



community service. It is contemplated that restitution will be ordered in this case.

The Presentence Investigation Report calculated the Advisory Sentencing Guideline Range as a level 16 and a Criminal History of I, resulting in a guideline range of 21 to 27 months. The Defendant accepts this calculation and, therefore, no objections to the Presentence Report have been filed<sup>2</sup>.

Pursuant to the Plea Agreement, both parties are free to recommend any sentence. Defendant submits that after considering the factors set forth in 18 USC Section 3553(a) a sentence of probation, with any conditions the Court feels are warranted, is sufficient, but not greater than necessary, to accomplish the goals of sentencing John Matassa in this case.

**THE NATURE AND CIRCUMSTANCES OF THE OFFENSE  
SUPPORT A SENTENCE SIGNIFICANTLY BELOW THE ADVISORY  
GUIDELINES RANGE**

John Matassa has pleaded guilty to embezzling union funds from Local 711. In his Plea Agreement, John admitted that on July 2, 2014, and again on February 4, 2015, he increased his wife's salary without obtaining the approval of the President of Local 711 or the Executive Board and he issued paychecks to his spouse that were not signed by the President. John admitted that these actions violated Local 711's Constitution and By-Laws as well as his fiduciary duty to Local 711. John admitted that as a result of these actions he received approximately \$33,513 more than he would have earned from

---

<sup>2</sup>The Plea Agreement indicates the Defendant's objection to this enhancement. Dkt. 62 Par. 9(b)(iii). However, consistent with his acceptance of responsibility, as recognized in the PSR guideline calculation (PSR Par. 39), the Defendant has not filed an objection to this enhancement.

Local 711 had he not issued these checks to his spouse.

John further admitted to relevant conduct that, as a result of issuing checks to his spouse and not raising his own salary, he received Old-Age Insurance benefits to which he was not entitled.

John has agreed that he will make restitution to both Local 711 and the Social Security Administration. Plea Agreement par. 13.

In pleading guilty and agreeing to make restitution, John has accepted responsibility for his criminal conduct. John regrets his illegal actions and seeks to rectify this conduct. He has agreed to make restitution of the funds he obtained from the union as a result of his conduct as well as funds received from Social Security because of the checks written to his spouse.

While acknowledging the seriousness of John's criminal actions, it is important for this Court, as directed in 18 USC 3553(a), to fully consider the nature and circumstances of the offense.

One crucial aspect of the nature and circumstances of the offense is the view of the victim of the embezzlement, Local 711. Shortly after John was indicted, the Executive Board of the union suspended him with pay for six weeks in order to determine next steps, including whether he should be replaced as Secretary/Treasurer. Subsequently, at an Executive Board meeting on 8/02/2017<sup>3</sup>, the Board voted unanimously that John Matassa was "to continue in his role as Secretary/Treasurer at

---

<sup>3</sup>A Board meeting was held on 7/26/2017 at which the same issues were discussed and the same resolution was agreed to unanimously by the Board members who were present. However, no formal vote was taken because of lack of a quorum.

the same rate of pay for all duties customarily performed by him on behalf of the Union; his wife Lynn allowed to continue assisting Matassa in the execution of those duties with no additional compensation for her assistance; no objection to Matassa allocating a portion of his pay to Lynn for that assistance, said allocation to be decided between Matassa and Lynn, as no additional expense incurred by the Union.”

Similarly on 5/8/2018, a motion was passed by the Local 711 Executive Board that the Defendant continue to receive salary and expenses for a 3 year term, that based on his continuing health issues and limitations he was allowed to hire/fire assistants to help with his duties, and that their compensation was to be paid from his salary, which was to continue at \$1500 per week plus expenses.<sup>4</sup> Thus the Executive Board acknowledged the value of John’s work as well as the value of the assistance his wife provided so that he could perform that work.

Despite this, the Government in its Sentencing Memorandum continues to assert that John’s spouse performed no work for the Union.<sup>5</sup>

However the Executive Board, which is in a position to know, confirmed in the minutes of 8/2/2017 and 5/8/2018 that the Defendant’s spouse did assist the Defendant, who has chronic medical issues and limitations, in performing his duties. The minutes further confirm that the Board believed that the salary received by the

---

<sup>4</sup>Both John and his wife have continued to work for Local 711 pursuant to the Executive Board’s authorization, although they have never taken the full \$1500 per week authorized by the Board.

