



UNITED STATES POSTAL INSPECTION SERVICE

OFFICE OF COUNSEL

March 14, 1997

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

Attention: Michael Courlander
Public Information Officer

Dear Mr. Courlander:

The United States Postal Inspection Service respectfully submits its comments to the proposed amendments published by the Commission in the January 2, 1997, Federal Register.

Generally, we support the Commission's efforts to consolidate and simplify the guidelines, especially in the area of loss determination for theft and fraud offenses. Over the last four years, we have proposed amendments for calculating the economic loss for theft of mail generally and the theft of mail containing credit cards. In our submission this year, we again recommended changes to address these problems. In particular, we proposed alternative means to determine the economic loss for stolen credit cards and large volume mail thefts based on the principles of intended loss and risk of loss. Specific provisions that authorize an upward departure for these offenses would address the shortcomings of the current guidelines. Furthermore, there are inconsistent interpretations among the circuits in the application of the theft guidelines for stolen, but unused, credit cards that we believe the Commission should address.

Although our proposed amendments were not published, the reasons we gave in their support are similar to those cited by the Commission in its proposed amendments for 1997.

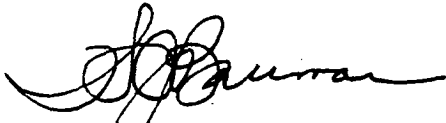
We are in favor of increasing the base offense level for theft and fraud offenses as proposed in Amendment 18. However, we have a concern with the deletion of §2B1.1(b)(3), the specific offense characteristic that provides for a two-level increase for the theft of undelivered United States mail. We do not support the elimination of this guideline and disagree with the narrative accompanying its proposed deletion: "[b]ecause the floor of 6 for offenses involving the theft of mail is unnecessary given the proposal to increase the base offense level for offenses from 4 to 6."

The federal statutes governing the theft and obstruction of mail differentiate United States mail from other stolen or destroyed property. We believe this distinction was the basis for §2B1.1(b)(3) when it was promulgated and feel strongly that it should be maintained in any general offense level increase proposed for the theft guidelines. The current guideline considers the inherent value of mail that cannot always be measured in dollars, the government's fiduciary role in this public communications service, and the mail as an integral part of our nation's commerce. Moreover, the commentary to the mail theft guideline states: "[t]hat the theft of undelivered mail interferes with a government function and the scope of the theft may be difficult to ascertain." For these reasons, we request the Commission maintain a two-level increase for theft or destruction of United States mail above any new base offense level established for theft offenses.

As a final matter, we agree with Amendment 37 that would consolidate the mail theft and obstruction guidelines and the corresponding change to the commentary.

If you have any questions, or need additional information, please feel free to contact me at (202) 268-4415.

Sincerely,



H. J. Bauman
Counsel
Office of Chief Inspector