

WRITTEN TESTIMONY OF K. M. HEARST
DEPUTY CHIEF INSPECTOR
UNITED STATES POSTAL INSPECTION SERVICE
BEFORE THE
UNITED STATES SENTENCING COMMISSION
MARCH 22, 1993

I AM K. M. HEARST, DEPUTY CHIEF INSPECTOR FOR CRIMINAL INVESTIGATIONS, UNITED STATES POSTAL INSPECTION SERVICE. I AM JOINED BY H. J. BAUMAN, COUNSEL.

I WANT TO THANK THE COMMISSION FOR THE OPPORTUNITY TO TESTIFY ON SEVERAL ISSUES OF INTEREST FOR THE POSTAL SERVICE. THE POSTAL SERVICE SUBMITTED FOUR AMENDMENTS TO THE COMMISSION. OUR FORMAL WRITTEN COMMENTS ON THESE PROPOSALS HAVE PREVIOUSLY BEEN SUBMITTED AND I WILL BRIEFLY SUMMARIZE THOSE COMMENTS.

WE ASK THE COMMISSION TO CONSIDER THE UNIQUE CHARACTER OF UNITED STATES MAIL AS THE CARRIER OF THE NATIONS CORRESPONDENCE, AND THE EFFECT OF MAIL THEFT CRIMES ON THE PUBLIC, AS IT CONSIDERS THESE PROPOSED AMENDMENTS. WE HAVE SEEN A CONTINUING INCREASE IN THE OVERALL VOLUME THEFTS OF MAIL. FOR EXAMPLE, MAIL THEFTS INCREASED OVER FIFTEEN PERCENT LAST YEAR. MORE SIGNIFICANTLY, VOLUME THEFT ATTACKS ATTRIBUTED TO POSTAL VEHICLE BREAK-INS, LETTER CARRIER CARTS/SATCHELS, AND MAIL STORAGE BOXES HAVE INCREASED SIXTY-ONE PERCENT WHEN COMPARED TO THE SAME PERIOD LAST YEAR. IN THESE CRIMES, NUMEROUS PIECES OF MAIL ARE TAKEN IN ONE CRIMINAL ACT, AND THE SAFETY OF POSTAL LETTER CARRIERS IS JEOPARDIZED. WHEN THEFT OF MAIL OCCURS, NOT ONLY ARE THE

CITIZENS WHO SEND OR RECEIVE MAIL VICTIMIZED, BUT ALSO THE POSTAL SERVICE, BECAUSE IT IS AN ATTACK ON AN ESSENTIAL GOVERNMENTAL SERVICE PROVIDED TO AMERICAN CITIZENS.

THE UNITED STATES MAIL HAS HISTORICALLY BEEN THE CARRIER OF THE "PUBLIC'S PAPERS." DUE TO THE EXPECTATION OF PERSONAL PRIVACY AMERICAN CITIZENS HAVE IN THEIR CORRESPONDENCE ENTRUSTED TO THE CARE AND CUSTODY OF THE POSTAL SERVICE, MAIL IN OUR CUSTODY, UNLIKE DOCUMENTS IN THE POSSESSION OF A COMMON CARRIER, IS PROTECTED BY THE FOURTH AMENDMENT.

TWO OF THE FOUR GUIDELINE AMENDMENTS ARE IN THE AREA OF MAIL THEFT. THE FIRST AMENDMENT WOULD INCREASE THE LEVEL FOR MAIL THEFT TWO LEVELS, IN ADDITION TO LEVELS ADDED FOR THE DOLLAR LOSS. WE BELIEVE THIS INCREASE IN THE LEVEL MORE PROPERLY REFLECTS THE HARM CAUSED BY THE MAIL THEFT IN GENERAL.

OUR SECOND AMENDMENT DEALS WITH THE RELATED ISSUE OF SCHEMES TO STEAL LARGE QUANTITIES OF MAIL. OUR EXPERIENCE HAS SHOWN THAT THESE CRIMES ARE OFTEN COMMITTED BY ORGANIZED CRIME ORGANIZATIONS OR GANGS. LARGE VOLUMES OF MAIL ARE STOLEN IN

