



decisions was later addressed by the Second Circuit in United States v. Crosby, 397 F.3d 103 (2d Cir. 2005). In short, while this Court is no longer bound by the Sentencing Guidelines, it must calculate the applicable Guidelines range (which the parties agree is Level 11 with a range of 8-14 months in Zone C), and consider it along with the factors set forth in 18 U.S.C. § 3553(a) before imposing sentence. Under the Sentencing Reform Act, after undertaking this analysis, the Court must “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” set forth in Section 3553(a) (emphasis added).

Accordingly, Mr. McGuire submits this Sentencing Memorandum to provide the Court with critical information relating to this required analysis and to request that this Court impose a sentence as lenient as possible with due consideration given to the substantial needs of McGuire’s family.

## **I. BACKGROUND INFORMATION**

Thomas McGuire was born in the Bronx in 1935 where he lived in a middle class neighborhood. His family was close-knit: his father was a business manager of Local 15 and his mother was a homemaker. They both raised Mr. McGuire and his sister Rose in a normal and happy household. (PSR at 78-81).

Mr. McGuire initially attended St. Joseph’s grammar school in the Bronx until his father accepted a position in Rhode Island which required the family to relocate. The McGuire family eventually returned to the Bronx. Mr. McGuire completed grade school there and then attended Manhattan Preparatory School and later, Manhattan College. He was graduated in 1957 with a

degree in Business Administration. In his senior year, he joined the Army Reserves and served for several years; he was honorably discharged in the early 1960's.

He began his career with Local 15 in the late 1950's and there began his climb within the Union culminating in his election as Business Manager in 1975. Mr. McGuire married his wife, Maureen, in 1964 and they bought a house a year later in Pearl River, New York. They live in that same house today. Together they have raised four children: Kerry (age 40); Thomas (age 37); Matthew (age 34); and Tara (age 32), all of whom live nearby. Their close proximity has enabled Mr. McGuire to be a significant part of their lives.

Mr. McGuire's commitment to his family is not a new-found avocation discovered at the eve of sentencing. As the letters submitted by his wife and children attest, Thomas McGuire has been there for his family at every juncture. His son, Matt, describes his father's active role in raising Matthew and his siblings and the important role he now plays as grandfather to six children. The letter submitted by his daughter Kerry describes the "unconditional love [he] has helped instill in his children and grandchildren" while Mr. McGuire's oldest son, T.J., simply states that his father has been "there for me without fail for my entire life." Mr. McGuire's youngest daughter, Tara Doherty, describes the support he provided her throughout her life: how he taught her to laugh and to be independent. Tara recounts the important role Mr. McGuire now plays to her four-year-old son Kieran, as Mr. McGuire has taught him to fish and to play baseball. Tara also describes with admiration Mr. McGuire's role as a devoted husband to Maureen these past 41 years. Maureen McGuire's letter --- recounting their 41 years of married life -- confirms that Tara's observations about their marriage were on target.

Mr. McGuire's tenure as the Business Manager of Local 15 has been impressive on many fronts as evidenced by letters submitted by the rank and file of Local 15, his business adversaries and professional colleagues. In his handwritten note, Mr. Lloyd Abrahamsen, an "oiler" (the lowest paying position within Local 15's jurisdiction) is grateful for the way Thomas McGuire treated him -- by giving him opportunities that Mr. Abrahamsen simply never expected: "...[T]he first time I met Tommy he made me feel like I was part of the union. I have never known him to say an ill word or deed..." In another handwritten note, Kevin Johns stated that upon becoming a member of Local 15 in 1984, he observed that "Tom cared about one thing and that was the members of this local receive an honest days wages for an honest day's work." Daniel A. Murphy (unrelated to Mr. McGuire's co-defendant) was a member of Local 15D for more than 42 years. He recalls Tom McGuire's "open door policy" to assist those in difficult personal situations and his creation of a medical, pension and annuity plan that is the envy of other trades.

Mr. McGuire showed respect to all with whom he worked. Laura Adduchio, who worked in the Welfare Fund Office, described Mr. McGuire's personal interest in the families of Local 15 employees. She sees him as an individual who "never looked the other way when there was an opportunity to help people." A former lawyer for Local 15, Robert Brady, described Mr. McGuire as a "man of outstanding character" who always acted for the "benefit of the members". James Callahan, the present Business Manager of Local 15, echoed that sentiment, describing Mr. McGuire's efforts to "better" the membership of Local 15 while demonstrating a "human side" that was "always there." Vincent Donahue, Jr., a member of Local 15D for 37 years,

observed that unlike other unions, under Mr. McGuire's leadership, the "funds stand prosperous and secure". Moreover, "[a]ll I know is that he always had the members and this union in his heart and I believe our welfare was always in the fore-front of his mind and actions."

Patrick Keenan, the Administrator of the Funds, had this to say about Mr. McGuire:

He was passionate because he cared. Tommy cared for the rights of the members to have humanizing work that is dignified and meaningful. He cared that the members were paid fairly and on time for the dangerous work that they performed. He cared for the member's safety. And, he cared for the physical and financial security of the member's family.

