UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 07 CR 18
	)	Judge John F. Grady
JOHN T. AMBROSE	)	

JOHN T. AMBROSE'S SENTENCING MEMORANDUM

Defendant John T. Ambrose, through his counsel, Francis C. Lipuma, herein submits to this Honorable Court his Sentencing Memorandum through which he presents his objections and positions on issues related to the determination of a reasonable and fair sentence. For the reasons set forth below, Mr. Ambrose respectfully requests the Court to impose a sentence of probation, pursuant to the factors identified in 18 U.S.C. §3553(a). A term of probation would appropriately recognize the history and characteristics of Mr. Ambrose, the nature and circumstances of the offense, and the need to impose a sentence sufficient, but not greater than necessary to be consistent with the purposes of sentencing.

This memorandum consists of five principal sections. First, Mr. Ambrose must address several factual inaccuracies contained within the Presentence Investigation Report ("PSR"). Second, Mr. Ambrose presents his objections to certain of the probation officer's scoring calculations and sentencing range under the advisory Sentencing Guidelines. Third, relevant information is provided regarding Mr. Ambrose's background and personal history in order to allow the Court to view a more complete picture of the man to be sentenced, and for the purpose of mitigation under the mandatory provisions of §3553(a). Fourth, Mr. Ambrose's offense conduct is addressed in relation to the nature and circumstances of the offense under §3553(a). Finally, certain of the most prominent facts are applied to settled legal principles in support of a variance, deviation, or departure from the

government's and probation officer's projected sentencing ranges to a term of probation, if justice truly is to be done.

I. The PSR Contains Several Factual Inaccuracies

Several statements set forth in the PSR deserve comment and correction. The best way to accomplish that is to return to April 28, 2009, and revisit the jury's findings as stated on the verdict forms. On count one, the §641 count, the jury returned a verdict finding only that Mr. Ambrose had "stolen, converted, or conveyed" information that he had "worked on and was assigned to the witness's (Nicholas Calabrese) WITSEC security details." (Verdict Form, item h.). On count two, the §3521(b)(3) count, the jury returned a verdict finding only that Mr. Ambrose had disclosed information that "[t]he witness, Nicholas Calabrese, was brought to Chicago, Illinois as part of the WITSEC program[,]" and that – identical to the finding in count one – he had "worked on and was assigned to the witness's (Nicholas Calabrese) WITSEC security details." (Verdict Form, items g. and h.). Finally, of course, the jury found Mr. Ambrose not guilty of the alleged §1001 false statement charges.

In stark contrast to the jury's findings, perhaps at the suggestion of the government, the probation officer has erroneously reported to the Court that Mr. Ambrose stole and disclosed information that: "Calabrese was indeed cooperating with authorities, that Calabrese had provided information about 19 murders, the dates on which Calabrese traveled to Chicago, the locations where Calabrese was taken (murder sites), the fact that James Marcello, Anthony Zizzo, and John Matassa's names were included in the confidential file (information provided at the request of the Marcellos), and that Calabrese had called his wife three times while in Chicago." (PSR at 3, lines 74-80).

The jury did not make these findings, and, in fact, it refused and rejected the government's allegations and arguments to return such findings. This is but one example of many unsupported and incendiary statements that fill the PSR. What can be drawn from these types of statements is how far the government will go, and how far the probation office is willing to go to stretch the evidence, the jury's findings, and any semblance of what is right and what is just in an effort to sway the Court to punish Mr. Ambrose and boost the sentence as heavily as possible.

The probation officer also adds inflammatory remarks that Mr. Ambrose "was provided with *the most confidential and sensitive information known to the United States government*. He was entrusted with protecting *the government's most valuable witness against the largest crime syndicate in Chicago*." (PSR at 7, lines 206-209) (emphasis added). Against all odds, the hype and sensationalism have only increased with time.

Foolishly boasting about protecting Calabrese hardly can be considered the United States government's "*most confidential and sensitive information*." It could be suggested that disclosing the launch codes of the country's nuclear warheads might be "*the most confidential and sensitive information known to the United States government*." Or perhaps divulging the identities of undercover CIA agents operating overseas might be "*the most confidential and sensitive information known to the United States government*." But not to the probation officer here, where exaggeration and overstatement are set forth as fact.

Moreover, by some estimates there are less than 100 "Outfit" members in the Chicagoland area. On the other hand, there are literally thousands of violent gang members represented in dozens of different gangs in the Chicagoland area. Unlike the probation officer, most reasonable people would be of the opinion that the Gangster Disciples, the Vice Lords, the Latin Kings and dozens of

other gangs are larger and pose a greater danger to society than the "Outfit." These types of claims by the probation officer have no place in a PSR for they are not based in reality and reveal a genuine bias, or, at a minimum, they reflect an irrational and unbalanced view of the case.

The PSR contains several other instances of bogus information. The PSR incorrectly recites that Mr. Ambrose's fingerprints were found on a transcript of Calabrese's testimony, (PSR at 3, lines 88-89), that when questioned by Patrick Fitzgerald and Robert Grant, Mr. Ambrose denied having reviewed Calabrese's confidential file and then admitted that he had "accessed and reviewed" the file after being confronted with fingerprint evidence. (PSR at 3, lines 88-93). As the evidence at trial clearly established, Mr. Ambrose, like his interrogators, was confused by the accusations he was facing. In fact, the testimony at trial revealed that Mr. Ambrose simply asked, "What file?," according to the testimony of Mr. Fitzgerald, while Mr. Grant unequivocally testified directly contrary to Mr. Fitzgerald, telling the jury that Mr. Ambrose never asked, "What file?" Further, the probation officer's use of the word "accessed" is very misleading because the uncontroverted proof at trial – even though Mr. Fitzgerald and Mr. Grant were completely unaware of it – was that copies of portions of Calabrese's WITSEC materials were freely handed out to Mr. Ambrose and other deputies. Additionally, there was no transcript of Calabrese's testimony in the WITSEC file, as the probation officer claimed in her report.