ORDER TO INSURE THE THIEVES OBTAIN MAIL WHICH CONTAINS ITEMS OF VALUE, SUCH AS CREDIT CARDS AND WELFARE OR SOCIAL SECURITY CHECKS WHICH ARE THEN FRAUDULENTLY NEGOTIATED OR USED. WHILE MANY MAIL THEFT CRIMES ARE OFTEN CRIMES OF OPPORTUNITY, THESE OFFENSES, WHICH ARE THE PRODUCT OF PLANNING AND SURVEILLANCE BY CRIMINALS, ARE EVEN MORE SERIOUS AND DISRUPTIVE. THEY IMPACT THE ECONOMIC WELL BEING OF NUMEROUS VICTIMS AND CAUSE A MAJOR DISRUPTION TO OUR POSTAL SYSTEM. IN THIS REGARD, WE HAVE PROPOSED A NEW GUIDELINE WHICH WOULD SIGNIFICANTLY INCREASE THE OFFENSE LEVEL FOR SCHEMES INVOLVING THE THEFT OF MULTIPLE PIECES OF MAIL.

THIS LEADS TO OUR NEXT AMENDMENT ISSUE WHICH IS OF SPECIAL IMPORTANCE -- THE PUBLIC TRUST GUIDELINE -- AS APPLIED TO EMPLOYEES OF THE POSTAL SERVICE. AS YOU ARE AWARE, THERE ARE TWO PROPOSED AMENDMENTS ON THIS GUIDELINE PENDING BEFORE THE COMMISSION. OUR PROPOSAL WOULD PLACE LANGUAGE IN THE GUIDELINE COMMENTARY WHICH WOULD CLARIFY THAT A POSTAL EMPLOYEE, BY VIRTUE OF THE SPECIAL FIDUCIARY POSITION WITH THE AMERICAN PEOPLE AND THEIR CORRESPONDENCE, SHOULD BE SUBJECT TO THE ENHANCEMENT PROVIDED IN THE GUIDELINE. IT IS OUR STRONG FEELING THAT THE FEDERAL CRIMINAL STATUTES

APPLICABLE EXCLUSIVELY TO OFFICERS AND EMPLOYEES OF THE POSTAL SERVICE, WHICH HAVE BEEN IN PLACE FOR OVER ONE HUNDRED YEARS, DISTINGUISH THEIR POSITION FROM THAT OF THE ORDINARY BANK TELLER. FOR THESE REASONS, WE STRONGLY OPPOSE A MORE RESTRICTIVE INTERPRETATION OF THE PUBLIC TRUST GUIDELINE AND URGE THE COMMISSION TO ADOPT OUR PROPOSED AMENDMENT. WE WOULD CLARIFY IN THE COMMENTARY THAT THE GUIDELINE EXPLICITLY APPLIES TO POSTAL EMPLOYEES WHO ABUSE THEIR POSITION TO STEAL MAIL, POSTAL SERVICE PROPERTY, OR EMBEZZLE POSTAL SERVICE FUNDS.

IN REGARD TO OUR FOURTH AND FINAL GUIDELINE AMENDMENT, WE ASK THE COMMISSION TO SET AS ONE OF ITS PRIORITIES FOR THE NEXT AMENDMENT CYCLE, A STUDY OF MULTIPLE VICTIM CRIMES AND THE FORMULATION OF A NEW GUIDELINE. THE POSTAL INSPECTION SERVICE, AS AN ADVOCATE OF VICTIMS' RIGHTS, BELIEVES THE NUMBER OF PEOPLE AFFECTED BY A CRIME IS AN IMPORTANT ELEMENT IN MEASURING THE CRIME'S OVERALL HARM TO SOCIETY. IT IS OUR POSITION THAT THE GUIDELINES SHOULD INCLUDE THIS AS A FACTOR IN THE SENTENCE COMPUTATION.

AS A FINAL MATTER, WE FEEL NO CHANGE IS NECESSARY TO THE MONEY LAUNDERING GUIDELINES. CLEARLY, THE LEGISLATIVE INTENT WAS TO CREATE A SEPARATE CRIME WITH A MORE SERIOUS PENALTY FOR MONEY LAUNDERING OFFENSES, DISTINCT FROM THE SPECIFIED UNLAWFUL ACTIVITIES. FOR THESE REASONS, WE SUPPORT THE POSITION OF THE DEPARTMENT OF JUSTICE ON THIS ISSUE. WE URGE THE COMMISSION TO MAINTAIN THE SEPARATE AND HIGHER OFFENSE LEVEL FOR MONEY LAUNDERING OFFENSES.

I WANT TO THANK THE COMMISSION FOR THIS TIME, AND WILL NOW ENTERTAIN ANY QUESTION CONCERNING OUR COMMENTS.

