



DEPARTMENT OF THE TREASURY
WASHINGTON

March 19, 1993

The Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1 Columbus Circle, N.E.
Suite 2500
South Lobby
Washington, D.C. 20002-8002

Dear Judge Wilkins:

The United States Sentencing Commission has proposed changes to the sentencing guidelines concerning sentences for money laundering crimes and violations of currency reporting laws. The changes proposed by the Commission would reduce the base offense level for these crimes and violations, and increase this offense level only based upon particularized characteristics of the offense or the state of mind of the offender. The Commission has advanced these suggested changes in response to some perceived excessive sentences with respect to "minor" money laundering offenses, and violations of regulatory reporting requirements.

The efforts of the Commission to change the sentencing guidelines to ensure that the sentence imposed is commensurate with the seriousness of the offense are laudatory. However, Treasury believes that the proposed changes to the sentencing guidelines for money laundering and currency reporting violations are contrary to both the Commission's past efforts and the intentions of Congress in enacting the money laundering and currency reporting laws. Therefore, Treasury opposes the Commission's proposed changes to the sentencing guidelines.

The two major money laundering statutes, 18 U.S.C. 1956 and 1957, provide for 20 and 10 year terms of imprisonment, respectively. It is apparent that Congress recognized money laundering as an offense separate from the underlying predicate crime that is deserving of independent and lengthy punishments.

The proposed changes to the sentencing guidelines for money laundering offenses would lower the base offense level and result in shorter sentences. At a time when the available information and statistics suggest that the volume of currency being laundered has grown tremendously and the methods and schemes of laundering money have proliferated and become increasingly more complicated, to lower the sentences for money launderers would be counter productive to all other law enforcement efforts.

The Department of Justice has submitted comments that include alternatives to the changes proposed by the Commission. While the alternatives suggested by the Justice Department proposal, and the analysis and reasoning offered in support thereof, acknowledge the Commission's concern for lower sentences in certain types of cases, the Justice proposal recognizes the serious nature of the money laundering offense and maintains a base offense level commensurate with the seriousness of the offense. Treasury believes that the Justice Department proposal accommodates the current need for the majority of money laundering offenses.

With respect to the currency reporting violations, 26 U.S.C. 7203 (26 U.S.C. 6050I), 31 U.S.C. 5313, 5314, 5316 and 5324, the Commission proposes to combine current sentencing guidelines 2S1.3 and 2S1.4 and create a base offense level of 8 or 6 with an adjustment for the value of funds involved. Merging 2S1.3 and 2S1.4 would treat the failure to file a monetary instrument report (31 U.S.C. 5316), the same as the failure to file other financial transaction reports. Representatives from Justice and Treasury discussed this alternative prior to its submission to the Commission and concur that the base offense levels proposed by the Commission are too low. Accordingly, the Justice Department has proposed an alternative, enclosed herewith, which combines current sentencing guidelines 2S1.3 and 2S1.4 with a base offense level of 13, 9, or 5.

The Commission considered currency reporting violations to be regulatory violations that need not be sentenced as severely as other money laundering offenses. For the reasons advanced by the Justice Department in its proposed alternative on currency reporting violations and for the additional reasons advanced below, Treasury does not agree that the base offense level for these violations should be reduced from 13 to 8.

The Bank Secrecy Act and its legislative history demonstrate that Congress believed certain reporting violations are criminal in nature and should be punished as such. This Congressional intent is reflected in 31 U.S.C. 5322, the criminal offense section, where enhanced violations are punishable by a term of imprisonment of up to ten years.

The principal anti-money laundering law enforcement effort currently is directed at detecting currency upon its entry into the financial system, the placement stage. The placement stage is acknowledged to be the most vulnerable phase of the money laundering operation. Presently, virtually every regulatory reporting requirement is aimed at recording funds at the placement stage of the money laundering scheme.

The enforcement of financial transaction reporting requirements has created a simple, wide-ranging process which identifies large

transactions in currency and monetary instruments. Congress recognized the value in this process and enacted a separate provision, penalizing the structuring of transactions to avoid the reporting requirements. Sentences must be severe enough to ensure the compliance necessary to support the overall anti-money laundering law enforcement effort; a base offense level of 8 or 6 is insufficient for this purpose.

