brief conference call? Our General Contractor [CPM] is trying to reach Aaron (Kidder) regarding the local subcontracting. We are planning to start construction the beginning of April and need to finalize the construction contract. He has received a competitive bid for a local excavator [Company A] and will like your feedback. CPM needs to select subs ASAP to stay on our construction schedule." The E-mail was directly addressed to Mr. Tyler.

On or about March 27, 2014, the Developer sent an E-mail to CPM which read in part "I spoke with the Mayor yesterday. Yes, he wants us to use the local excavator (Company A). Also, Aaron (Kidder) was going to call you to set up a call with Mayor. I told him that you will do a summary with the bids you have received from locals and their percentage overage over the competitive bid." According to CPM and Person A, after March 27, 2014, CPM and Person A entered into an oral agreement that CPM was going to hire Company A for the Walnut Commons job.

On or about April 23, 2014, Person A and Barton had the following text message exchange:

Person A	Is it going to upset the mayor if I tell cpm to fuck off?
Barton	Probably What's up know?
Person A	They call every two hours and ask for a bond. Its probably gona be the end of the week before thats even possible if im lucky
Barton	The original scope didn't require a bond from you?
Person A	No. Ive never bonded a private job

Barton	Let me check something.... And I will text you in a few
Person A	Theyve took it uppon themself to decide if im capable of doing the job.
Barton	I'm gonna contact PN [Phil Nichols].
Barton	Meeting Phil [Phil Nichols] tomorrow.. Don't tell cpm to get fucked til ya hear from me...k?
Person A	10-4

According to Barton and Person A, CPM required Company A to get a performance bond because of their poor credit rating. Person A was having difficulty complying. Because the Mayor had steered the contract to Person A, Person A was concerned that the Mayor would be upset if Person A pulled out of the Walnut Commons Project. Accordingly, he asked Barton whether the Mayor would be upset if he did so. Ultimately, Company A did back out of the work only after Barton confirmed that the Mayor would be okay with it. CPM then did what it had wanted to do in the first place, hire Company A's competitor—a company with a good credit rating, that was qualified and the lowest bidder. Importantly, CPM's owner recalled feeling an unusual amount of pressure. Specifically, CPM didn't want to hire Company A because Company A had bad credit. Reluctantly, CPM agreed to hire Company A despite its rating because of the Mayor's insistence.

Accordingly, and in summary, beginning in 2014, Mr. Tyler agreed to use his official position as Mayor of Muncie to steer demolition work on the Walnut Commons Project to Company A. To that end, Mr. Tyler used his official capacity to pressure the developer and general contractor for the Walnut Commons Project to hire Company A. On March 27, 2015, the demolition work for the Walnut Commons

Project was awarded to Company A as a result of Mr. Tyler's undue influence. On or about April 23, 2014, Company A withdrew from the Walnut Commons Project after first ensuring, through Tracy Barton, that Mr. Tyler would not be angered by the withdrawal.

ii. The Dick's Sporting Goods Project

In early 2014, the City announced a multi-million dollar project developing nine acres on McGalliard Road near Target and the Muncie Mall that included several stores, Dick's Sporting Goods among them. The project was spearheaded by the Muncie Redevelopment Commission. The Muncie Redevelopment Commission (MRC) is an agency/department within the City of Muncie, and was authorized to acquire and dispose of abandoned residential properties for redevelopment. Part of the project called for excavating, leveling, and installing storm sewers so that the area would be suitable for development. In a speech on April 16, 2015, Mayor Tyler highlighted the project as he unveiled his new community boosting logo, called "One Muncie." Eventually, part of the work for the Dicks Sporting Goods project was awarded to Company A. Mr. Tyler then turned his efforts to hire Company A for yet another project, Nebo Commons.

iii. The Nebo Commons Project

Beginning before 2012, Muncie began the Nebo Commons Project, which was a commercial development in Nebo Commons, Muncie. The Nebo Commons Project was spearheaded by both the Muncie Board of Public Works (BOW), an agency/department within the City of Muncie, and Delaware County. On or about

May 20, 2015 Muncie announced an excavation project necessitated by the development. One of Mr. Tyler's duties as Mayor was to oversee the BOW, appoint the board members, and sign contracts on its behalf. Because the Nebo Commons Project was a public works project, it was subject to Indiana law which required public officials to solicit quotes from responsive contractors who were known to perform the type of work the contract required, and award the contract to the lowest responsive contractor who submitted a quote. There were three bidders for the Nebo Commons Project—Company A, Barber Contracting (Mr. Barber is the subject matters of other indictments), and Excavating Company A. According to the records, Excavating Company A's bid was lower than Company A's, and thus, by law, Mr. Tyler should have awarded the contract to that company. Instead, he steered it to Company A and signed the contract with Company A on October 14, 2015.

X [Signature]
By: Roger Overbey

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Vice-President

X- [Signature]
By: Bobbie Clemens

Secretary

Attest: Linda Hayes

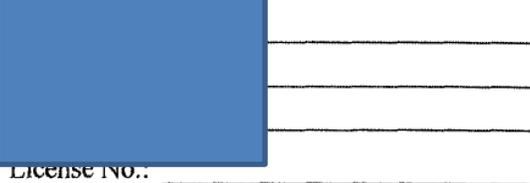
Attest: _____

Title: Recording Secretary

Title: _____

Address for giving notices:
300 N High St.
Muncie, IN 47305

License No.: _____



Approved By: [Signature]

Printed: Dennis Tyler

Title: Mayor

Date: 10-19-2015

On or about December 10, 2015, Person A directed a bank teller to withdraw \$5,238 in cash from Company A's bank account. Person A gave \$5,000 of the cash withdrawal to Tracy Barton, knowing that Barton intended to give it to Mr. Tyler as a gratuity because Mr. Tyler had illegally steered the Walnut and Nebo Commons Projects to Company A, and to ensure that Company A continued to get work from Muncie. In December 2015, Barton met Mr. Tyler in a parking lot in Muncie, Indiana, and gave Mr. Tyler the \$5,000 he received from Person A. Person A deposited the \$108,975 check for the Nebo Commons Project into Company A's business bank accounts. According to Person A, Barton selected the amount of the gratuity, and Person A knew it was a "thank you" for the Walnut Job, and to "keep

the wheels greased,” which he explained meant that he hoped if he thanked the Mayor properly he would continue to get work.