Epidemic of Mail Truck Robberies Sweeps Southland

■ **Crime:** Gangs of thieves targeting welfare and Social Security checks are growing more brazen. Officials say the problem began spreading after the riots.

By PATRICE APODACA
TIMES STAFF WRITER

Gangs of thieves seeking government checks and credit cards are causing an epidemic-like increase in the theft of mail from postal trucks while carriers walk their rounds, according to federal authorities.

The problem began escalating in South-Central Los Angeles after last spring's riots. It has spread across Southern California, authorities say. Thieves are on the prowl from Santa Ana to Ventura.

Since October more than 100,000 pieces of mail have been stolen from trucks in the Postal Service's Los Angeles Division, which covers Los Angeles, Orange, Ventura, San Bernardino and Riverside counties. Total losses are unknown. Welfare checks totaling several hundred thousand dollars have been taken, officials say.

In the year that ended Sept. 30, postal vehicle break-ins in the region nearly doubled from the previous year, to 289. More than 200 have already been reported in the five months since then.

It's an "epidemic-type situation," said David H. Smith, the head Los Angeles postal inspector.

"It started picking up after the riots, then it just took off," Smith

said. "Before you could say boo, it jumped from five or six a check day to 25 or 40 a check day." Check days are when public assistance checks are delivered.

Los Angeles postal inspectors recently broke up a gang that they think broke into trucks from Long Beach to San Jose.

The gang is believed to have brought illegal aliens across the border and then coerced them into smashing truck windows and grabbing mail trays. An alleged kingpin and two suspected accomplices are under federal indictment in Phoenix.

The three are accused of changing the names on stolen checks and depositing them in banks in Arizona. Gang members would withdraw cash from automated teller machines or write checks against the accounts, prosecutors say. When the arrests were made in January, one Arizona account contained about \$24,000.

Vehicle break-ins are now "the major focus of my attention," Smith said.

This type of crime comes in waves every few years, officials say but the latest surge may be the biggest ever.

Among causes, they cite high unemployment.

Please see THEFTS, A24

THEFTS: Epidemic of Mail Robberies

Continued from A3

"As people get more desperate for money, they resort to more desperate means," postal inspector Pamela Prince said.

Another likely cause of the surge: The crime has become organized.

In a typical operation, "one central person is controlling a group of runners who are going out and breaking into the vehicles," Smith said. "All it takes is one or two or three really smart operators."

Gang members sometimes cash the checks using phony identification. Or they alter the checks and cash them at places that do not ask many questions. Stolen credit cards can be taken to Las Vegas and charged to the limit.

For a welfare recipient, the theft of a check can be a major problem. Getting a replacement can take months, officials say, despite their policy of making it a high priority.

"For some elderly people on Social Security, if their check is stolen they're in dire straits," postal inspector Ray Chavez said.

Prince says an underlying cause of the increase in break-ins is diminishing respect for the mail and mail carriers. If the Postal Service was once considered sac-

rosanct, last year's riots showed that it no longer is. Several post offices were plundered. One was burned to the ground.

While stealing from unattended vehicles is the most common technique, recent incidents suggest that mail thieves are growing more brazen.

In August, a carrier in Redondo Beach was attacked by a man who cut him with a knife and stole a tub of mail. The attacker has pleaded guilty to assault.

In September, a female carrier was attacked in Los Angeles by two men who held a sawed-off shotgun to her chest, sprayed a chemical disabler in her face and grabbed 500 pieces of mail.

This month, two armed robbers stole a load of mail at a postal facility on Washington Boulevard near Crenshaw Boulevard.

Federal officers have started patrolling streets on check days, and the number of truck break-ins has dropped from more than 25 to 15 or 20 a day, Smith said.

Since October, 12 arrests tied to postal vehicle break-ins have been made in the Los Angeles district. An undercover task force hopes for more arrests, Smith said.

"We are getting more and more leads on who these people are, and we are getting closer and closer to getting identifications," he said.

Burglarizing a postal vehicle and stealing or receiving stolen mail are punishable by up to five years in federal prison. Related offenses, such as forgery, interstate transportation of stolen property and violation of organized crime statutes carry heavier penalties.

Postal officials are sending warnings to check-cashing establishments, the ultimate loss when a stolen check is traced back to them. Printed warnings tell them to spot phony identifications, altered checks and other signs of trouble.

Also, about 85% of the old delivery trucks in the Los Angeles district have been replaced with vehicles lacking rear windows.

To encourage "public" involvement, officials are giving information to neighborhood groups and posting notices asking that people watch for suspicious activity around mail trucks.