The United States has participated in the meetings and discussions of the Financial Action Task Force (FATF). Through its membership, the United States has encouraged other nations who participate in the FATF to adopt currency reporting requirements as an important part of an overall anti-money laundering program. Indeed, some of the FATF member nations have begun considering currency reporting requirements.

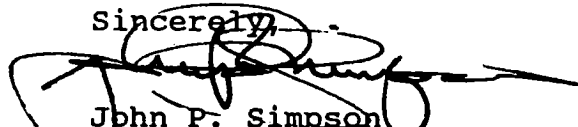
At the same time that the value of currency reporting is being advanced by the United States in the international forum, the Commission proposes to reduce the sentencing guideline offense levels for failing to comply with those reporting requirements. The Commission's proposal to reduce the base offense level for failing to comply with the currency reporting guidelines is not the appropriate signal to send to the other FATF members and the international law enforcement community, who are eager to join in the fight against money laundering.

The Commission's proposed changes would only increase the level of the offense based upon the value of the funds involved in the reporting offense. The Commission should be mindful, however, that the value of the funds involved in a money laundering offense may not be an accurate measure of the harm caused.

For the reasons advanced above and for the reasons advanced by the Department of Justice, the Department of the Treasury endorses and supports the Department of Justice's proposals concerning the sentencing guidelines for money laundering offenses and for currency reporting violations.

Treasury appreciates the opportunity to share its views with the Sentencing Commission.

Sincerely,



John P. Simpson
Deputy Assistant Secretary
(Regulatory, Tariff and Trade
Enforcement)

Enclosure

Proposed Guideline (changes appear in bold)

§2S1.3 Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements

(a) Base Offense Level:

(1) 13, if the defendant:

(A) structured transactions to evade reporting requirements; or

(B) knowingly filed, or caused another to file, a report containing materially false statements; or

(2) 9, for a wilful failure to file; or

(3) 5, otherwise.

(b) Specific Offense Characteristics

(1) If the defendant knew or believed that the funds were criminally derived property, increase by 4 levels. If the resulting offense level is less than level 13, increase to level 13.

(2) If the base offense level is from (a)(1) or (a)(2) above and the value of the funds exceeded \$100,000, increase the offense level as specified in §2S1.1(b)(2).

(c) Special Instruction for Fines -- Organizations
[unchanged]

Commentary

Statutory Provisions: 26 U.S.C. § 7206 (if a willful violation of 26 U.S.C. § 6050I); 31 U.S.C. §§ 5313, 5314, **5316**, 5322, 5324. For additional statutory provision(s), see Appendix A (Statutory Index).

Background:

[add as indicated:] A base offense level of 13 is provided for those offenses where the defendant either structured the transaction to evade reporting requirements or knowingly filed, or caused another to file, a report containing materially false statements. A base level of 9 is provided for willful failure to file and for the mere denial of reportable assets, in response to routine questioning at a border crossing. A lower alternative of 5 is provided in all other cases.

[§2S1.4 IS DELETED]



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March 17, 1993

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8003

Dear Mr. Courlander:

I am a federal criminal defense practitioner in Columbus, Ohio. I am writing in response to the United States Sentencing Commission's request for public comment upon the proposed amendments to the Sentencing Guidelines published in the December 31, 1992 edition of the Federal Register (Vol. 57, No. 252, Part IV). The purpose of this letter is to comment on proposed amendment numbers 20 and 58, which govern money laundering offenses and violations for failing to file certain currency and monetary instrument reports.

I strongly recommend adoption of amendment number 20, which would amend U.S.S.G. §§2S1.1 and 2S1.2 governing money laundering offenses. This amendment would tie the base offense levels for **money laundering** violations more closely to the underlying conduct that was the source of the illegal proceeds.

This constitutes a much needed reform. As the report of the Commission staff on money laundering demonstrates, there are cases around the country in which the government has been able to obtain a significantly higher guideline sentencing range than the underlying offense would yield simply by adding a violation of 18 U.S.C. §§1956 or 1957 to the indictment. As the proposed amendment seems to recognize, these statutes are quite broad and can apply even in relatively simple fraud and other cases. Such cases often involve monetary transactions that are normally not thought of as sophisticated "money laundering," but which nonetheless are proscribed by §§1956

Mr. Michael Courlander
March 17, 1993
Page Two

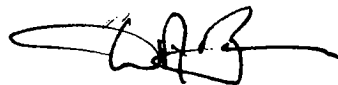
and 1957. United States v. Montoya, 945 F.2d 1068 (9th Cir. 1991), is a perfect example. In that case, a state public official was convicted for money laundering under 18 U.S.C. 1956 based upon the deposit into his personal checking account of a single \$3,000 check representing a bribe.