The probation officer also claims that Mr. Ambrose provided the FBI with "conflicting and/or inconsistent information," and proceeds to argue that Mr. Ambrose stated that he knew about William Guide's "associations" with organized crime figures, including John DiFronzo, and that he wanted to "ingratiate himself" with DiFronzo. Later, according to the PSR, Mr. Ambrose stated that he had no idea that Guide would pass information on to others. (PSR at 3, lines 94-99). First, the jury

rejected the testimony of the government's witnesses (Mr. Fitzgerald, Mr. Grant, and two FBI agents), and found Mr. Ambrose not guilty of making false statements. You would think that would count for something. Second, the only "association" demonstrated between Guide and DiFronzo at trial was that for a very short period they served time together at the same institution. Third, according to government witness Michael Marcello, DiFronzo was not at all involved in any purported chain of communication.

Still not done, the probation officer also claims that Mr. Ambrose's father was the "lead defendant in the 'Marquette 10' police corruption case." (PSR at 3, line 87). Upon information and belief, Thomas Ambrose was not the "lead" defendant, but rather was listed first alphabetically and/or because his notice of appeal was the first one filed. These are just some examples of unbalanced analysis and unrestrained hype and sensationalism in the PSR, and they should be stricken.

Finally, Mr. Ambrose objects to the two pages attached to the PSR referencing the purported "Related Cases" involving the defendants in the government's so-called "Family Secrets" case. These are not related cases and the two pages should be stricken from the PSR.

II. Certain Offense Level Calculations Are Erroneous

There are several incorrect applications and adjustments under the provisions of the advisory Sentencing Guidelines. The inaccurate factual statements replete across the PSR perhaps caused the probation officer to imprudently assign additional offense levels and a corresponding aggravating term of incarceration against Mr. Ambrose. Based on her ill-founded conclusions and scoring calculations that the total offense level is 17, the probation officer has proposed that the advisory sentencing range is 24 to 30 months of imprisonment. In so doing, any notion of what is right, what

is fair, and what is just has been cast aside. Rather, fair and correct applications of the pertinent provisions of the guidelines establish that the total offense level is 8 and, with no criminal history points, the resulting sentencing range is 0 to 6 months.

A. There Is No "Loss"

Section 2B1.1 of the Sentencing Guidelines is applicable, and the base offense level is 6. As there is no pecuniary harm, the probation office correctly concludes that there is no enhancement under §2B1.1(b). The government's objection to this conclusion is a non-starter.

The law is clear that under subsection (b)(1), the term "actual loss" means "the reasonably foreseeable pecuniary harm that resulted from the offense." USSG §2B1.1, comment. (n. 3). The term "pecuniary harm" means "harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm." *Id*. Moreover, also excluded from any loss measurement is "[c]osts to the government of, and costs incurred by victims primarily to aid the government in, the prosecution and criminal investigation of an offense." *Id*. For instance, the costs of travel for meetings between a witness and the FBI are not measured under the loss provision, *see United States v. Schuster*, 467 F.3d 614, 619-620 (7th Cir. 2006), contrary to the government's urging.

The guidelines and case law clearly preclude the claimed losses purportedly suffered by the government. For example, the claimed $14,900 cost of Calabrese's transportation to Chicago in May 2003 is not properly considered in determining loss as the probation office rightly concluded. (PSR at 5, lines 147-148). Despite the authority and policy against it, the government apparently seeks to transform the sentencing hearing into a civil damage award hearing with the Court assigning

monetary values to intangible harms.[1] The government claims that Mr. Ambrose should be held liable for a purported $240,000 loss based on the concept of the "thieves market," in that the Marcellos supposedly paid $4,000 per month for some five odd years to Calabrese's family for Calabrese's silence.

The government's reliance on the $240,000 figure is misplaced. As this Court may recall, Michael Marcello testified that initially, and for a long time, the $4,000 was not paid by the Marcellos, but rather was paid by Calabrese's friend, John Monteleone. Further, the initial purpose was not to keep Calabrese silent, but rather to provide for his family while he was incarcerated. Marcello testified to this repeatedly in the grand jury and during the trial. Consequently, the $240,000 figure urged by the government does not have support in the record. In any event, §2B1.1 was specifically intended to bar such wide-ranging inquiries. As the government bears the burden of proving the amount of loss, *United States v. Vivit*, 214 F.3d 908, 914 (7th Cir. 2000), and has failed to do so, the pecuniary harm is zero.

To the extent the Court credits the government's theory, which rests on a series of Marcello's inconsistent statements, the Court need be mindful of the need to make sentencing determinations based on accurate, reliable, and trustworthy information. *United States v. Henderson*, 58 F.3d 1145, 1152 (7th Cir. 1995). Corroboration is a step toward establishing reliability. *United States v. Linnear*, 40 F.3d 215, 219 (7th Cir. 1994). A loss estimate based on hearsay may be allowed if the hearsay is reliable. *United States v. Sliman*, 449 F.3d 797 (7th Cir. 2006); *United States v. Patrick*, 479 F.3d 760

[1]In its "Version of the Offense," and as recited in the PSR, the government held out $3 million as a potential loss amount based on an undocumented claim that the safe site may have to be moved, leveling the cost on Mr. Ambrose despite the fact that unauthorized people, including criminal defense attorneys, were allowed into the safe site. The government has since abandoned that position.

(11th Cir. 2007) (rejecting estimate of loss based on tax liability unrelated to embezzlement). Here, there is no corroboration for Marcello's obvious inconsistent statements and we are left with a gaping hole in reliability.

