



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

DRA : BMR : JL  
F. #2002R00892

*One Pierrepont Plaza  
Brooklyn, New York 11201*

*Mailing Address: 147 Pierrepont Street  
Brooklyn, New York 11201*

April 4, 2005

U.S. Probation Officer Terri Linton  
U.S. Probation Department  
Eastern District of New York  
75 Clinton Street, Room 405  
Brooklyn, New York 11201-4201

Re: United States v. Thomas G. McNamara, et al.  
Criminal Docket No. 03-191 (S-6) (SJ)

Dear Ms. Linton:

We write to address certain factual discrepancies/ issues set forth in the Presentence Report ("PSR") for the defendant Thomas G. McNamara. Additionally, it is our position that McNamara's Guideline range should be 46-57 months, as indicated in the PSR. However, we arrive at that offense level based on a three-level increase (rather than a two-level one) for role in the offense and a one-level reduction for global disposition.

At page 5-6, paragraph 5, the PSR indicates its disagreement with a one-level reduction for global resolution, noting the PROTECT Act and stating that United States v. Garcia, 926 F.2d 125 (2d Cir. 1991), is distinguishable. Rather than limiting the sentencing discretion given to judges by Garcia to a narrowly focused set of facts, in cases quite different from Garcia's factual core, the Second Circuit has expressly permitted Guideline reductions or downward departures based on a conservation of judicial resources. See, e.g., United States v. Agu, 949 F.2d 63, 67 (2d Cir. 1991) (holding that "cooperation with the government in respects other than the prosecution of others or cooperation with the judicial system can, in appropriate circumstances, warrant a departure"). It is thus our position that a one-level reduction for global disposition is within the Court's discretion.

In conjunction with page 6, paragraph 6, we note that forfeiture payment should be sent to the attention of Special

Assistant U.S. Attorney Douglas Leff, rather than Adam Schwartz.

At page 8, paragraph 17, the end of the second sentence should read "and had no-show jobs." Also, we note that while most of the mail fraud schemes in this case did involve business agents getting kick-ups, this particular scheme involving defendant Daniel Murphy did not.

At page 9, paragraph 18, the second sentence should be deleted because the indicated mailings were not sent to contractors.

At page 10, paragraph 24, it should be payments and deliveries of money.

At page 13, paragraph 36, we agree that restitution is inappropriate, but it was necessary to advise defendant Thomas McGuire of his maximum exposure in that regard. As indicated elsewhere in the plea agreement, the money is to be paid as forfeiture.

Referring to page 14, paragraph 37, the PSR indicates that McNamara's restitution liability is \$799,544 (the loss figure), not \$54,000. McNamara is responsible for the amount he personally illegally received from the unlawful labor payments from Clemente, LaQuilla and DeFazio (\$54,000), and the loss arising from the mail fraud scheme involving McNamara, Joseph Coriasco, Anthony Polito, Ralph Garguilo and others (\$799,544). However, Polito has already been held responsible for forfeiture/restitution in the amount of \$386,173 and Joseph Coriasco and Ralph Garguilo have already paid \$1,160,619 to the government, which could first be applied as restitution.

Referring to page 14, paragraph 38, the PSR indicates a discrepancy between restitution owed and amount of loss for Murphy, which was addressed to the extent necessary in response to Murphy's PSR.

Referring to page 14, paragraph 39, the PSR indicates that Quaranta's restitution liability is \$145,200 (the loss figure), not \$18,000. Quaranta is being held responsible for the amount he personally illegally earned, i.e., the money he received from Recine Materials at the Starrett City job - his second overlapping job. Others, i.e., Ralph Garguilo and Joel J. Cacace, Jr., are responsible for their part of the greater loss figure.

Referring to pages 14-15, paragraph 42, the time span of the referenced mail fraud scheme was in or about and between March 2000 and December 2001 (not 1989 and December 2001). As to McNamara's role in the offense, the proof shows that McNamara

should receive a three- as opposed to two-level increase under U.S.S.G. § 3b1.1(b). McNamara was a manager and supervisor of criminal activity involving five or more participants, specifically, himself, Joseph Coriasco, Ralph Garguilo, Anthony Polito, Arthur Palmer and Richard Troy. Coriasco and McNamara were the two business agents involved in the schemes, who were able to ensure that Garguilo, Polito and others received multiple no-show jobs that provided the opportunity for kickbacks. McNamara agreed to the three-level enhancement in his plea agreement.

Referring to page 16, paragraph 47, the government has supplied the Probation office with a chart of victims of the Murphy mail fraud scheme.

As to page 16, paragraph 48, the company name is Soil Solutions, plural. It was Vito Volpicelli who typically accumulated the receipts.

As supported above, at page 19, paragraph 63, the PSR should be amended to reflect a three-level increase for role in the offense. At paragraph 65, the adjusted offense level should be 27, not 26.

On page 20, at paragraphs 75 and 78, the combined adjusted offense level should likewise be 27, not 26. At paragraph 80, the total offense level should be 24, not 23.

Ultimately, however, because we believe McNamara should receive a one-level reduction for global disposition, at page 32, paragraph 138, the total offense level should be 23, which, with Criminal History Category I, yields a Guideline range of 46-57 months.

Referring to page 33, paragraph 143, the following is a list of those identifiable victims that suffered loss in the mail fraud scheme involving McNamara, Coriasco, Polito, Garguilo and Arthur Palmer:

<u>Job Site</u>	<u>Contractor</u>	<u>Loss</u>
P.S. 58	DeMatteis NY Concrete	162,958 58,384
Yankee Stadium	Interstate D. Gangi	104,475 193,000
Brooklyn Post Office	JA Jones	436,344
Goldstein High School	JA Jones	4,291

SI University Hospital	Morgan	5,497
Oceana Condos	Muss	230,421
Mets Stadium	Turner	122,876
Various sites	Cruz	133,450
	Total:	\$1,451,696

In conclusion, we respectfully submit that McNamara should be sentenced within the 46 to 57 month Guideline range.

Very truly yours,

ROSLYNN R. MAUSKOPF  
UNITED STATES ATTORNEY

By: Bridget M. Rohde/Joey Lipton  
Assistant United States Attorneys  
(718) 254-6348/6125

cc: Clerk of the Court (SJ)  
William Fleming, Esq.