As charged in the Indictment, as Mayor, Mr. Tyler accepted a \$5,000 payment knowing that he had used his official capacity as Mayor to illegally steer contracts such as those related to the Walnut and Nebo Commons Projects to Company A.

iv. Barton Cooperates with the United States

In the fall of 2018, Mr. Barton was indicted on wire fraud charges. Immediately, Mr. Barton agreed to cooperate proactively and covertly. He told the Government (among other things) that Mr. Tyler had accepted the \$5,000 gratuity.³ As part of his cooperation, and during a consensually recorded in person meeting between Barton and Tyler, the following conversation took place:

TB (Barton): Hey uhh, you know he [Person A] gave me that money [cash gratuity] to give to you one time. I think he’s probably told them that cause he’s told them [federal government] some other stuff.

DT (Tyler): Oookkayyy.

TB: And

DT: I can’t remember.

TB: I told Phil [Nichols] about this and he said I need to get with you as soon as I could.

DT: Mhm

DT: Well.... That... cause when you got him that.... Job out there to at the

TB: The auto part, the auto park? I think it might been when you got him that job at, you and Todd [Donati] got him the Walnut Commons.

³ Person A also cooperated with the Government. Mr. Barton’s and Person A’s extensive cooperation was corroborated by recordings, a Title III intercept, witness accounts, and other information. Their cooperation led to numerous charges against several individuals.

DT: Okay, I don't, I don't remember. I, I, I don't remember. I think that the way it [cash gratuity] came to me, I don't think I, I put that on my report [campaign contribution report].

TB: Kay.

DT: Cause if I had, I would've had to

TB: No, I gave it [cash gratuity] to you right in the parking lot. [sighs]

TB: It would be good if you could check your report and if it's [cash gratuity] in there, but I doubt it cause I mean it [cash gratuity] was cash.

DT: Then I probably didn't cause it wouldn't have been anyway to have done it and not...

DT: Unless I ran it through my golf outing but then I don't remember putting his name down in my golf outing.

Tb: Maybe a team that year is all he would've down

DT: Do you remember what year it [cash gratuity] would've been

TB: It was right before Christmas, caught you out there in the parking lot... [clears throat]

DT: That won't be good.

TB: No it won't be good.

DT: But you don't remember what year it was?

TB: It was Christmas of, Christmas right... uhh right before Christmas, probably fifteen [2015].

DT: Okay

TB: Probably 2015

DT: Bet cha I ain't got it in there Tracy

TB: You don't think so?

DT: My guess is that I probably used it to pay bills and some other crap that I.... it's always, always holding, held out money to give people things for Christmas

TB: Well and that's the whole reason

DT: And somebody had a sewer bill that they needed I, I could give them the money.

TB: That was the whole reason why I gave it [cash gratuity] to you, was for Christmas

DT: I know it, I almost bet you uhh cause if it was 2015 heh... I, I think that's when I bought all them turkeys to give away and stuff. Which ain't gonna mean a damn thing to them [federal government won't care that he gave most of the money away to other people].

TB: Well no. [sigh]

DT: Do you remember how much that [cash gratuity] was Tracy?

TB: Yeah, it was 5 grand

DT: Shit, I know that, that's what I did....

TB: Yep

DT: I ju—I just know that that's not gonna be [deposited or reported] (UI) cause I always like money to, I guess somebody give me cash and didn't want it [report it].

TB: Well and that time of year I figured it...for your family or whatever you done with it[cash gratuity]

DT: Yeah, yeah... I probably did some of that but I probably did some of that but I, I'd go out and buy things and pay for people's sewer bills and light bills and you'd be amazed at

TB: the people that needed help

DT: Yeah I mean at this... and that's what I've always done and, but I'm sure I used some of it [cash gratuity] for my own personal stuff too

TB: Yeah

DT: So

TB: Well and that's easy to do

DT: Mhm

TB: That's easy to do

DT: Yeah but its, it is what it is.

TB: Yeah

DT: I don't know how this thing got so screwed up

TB: Well I don't know either Dennis

DT: I, I swear I don't (UI) it. It was so good.

TB: And, and you know similar things I do to because that way it doesn't seem like you're, doesn't seem as bad if you're doing it with that money [committing crimes doesn't seem as bad if you use the money to do good things].

DT: Yeah, yeah.

TB: By taking it

DT: Yeah... yeah, no I, I agree that's where the superseding indictment come from.

TB: So we lined it out, [Person A] got Elm, Rodney [Barber] got Madison and... satellite places for, for Tony Myrtle, Howard, one on Liberty but in his statement he says right in there early October I'd come to him and told him Nikki had given me Tony's [Franklin] numbers and his number needed to be higher than that [bid rigging].. Umm, I say the, the big thing.... That money that he gave me to me give to you [cash gratuity]

DT: Mhm

TB: They're holding [USAO/FBI], they probably won't give that [discovery] to me til right before my trial

DT: Mhm.

TB: Or at least until they put the superseded indictment on it

DT: Mhm... I say you're probably right... mhm (UI)

TB: I uhh, I sat in the attorneys office in front of the computer screen, I read that shit, if I got questions I go to them, they don't really, you know, they, they've got other clients doing other stuff so I don't even know if they seen that statement yet from [Person A] or not

DT: Mhm

TB: And I told them nothing and I'm not

DT: No you shouldn't, no.... did you ask for that money [cash gratuity] from [Person A]?

TB: No he [Person A] told me he want me to make sure you got it for helping him [get a public works contract].