There also are instances when the government can substantially influence plea bargaining negotiations by merely threatening to include in the indictment a count charging a violation of §1956 or 1957. The proposed amendment goes a long way towards addressing this problem and ultimately will help to achieve the Commission's stated goal of "eliminating unfair treatment that might flow from count manipulation." U.S.S.G., Chapter 1, Part A, Paragraph 3.

While I strongly recommend adoption of amendment number 20, I strongly urge the Commission to reconsider amendment number 58, which would amend §2S1.3 governing violations of the currency transaction and IRS Form 8300 reporting requirements. Although I support the Commission's efforts to harmonize its treatment of violations under §2S1.3 with violations under §2S1.4, I think that a base level of 9 is too high for all of these offenses, particularly if the currency is not the proceeds of, or being used to further, criminal activity. To be consistent with the base offense level for structuring transactions to evade these same reporting requirements and the Commission's overall goal in harmonizing its treatment of similar offenses, I strongly urge the Commission to seriously consider a base offense level of 6 for both §2S1.3 and §2S1.4 for failures to file Currency Transaction Reports, IRS Forms 8300 and Currency and Monetary Instrument Reports. As with structuring, the offense level could be increased by the number of offense levels in the fraud table (§2F1.1) if the defendant knew or believed that the funds were intended to be used to promote criminal activity.

I support the Commission's effort to make the sentencing guidelines uniform and fair.

Very truly yours,



Daniel A. Brown



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March 15, 1993

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United States Sentencing Commission
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ATTN: Public Information

To: Honorable Sentencing Commission:

I am an active criminal defense lawyer and am writing to comment on two of the most serious areas of abuse that I have personally witnessed in my law practice.

* AMENDMENT NO. 20 - (pg. 25) - Money Laundering (Chapter Two, Part S) - Consolidate Sections 2S1.1 and 2S1.2 in Sections 2S1.4 and 2S1.4; Ties offense level closer to seriousness of offenses.

In the area of white collar crime this area of the guidelines is the one most frequently abused by prosecutors. In plea bargaining negotiations, we are frequently told "if you don't plead to the mail fraud, then we will charge him with money laundering". It is very unfair when someone can get 6 to 10 months for a mail fraud scheme, and then 40-something months for depositing the check that was the object of the mail fraud. In the first place it does not make good sense, and in the second place it is a very unfair advantage for the Government. Further, it does not in any way mete out fair punishment.

It is very simply an arrow that should be removed from the Government's quiver.

AMENDMENT NO. 40 - (pg. 63) - 100 to 1 Ratio of Crack vs. Powder Cocaine; There is in fact little scientific support for the 100 to 1 Ratio, and unquestionably black persons are impacted by this very unfair requirement. I proved in the case of United States v. Hutchinson, in the United States District Court for the Western District of Oklahoma, Case No. CR-92-31-T, that of all

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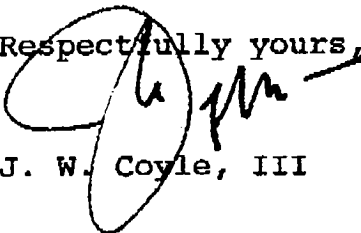
United States Sentencing Commission
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Page 2

crack cases since the guidelines (November 1, 1987) in the Western District, 94.39% of the defendants were black.

The enormous disparity in sentences, and the unduly harsh requirements of the guidelines have resulted in the life imprisonment of many persons who deserve a substantially shorter sentence. This should be done immediately, and retroactively.

Thank you for the opportunity to comment on the guidelines.

Respectfully yours,


J. W. Coyle, III

JWC/am
L-JW.SC

BAKER & MOSCOWITZ

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March 15, 1993

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
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Washington, D.C. 20002-8003

Dear Mr. Courlander:

I am a federal criminal defense practitioner in Miami, Florida. I am writing in response to the United States Sentencing Commission's request for public comment upon the proposed amendments to the Sentencing Guidelines published in the December 31, 1992 edition of the Federal Register (Vol. 57, No. 252, Part IV). The purpose of this letter is to comment on amendment numbers 20 and 58, which govern money laundering offenses and violations for failing to file certain currency and monetary instrument reports.