Should the government suggest that the Court substitute its views for the jury's verdict, a higher standard of proof should apply. *See United States v. Anderson*, 259 F.3d 853, 858 (7th Cir. 2001); *United States v. Ofcky*, 237 F.3d 904, 907-908 (7th Cir. 2001); *United States v. Kroledge*, 201 F.3d 900, 909 (7th Cir. 2000). A sentence based entirely on the civil standard of proof does not promote respect for the law, which is a factor included in §3553(a)(2)(A).

The various bloated estimates unsupported by documentation and corroboration are not supported by the jury's verdict based on proof beyond a reasonable doubt and thus, if adjusted, would be constitutionally infirm. In order to avoid the very real problem here of the tail wagging the dog – with respect to any sentencing adjustment – boosting the potential sentence by many years in the absence of jury determinations based on proof beyond a reasonable doubt, any increase in the offense level must be proven beyond a reasonable doubt in order to protect Mr. Ambrose's Fifth and Sixth Amendment rights. In that light, because the government failed to prove nearly all of the proposed special findings as set forth in the superseding indictment and verdict forms to the jury's satisfaction based on proof beyond a reasonable doubt, any belated request to substitute findings must be rejected.

The monetary, the out-of-pocket loss to the government is zero, and that figure should be used in applying §2B1.1. The Sentencing Commission has made it clear that where the amount of loss to the victim can be determined, even if it is zero, that is the loss figure that must be used to

calculate the loss for guideline purposes. USSG Amend. 617. Therefore, under the advisory guidelines, the resulting adjusted offense level remains at a base of 6.

Finally, in its sentencing memorandum, the government also submits that as an alternative measure of loss, the gain to an offender can be used when there is a loss, but it cannot reasonably be determined. (Docket Item 157 at 5). The government's position has support in the law. *See United States v. Serpico*, 320 F.3d 691, 698 (7th Cir. 2003). Here, of course, there was no monetary gain to Mr. Ambrose at all. The evidence was clear that Mr. Ambrose did not seek, was not paid for, and obtained no gain whatsoever for the alleged criminal conduct. Consequently, Mr. Ambrose agrees with the government that his gain, that is, zero, may be used as an alternative measure of loss. The adjusted offense level remains unchanged.

B. Section 2B1.1(b)(13)(A) Is Inapplicable

Section 2B1.1 provides for a two-level increase in the offense level if the offense involved "the conscious or reckless risk of death or serious bodily injury[.]" USSG §2B1.1(b)(13)(A). If the resulting offense level is less than level 14, as it is in this case, there is an automatic increase to level 14. *Id*. Effectively, the probation officer's unfounded conclusion results in a 8 level increase (more than twice the base offense level) to Mr. Ambrose. The probation officer surmises that the provision is applicable because Mr. Ambrose disclosed Calabrese's "whereabouts and activities." (PSR at 6, line 188). Again, the jury did not find that Mr. Ambrose disclosed the items suggested by the government and adopted by the probation officer. As the factual predicates relied upon by the twin offices is erroneous, this provision of the Sentencing Guidelines is inoperable.

Moreover, a very telling concession was made by the government which directly implicates this issue. In a Press Release dated January 11, 2007, Gary S. Shapiro, First Assistant U.S. Attorney

for the Northern District of Illinois, stated that "the investigation, so far, has not uncovered any evidence that either this witness or any other was ever in danger, and there is no evidence that any attempt was made to harm any protected witness." This concession should be viewed as a waiver and/or a forfeiture of the government's and the probation officer's attempts to now put this provision into play.

Further, the jury understood the evidence from the proper perspective and rejected the vast majority of the alleged specific findings about the substance of the disclosure. Juror Christy Keller's post-trial comments to the press are illuminating: "He jeopardized the [WITSEC] program by opening his mouth and shooting it off, but I don't think there was any intent to harm the program[.]" Robert Mitchum, *U.S. Marshal Found Guilty*, Chicago Tribune, April 29, 2009, at 10.

As reflected in the jury's verdict and post-trial comments, Mr. Ambrose foolishly boasted to Guide – someone he thought of as a trusted friend and father figure – words akin to having guarded some big OC guy. There is no evidence the Marcellos ever used this information. No action ever was taken against Calabrese or his family. Nobody was harmed. The WITSEC documents identified where Calabrese was housed and where he was going to be housed. That is information the Marcellos never discussed because they did not have it. Significantly, the WITSEC program performed its duties and provided protection to Calabrese and his family before, during, and after the prosecution without incident.

C. An Upward Departure Under §2B1.1 Is Not Warranted

The government and the probation officer also join together in seeking an upward departure. They submit, *inter alia*, that there was a "plethora of non-monetary harm" to the government, including risk to current and future participants in the WITSEC program (although neither explains

the risk), potential grave danger to Calabrese and his family (although Calabrese testified in the "Family Secrets" trial, every defendant was convicted, and Calabrese and his family are unharmed), endangerment to witnesses housed at the safe site and employees at that location (although WITSEC inspectors allowed unauthorized people to enter the safe site, including criminal defense attorneys), reputational damage to the Marshal's Service and an overall public distrust of law enforcement (without any documentation or empirical support). (PSR at 18-19, lines 528-557; Docket Item 157 at 6-7). The government adds that an unnamed "government executive" had to travel and work 200 hours implementing new administrative procedures, which exceeded $40,000. (Docket Item 157 at 6, n. 2). No information nor documentation has been tendered to Mr. Ambrose regarding this purported cost. In fact, the first and only time this has been raised was this week in the government's sentencing memorandum.