DT: And see I don't remember helping him [getting him jobs], I, I'm not saying I didn't,

TB: Yeah

DT: I'm just like

TB: I know Todd [Donati], Todd got him a lot of jobs

DT: Did he?

TB: I mean you know, well you mentioned that auto park or whatever it's called out there

DT: Yeah

TB: Uhh, Dick's, he got all of Dick's dirt work and

DT: That was through the redevelopment commission

TB: Yeah and then he got Walnut Commons you helped him with, you and, you an Todd

DT: Kay, Walnut Commons that was the

TB: The apartment building

DT: Meridian, okay.

TB: Is that what that's called Walnut Commons?

DT: Yeah it is called Walnut Commons

TB: Yeah

DT: I don't remember helping him uhh, I know that the redevelopment commission (UI)...and that I just don't, I don't remember uhh

DT: (UI) Yup and I still don't see they're getting that.

TB: Right

DT: There was a mistake I made and I wish to hell now you know, that I had kept the invoices and I had kept receipts and I had done this and I had done that but you know you..

TB: Yep

DT: You pay for them types of mistakes

TB: And I mean, I've made them too

DT: Yeah

TB: I made them too.

DT: Yeah

TB: And listen, I mean, you ain't the I mean, you ain't the only one Dennis, I mean when, when [Person A] offered to give me a little bit of money [kickbacks] that's hard to turn down

DT: Yeah, sure.

TB: You know.

DT: Sure

TB: And I do the same things you've done [take kickbacks], I mean lot of it would be for our Thanksgiving dinner out there at work

DT: Yeah

TB: That's how me and Doug would supply all the meat and the food

DT: Oh yeah

TB: You know

DT: I think that was 2000, if Michael Harly (PH) was still alive. I believe that's when I did that big turkey giveaway out there at the (UI) Unity Center.

TB: Might've been

DT: Yeah, if I remember correct that.

TB: Yeah you might've took that money right and bought, and bought all that.

DT: (OV) Yeah, I think it could've been that, but I, I don't know. Don't make any difference

TB: No it don't matter to them, no. No, I mean just like me, it don't matter, we took it [Government won't care that they used the cash for good things].

DT: Jesse don't know what to do..... well hmm, hmm, hmm, hmm...I'll go back and look at that report if you think it was on fif... 2015 but I, I know that I, I know that's what I did, or I think I know.

DT: Yeah, yeah uhh... here's just, here's the truth, here's the thing, I would've never remembered that [cash gratuity] if you hadn't reminded of it

TB: About [Person A]?

DT: Yeah I would've never... but

TB: Well I hate to bring that shit to you but I, I mean I'm obligated

DT: (OV) I'm glad you did

TB: I'm obligated to do that Dennis, I mean

DT: Yeah... and honest to God I.... I would've never remembered if you hadn't of brought it up to me

TB: Yeah

DT: So

TB: Yeah, I... when you go trying to remember and reading all the shit I read you remember, you start to remember a lot of things

DT: Yup

TB: And if he's talking, he's told them that

DT: I'd say you're probably right

TB: Cause I know he ain't forgot

DT: Yeah... well there's gotta be something that he's giving them to leave him alone

TB: Absolutely

DT: And uhh

TB: And if you're right about what the, you know wanting you and Phil [Nichols], then it's, it's more than just stuff about me

DT: My attorney's always got like the.... They wanted me and, and Phil [Nichols] more than anything. If they can figure out a way to get both... mhm.... But man you've got to take care of yourself and try to take care of the family as best as you can and try to put things together as best you can from them, Tracy I

TB: Yeah it's difficult

DT: Yeah I know it's difficult... and I know, and I'm sure you feel just like I do, that every time you're out in public and everybody's looking at you

TB: Sure

DT: Cause you're a crook

TB: Absolutely

DT: You know and uhh and that, and that hurts

TB: It's not a good feeling

DT: No it's not a good feeling and.... And now my poor son's walking around with my name

TB: Yep

DT: And uhh, you know I still don't think we're crooks.... I don't care what people say I don't feel that way. I think we've made mistakes

TB: Yeah I mean, hell we all mistakes them fucking feds won't look at it that way

DT: Oh no

TB: You know

DT: No they won't, no they won't

TB: But you know its hard to turn something back and something's down

DT: Mhm.... Mhm... yeah

TB: I mean... you know [Person A] coming to me with a little bit here and there and I could've told him no

DT: Mhm

TB: You could've told me no

DT: Mhm

TB: But we didn't

DT: Yeah, yeah.... Yep

TB: And at the time, it was helpful.

DT: I can only imagine

TB: You know.... It just, I just don't know how we got all the way to here man

DT: I don't either Tracy, I mean man we had this city going in the right direction and things moving in the right direction

TB: Yes we did

DT: Good things happening and

TB: Yes we did

DT: I don't know how. I think it all goes back to Gretchen Cheese and Steve Stewart, Aubrey Jones and Kidder and, and Craig [Nichols] got caught up in the middle of it and then uhh Gretchen with her ties to Freeman and them

TB: Yep and it went to hell from there

DT: And it went to hell from there

TB: Yep

DT: Uhh

TB: Yep

DT: Uhh oh well... Well I better get over there and get ready for that next meeting and

TB: [sigh] well Dennis if there's anything you need from me or if I come across anything else I will definitely call you

v. Summary of Offense Conduct

Below is a timeline showing Company A's receipt of lucrative contracts from the City of Muncie and MSD.