<sup>5</sup>The PSR reflects that the investigating agent asserted that “Defendant’s wife performed very limited work on behalf of the Union/defendant, such as driving the defendant around for Union business or picking up union mail on the defendant’s behalf”. PSR par. 14,

Defendant was justified by the services he performed for the union and the union did not object to the Defendant's salary being allocated to his spouse or other assistant in any way the Defendant determined.

It is truly unfortunate that the Government is unable to understand or acknowledge the significant value of services, such as performed by John's spouse, that allow people with medical and physical limitations to continue to function and work in our society.

Also unfortunate is the Government's failure to recognize the value of the work John Matassa performed for Local 711 over many years. The Government's disdain for that work, referring to it as "minimal" (Dkt. 67 Govt. Sentencing Memo p. 9), is not only insulting, but untrue. The Government somehow believes it can determine the value of a person's work based on the documents it produces or the estimates of persons not intimately involved in the work.

John Matassa worked for Local 711 for more than twenty years. As Secretary Treasurer of the union he was on call 24 hours a day/seven days a week. His work included but was not limited to running the union on a day to day basis, attempting to organize at various companies, negotiating contracts, obtaining and preserving benefits for union members, and advocating for employees, including resolving informal complaints and problems as well as formal grievances. Moreover, John continued to fully perform his duties even as his medical and physical condition worsened and his mobility deteriorated over the years.

Both past and present members of the Executive Board of Local 711, who are also members of the union, have written to the Court on John's behalf<sup>6</sup>. Here are some of their comments as to the value of John Matassa's work for Local 711:

It's an honor to have John as our Union Secretary. His handling of our day in and day out Union business is what keeps our Union running and we never need to worry knowing that John stands for our rights. Whether he is negotiating our collective agreements, pushing our grievances, or defending one of us to our employer, John has proven his value to the Union and our members over and over again.

\* \* \*

Our Union was, and is, very happy with John as our Sec/Treasurer. John is the guy who handles all of our problems and issues, from negotiating new contracts with employers, to resolving grievances and workplace issues, he smooths out all the wrinkles for everyone. His service to us is special and his position is impossible to fill...

\* \* \*

Please know that John has been a wonderful Secretary/Treasurer who has always been a great asset to our Union. He has always been the constant backbone for all of us. Without John, the strength of our Union will be seriously damaged. He keeps our Union running handling the day to day duties which none of us would be able to do. He leads our negotiations when our collective bargaining agreements expire, he deals with the companies whenever there is a workplace complaint or grievance, and he quickly responds with help whenever a member asks him, no matter what the issue might be.

\* \* \*

---

<sup>6</sup>These letters have been provided to the Probation Officer to submit to the Court as a Supplement to the Presentence Report.

John Matassa has admitted and acknowledged to this Court the wrongness of certain actions he took as Secretary/Treasurer of Local 711. Those admissions will result in a felony conviction, monetary restitution, and a sentence to be determined by this Court. While this Court must consider the seriousness of those criminal actions when determining the appropriate sentence, this Court must also consider the years of valuable service John has given to Local 711, valuable service that is gratefully recognized by the victim of the crime.

**A PRISON SENTENCE FOR JOHN MATASSA WILL BE PHYSICALLY DIFFICULT AND POTENTIALLY DANGEROUS GIVEN HIS MULTIPLE SERIOUS MEDICAL CONDITIONS**

As reflected in the PSR, and as described in letters from his family and doctors submitted to the Court,<sup>7</sup> John Matassa suffers from a number of serious and debilitating medical conditions that will make every day he serves in prison physically difficult and potentially dangerous to his health and well being. While we are aware that defendants with a variety of medical conditions are sent to prison and accommodated by the Bureau of Prisons, given the nature of this non-violent offense and John's particular medical conditions, we submit that imprisonment in this case would be unreasonably punitive.

John suffers from severe Chronic Obstructive Pulmonary Disease (COPD). On a daily basis, John is dependent upon medication and inhalers to keep him breathing. In

---

<sup>7</sup>These letters have been provided to the Probation Officer to submit to the Court as a Supplement to the Presentence Report.

the event of an exacerbation of shortness of breath, a common occurrence with COPD, John will need immediate access to a rescue inhaler at a minimum, and potentially more significant medical intervention to restore oxygen. Immediate access to these life-saving measures simply cannot be insured in a prison environment. In just a few minutes without a rescue inhaler or other intervention, John's health could be seriously and irrevocably compromised.