Regardless, this is not one of those cases where application of §2B1.1 "substantially understates the seriousness of the offense." USSG §2B1.1, comment. (n. 19). There is no evidence the Marcellos ever used this information. No action ever was taken against Calabrese or his family. Regarding the claimed reputational damage to the U.S. Marshal's Service, pretrial and trial witness FBI SAC Robert Grant stated in the aforementioned Press Release: "I am also confident that the Witness Security Program remains a vitally important resource for law enforcement and that its effectiveness is not diminished by this isolated problem." Sharing that view, Mr. Shapiro stated: "I remain confident in the integrity of the United States Marshals Service and the government's Witness Security Program[.]" Finally, an upward departure is not permissible in cases where loss could not be determined with reasonable accuracy. *United States v. Schaefer*, 384 F.3d 326, 335-36

(7th Cir. 2004). For these reasons, the government's and probation officer's upward adjustments requests should be rejected.[2]

D. There Was Not An Obstruction Of Justice

The government also seeks a two-level obstruction of justice enhancement against Mr. Ambrose on the grounds that he purportedly "provided false statements to the FBI and false testimony during a suppression hearing." (PSR at 4, lines 110-111). According to the government, Mr. Ambrose both "made false statements to the FBI by failing to honestly disclose the extent of his communications with William Guide or the time of his access to the confidential WITSEC file," and "when he testified that on September 6, 2006 he was never told that he was not under arrest, that he believed he was in custody, and that he did not feel free to leave the FBI office[.]" (PSR at 4, lines 119-120 and 112-113, respectively).

The first purported basis is easily disposed of here. FBI Special Agent Anita Stamat advised the probation officer that Mr. Ambrose's statements to investigating agents and prosecutors in September 2006 did not significantly obstruct or impede their investigation of Mr. Ambrose. (PSR at 4, line 102-103; PSR at 8, lines 237-239). Thus, §3C1.1 is inapplicable because Mr. Ambrose did

[2]The probation officer also mentions that other upward departure provisions, specifically "§2H3.1" and "§2K2.7," may be applicable. (PSR at 18-19, lines 531-536 and 545-557, respectively). Section 2H3.1 is inapplicable and has not been advanced as a ground for departure by the government. Without case law or argument in support, this provision should be squarely rejected. Further, there is no "§2K2.7" in the guidelines. The fact that the government believes that "§2K2.7" is "another valid justification for an upward departure," (Docket Item 157 at 6), does not change the fact that there is no §2K2.7. To the extent both the probation officer and the government have mis-identified the provision, §5K2.7 does not permit an upward departure in this instance because there has been no proof whatsoever that Mr. Ambrose's conduct "resulted in a significant disruption of a governmental function." USSG §5K2.7. Moreover, interference with a government function is inherent in the counts of conviction. Finally, both the probation officer and the government recite the wrong standard for the Court; §5K2.7 requires proof of a "significant" disruption of a governmental function and not a "considerable" disruption.

not "provide a *materially* false statement to a law enforcement officer that *significantly* obstructed or impeded the official investigation or prosecution of the ***instant*** offense[.]" *See* USSG §3C1.1, comment. (n. 4(g)) (emphasis added). The government's belated claim that "all that is required is for the government to establish that defendant 'attempted to obstruct or impede,' . . . the progress of the investigation into his conduct[,]" (Docket Item 157 at 8), is clearly belied by the express language of the guidelines.

With respect to the second purported basis, the guidelines allow an adjustment where, *inter alia*, "the defendant *willfully* obstructed or impeded, or attempted to obstruct or impede the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction[.]" USSG §3C1.1 (emphasis added). This guideline cautions: "In applying this provision in respect to alleged false testimony or statements by the defendant, the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice." USSG §3C1.1, comment. (n. 2). In fact, a defendant must act with the specific intent to obstruct justice. *United States v. Ewing*, 129 F.3d 430, 434 (7th Cir. 1997).

Mr. Ambrose did not testify at the suppression hearing with the willful intent to provide false testimony about material matters. To the extent his testimony differed from the government's witnesses on the three points identified in the PSR, they should be considered the result of confusion, mistake, or faulty memory. Conflicting testimony does not necessarily amount to perjury. *United States v. Miller*, 159 F.3d 1106, 1112 (7th Cir. 1998).

A good example of the importance of this principle is the inconsistency between the testimony of Mr. Fitzgerald and Mr. Grant at trial. According to Mr. Fitzgerald, Mr. Ambrose asked

his interrogators, "What file?" According to Mr. Grant, Mr. Ambrose never asked that question. Furthermore, at least two jurors stated "they were bothered by inconsistencies in the testimony of Fitzgerald and Grant about the 2006 interview" with Mr. Ambrose. Robert Mitchum, *U.S. Marshal found Guilty*, Chicago Tribune, April 29, 2009, at 10.

As another example, during the suppression hearing, Mr. Fitzgerald testified that he told Mr. Ambrose he was not under arrest, but that Mr. Grant did not tell Mr. Ambrose he was not under arrest. Mr. Grant, on the other hand, testified that he had, in fact, told Mr. Ambrose he was not under arrest, thus contradicting Mr. Fitzgerald. Two clearly irreconcilable statements; do we accuse either of them of perjury? Of course not because memories can differ, nor should Mr. Ambrose be so penalized. It certainly would have helped, however, if either of them had taken notes or caused the interview to be recorded by audio or video means.

There is no material and substantive difference between those examples and Mr. Ambrose's answers, particularly since the accusations being made proved to be so wrong, that is, Mr. Ambrose did not meet mob bosses for dinner or breakfast as he was accused of doing. Close cases should be resolved in favor of the defendant. *See United States v. Hach*, 162 F.3d 937, 949 (7th Cir. 1998). While the Court ruled against Mr. Ambrose's motion to suppress, it is respectfully submitted that objective minds could reasonably disagree as to whether Mr. Ambrose was in custody and subjected to interrogation on September 6, 2006.

E. The Counts Of Conviction Should Be Grouped

The probation officer determined – without any reference let alone analysis – that counts one and two are not grouped. (PSR at 9). This determination is fundamentally flawed. Section 3D1.1 requires the sentencing court to group the counts of conviction (excluding counts containing

specified or consecutive terms of imprisonment) into distinct groups of closely related counts. USSG §3D1.1 (a)(1). Counts that, *inter alia*, involve the same victim, act, or transaction, counts that involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan, and counts that feature offense levels determined largely by quantity or aggregate harm (such as those involving loss) are grouped. USSG §3D1.2(a)-(d).

