

ZUCKERMAN, SPAEDER, TAYLOR & EVANS

ATTORNEYS AT LAW
201 SOUTH BISCAYNE BOULEVARD
SUITE 900

MIAMI, FLORIDA 33131

(305) 579-0110

TELECOPIER
(305) 579-9749

TAMPA OFFICE
101 EAST KENNEDY BOULEVARD, SUITE 3140
TAMPA, FLORIDA 33602
(813) 221-1010

FORT LAUDERDALE OFFICE
1750 EAST SUNRISE BOULEVARD
FORT LAUDERDALE, FLORIDA 33304
(305) 525-0531

WASHINGTON, D.C. OFFICE
1201 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 778-1800

MARYLAND OFFICE
100 EAST PRATT STREET
BALTIMORE, MARYLAND 21202
(410) 332-0444

NEW YORK OFFICE
415 MADISON AVENUE, 18TH FLOOR
NEW YORK, NY 10017
(212) 906-8308

ERIC F. FACER
MARSHALL S. WOLFF
MARY LOUISE AMERINE
BLAIR G. BROWN
BARBARA KRAMER MORGAN
LESLIE M. BERGER
XONNA M. CLARK
ROSEMARIE SCHMIDT
DEBORAH J. JEFFREY
GARY D. WEINFELD
BARBARA L. WARD
LOUISE A. STOVALL
THOMAS B. MASON
BRUCE AMON JAMES
RICHARD B. ROSENBLATT
ELEANOR H. SMITH
ELLEN FISHBEIN MILLS
ALAN H. SCHEINER
SUSAN E. KESTNER
VIRGINIA A. WHITEHILL
ROBERT GULACK
NORMAN L. EISEN
MARIA A. STAMOULAS
TURNER SWAN
JULIE A. BELL
GREGORY H. GUST
DAVID U. GOUREVITCH
RESIDENT IN MARYLAND*
HERBERT BETTER
DONALD J. MCCARTNEY
MARTIN S. HIMELER, JR.
CYRIL V. SMITH

JOHN F. EVANS
(1941-1988)

RESIDENT IN FLORIDA
RONALD B. RAVIKOFF
MICHAEL S. PASANO
MORRIS WEINBERG, JR.
JOHN F. LAURO
HUMBERTO J. PEÑA
SHARON L. KEGERREIS
THOMAS J. MEES
MICHAEL S. GREENE
GUY A. RASCO
BRYAN R. CLEVELAND
JENNIFER R. COBERLY
LAURA L. VAUGHAN
TERESA HALLIGAN
MELISSA HAMMERSLEY CLARK
MARC N. BELL
JEFFREY P. AORON
JILL M. GRANAT
RESIDENT IN WASHINGTON, D.C.*
ROGER E. ZUCKERMAN
MARK W. FOSTER
ROGER C. SPAEDER
BRUCE GOLDSTEIN
WILLIAM W. TAYLOR, III
PETER R. KOLKER
ARTHUR K. MASON
STEPHEN H. GLICKMAN
MICHAEL R. SMITH
ANTHONY THOMPSON
NELSON C. COHEN
STEVEN M. SALKY
EDWARD C. BERKOWITZ
JUDITH STURTZ KARP
*NOT ADMITTED IN FLORIDA

March 2, 1994

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D. C. 20002-8002

Dear Mr. Courlander:

I am a federal criminal defense practitioner in Miami, Florida. I am also Chairman of the ABA Criminal Justice Section Defense Function Committee; Chairman of the Florida Regional Subcommittee of the ABA White Collar Crime Committee; and a Vice-chair of the White Collar Crime Committee. 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 21, 1993, edition of the Federal Register (Vol. 58, No. 243, Part V). The purpose of this letter is to comment on proposed amendment number 11, which would amend and consolidate U.S.S.G. §§ 2S1.1 and 2S1.2 governing money laundering offenses.

I strongly recommend adoption of proposed amendment number 11 with the modifications suggested below. The proposal would tie the base offense levels for money laundering violations more closely to the underlying conduct that was the source of the illegal proceeds and constitutes a much needed reform.

Mr. Michael Courlander
March 1, 1994
Page Two

The proposed amendment seems to recognize that §§ 1956 and 1957 are broad and can apply even in relatively simple fraud and other cases. Such cases often involve transactions that are normally not thought of as "money laundering," no less sophisticated money laundering, but which nonetheless are prosecuted under §§ 1956 and 1957. Indeed, in some cases, the money laundering offense is difficult to distinguish from the underlying crime.

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.

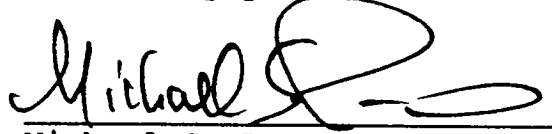
While I support the Commission's objective, I strongly urge the Commission to make the following modifications to the proposed amendment to better achieve the Commission's stated goal of "relating the offense levels more closely to the offense level for the underlying offense from which the funds were derived."

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 § 2S1.1(a)(2) or (3). This offense level then would be increased by any specific offense characteristics under proposed § 2S1.1(b). To achieve this result, I would suggest deleting from the instruction in § 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 § 2S1.1(a)(3) the same as the base offense level for fraud and deceit (§ 2F1.1). Therefore, I would suggest changing proposed § 2S1.1(a)(3) to a base offense level of 6 plus the number of offense levels from the table in § 2F1.1.

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

Very truly yours,


Michael S. Pasano

MSP:mdv