I strongly recommend adoption of amendment number 20, which would amend U.S.S.G. §§ 2S1.1 and 2S1.2 governing money laundering offenses. This amendment would tie the base offense levels for money laundering violations more closely to the underlying conduct that was the source of the illegal proceeds.

This constitutes a much needed reform. As the report of the Commission staff on money laundering demonstrates, there are cases around the country in which the government has been able to obtain a significantly higher guideline sentencing range than the underlying offense would yield simply by adding a violation of 18 U.S.C. §§ 1956 or 1957 to the indictment. As the proposed amendment seems to recognize, these statutes are quite broad and can apply even in relatively simple fraud and other cases. Such cases often involve monetary transactions that are normally not thought of as sophisticated "money laundering," but which nonetheless are proscribed by §§ 1956 and 1957. United States v. Montoya, 945 F.2d 1068 (9th Cir. 1991), is a perfect example. In

Mr. Michael Courlander
March 15, 1993
Page Two

that case, a state public official was convicted for money laundering under 18 U.S.C. 1956 based upon the deposit into his personal checking account of a single \$3,000 check representing a bribe.

There also are instances when the government can substantially influence plea bargaining negotiations by merely threatening to include in the indictment a count charging a violation of § 1956 and 1957. The proposed amendment goes a long way towards addressing this problem and ultimately will help to achieve the commission's stated goal of "eliminating unfair treatment that might flow from count manipulation." U.S.S.G., Chapter 1, Part A, Paragraph 3.

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I support the Commission's effort to make the sentencing guidelines uniform and fair.

Yours very truly,


Jane W. Moscowitz

JWM:cmt

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March 15, 1993

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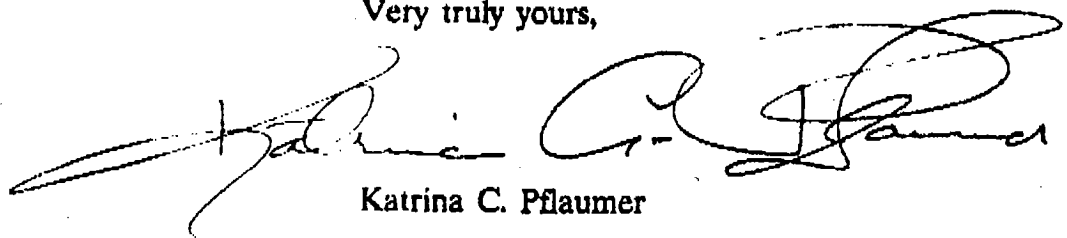
Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500 South Lobby
Washington, D.C. 20002-8003

Dear Mr. Courlander:

I strongly recommend adoption of amendment number 20, which would amend U.S. Sentencing Guidelines §§ 2S1.1 and 2S1.2 governing money laundering offenses. My experience with the Sentencing Reform Act convinces me that it is critical to bring the sanctions for money laundering into proportion with the underlying offense. Because the language of the money laundering laws is so broad, federal prosecutors use it as a threat in a significant proportion of underlying cases, with inequitable results. Defendants are then simply not in a position to contest the underlying offense because of the enormous threat of the money laundering sanctions.

I also strongly urge the Commission to adopt the modification of the Guidelines which would preclude a court from considering conduct on which a defendant was acquitted at the sentencing phase.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Katrina C. Pflaumer', is written over a horizontal line.

Katrina C. Pflaumer

KCP:nz

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March 11, 1993

Chairman William Wilkins
United States Sentencing Commission
One Columbus Circle N.E., Suite 2-500
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Washington, D.C. 20002-8002

Re: Public comment on sentencing guideline proposals

Dear Chairman Wilkins:

It is my understanding that one of the proposals up for consideration to amend the sentencing guidelines involves the money laundering section, §2S1.1. I am writing because the present money laundering guideline requires sentences, in some cases, that are totally out of line with the underlying crime itself. I am an attorney that represents someone who faces this problem.

My client is alleged to have participated as an assistant in a company that allowed escort services to use their merchant number to process credit card charges. The company also assisted in processing the charges for the escort services and paid them the face value of the charge less a percentage for their service. The Government's position is that this is money laundering because following certain sections in the racketeering chapter of the United States Code, the specified criminal conduct leads to the travel act violation, 18 U.S.C. §1952, promoting prostitution by interstate conduct.