Counts one and two are closely related counts because they involve substantially the same harm. The counts also involve the same victim and two or more acts or transactions. The counts represent essentially one composite harm to the same victim even though they may constitute legally distinct offenses occurring at different times. This is demonstrated by the superseding indictment and the verdict forms tendered to the jury.

In count one, the jury was required to consider guilt or innocence based on Mr. Ambrose's "having stolen, converted, or conveyed without authorization" one or more of the eleven specified items (a. through k.) stated in the superseding indictment and the verdict forms. In count two, the jury was required to consider guilt or innocence based on Mr. Ambrose's "unauthorized disclosure" of the identical eleven specified items (a. through k.). First, the jury was allowed to find Mr. Ambrose guilty on count one based solely on whether he "conveyed" information. At the same time, the jury was allowed to find Mr. Ambrose guilty on count two based on the same conveyance or disclosure of information. The acts of conveying and disclosing are the same. Second, the jury considered precisely the same eleven items of information in returning its verdicts on counts one and two. Because the theft count is so closely related to the disclosure count, no units are added.

III. Mr. Ambrose's Background And Personal History Merit A Variance[3]

Section 3553(a) recognizes that two mandatory factors to be considered in determining an appropriate sentence are the "history and characteristics" of the individual defendant. 18 U.S.C. §3553(a)(1). Thus, no defendant can be defined and sentenced simply by reference to his worst act, but rather he must be sentenced with the benefit of consideration of the full measure of the man as well as his demonstrated potential for rehabilitation and further significant contribution to society. Other than this case, Mr. Ambrose has no criminal history of any kind. The convictions directly conflict with every other aspect of his life, that is, as a law enforcement officer, as a contributing and valued member of the community, and as a loving husband, father, friend, and fellow citizen. As reflected throughout the many character letters, Mr. Ambrose is a good, kind, respected, and most generous person. His record and background as well as his present responsibilities and circumstances, considered individually and in a combined fashion, are simply beyond the norm and it is respectfully submitted that there is no compelling reason to remove him from society.

For starters, let us begin where the trial left off. The Honorable Charles P. Kocoras testified as a character witness for Mr. Ambrose. He testified that he found Mr. Ambrose to be truthful in all his dealings with him and that Mr. Ambrose was superb at his job. Former federal prosecutor Matthew Crowl likewise testified that Mr. Ambrose was especially good at his job, and that in all his dealings he found Mr. Ambrose to be very truthful. Former colleagues joined in that assessment, testifying that Mr. Ambrose was trustworthy, that he was a truthful person, and that they would trust

[3]The information contained herein is based on the PSR, the trial proofs, and the character letters submitted to the Court in support of Mr. Ambrose. "In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law." USSG §1B1.4.

their lives with him. These members of the community, these members of the "family" if you will at 219 South Dearborn, proudly and without hesitation stepped into the courtroom, took the oath to tell the truth, looked the jury square in the eye, and told them about Mr. Ambrose's character trait for truthfulness.

Even at the suppression hearing, Marshal Kim Widup testified that Mr. Ambrose was one of the stars in the office. Mr. Ambrose has performed many exemplary duties and good acts of conduct while serving the citizens of this district and several other districts. In order to allow a more balanced view of Mr. Ambrose's background and work as a Deputy U.S. Marshal ("DUSM"), present and former law enforcement officers have submitted letters to the Court, offering insights into the person of John Ambrose and the manner in which he discharged his duties as a federal law enforcement officer.[4]

Initially, it should be noted that information suggests that executives in the U.S. Marshals Service in Washington D.C. have directed all personnel to not only have no contact with Mr. Ambrose, but also to not assist him in any manner. Consequently, the large volume of character letters promised from Marshals personnel did not come through. In fact, only one DUSM submitted a letter in support to the Court, and his or her name will not be mentioned for fear of reprisal. That

[4]Another "mistake" in the PSR cannot pass without comment. The PSR recites: "According to the defendant, he was promoted several times throughout his employment and was highly regarded as a law enforcement officer." (PSR at 13-14, lines 395-397). That statement is false and should be stricken. Undersigned counsel was present when the probation officer interviewed Mr. Ambrose. At no time did Mr. Ambrose claim or imply that he "was highly regarded as a law enforcement officer." As most people who know him will say, and as the letters in support reflect, Mr. Ambrose is a most humble man and his career always has taken a back seat to his family. It must also be noted that the probation officer devoted several paragraphs of her report describing grounds for an upward departure, and yet she used just two sentences to describe grounds for a downward departure.

courageous DUSM, however, described for the Court Mr. Ambrose's professionalism and devotion to the job, and opined that Mr. Ambrose was one of the best investigators in the district.

John J. Kinnane, a former Cook County Assistant State's Attorney and Chief of Courts of Cook County, discussed Mr. Ambrose's enthusiasm, sense of direction, and work ethic, which always was above reproach. He also stated: "I never questioned John's character or integrity, nor do I now." A Chicago police detective, who cannot be identified publicly because he continues to work on the task force Mr. Ambrose once worked on, stated about Mr. Ambrose: "He is a great cop and will be missed especially among younger officers who need guidance on the street." Thomas Spanos, retired Commander in the Chicago Police Department, advised the Court that "John has the highest standards of morality and integrity – and the utmost respect for the law."

Thomas Kinsella has been a police officer for some 46 years, and he currently serves as the Executive Director of the Sheriff's Office of Criminal Intelligence. He spent 15 years assigned to a DEA task force, and advised that he testified a number of times in the federal court. Mr. Kinsella has known Mr. Ambrose for about ten years, both professionally and personally. He described how Mr. Ambrose "worked tirelessly," and "conducted himself in a professional and I believe, honest manner." Clearly, Mr. Ambrose earned the respect of fellow officers as well as the citizens of our community.