Contract Date	Contract Amount
Early 2014	The Walnut Commons Project begins
2/2014	Dick's Sporting Good Project Announced

3/27/2014	Walnut Commons Project awarded to Company A after Mayor pressures CPM to hire despite poor performance bond.
4/23/2014	Company A withdraws from Walnut Commons Project after confirming with Barton that it won't upset then Mayor Tyler
Spring 2014	Dick's Sporting Goods Project awarded to Company A
7/22/2014	Company A is paid for Dick's Sporting Goods Project
10/3/2014	Dick's Sporting Goods Project Completed, Store Opens
5/20/2015	Nebo Commons Project announced, bids opened
5/27/2015	A bid from Excavating Company A is thrown out to allow for work to be steered to Company A on Nebo Commons Project.
10/8/2015	\$110,389 in contracts awarded to Company A by Barton (first set of demolition work from MSD)
10/19/2015	Nebo Commons Project officially awarded to Company A
11/6/2015	\$84,380 in MSD contracts awarded to Company A by Barton
11/2015-early 2016	Company A works on Nebo Commons Project (winter)
12/7/2015	\$44,650 in MSD contracts awarded to Company A by Barton
12/15/2015	\$24,275 in MSD contracts awarded to Company A by Barton. Person A withdraws \$5,000 to pay Mr. Tyler.
GRATUITY	\$5,000 gratuity accepted by Mr. Tyler

1/13/2016	\$71,575 in MSD contracts awarded to Company A by Barton.
3/16/2016	\$40,950 in MSD contracts awarded to Company A by Barton.
8/25/16	Invoice from Company A for Nebo Commons Project in the amount of \$108,975
11/23/2016	Payment by Muncie to Company A for Nebo Commons Project

In summary, beginning in or about 2014, and continuing through on or about August 25, 2016, in the Southern District of Indiana and elsewhere, Dennis Tyler, the defendant, being an agent of Muncie, Indiana, a local government that received in excess of \$10,000 from January 1, 2015, and December 31, 2015, otherwise than as provided for by law for the proper discharge of his official duties, directly and indirectly accepted and agreed to accept, something of value from Person A, through Tracy Barton, that is, \$5,000, for or because of any official act performed or to be performed by Mr. Tyler, that is, the awarding of contracts under Mr. Tyler's influence or control to Company A.

There is nothing wrong with a Mayor encouraging the hiring of local contractors to perform public works projects. But, that's not what happened here. Dennis Tyler crossed the line. He accepted \$5,000 as a thank you for steering work to an otherwise unqualified and more expensive contractor. In doing so, he rewarded a contractor who was willing to pay him under the table, and excluded honest contractors who were simply trying to make a living in Muncie. Mr. Tyler knew that

the City could have received quality work at a lower price, but prioritized his own interests over the taxpayers.

Mr. Tyler also knew that Barton was corrupt and that he held a position of trust and power. Yet, Mr. Tyler knowingly left Barton in his position at MSD. That allowed Barton and others to continue to steer government contractors to other contractors in exchange for kickbacks. (See *United States v. Phil Nichols, Debra Nicole Grigsby, Jess Neal, and Tony Franklin* 1:19-CR-0231-JRS-DLP). In total, Mr. Tyler, Mr. Barton and the other indicted officials steered millions of dollars in contract work in exchange for kickbacks, bribes, and in Mr. Tyler's case—a \$5,000 gratuity.

The United States will address the impact accepting this type of gratuity has on Muncie citizens, and particularly other contractors who resist the overwhelming pressure to pay bribes, gratuities, and kickbacks to public officials at sentencing. The United States will also address Mr. Tyler's mitigation or claims thereof at sentencing.

B. Other Conduct by Mr. Tyler that the Court should Consider under Title 18, United States Code, Section 3553(a).

Pursuant to Title 18, United States Code, Section 3553(a), this Court may consider the history and characteristics of Mr. Tyler at sentencing. The United States has included important information relevant to his character below.

1. Mr. Tyler Attempted to Obstruct Justice in the Craig Nichols' Investigation

In 2012, Mr. Tyler appointed Craig Nichols to the position of the Building Commissioner for the City of Muncie. Craig Nichols was the son of Phil Nichols. On July 12, 2017, Craig Nichols was charged in a Superseding Indictment with seventeen counts of wire fraud, theft of government funds, and money laundering. In summary, and as set forth in the Superseding Indictment, Craig Nichols intentionally prepared and caused others to prepare false and fraudulent documents and invoices so that he could 1) use his company Advanced Walls and Ceilings (“AWC”) to steal \$81,500 from the City for demolition work that AWC never performed, 2) cover up his theft of \$81,500 by engaging in further document fraud and causing others to do the same, 3) concealing his ownership interest through fraud by creating a second company, Capitol Consulting and Property Management (“CCPM”), so that 4) Nichols could continue to engage in document fraud and bilk the City for asbestos inspection and abatement work that he either never performed, double billed, or performed at inflated prices. All told, Craig Nichols fraudulently billed Muncie for \$454,400. On January 22, 2019, Chief Judge Tanya Walton Pratt sentenced Craig Nichols to 24 months’ imprisonment.

The FBI began investigating Craig Nichols in 2014. The investigation became public on March 14 and 15, 2016, when Federal Grand Jury Subpoenas were issued to the City of Muncie Controller’s Office, Craig Nichols, and entities controlled by Craig Nichols. As set forth below, while he was Mayor, Mr. Tyler attempted to obstruct the FBI’s investigation into Craig Nichols’ crimes. In order to fully

understand the gravity of his obstructionist efforts, the United States has summarized the timing of Craig Nichol's crimes and the FBI's investigation.

Beginning in or about 2014, MSD began a public works project to improve Muncie's levee system so that it could be recertified by the Federal Emergency Management Agency (the "Levee Recertification Project"). The Levee Recertification Project included plans to demolish homes and businesses along the White River to make way for the construction of new levees. MSD also conducted a multiyear project to separate the City's Storm water and Sewer Systems.⁴ When Muncie conducted or sponsored demolitions, the Indiana Department of Environmental Management ("IDEM") required Muncie to show that the property to be demolished had been inspected for asbestos. In most cases, the identified asbestos must be abated by an Indiana-licensed asbestos abatement contractor.