This is a unique case. All previous prosecutions concerning this type of activity, using merchant numbers to process credit card charges for escort services, have been prosecuted under the travel act as a travel act violation under 18 U.S.C. §1952.

Travel act violations under §2E1.2 would have a base offense level of 6 or the 14 under §2G1.1, transportation for the purpose of prostitution, if applicable under §2E1.2(2). The relevant guideline for that, without any adjustment for acceptance of responsibility, would either be 0-6 under offense level 6 or 15 to 21 months under offense level 14.

BAROCAS & SCHMIDT, P.C.

ATTORNEYS AT LAW

However, since defendant is charged under 18 U.S.C. §1956(a)(1)(A), the base offense level is 23. Moreover, since the amount of funds that have passed through the company on the way to the credit card companies is substantial, approximately 5 or 6 additional points would be added on.¹

Thus, the base offense level for my client would be 28 or 29. This offense level would require my client to be sentenced to either 78-97 months or 87-108 months.

It is my understanding that the proposed amendment to the sentencing guidelines would cause the offense level of money laundering to relate to the underlying offense. This is reasonable and rational. Money laundering of proceeds from gambling should be treated differently than money laundering of proceeds from drug dealing. The same thing is true with money laundering of prostitution proceeds.

It goes without explanation that escort services are rarely, if ever, prosecuted for promoting prostitution. On the rare cases that they are, such as the Mayflower Madam case, the charges are misdemeanors, punishable with a maximum of one year in jail. To punish someone for assisting a misdemeanor offense as they would punish someone assisting a large scale drug operation, makes no sense and is repugnant to our sense of fairness and justice.

I implore you and the sentencing commission to adopt the proposal that will relate the offense level for money laundering to the offense level of the underlying criminal activity.

Thank you for your consideration of this matter.

Sincerely yours,

Sam A. Schmidt

SAS/jr

1. It is important to note that there is no claim of loss to any party.

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March 11, 1993

BY TELECOPY AND REGULAR MAIL

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8003

Dear Mr. Courlander:

I am a federal criminal defense practitioner in Washington, D.C. and Co-chair of the American Bar Association, Criminal Justice Section, White Collar Crime Committee, Money Laundering Subcommittee. I am writing in my individual capacity to respond to the United States Sentencing Commission's request for public comment on the proposed amendments to the Sentencing Guidelines published in the December 31, 1992 edition of the Federal Register (Vol. 57, No. 252, Part IV). The purpose of this letter is to comment on proposed amendment numbers 20 and 58, which govern money laundering offenses and violations for failing to file certain currency and monetary instrument reports.

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I support the Commission's effort to make the sentencing guidelines uniform and fair.

Very truly yours,



Amy G. Rudnick

richard crane

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February 18, 1993

U.S. Sentencing Commission
1 Columbus Circle, N.E.
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Washington, D.C. 20002-8002

Re: Amendments 28(G), 37 and 38
Amendment 25

Gentlemen:

I am writing in support of proposed amendment 28 (G). Some of the problems with the loss definition under § 2B1.1 and § 2F1.1 have been resolved because of the 1992 amendment to the statutory index specifying that either of these guidelines could be appropriate for violation of 18 § 656.

But, the problem persists in other areas. For example, I had a client convicted this past year for conspiring to embezzle from an employee benefit plan. (18 § 371) The offense involved the use of a certificate of deposit from a union pension fund as collateral for a loan. The CD greatly exceeded the amount of the loan, so when the loan was defaulted on, only a portion of the CD was seized to cover the loss. Because the offense involved pension fund money, my client's sentence was calculated under § 2B1.1 using the full value of the CD, rather than the actual loss. Your proposed amendment 28(G) would, hopefully, resolve this problem.

I also very much favor amendment No. 25 regarding disclosure of information relative to guideline calculations. I practice around the country and there are great differences from one U.S. Attorney's Office to another in providing this information.

Additionally, I think that the amendment should include a requirement

that the government stipulate as often as possible in plea agreements to any facts which impact on guideline calculations. Again, as I practice in various states, some U.S. Attorney's offices are readily agreeable to incorporating stipulations or a separate statement of the offense, while other U.S. Attorney's offices have a "policy" of never stipulating to anything. This only increases the work for the probation officer and for the court, when these matters could easily be resolved during plea negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Crane', with a long horizontal flourish extending to the right.