Throughout his ten year career as a DUSM, Mr. Ambrose's record has been filled with honor and distinction, and he has received many awards and commendations for his outstanding police work in fugitive investigations and apprehensions. He is the recipient of six Department of Justice awards for service above and beyond the call of duty. In May 2004, Mr. Ambrose was promoted to the position of Supervisory Inspector of the Great Lakes Regional Fugitive Task Force, where he

earned an impeccable reputation as an honest and hardworking law enforcement official. He also is a certified hostage/crisis negotiator, and has been called upon to use those skills in hostage situations. In cooperation with other law enforcement officials, Mr. Ambrose has been involved in thousands of investigations and apprehensions of violent offenders and fugitives in the Chicagoland area, throughout Illinois, and in several other states.

Among the many violent fugitives Mr. Ambrose arrested or assisted in arresting, some of Mr. Ambrose's most notable achievements included working as the lead U.S. Marshals investigator and/or participating in the physical arrests of the following individuals: (1) Johnny Jackson, U.S. Marshals 15 Most Wanted List, "Board Member" of the Gangster Disciples charged along with the gang's leader, Larry Hoover; (2) Keith Kyser, U.S. Marshals 15 Most Wanted List, leader of the Lakeside Gangster Disciples; (3) Sienky Lallemand, ATF 10 Most Wanted List, wanted in connection with a bombing death and insurance fraud scheme; (4) James Jackson, Gangster Disciple charged with providing the handgun used in the murder of Chicago Police Department Officer Michael Ceriale; (5) Robert Burke, received twenty years in prison for lying about his role in the escape of Jeffrey Erickson; (6) Aldo Cardellicchio, wanted by Italian authorities for his leadership role of an organized crime family in Italy; (7) Louis Rowe, Vice Lord gang member wanted for the trafficking of hundreds of illegally purchased guns transported from Mississippi to Chicago; (8) Casey Nowicki, wanted in connection with the twenty-year-old homicide of Marcy Jo Andrews, and subsequently convicted and sentenced to life in prison; (9) Investigation relating to the arrest of three alleged Satan Disciples gang members charged with the shooting death of seven-year-old Anna Mateo; and (10) Investigation relating to the arrest of three individuals responsible for the armed robbery and carjacking of a judge sitting on the Seventh Circuit Court of Appeals.

He now has lost his job, his career, his calling. The collateral consequences of the conviction can be considered by the Court for sentencing purposes. For instance, at the resentencing hearing of attorney Charles Schneider in the prosecution styled, *United States v. Spano, et al.*, the Court took into account the fact that Schneider had lost his law license. The same holds true here for Mr. Ambrose who has lost his badge and, unlike an attorney subject to ARDC discipline and possible reinstatement, Mr. Ambrose never will get his badge back. This is devastating to him and the Court respectfully should consider it in evaluating a proper sentence.

The letters to the Court also demonstrate that Mr. Ambrose has given, and continues to give significant amounts of his time and energy and has made, and continues to make substantial contributions to our community, and specifically to the youth in our community. Heartfelt emotions and pleas for mercy pour off the pages of those letters. While all of them are genuine and insightful, we cannot simply repeat all of what they have said to the Court. However, some general themes among the letters reveal that Mr. Ambrose is extremely close with his children, that he is deeply involved in their lives, and that incarceration will have a profoundly negative impact on the children's lives.

Sandra Domagala advised the Court that Mr. Ambrose's "children are extremely polite, well-mannered young adults and it is obvious when I am around them that they have a deep respect for the father that raised them and they depend on him in many, many ways." Other writers indicated that Mr. Ambrose is dedicated to his family and that his "children are his life." Brian Krasowski stated of Mr. Ambrose's sons: "Three more devoted boys you could not find. A better role model for these boys you could not find. The bond they have with John is crucial in guiding them in their young lives. To separate John from his family for any length of time would be detrimental to his wife

and children and cause untold repercussions." Jim Pretto has known the Ambrose family for many years, and he wrote: "If John is sent to prison it will not only destroy him, but also have an everlasting impact on his children. They are good kids with a bright future. Please consider the impact on their lives."

Letters tendered in support also describe the great sacrifices of time and effort Mr. Ambrose devotes to other children, not just his own, mainly through youth sports and the Illinois Kids Wrestling Federation. For instance, Mr. Krasowski informed the Court that "[h]undreds of community families have entrusted John to coach and guide their children." Mr. Pretto advised that over 2,500 kids have competed in the junior state tournament because of Mr. Ambrose's work in creating and sustaining it. William Dudeck mentioned that he coached wrestling with Mr. Ambrose, who "dedicate[d] a vast amount of time and energy to helping kids. I have seen him work with kids whose parents have not shown any interest in them and [John has] been a father figure to them. . . . He has been a father figure, teacher, and a shoulder to lean on for so many kids in this state." James Vail described how Mr. Ambrose "taught them how to be good sportsmen as well as respect for others." Regina Glascott described Mr. Ambrose as regularly helping at youth football games: "He announces games, works the chains, sets up and/or tears down the fields, and helps out anywhere else he is needed."

Joseph Pisciola is of the opinion that Mr. Ambrose is a leader in our community. "John Ambrose has set a good example for hundreds of young men. He has coached boys all through grammar school, sending them off to high school with a strong work ethic and great character. He is responsible for turning young boys into successful men." Gerald Burns, a former police officer, described how he was impressed with Mr. Ambrose's ability to work with children: "He had a calm,

patient approach and was not interested in just winning, but building character in the young men. Instead of towering over them when he was trying to teach, he would get down on his knees or bend over to talk to them at their level, face to face." Likewise, Jean Burns wrote:

> I see John as a great father, a leader, a role model, a giving person, a dedicated responsible man. He is intelligent, trustworthy, funny, and respectful of people. I have seen John kneel down to a child to get eye level with him to fix a problem. I have seen him work with teenagers and give them the respect and advice they need. I have seen John deal with parents and coaches in difficult situations and make it positive and right for all.