Craig Nichols abused his position as Muncie's Building Commissioner to scam the Levee Recertification and Kitselmen Pure Energy Park Projects for his own financial gain. As mentioned above, Craig Nichols was the City's Building Commissioner. When Craig Nichols was appointed, he was also the registered owner and agent of AWC, a drywall company. After his public appointment, Nichols dutifully filed Uniform Conflict of Interest Disclosure Statements (Indiana Form 236) indicating that he had a financial interest in contracts awarded to AWC. During the summer of 2015, Nichols fraudulently steered work to his own company (AWC) to

⁴ This is the same project that Barton used to steer to Company A and others. It is the subject matter of the *United States v. Phil Nichols, Debra Nicole Grigsby, Jess Neal, and Tony Franklin* pending before this Court.

demolish four properties that allegedly existed at 527 S. Elliott, 746 North Elm Street, 1000 North Wolf Street, and 439 South Proud Street. As the City's Buildings Commissioner, Nichols was required to obtain three, or arguably, at least two, bids to demolish the properties, but he intentionally failed to solicit any bids and simply awarded the work to himself.

Avoiding the competitive bidding process ensured that Nichols' company (AWC) would be awarded the "work." But, bypassing the bidding process was also a necessary part of his scheme. From the beginning, Nichols intended to bill Muncie to demolish structures that didn't exist. And, had contractors competitively bid on the four projects, they would have immediately discovered that there were no structures located at 527 S. Elliott, 746 North Elm Street, 1000 North Wolf Street, and 439 South Proud Street to demolish. But, given his powerful allies, including Mr. Tyler and Phil Nichols, Craig Nichols figured that either no one would notice or no one would care, and he quietly submitted \$81,500 in invoices to the City between August 7, 2015, and October 5, 2015 for work he didn't perform.

Craig Nichols falsely claimed on the AWC invoices that the structures on the properties listed above were demolished in the summer and early fall of 2015. Having been duped, Muncie paid Nichols \$81,500. Nichols deposited the checks, sat back, and hoped that no one would notice he just stole \$81,500 from Muncie. But, someone did notice. On November 4, 2015, Les Marsh (concerned citizen/government watchdog) made a public records request for invoices related to the demolitions. It didn't take long for Les Marsh or anyone else to discover that as of the summer of

2015, there were no structures to demolish on the on Elliott, Wolf, Elm, and Proud properties. In other words, Nichols billed Muncie \$81,500 for doing absolutely nothing, and Les Marsh and others had figured it out.

Marsh's FOIA request also caught the attention of Audrey Jones, the City of Muncie Controller. As set forth in her recorded testimony, Marsh approached Jones and asked for copies of all AWC invoices to the City. According to Jones, she gave Marsh copies of the original invoices, and then approached Craig Nichols to inform him that she had turned them over. Knowing that his theft had either already or was about to be discovered, Craig Nichols panicked. Nichols lied to Jones, and immediately told her that the invoices he submitted (one at a time) in August, September, and October, had been "incorrect." Jones believed him (even though she later suspected something was amiss, "I mean, you get to thinkin' about it, how could you make a mistake on four invoices..."), but she told him she couldn't change what had already been entered into her computer. So, she asked Craig Nichols to provide the corrected invoices.

In a clumsy effort to conceal his sham demolition of the Elliott, Elm, Wolf, and Proud properties from Marsh and others, Nichols submitted a second set of false and fraudulent invoices to Muncie. In these invoices (the "second set of invoices"), Craig Nichols intentionally altered the descriptions of the locations of the properties in the first set of invoices, by describing the locations of the properties by city block rather than by specific addresses. This wasn't correcting an error—it was a sloppy attempt at a cover-up. Instead of describing the demolished structures by address, Craig

Nichols vaguely described them by city block so that no one could tell precisely which homes he was claiming he had demolished. That didn't satisfy anyone, including Jones, and Nichols had to figure out a better way to hide his theft.

Craig Nichols then created a "third set of false invoices" that provided specific addresses that somewhat resembled the property descriptions in the first set of invoices (to lend legitimacy to the "mistake" defense), and matched the billed amounts precisely (so that they would equal \$81,500). This time, AWC actually needed to demolish the structures listed in the third set of invoices. But nevertheless, the invoices were false. In order to cover up the sham demolition of the structures in the first set of invoices, Nichols falsely claimed that the structures listed in the third set of invoices were demolished in the summer of 2015. But, they weren't. The structures were actually demolished in late November/early December of 2015. Because AWC had no experience demolishing houses, Craig Nichols had to hire subcontractors to do the work. It should come as no surprise that he hired Company A and Barber Contracting to perform his cover-up demolitions. And when the Government started asking questions, he had the same contractors produce fake invoices in an attempt to conceal the magnitude of his fraud.

But simply giving these doctored invoices wasn't going to be enough in light of the public's scrutiny. Craig Nichols had to 1) explain why there was no bidding on any of the properties and 2) make it look as though the properties in the third set of invoices were demolished back in the summer and fall of 2015 when he first submitted the \$81,500. Craig Nichols turned to his father Phil for help. To lend legitimacy to

the demolitions in the third set of invoices, Craig Nichols asked Phil Nichols to help him obtain fraudulent quotes for the properties from another contractor. According to Muncie Street Superintendent Duke Campbell (who was a close friend of Mr. Tyler and Phil Nichols), Phil or Craig Nichols asked Duke Campbell to find a contractor to submit a false bid for the demolition project so that Craig Nichols' bids and prices would look legitimate. Campbell agreed.

In December 2015, and according to their statements and testimony, Campbell called his nephew, Nick Gibbs of Gibbs Construction. Campbell asked Nick Gibbs to provide emergency demolition quotes for the properties set forth in the third set of invoices. Again, an emergency project only requires two bids—so, if Gibbs agreed to provide the bogus and back dated quotes, then it would lend legitimacy to the “mistake” defense. According to Gibbs, Campbell provided Gibbs with the addresses, the prices (to ensure that AWC's bid was the lowest and to conceal that they were inflated), and dates to be included in the quotes (to conceal the \$81,500 theft and the fact that the properties were actually demolished in late 2015). Campbell told Gibbs that it was a favor for Phil Nichols. Gibbs knew that he wasn't going to be awarded the work because the dates had already passed, but he trusted his uncle and, according to his testimony, he reluctantly gave Campbell the bogus quotes.