In addition, because of his COPD, morbid obesity, polymyalgia, and vertigo, John's ability to walk is severely limited. This will make the basics of prison life, such as getting around the facility, extremely difficult. As his wife describes, "just a short walk down the hall leaves him breathless and simple everyday tasks like dressing have become difficult."

Also important, John's lack of mobility and balance presents a significant danger in prison. Other more able-bodied prisoners will be moving faster than John can, increasing the likelihood he will fall and injure himself. And, in the event of an altercation in a prison environment, John will simply be unable to defend himself.

Adding to these difficulties, John suffers from Type 2 diabetes and is on insulin and multiple oral medications. His timing of meals and insulin is critical to his health and he must have a specific diet to keep his blood sugar under control. This is again difficult to insure in a prison environment. John also suffers from sleep apnea requiring 100% access to a CPAP machine with appropriate settings at all times while sleeping.

Finally, John has a history of coronary artery disease which previously required the placement of a stent. As the Court is aware, John also has recently been diagnosed

with mitral stenosis. Although this new condition does not require immediate surgery, it presently is being monitored by a cardiologist.

All of these conditions together create a situation in which every day in a prison environment will present significant dangers to John's health and well being. John's crime, while serious, should not require him to struggle to function on a daily basis in a prison environment, suffer physically, or endanger his health or life. This Court can fashion a probationary sentence that adequately punishes John without taking the chance that his punishment will severely compromise his health or end his life.

**A SENTENCE OF PROBATION FOR JOHN MATASSA IS SUFFICIENT BUT NOT GREATER THAN NECESSARY TO SATISFY THE GOALS OF SENTENCING**

Considering the factors discussed above, requiring John Matassa to serve a period of probation more than satisfies the purposes of sentencing set out in Section 3553. Such probation would include a condition of restitution , so it would satisfy the statutory requirement. 18 USC §3563(a)(2). The Court could also impose additional conditions such as home detention.

A sentence of probation with whatever conditions this Court feels are warranted is sufficient but not greater than necessary to satisfy the purposes of sentencing. Such a sentence will reflect the seriousness of the offense, promote respect for the law and provide just punishment for the offense. *Section 3553(2) (A)*. While the offense of conviction is a serious one, it is a non-violent offense and the defendant will be required to repay the financial benefit derived. The probation sentence suggested reflects the

additional §3553(a) factors unique to this Defendant that must be considered in addition to the advisory sentencing guideline range.

As to the sentencing purposes of deterrence and protection of the public from further crimes of the defendant, *Section 3553(2)(B) and (C)*, except for a supervision sentence at the age of 18, John Matassa has no criminal convictions. Moreover, while on probation, John will be under the supervision of the Probation Department and the Court. There is no reasonable danger of further crimes by the defendant or a need to protect the public from the defendant. Moreover, the fact of a felony conviction and financial restitution, particularly in light of John's many years of valuable work for the union and present serious medical condition, will serve as a general deterrent to others.

Finally, imposing a sentence that provides a defendant with necessary medical care in the most effective manner is one of the four stated goals of sentencing. *Section 3553(2)(D)*. In this case John Matassa's multiple medical conditions are most effectively treated and monitored outside of prison. He will be assured of receiving all necessary medication timely and on a daily basis, have immediate care at hand in an emergency, and have doctors familiar with his medical history readily available to treat and monitor his conditions. In contrast, a prison sentence would not only be physically difficult for John, but could be dangerous to his health and life.

### **CONCLUSION**

This Court has a duty to impose a sentence on John A. Matassa, Jr., which is sufficient but not greater than necessary to satisfy the purposes of sentencing. Given the factors discussed above, we respectfully ask this Court to impose a sentence of probation with whatever conditions this Court deems appropriate.

Respectfully submitted,

/s/ Cynthia Giacchetti

CYNTHIA GIACCHETTI  
One of the Attorneys for  
John A. Matassa, Jr.

CYNTHIA GIACCHETTI  
53 West Jackson—Suite 1035  
Chicago, Illinois 60604  
312-939-6440