Richard Crane

RC/cm



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CHIEF POSTAL INSPECTOR
INSPECTION SERVICE

March 15, 1993

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Attention: Public Information

Gentlemen:

The U.S. Postal Service respectfully submits its comments on the 1993 proposed guideline amendments. As an overview, we disagree with the proposed guidelines on money laundering (Amendment 20) and the guideline commentary on public trust (Amendment 23), and request the adoption of the proposed amendments submitted by the Postal Service relating to the theft of mail (Amendment 44), and the public trust enhancement for offenses committed by postal employees (Amendment 46). In addition, we strongly urge the Commission to consider the future formulation of a "multiple victim" adjustment guideline (Amendment 45). Our comments are explained more fully in the following:

Proposed Amendment 20, § 2S1.1, § 2S1.2. We disagree with the proposed revisions to the money laundering guideline based on the statutory purpose of 18 U.S.C. §§ 1956, 1957. The legislative intent of these statutes is to create a separate crime offense to deter criminals from attempting to profit from their illegal activities and to impose a higher penalty for this type of criminal misconduct. To accomplish this, the statutes prescribe criminal penalties separate from and higher than those of the underlying criminal offense which gave rise to the monies, property or proceeds involved in the money laundering. This legislative intent would in effect be vitiated by the revision to the guideline. Because the underlying offense and the money laundering are two separate crimes, we believe the guidelines should likewise maintain this



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was not in a trust position), and obviate the need of detailed analysis by the court of the specific duties and responsibilities of the defendant as qualifying the particular position occupied as one of "public trust."

* Proposed Amendment 44, § 2B1.1(b)(4). The current guidelines applicable to mail theft are based on the dollar value of the loss. Although the guideline increases the offense level if mail is involved, we do not feel this adequately addresses the seriousness of the offense and its impact on the victims and on the essential governmental function of mail delivery. The proposed amendments take these factors into consideration by initially increasing the offense level to a level 6, and then adding the appropriate level increase corresponding to the total dollar loss associated with the theft. In order to conform with similar guideline language, the amendment should be reworded to read:

"If undelivered United States Mail was taken, increase by two levels. If the offense is less than level 6, increase to level 6."

In addition to this amendment to the mail theft guideline, we have proposed § 2B1.1(b)(8) to address theft schemes involving large volumes of mail. Frequently, these volume thefts are conducted as a gang-related crime to steal the mail and then fraudulently negotiate or use those items contained within. In most instances, a substantial volume of stolen mail is necessary to obtain a minimal number of checks, credit cards, negotiable instruments or other items of value. The dollar loss of these types of thefts does not accurately reflect the scope of the crime in terms of the number of victims affected and the operations of the government's postal system. Our proposed amendment would address the more serious nature of these schemes to steal large volumes of mail by increasing the offense level to a 14.

Technical corrections to the proposed amendment are needed to clarify the application of the guideline for its purpose. The amendment would read as follows:

8. If the offense involved a scheme to steal multiple pieces of undelivered United States Mail and the offense level determined above is less than level 14, increase to level 14.

Proposed Amendment 45, (§ 3A1.4). The Postal Service remains committed to the principle of victims' rights and supports more guidelines which emphasize victim impact in the sentencing process. We believe the sentencing level should reflect the total harm caused by the defendant's criminal misconduct. Our proposed guideline accomplishes this by including a victim-related adjustment based on the number of victims. For example, in volume mail theft crimes, and in consumer fraud crimes, substantial numbers of victims are directly harmed. We believe that the number of victims impacted by the defendant's relevant conduct should warrant an increase in the offense level. Furthermore, we feel such a guideline should be applied to any offense which results in multiple victims for these reasons.

As proposed, our amendment would give a two-level increase for a crime which results in two or more victims; those crimes affecting more than 100 victims would be subject to an additional two-level increase for each 250 victims, up to a maximum eight-level increase.

Because our proposed amendment is a Chapter 3 adjustment, it would impact on other offenses beyond those which are postal related, which requires a more comprehensive analysis of multiple victim crimes. Accordingly, we urge the Commission to include the study and formulation of a multiple victim guideline as a priority issue for 1994.

Your consideration of these issues is appreciated. If additional information is needed, please contact me at (202) 268-4267.

Sincerely,

A handwritten signature in cursive script, appearing to read "K. J. Hunter".

K. J. Hunter