Mr. Tyler Intervenes to Conceal Craig Nichols's Crimes

Between February 20, 2016, and February 24, 2016, and according to Jones, Mr. Tyler, Aaron Kidder (the Mayor's Chief of Staff), City Attorney John Quirk, Phil Nichols, Craig Nichols, and Jones met on approximately four occasions at the

Delaware County Political Party Headquarters to discuss how to address the issues with Craig Nichols' invoices. According to Kidder, during one of the meetings, Craig Nichols asked Kidder if he would be willing to say that he acquired quotes from Gibbs even though he had not. Kidder refused. On February 24, 2016, Craig Nichols submitted the third set of invoices to the Muncie BOW during its regular meeting. The bogus invoices were legitimized by the false quote from Gibbs.

During a BOW meeting, Kidder, who appeared on behalf of the Mayor's Office, asked the BOW to approve the four demolitions from the third set of invoices. Kidder also stated that the BOW had received copies of two quotes for each of the demolitions. Jones also spoke during the meeting. She told the BOW that, although she couldn't remember the exact date, in approximately October 2015, Craig Nichols represented to Jones that the first set of invoices Nichols had previously presented to the BOW had incorrect addresses. According to Jones, she had requested updated invoices from Nichols and told the Board that she filed them in the contractor's file when she received them. Jones made these statements to the BOW at Craig Nichols' request, and because she was duped by him into believing his lies.

According to Kidder, after the February 24, 2016 meeting, Craig Nichols asked Kidder to create fraudulent documents which would purport to be Muncie's request for quotes associated with the demolitions in the third set of invoices. He refused. Subsequently, Vicki Veach (Director of Development) asked Kidder to attend yet another meeting with Mr. Tyler, Phil Nichols, and Campbell. During that meeting, Phil Nichols asked Kidder to create fraudulent documents which would purport to be

requests for the quotes for the emergency demolitions in the third set of invoices. Kidder again refused.

On March 14 and 15, 2016, Federal Grand Jury Subpoenas were issued to the City of Muncie Controller's Office, Craig Nichols, and entities controlled by Craig Nichols. It was now well known that the FBI and the United States Attorney's Office was investigating Craig Nichols. According to Arron Kidder, on March 16, 2016, Craig Nichols pleaded with Kidder to lie and say that Kidder requested quotes related to a demolition scheme perpetrated by Nichols. Later that same day, Mr. Tyler, Kidder, Craig Nichols, John Quirk, and Phil Nichols met to discuss the matter. In that meeting, Craig Nichols admitted that his quotes were fraudulent. Kidder was again asked to say he obtained the quotes. Mr. Tyler said that Kidder would have "to be okay with that," but Kidder declined.

According to Jones, on March 16, 2016, Mr. Tyler said that he had learned that Kidder had not requested quotes for Craig Nichols' demolitions. Mr. Tyler told Jones "I'm gonna need you to say you requested the quotes." Jones told Mr. Tyler that she would not say she asked for the quotes. According to Jones, she was so upset about the Mayor's request that she contacted other city employees, namely, Eddie Bell, Bret Granger, Sarah Beach, and Phil Peckinpaugh, to tell them that Mr. Tyler had asked her to lie about requesting the quotes. The FBI interviewed those employees, and they corroborated Jones' account of the meeting. Importantly, Mr. Tyler's efforts to obstruct justice, and help Craig Nichols conceal his theft occurred after the FBI had served Federal Grand Jury subpoenas on Muncie City Hall and on Craig Nichols'

companies. In other words, Mr. Tyler knew that he was obstructing a federal investigation, and pressuring his subordinates to assist him in doing so. He literally asked his employees to lie on Nichols' behalf in an effort to cover up his schemes against Muncie.

The next day, Jones participated in a meeting with Mr. Tyler and the leaders of several departments. Jones became upset and left the meeting abruptly because employees were being told to support Craig Nichols. According to Kidder, in or around March 2016, Nichols admitted to Kidder that the third set of invoices were false in that they were backdated. Kidder told the Mayor, and according to Kidder, the Mayor neither said nor did anything in response.

Mr. Tyler's obstructionist behavior speaks volumes about his character. He knowingly attempted to obstruct a federal investigation, and shamelessly pressured his own employees to assist him. This is yet another example of Mr. Tyler's willingness to abuse his power to help insiders. Not only did his efforts directly impact the FBI's ability to investigate Nichols, but they also had an enormous impact on City employees who felt pressured to say yes to their boss. Unfortunately, his behavior didn't stop there.

Craig Nichols knew that his company ACM was being investigated by the authorities. But rather than cease his criminal activities, he chose instead to create a sham company called Capitol Consulting and Property Management (CCPM). Craig Nichols concealed his ownership interest in CCPM to the outside world—but not to Dennis Tyler. On March 22, 2016, six days after Mr. Tyler's administration

was hit with Grand Jury subpoenas in the Nichols investigation, Dennis Tyler signed a conflict of interest form required by the State of Indiana approving Craig Nichols' ability to receive City-derived income from CCPM. In other words, Mr. Tyler signed off on Craig Nichols receiving more City funds knowing that he owned CCPM, had used AWC to submit the aforementioned false invoices, and that he was under federal investigation.

Mr. Tyler's actions came at a huge cost for Muncie. Ultimately, Craig Nichols' succeeded in using CCPM to bill Muncie for hundreds of thousands of dollars. The total actual loss to Muncie for CCPM was \$107,592 because City of Muncie paid CCPM 232% above market rate in inflated asbestos inspection and abatement work for the Muncie Asbestos and Abatement Job. Additionally, Craig Nichols, through CCPM invoiced Muncie \$88,950 for CCPM's work at Kitselman Pure Energy Park, and invoiced another company \$74,950. Nichols defrauded both Muncie and the other company by 1) using document fraud (Gibbs) during the bidding process to rig it so that CCPM would be awarded the work and 2) submitting false and fraudulent invoices to Muncie and the other company for work he performed during the project. Those losses could have all been avoided had Mr. Tyler refused to sign Craig Nichols' conflict of interest form.