Another parent, William Klaver, described a similar occurrence in more detail:

> Time and again I witnessed John as a coach and can tell you for a fact John was always encouraging to both his wrestlers and the opponents, always considerate of other parents and coaches, and selflessly gave of himself to both promote and help others. One specific example I can cite actually involves my own son; John and I were on competing clubs and our sons had to wrestle each other in a major tournament. Both of our boys are hard-nose competitors and the match was, as expected, very close and very intense. John's son beat my son and the first person to console and offer support to my son was John. He told my son that the match could have gone either way, told him what he needed to work on, and congratulated him on his performance.

There are many additional letters written in the same vein. They are touching, they ring true, and they support the position expressed by many that Mr. Ambrose's absence in the lives of his and other children would create a hole that could not be filled. The Court, respectfully, should allow a departure based on the nature of these facts and circumstances.

It is respectfully suggested that the Court also should consider the condition of Mr. Ambrose's father-in-law, who lives down the block from Mr. Ambrose. The 63-year-old, otherwise healthy gentleman suffers from Alzheimer's disease. Unfortunately, the disease is full-blown and the gentleman has psychotic episodes. He also can become physical with those around him. The gentleman's wife and daughter do not intend to institutionalize the gentleman. According to family

members, Mr. Ambrose is the only person who can calm down and control the gentleman. This is another element to the family circumstances equation before the Court that we submit should be considered.

A consistent refrain throughout the many letters is that Mr. Ambrose has displayed humility, honesty, integrity, and compassion to others throughout his life. Moreover, those who know him confide that Mr. Ambrose is a man of faith, his belief in God being the foundation upon which he leads his life. All of the letters in support are a testament to the content of Mr. Ambrose's character. He is a loving father and husband, a concerned and giving neighbor, a friend to those in need, and a faithful volunteer of his time and talents to the people in our community. For these reasons, a variance, departure, and deviation from any projected sentencing range to a sentence of probation should be allowed under §3553(a) and traditional departure principles.[5]

IV. The Nature And Circumstances Of The Offense

Additionally, the Court is required to consider "the nature and circumstances of the offense." 18 U.S.C. §3553(a)(1). Based on the jury's verdict and the post-trial remarks, Mr. Ambrose trusted a former police officer and friend and father figure, and boasted to him something like having guarded some big OC guy. According to the government's theory, Guide told others and cunningly abused the trust Mr. Ambrose placed in him. How many of us have not foolishly boasted about our careers? How many have not foolishly revealed something sensitive or inappropriate related to our work? How many in law enforcement have not – with absolute innocence – told a spouse or a parent or a friend about an investigation he or she is working on? There are exceptions, of course, but we

[5]Legal authorities in support of a variance are set forth in the final section of this memorandum.

are human and we have foibles and we make mistakes. And, but for the grace of God, many of us – had our secret disclosures been revealed – could have lost our jobs or worse. Mr. Ambrose's greatest mistake was trusting a man who, after Thomas Ambrose died in prison, stepped in and acted as if he could be trusted as a father could be trusted.

The jury certainly understood the evidence that way and rejected the bulk of the alleged special findings about the nature and substance of the disclosure. As mentioned, juror Keller's post-trial comments to the press are most illuminating: "He jeopardized the [WITSEC] program by opening his mouth and shooting it off, but I don't think there was any intent to harm the program[.]" Robert Mitchum, *U.S. Marshal Found Guilty*, Chicago Tribune, April 29, 2009, at 10. Mr. Ambrose's job involved investigative work on the edge. He may have gone to the edge, but he knew there was a line and he did not cross it in such a way as to compromise Calabrese or anyone around him.

The evidence was very clear that Mr. Ambrose did not seek, was not paid for, and obtained no gain whatsoever for the alleged criminal conduct. Michael Marcello testified that he did not know Mr. Ambrose, never met Mr. Ambrose, and never spoke to Mr. Ambrose on the telephone. In fact, Marcello testified that he knew nothing about him and, in fact, never heard the name Ambrose until charges were brought in this case. The Marcellos had great suspicions but no knowledge that Calabrese was cooperating with authorities prior to January 2003, even though Mr. Ambrose was assigned to protect Calabrese during the first detail in October 2002. The Marcello brothers never mentioned the U.S. Marshals Service or the WITSEC program. They never discussed the fact that Calabrese was a "protected" witness. They never mentioned that Deputy Marshals were protecting

Calabrese. They never talked about a safe site. Their information was dated and often inaccurate, and there was no evidence to suggest that they ever used the information.

Additionally, the information that Calabrese gave to the government was used in the same state it was received. The government did not have to modify or salvage any aspect of the information. The information Calabrese provided was used to convict all of the defendants in the "Family Secrets" prosecution. The WITSEC program performed its duties without incident and provided absolute protection to Calabrese and his family. To his credit, First Assistant U.S. Attorney Gary Shapiro even advised the public that "the investigation, so far, has not uncovered any evidence that either this witness or any other was ever in danger, and there is no evidence that any attempt was made to harm any protected witness." Nothing has changed since those remarks.

Finally, neither Mr. Fitzgerald nor Mr. Grant knew or ever were advised (until cross-examination at trial) that Inspector 1 had made multiple copies of the WITSEC application and/or the FBI Threat Assessment, and gave them to the assigned personnel on the WITSEC assignments, including to Mr. Ambrose. No WITSEC inspector or Marshals personnel ever observed Mr. Ambrose engaging in any suspicious behavior while in or outside of the safe site. Moreover, according to all inspectors and deputies, Mr. Ambrose did not have unrestricted access to the safe site, contrary to the access Michael Marcello described his source as having.

