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March 14, 1994

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

Dear Mr. Courlander:

Pursuant to the Sentencing Commission's request for public comment on the proposed amendments to the Sentencing Guidelines published in 58 Fed.Reg. No. 243, Part V of December 21, 1993, I wish to register the following suggestions. The specific purpose of my letter is to comment on Proposed Amendment No. 11, and which would amend and consolidate USSG §§2S1.1 and 2S1.2 (money laundering offenses).

I am strongly in favor of adoption of the proposed Amendment No. 11, subject to modifications which I suggest below. The proposed amendment would tie the base levels of money laundering violations more closely to the underlying conduct which was the source of the illegal proceeds. My suggested modifications are intended to insure this result.

The Commission's proposed amendment satisfies a much needed reform. Although the current guidelines arise from concerns regarding drug trafficking, they have caused and encouraged prosecutors to seek money laundering convictions in non-narcotics related money laundering cases merely because they can gain guidelines sentences which are much harsher than those applicable to the underlying offense, as well as asset forfeitures, a factor not taken into consideration under the current Guidelines.

As the October 14, 1992 Report to the Commission Staff Director from the Commission's Money Laundering Working Group clearly demonstrates, there are cases from around the country in

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which the Government, simply by adding a violation of 18 USC §§1956 and 1957 to the indictment, has been able to obtain significantly higher guideline sentencing ranges than would have been the case if the guideline for the underlying offense had controlled. Moreover, the results of the Working Group's study of Fiscal Year 1991 sentences showed that 40% of the underlying crimes in money laundering cases were not related to drug trafficking, but were characterized as "white collar" crime, and that the offense level for the money laundering conduct exceeded that for the underlying conduct 96% of the time in non-drug cases.

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", much less sophisticated as money laundering, but which nonetheless are proscribed by §§1956 and 1957. Indeed, in some cases, a money laundering offense is difficult to distinguish from the underlying crime. See, United States v. Montoya, 945 F.2d 1068 (9th Cir. 1991) (state public official was convicted of money laundering under 18 USC §1956 based upon the deposit into his personal checking account of a single \$3,000 check representing a bribe.)

The current guidelines make it easy for the Government to substantially influence plea bargaining negotiations by merely threatening to include a count charging a violation of §1956 or §1957 in the indictment. The proposed amendment goes a long way towards addressing this problem and ultimately will help to achieve the Commission's mandated and stated goal of "eliminating unfair treatment that might flow from count manipulation." USSG, Chapter 1, Part A, Paragraph 3.

PROPOSED MODIFICATION

While I support the Commission's objective, I urge the Commission to make the following modification to the proposed amendment in order 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 where the underlying offense level can be determined, the base offense level for the underlying offense should be applied in all cases, not just in those cases in which the base offense level would exceed the base offense level as in proposed §2S1.1(a)(2)(4). The offense level of the underlying offense would

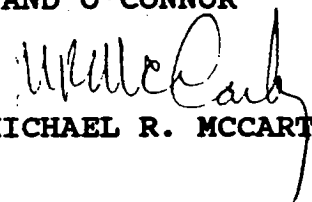
then be increased by any specific offense characteristics under proposed §2S1.1(b). To achieve this result, I suggest deleting from the instruction in §2S1.1(a) the term "(Apply the greatest)" and further suggest inserting in its place, the term "otherwise" after sub-paragraph (3).

Second, I 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 found in §2F1.1. Accordingly, I suggest changing proposed §2S1.1(a)(3) to a base offense level of 6, plus the number of offense levels taken from the table in §2F1.1.

As a practicing criminal defense counsel who frequently appears in federal criminal trials in Philadelphia, Pennsylvania (as well as in other federal districts), I strongly support the Commission's efforts to make the Sentencing Guidelines uniform and fair.

Very truly yours,

COZEN AND O'CONNOR


BY: MICHAEL R. MCCARTY

MRM/jm