Those who encountered Mr. McGuire from other vantage points also saw a man passionate about the fate of the Local 15 members. John Sweeney, the well-known President of the AFL-CIO, who has known Mr. McGuire for thirty years, characterizes him as "one of the most dedicated and committed local union leaders.... working tirelessly to improve the wages, benefits, and working conditions of the members of his local...." Frank McArdle, who was an Assistant to Mayor Beame and the Commissioner of Environmental Protection for Mayor Koch, was until recently, the Managing Director of the General Contractors Association ("GCA"), one of the largest heavy construction associations in the country. Mr. McArdle sat across the collective bargaining table from Thomas McGuire for years. While they disagreed on many contractual matters, Mr. McArdle had tremendous respect for Mr. McGuire, who he saw as a tireless advocate for his members and a man of integrity and honesty. Mr. McArdle, with knowledge of this criminal proceeding, still believes in Mr. McGuire's "fundamental honesty and integrity." Ted King, the Director of Labor Relations for the GCA, who also described himself

as an “adversary” to Mr. McGuire, mentioned McGuire’s diligent work for the Local 15 members and his varied accomplishments for the City of New York.

Such accomplishments include the substantial time Mr. McGuire volunteered at “ground zero” in the rescue and recovery efforts that followed the 9-11 tragedy. From early morning to late at night for months on end, Mr. McGuire was tireless in the important yet haunting work occurring at the World Trade Center site. His specific experience in the building and trade industry enabled him to undertake numerous important tasks ranging from ensuring that rescuers had adequate safety equipment (see Letter of Kevin Johns) to checking that companies providing excavation assistance were appropriately skilled to undertake the precarious and sensitive recovery work.

Mr. McGuire’s accomplishments also included his promotion of many public projects that improved the quality of life in New York City, including Hudson River Park and the waterfront of Chelsea and Greenwich Village.

Mr. McGuire constantly “gave back” to his community. From organizing the U.S. Marine Corps “Toys for Tots” Program to co-chairing the Cardinal’s Committee on the Laity Fundraising efforts, Mr. McGuire always labored for those less fortunate. Denis Hughes, the President of the New York State AFL-CIO, described Thomas McGuire’s tireless efforts to “shape strategies and initiatives to enhance the lives and working conditions of working people” in New York and to raise funds for “the neediest among us” through the Cardinal’s Committee of the Laity. In commenting on Mr. McGuire’s work for that organization, Marie Maloney, who worked as a secretary for Mr. McGuire for 14 years, noted that through Mr. McGuire’s efforts,

funds were generated to administer to the poor, sick, mentally and physically disabled and the homeless as well as to fund education, regardless of race, creed or color.

He has also been a wonderful neighbor to those living in Pearl River. As his longtime neighbor, Peter F. Sheridan observed: “[Tom McGuire] has helped many families in our town in need of support due to the death of a bread winner or a burden due to sickness.”

Mr. McGuire’s involvement in this case has simply been the lowest part of his life. True to form, Mr. McGuire is less worried about himself than he is for his family members who have suffered a great deal as a result of the proceedings that have taken place thus far. To begin with, the inaccurate press accounts linking Mr. McGuire with organized crime (notwithstanding the filing of a superseding indictment that made no reference to organized crime whatsoever) has caused pain – even to his grandchildren in school and in the playground.

But far more disturbing is the impact this case has had on his daughter, Kerry and her children as a result of the proceedings against Thomas McNamara. Mr. McNamara is Mr. McGuire’s co-defendant and son-in-law, Thomas McNamara. One of Kerry’s three children, Ryan, was present when his father was removed from his home in handcuffs the day of his arrest.<sup>1</sup> He was nine years old at the time. This event, among others, has caused complications in young Ryan’s life, which requires therapeutic intervention. Since then, Mr. McGuire has been an integral part of young Ryan’s rehabilitative efforts, including physically transporting Ryan to medical visits. While, in the ordinary course, Ryan’s mother, Kerry, would handle such

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<sup>1</sup> We do not suggest that the arrest violated governmental procedures, but simply recount the impact it had on this young boy.

appointments, she has recently become a substitute teacher in an effort to secure a full-time position in the 2005-2006 academic year as a means of supporting her family for whatever time is required. Hence, Kerry cannot always provide the personal care required in this sensitive situation and Mr. McGuire is playing an important role in stabilizing this situation while his wife, Maureen, is furnishing assistance to their other daughter, Tara Doherty.