These are the facts of the nature and circumstances of the offense. Mr. Ambrose's actual conduct, as evidenced by the jury's verdict and post-trial remarks, is not anywhere as egregious as the government and the probation office has painted it to be. A temperate tone must replace the extreme tones displayed in this case.

V. A Downward Variance Produces A Reasonable Sentence

Based on the §3553(a) factors discussed above as well as the legal and equitable points addressed below, it is respectfully submitted that the Court should consider and grant a downward departure or deviation from the projected advisory Sentencing Guidelines range. A non-guideline sentence of probation, either under the factors promulgated in 18 U.S.C. §3553(a) or as a traditional downward departure, is appropriate because any custodial sentence, given all the circumstances, is unreasonable and greater than necessary. *See Kimbrough v. United States*, 552 U.S. 85 (2007) (district court's judgment that a particular sentence is "sufficient, but not greater than necessary" is entitled to great deference). Justice would be well served were this Honorable Court to sentence Mr. Ambrose to a term of probation.

As is now well-established, the Court simply must "consider the guidelines and make sure that the sentence he gives is within the statutory range and consistent with the sentencing factors listed in 18 U.S.C. §3553(a)." *United States v. Demaree*, 459 F.3d 791, 795 (7th Cir. 2006). "His choice of sentence, whether inside or outside the guideline range, is discretionary and subject therefore to only light appellate review." *Id*. "The applicable guideline nudges him toward the sentencing range, but his freedom to impose a reasonable sentence outside the range is unfettered." *Id*. Post-*United States v. Booker*, 543 U.S. 220 (2005), under §3553(a) the sentencing court "has significantly more freedom than before *Booker* to fashion an appropriate sentence." *United States v. Baker*, 445 F.3d 987, 992 (7th Cir. 2006). Pursuant to the factors stated in §3553(a), a non-guideline sentence would appropriately recognize the facts of the offense, the characteristics of the offender, and the need to "impose a sentence sufficient, but not greater than necessary," to

accomplish the sentencing and societal goals of punishment, deterrence, rehabilitation, and a return to productive citizenship. 18 U.S.C. §3553(a).

Before *United States v. Booker*, 543 U.S. 220 (2005), the Sentencing Guidelines discouraged or prohibited a sentencing court from relying on certain offender characteristics for downward departures. *See* USSG §5H1.5 (employment record) ("not ordinarily relevant"), §5H1.6 (family ties and responsibilities) ("not ordinarily relevant"), and §5H1.11 (civic, charitable, or public service; employment-related contributions; and record of prior good works) ("not ordinarily relevant"). Now that the guidelines are no longer mandatory, these limitations no longer restrict the Court from imposing a sentence below the calculated advisory range. Moreover, Mr. Ambrose easily fits within the profile set forth in §5K2.20 (aberrant behavior), and the Court may and should consider aberrant behavior as another basis for a downward departure in light of the facts and arguments set forth above.

In this instance, the Court is permitted to consider Mr. Ambrose's employment and employment-related contributions, his family ties and responsibilities, and his civic, charitable, and public service and record of prior good works. The uncontroverted evidence before the Court demonstrates beyond any doubt that Mr. Ambrose has lived a life dedicated to helping all men and women. He consistently has lived a life filled with unselfish service and compassion for humanity. He has lived a life faithful to the teachings of God. He has sacrificed personal gain for the betterment of others who were in need of help and comfort. He has done positive and extraordinary service and good deeds for countless people. Consequently, given the Court's authority to exercise its discretion, and given the facts presented, Mr. Ambrose respectfully submits that a variance, deviation, or

departure is justified. Mr. Ambrose poses no threat to society and he poses no threat of recidivism. Probation, therefore, is appropriate based on all these mitigating facts and circumstances.

Lastly, it is respectfully submitted that the Court should consider Mr. Ambrose's vulnerability if imprisoned. If incarcerated as a former DUSM, and especially in his career apprehending federal fugitives, Mr. Ambrose will find himself quite a target for other inmates. It will be a terribly horrific and difficult time for him. The conviction alone has caused Mr. Ambrose to fall far, and it has humbled him to a great degree. Confinement only will break him and subject him to immense danger.

In *Koon v. United States*, the Supreme Court held that it was perfectly appropriate for a sentencing court to consider the conditions of confinement that a former police officer suffered (or even could suffer) while confined as a prisoner. 518 U.S. 81, 112 (1996). The Court also ruled that a police officer's susceptibility to abuse in prison is a valid and acceptable basis for a reduced sentence under the Sentencing Guidelines. *Id*; *see also United States v. Wilke*, 156 F.3d 749, 750 (7th Cir. 1998) (Seventh Circuit recognizes vulnerability to abuse in prison as an accepted basis for departure). Given these statutory and case law authorities, it is very clear that the Court may deviate from any projected sentencing range under the guidelines, consistent with the requirements of §3553(a), and we respectfully urge the Court to do so.

The nature of all of these considerations genuinely prove that a non-guideline sentence is fair and reasonable under traditional departure principles or as part of a §3553(a) analysis. *See Gall v. United States*, 552 U.S. 38 (2007). Consequently, given the Court's authority to exercise its discretion, and given the facts presented, Mr. Ambrose respectfully submits that a variance or deviation below the projected advisory range is justified. Clearly, under the unique circumstances

presented, a term of probation is appropriate based on these various mitigating facts and circumstances.

Therefore, defendant John T. Ambrose respectfully requests this Honorable Court to impose a reasonable and fair sentence of probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Francis C. Lipuma, an attorney, do hereby certify that I caused a copy of "John T. Ambrose's Sentencing Memorandum" to be served upon:

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pursuant to Fed.R.Crim.P. 49, Fed.R.Civ.P. 5, L.R. 5.5, and the General Order on Electronic Case Filing of the United States District Court for the Northern District of Illinois, Eastern Division.

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