On May 12, 2016, Jones recorded a conversation with Mr. Tyler during which they discussed Craig Nichols' demolition scheme and Jones' upcoming interview with the FBI. When Jones explained that the timing of the actual demolitions happened after Craig Nichols invoiced the city and was paid, Mr. Tyler said:

“I don’t know anything about that Audrey, and you don’t either. And you just take the high road and stay out of it, and that’s what I’m going to do. ‘Cause if [Craig Nichols] did anything wrong, that’s on him. I’m not going to allow you, or me, or anybody in my administration, if he did something that wrong, we’re not going to take a hit over it.”

Mr. Tyler’s statement to Jones was obviously false. According to all of the witnesses mentioned above, Mr. Tyler did have knowledge about Nichols’ scheme. His efforts to tell Jones to “stay out of it,” and that she wouldn’t “take a hit over it” were obstructionist. Later in the conversation, he said:

“Here’s all I can tell you that I know, they laid properties in front of me to look at that in my opinion, needed to come down. They were a public safety issue, and I said get ‘em down. That’s it. I can’t tell you what the address was, I can’t tell you what color it was, I can’t tell you any of that. I remember one that had crap all over, it had limbs all over, it looked like growth coming out of it and everything else, and one that was leaning like it was getting ready to fall on the house. But I couldn’t tell you where they were at, or you know, it’s no different than if I tell you to go find me \$15,000.”

Again, this statement was false. Mr. Tyler implied to Jones that he gave authorization to perform the “sham” demolitions before the invoices were submitted beginning in August of 2015. But, that wasn’t true. The investigation showed that the “cover-up” demolitions were not chosen until November and December of 2015. In other words, Mr. Tyler was falling in line with Craig Nichols’ cover-up story.

Later in the conversation, Jones’ lamented the impact that Craig Nichol’s actions were having on her. In particular, she said that she felt that the investigation was impacting her relationship with Mr. Tyler. He responded:

“No, no, no, that’s not true, listen, I’m going to protect you, I’m going to protect everybody. That’s why I’m paying big bucks to Ice Miller.”

Later in the conversation Mr. Tyler told Jones he was not allowing his employees to own companies that did business with the City of Muncie. Jones responded that she had just approved a payment to CCPM. Mr. Tyler told Jones that CCPM did not belong to Nichols. This was an obvious lie as Mr. Tyler had previously signed a conflict of interest form permitting Craig Nichols to use CCPM to perform contracts for the City. Again, Mr. Tyler made this statement knowing that Jones would soon be speaking to the FBI about Nichols.

In summary, Mr. Tyler has shown his willingness to abuse his power as Mayor to help his friends and by paying insiders. His efforts to shield Craig Nichols from a federal investigation by bullying his own employees are aggravating. His attempts to persuade Jones to tell bogus stories to the FBI come close to witness tampering. These are important factors for the Court to consider at sentencing.

2. Mr. Tyler Used his Position to Pay for Personal Expenditures

In October 2014, there was a tree on Mr. Tyler's property that was in danger of falling down on his house. Rather than hire a local tree removal company, Mr. Tyler instead relied on his insider buddies to get the job done free of cost. In short, Mr. Tyler told Doug Marshall (employee of MSD and subordinate to Tracy Barton) that he needed a tree cut down at his residence and asked if Marshall could take care of the tree for him. Marshall talked to his boss (Tracy Barton), and Barton asked Rodney Barber (a local contractor who has been indicted separately) to cut the tree down. Marshall then informed Mr. Tyler that Barber would cut down the tree.

According to Rodney Barber, when Mr. Tyler was first elected, several influential City Employees or Appointed Officials were allowed to vouch for a private contractor who would be included on a “list” of contractors who would be included as eligible bidders for City work.⁵ As an example, Barton vouched for Company A, and Marshall vouched for Barber. According to Barber and Barton, in December of 2014, Tracy Barton asked Barber for \$5,000 in cash on behalf of Mr. Tyler’s campaign. Barton told Barber that Mr. Tyler had asked Barton to solicit contractors for donations. Barber made the requested payment in cash and he provided a bank statement including a December 29, 2014 withdrawal which Barber used to pay Barton. According to Barber, Barton claimed that the money would be used for Mr. Tyler’s reelection campaign.

According to Barber, he made the payment because he knew that Mr. Tyler's administration would be good for his business. He also wanted to remain on the “list” and to continue winning city jobs, but not in connection with a specific job. Barber believed that if he hadn't made the payment, he probably would not have continued to receive city jobs. In hindsight, he knew that the payment was not really a political contribution, and was instead a kickback. At the time, however, he thought these types of payments were just how business was conducted in Muncie. Barber believed that other contractors were making similar payments and wanted to ensure that he was playing on a “level playing field” in order to survive. The payment stands out to Barber because at the time, he was struggling to make his business profitable and

⁵ This is consistent with information from other contractors and corroborated by recordings.

\$5,000 was a significant amount of money. At the time, he did not think about writing a check, but in hindsight he knew it was a bad idea to pay cash. He did not ask for a receipt and assumed Barton or Tyler would record the transaction on the required campaign finance reports.

According to Barton, after the \$5,000 payment, probably in the spring of 2015, Barton asked Barber to cut down a tree on the northeast corner of Mr. Tyler's personal residence. The tree was approximately 40 inches in diameter and in danger of falling on Tyler's neighbor's property. Barber initially assumed he would be paid for the work, but never quoted a price and never talked to Mr. Tyler about the work. Barber paid a tree service company \$1,800 to remove the tree and was not repaid by the Mayor or anyone else. When he asked about being paid, Barton told Barber that Mr. Tyler would make it up to him in another way. But, Barber never did receive any form of compensation for cutting down the tree. Barber believed that cutting down the tree was just part of the process to ensure that he remained on the "list" and would continue to get work. He was afraid to refuse.