Tara Doherty was pregnant during much of these criminal proceedings. Tara was physically upset about these proceedings throughout her pregnancy. Complications arose and the baby, Owen, was born premature with resulting lung complications. To complicate matters further, Tara's four-year old has severe allergies and asthma while her two-year old suffers from an asthmatic condition. Mrs. McGuire spends the bulk of her time assisting the Dohertys while Tom McGuire works daily to support the McNamara household in a myriad of ways. For instance, in addition to attending to his grandson Ryan's needs, Mr. McGuire often picks up all three McNamara grandchildren at school, takes them to their various after-school activities and minds them while they do their homework until their mother returns from work. Further, because their mother works in a different school than the one her children attend, Mr. McGuire has been needed to mind the children on vacation days while their mother is teaching. In short, Mr. McGuire and his wife are juggling to help their children keep the McNamara and Doherty households together through difficult times.

With this backdrop, we turn to the sentencing issues before this Court.

## **II. THE OFFENSE CONDUCT AND SENTENCING GUIDELINES**

Based on the plea agreement, the PSR and the related correspondence, the parties agree that the applicable Guideline Level is 11 with a sentencing range of 8 to 14 months. Under the terms of the plea agreement, the defendant cannot move for a downward departure.

After the plea agreement was signed, however, the United States Supreme Court decided Booker. In essence, the Supreme Court ruled that the guidelines are no longer mandatory but must be a factor considered by the Court before imposing sentence. Specifically, once an applicable Guidelines range has been determined, "the sentencing judge will have the duty, imposed by subsection 3553(a)(4), to "consider" it, along with all of the factors listed in section 3553(a)." Crosby, 397 F.3d at 113. These factors include: the nature and circumstances of the offense and history and characteristics of the defendant; the need for the sentencing to reflect the seriousness of the offense, to promote respect for law, and to provide just punishment; specific and general deterrence; the need to provide the defendant with training, medical care, or treatment; available sentencing alternatives; consistency in sentencing among similarly-situated defendants; and the need to provide restitution. 18 U.S.C. § 3553(a).

We respectfully submit that the application of these factors in this factual context warrants a lenient sentence. While Mr. McGuire stands before this Court guilty of two felonies, the charges relate to his acceptance of Christmas gifts; he was convicted of accepting gratuities and not of accepting bribes. As the letters reflect, Mr. McGuire is of outstanding "character" as people from all walks of his life attest. Deterrence has already been accomplished. Mr. McGuire, who is 69 years old, has retired from Local 15 and is not in a position to commit

further offenses. He has suffered a great deal for his crimes already. He has watched, painfully, how his conduct has brought grief to his family who will suffer forever as a result. He was forced to step down from the Union and the position he loved. As a long time union member perceptively observed: "Tom is a seventy year old man who has spent all his adult life serving and leading one of the premier unions of New York City. The embarrassment to himself, his family and the loss of stewardship of the union he so loved, I'm sure is devastating to him." (See Letter of Vincent Donahue, Jr.)

Thomas McGuire has been the cornerstone of a wonderful family; has given much to his extended community; he has lent a helping hand to those less fortunate; and he has been a valuable resource to New York City for decades. He is presently aiding his family members who desperately need his assistance. These are the views of those who know him best: the many neighbors, co-workers, union members and even adversaries from all corners of the community who think the world of Mr. McGuire and want this Court to know about his decency before sentence is imposed.

Before imposing sentence, we respectfully ask that you "take [Mr. McGuire's] lifetime of service to the labor movement, and his entire body of work as an activist on behalf of those least fortunate among us" into consideration (See Letter of Denis Hughes). Specifically, we ask that this Court to impose the most lenient sentence possible with consideration given to the substantial needs of his family.

We note that in 2002, the U.S. Sentencing Commission proposed amending the Sentencing Guidelines to allow some defendants who fell in Zone C of the sentencing table, as

Mr. McGuire does, to serve their entire sentence at home. The proposed amendment, reported in the Federal Register at 67 FR 2456, was suggested specifically with an eye toward allowing more flexibility to judges in sentencing first-time, nonviolent offenders. Three versions of the amendment were proposed; the version that ultimately was voted on would have allowed Mr. McGuire to receive a sentence of full home detention. The Commissioners failed to pass the amendment as proposed in 2002 but generally agreed that consideration of the amendment should await the results of then-pending studies on recidivism and other data. Hence, the Sentencing Commission has proposed home confinement as a reasonable penalty for defendants who fall in Zone C of the Guidelines.

Finally, we note that under the terms of the plea agreement, Mr. McGuire is obligated to pay \$36,000 in restitution. While Mr. McGuire is of some means, we ask this Court to decline to impose a fine, as permitted by Title 18, U.S.C., § 3572(b), so, among other reasons, he can help provide financial support to the McNamara family during whatever time period Mr. McNamara cannot work.

**CONCLUSION**

For the reasons set forth above, we respectfully ask this Court to impose as lenient a sentence as possible – one that fulfills the Sentencing Reform Act’s mandate that “[t]he court shall impose a sentence sufficient, but not greater than necessary....”

Respectfully submitted,

DAY, BERRY & HOWARD LLP

By \_\_\_\_\_/s/\_\_\_\_\_

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**CERTIFICATION**

THIS IS TO CERTIFY that a copy of the foregoing was sent via regular mail, postage prepaid, this 6th day of April, 2005, to:

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