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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. 2002-8002

Dear Mr. Courlander:

I am a federal practitioner in Dallas, Texas. I am also admitted to practice in Washington, D.C. I do quite a bit of federal criminal defense work. Before that, I served almost 15 years with the U. S. Department of Justice, both in Washington, D.C. and here in Dallas, where I served as the Criminal Chief and later the First Assistant of that office. I am writing in response to the Commission's request for public comment on proposed amendments to the Guidelines governing money laundering offenses. I strongly recommend adoption of amendment 11, with suggested modifications.

The amendment is much needed and long overdue. The current money laundering guidelines encourage prosecutors to seek money laundering offenses in cases for which they are most inappropriate in order to achieve the plea bargaining leverage afforded by the Guidelines. In non-narcotics cases, the money laundering sentence is much harsher than the penalty for the underlying offense. Of particular note, the results of the Commission's money laundering working group demonstrated that in non-drug trafficking cases, 40 percent of the underlying crimes in money laundering cases were white collar rather than drug trafficking and that the offense level for such money laundering conduct exceeded that for the underlying conduct 96 percent of the time in non-drug cases. The proposed amendment recognizes that Sections 1956 and 1957 are broad and can be applied to relatively simple fraud cases. Moreover, those sections can also apply to relatively ordinary transactions which are not usually thought of as money laundering. I have personally experienced cases in which I am confident that violations under Sections 1956 and 1957 were added to the indictment for the plea bargaining leverage presented.

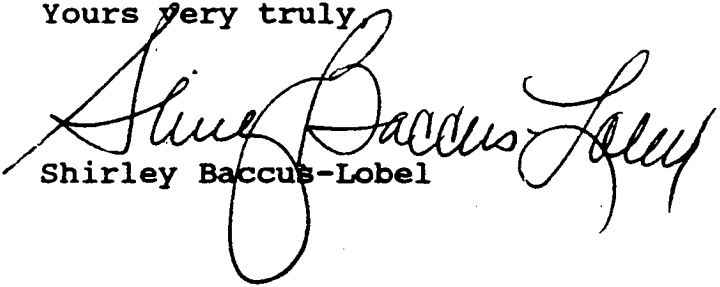
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Based on the foregoing observations and my personal experience, I certainly support the Commission's objective but I urge as well that certain modifications to the proposed amendment be made. With these modifications, the Commission's stated goal ("relating the offense levels more closely to the offense level for the underlying offense") will be better achieved. First, where the defendant committed the underlying offense and the offense level can be determined, the base offense level for the underlying offense should be applied in all cases, not just in those cases where the base offense level would exceed the base offense level in proposed Section 2S1.1(a)(2) or (3). This offense level then would be increased by any specific offense characteristic under proposed Section 2S1.1(b). To achieve this result, I would suggest deleting from the instruction in Section 2S1.1(a) "(Apply the greatest)" and suggest inserting the term "otherwise" after subparagraph (3).

Second, I would strongly urge the Commission to make the base offense level in proposed Section 2S1.1(a)(3) the same as the base offense level for fraud and deceit (Section 2F1.1). Therefore, I would suggest changing proposed Section 2S1.1(a)(3) to a base offense level of 6 plus the number of offense levels from the table in Section 2F1.1.

Thank you for your consideration and your effort to make the Sentencing Guidelines more uniform and fair.

Yours very truly

  
Shirley Baccus-Lobel

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