3. Mr. Tyler Deposits Campaign Contributions into his Personal Account, and then Adjusts his Company Report after Learning of the FBI's Investigation

Kelly Zullo worked for Assured Partners, previously Neace Lukens, as an insurance agent for municipalities and non-profit clients. Edward Culpepper Cooper (Cooper), who was in a relationship with Zullo, previously provided insurance to Muncie. According to Zullo, shortly after then Mayor Dennis Tyler was elected in 2012, Cooper suggested Zullo contact Mr. Tyler to gain insurance clients. By 2016,

Zullo's customers included Muncie and MSD. Indeed, Muncie was 15% of her commission and was one of her higher end clients.

In early 2016, the FBI began investigating Zullo's contributions to Mr. Tyler. The FBI learned that Zullo made the following contributions:

- A \$1,000 check on October 26, 2015, for a sponsorship of the JJ Dinner, deposited into the account of the Chanticleer Club.
- A \$1,000 check on October 26, 2015, for advertising at Mayor Tyler's golf outing deposited into Mr. Tyler's personal checking account.
- A \$1,000 cash payment given to Eddie Bell on July 19, 2016 for Mr. Tyler's golf outing.

On December 14, 2016, the FBI interviewed Zullo. On January 19, 2017, the FBI also interviewed Bell. According to Bell, Mr. Tyler was aware of Bell's interview. The FBI compared Zullo's payments to Mr. Tyler's contribution records for 2016. They learned that there were two versions of the report—one that was prepared prior to Bell's FBI interview on January 17, 2017, and an amended report that was filed after his interview on January 26, 2017. Interestingly, the original report did not disclose Zullo's \$1,000 contribution July 15, 2016, and stated that Mr. Tyler had received \$7,670 and ended the period with \$5,900.91 in cash. The amended report (after the Bell interview) included Zullo's \$1,000 contribution, and listed \$8,670 in contributions and \$6,900.91 in ending cash. Mr. Tyler never reported the 2015 contribution \$1,000 contribution that went into his personal account.

The timing of Mr. Tyler's amendment is no coincidence. He had learned that the FBI was investigating his deposit of Zullo's "contribution" into his personal account and moved quickly (albeit two years later) to "correct it." It was a clumsy attempt at a cover up, and indicative of further efforts by this defendant to obstruct justice.

C. Mr. Tyler's History and Characteristics do not Merit a Downward Variance.

At sentencing, Mr. Tyler will undoubtedly argue that his age merits a downward variance, and his use of some of the illegal gratuity on his constituents is mitigating. He is wrong. First, the Government is not aware of a condition from which Mr. Tyler suffers that is "extraordinary" or to an "unusual degree" that would justify a downward variance under Section 5H1.1 or 5H1.4. Second, Mr. Tyler's belief that using some of the \$5,000 to buy things for his constituents does not absolve him morally. Honest politicians don't purchase clout with illegal proceeds.⁶

The Government will address these matters more fully during the sentencing hearing. In short, the arguments Mr. Tyler has or will present in mitigation pale by comparison to the aggravating nature of his criminal offense. They are, to be plain, not close to enough to warrant a downward variance from a Guideline sentence.

⁶ Notably, Mr. Tyler admitted in the recording to Barton that he kept some of the gratuity for himself.

D. A Sentence of Imprisonment at the Low End of the Applicable Guideline Range is Reasonable whereas a Downward Variance will Result in an Unreasonable Sentencing Disparity

A sentence at the low end of the applicable Guideline range is reasonable whereas a downward departure will result in an unreasonable disparity. Other defendants who held the position of Mayor have been sentenced as follows:

- Former Mayor Mario King of Moss Point, Mississippi: Sentenced to 30 months' imprisonment, 3 years' supervised release, and ordered to pay \$6,937.98 in restitution and an \$8,000 fine. King and his wife began soliciting funds in late 2018 for a Gala to be held on March 23, 2019, in Moss Point. The written solicitation stated that the "gala honors and supports organizations that are making a difference for the mental health community. Proceeds support the efforts of mental health in the City of Moss Point with a focus on the Moss Point School District, converting spaces into a therapeutic and innovative learning environment." In reality, he used a portion of the funds for personal expenditures. (July 22, 2021).
- Former Mayor Asiel F. Correia II of Fall River, Massachusetts: Sentenced to six years' imprisonment and 3 years supervised released in connection with a scheme to defraud investors and extorting and conspiring to extort marijuana vendors for hundreds of thousands of dollars. (September 21, 2021).
- Former Mayor James Snyder of Portage, Indiana: Sentenced to 21 months' imprisonment after being found guilty of taking a \$13,000 bribe from a trucking company and illegal tax evasion. (October 14, 2021).

VI. CONCLUSION

Instead of serving the interests of his constituents, Mr. Tyler chose to serve himself and the interests of insiders who were persuaded to buy their way into a rigged system. Instead of earning his reelection through hard work and good deeds, Mr. Tyler chose instead to use proceeds from an illegal gratuity to buy political clout. And, instead of ensuring that his administration served the interests of justice, he protected his corrupt insiders, and attempted to obstruct a federal investigation. Corrupt politicians like Mr. Tyler who choose to abuse their positions of public trust

must be punished in a way that deters others from doing the same. Mr. Tyler's punishment should also reflect the damage he has done to a City that believed his intentions were good, and that he would serve as an honest leader. He should be sentenced to a term of imprisonment at the low end of the applicable Guideline range as calculate by this Court at sentencing.

WHEREFORE, and for the foregoing reasons, the United States respectfully requests that the Court sentence former Mayor Dennis Tyler to a term of imprisonment at the low end of the applicable Guideline range as calculated at sentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2021, a copy of the foregoing GOVERNMENT'S SENTENCING MEMORANDUM was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.