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Communications Director
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Dear Director:

In response to the invitation by the Sentencing Commission, I would like to bring one item to your attention. We have a case of an individual with no criminal record who sells low cost electronic gadgets. Most of his customers pay in cash. On one occasion when trying to deposit the proceeds of that day, he was told by the cashier in the bank that if less than \$10,000 a day is reported from his business, there would be less paperwork for all concerned. After that time, he was engaged for two years in what the United States Attorney considers "structuring." Approximately \$1,000,300 was so structured. The individual used his wife and his sister, both of whom were then employed in the business, to make the actual deposits. There was no unlawful motive other than the desire, suggested by the bank, to save on paperwork.

Under the sentencing guidelines, the base offense level would be 13. Guidelines § 2S1.3(a)(1)(A) (defendant "structured transactions to evade reporting requirements"). Five levels would be added because the value of the structured funds exceeded \$1,000,000. Guideline §§ 2S1.3(b)(2); 2S1.1(b)(2)(F). An additional two levels would be added for the defendant's aggravating role in the offense. Guideline § 3B1.1(c) ("defendant was an organizer, leader, manager or supervisor").

The United States Attorney in the case agrees with me that the guidelines make no sense when applied to the facts of this case. It is clear that the guidelines were not intended to cover this situation, but the U.S. Attorney sees no way out of it in light of the mandatory language of both the statute and the guidelines. We have considered the approach of a downward departure simply so that justice will be done. At present writing it is not clear whether his superiors will approve a plea bargain based on this approach. If the matter is treated in normal fashion, the client will face up

to 43 months of incarceration which I believe to be an outrage.

Please bring it to the attention of the commission as an example of rigidity which makes no sense. There is inadequate space in prisons for real criminals. To criminalize an individual who works 16 or 17 hours a day, 7 days a week, and is a useful member of society, on the basis of facts such as the ones I presented to you, is a telling example of why the guidelines should be amended. If you have any questions please feel free to contact me.

Very truly yours,



EPHRAIM MARGOLIN

EM/scb