"My job is to stop this," Smith said. "If I have to do it by arrest, so be it. If I have to do it by public awareness, that's great. We're going to get them."

Postmaster
33 College Ave.
Waterville, ME 04901-9998

Morning Sentinel, Thursday, February 25, 1993 9

Ex-postal clerk gets 60 days for theft

By JOHN HEALY

Ory General Service

PORTLAND — A former U.S. Postal Service mail handler was sentenced in federal court Wednesday to 60 days in prison for stealing two checks worth \$15 from the Naples post office.

The sentencing of Lisa M. Burns, 34, highlights what the U.S. government contends is a widespread problem of theft in the Postal Service.

The U.S. attorney for Maine has handled eight postal theft cases in the past three years and 50 or more over the last decade, authorities said Wednesday.

"And these are just the ones we've caught," said **Postal Inspector Robert**

Paula Stuby, the assistant U.S. attorney who prosecuted Burns, told U.S.

District Judge Goose Carter. "The government believes a significant number of postal employees do precisely what Lisa Burns did, and that is steal from their employer."

The Postal Service was unable to provide any detailed statistics of such crimes. But the president of the local postal workers' union, while conceding that thefts occur, said they are rare.

"I can't see where anyone would say it's widespread and getting worse," said Wayne Poland.

Judge Carter tried to use Wednesday's sentencing hearing to deter other postal employees and to reassure the millions of people who rely on the mail service.

"You were a federal government employee in violation of a solemn oath," Carter admonished Burns, who was earning \$10.50 an hour after 10 years

with the post office at the time of the thefts in 1992.

Carter stressed that the crime was more serious than simple theft.

"You've violated those who entrust their property to the integrity, the safeguarding and the care of the United States Postal Service," Carter said.

Burns' attorney, William Manelli of Auburn, indicated that he may appeal the sentence. He pleaded for leniency, arguing that Burns suffered from alcoholism at the time of the crime and has since become sober.

Burns was convicted by a federal court jury last November of stealing and cashing two "beaver coupons," the kind of checks consumers receive in popular rebate programs from manufacturers.

The checks, worth \$5 and \$10, were sent by the post office's inspection ser-

vice as part of a random investigation intended to root out theft.

Bethel, the postal inspector, said the post office does not monitor the monetary value of internal theft.

"We're not looking at monetary value; it's not important," he said. "The integrity of the mail is all that matters. The sanctity of the mail is the most important thing."

Poland, the head of the Portland local of the American Postal Workers Union, said the national union regularly uses its newsletter to warn postal workers of the risks of stealing.

He added that the union may include a story about the Burns case in an upcoming issue "just to make people aware of what they're jeopardizing."

"I can't understand where anybody would think it would be worth it for such a small amount of money," Poland said.

SAN FRANCISCO DIVISION

Postal truck crooks hit again

■ Thieves of welfare, Social Security checks reach out to Richmond

By Cecily Burt
STAFF WRITER

RICHMOND — Crooks targeting monthly deliveries of welfare checks are expanding their territory beyond Oakland and San Francisco, breaking into two postal vehicles in Richmond early this month.

Thieves in Oakland and San Francisco have been targeting first-of-the-month mail deliver-

ies because they include an abundance of public-assistance and Social Security checks. In Oakland alone, more than a dozen postal vehicles have been broken into since the end of last October.

Now thieves have turned their attention to postal vehicles in Richmond. Even though theft of such mail has not typically been a problem in the city, the break-ins of two vehicles on Feb. 1 prompted the Postal Inspection Service to offer rewards of as much as \$1,000 for information leading to the arrest and conviction of the perpetrators.

One of the vehicles was broken into at about 1:30 p.m. while parked at the corner of South and Beck streets. The other vehicle was broken into at about 3:15 p.m. while parked at 1800 Gaynor St.

Persons convicted of felony mail theft can face fines up to \$250,000 or five years in jail, or both.

Anyone with information should call the Postal Inspection Service in Oakland at 510 836-2800 and ask for the External Crimes Team. Anonymous tips are welcome.

SAN FRANCISCO DIVISION

BAY AREA REPORT

■ REGION

Reward Offered in Carrier Robberies

The U.S. Postal Service yesterday offered two \$10,000 rewards for information leading to the arrest of suspects in the beating and robbery of a San Francisco letter carrier and the armed robbery of an Oakland postal clerk.

On February 1, a San Francisco carrier was beaten by three men near the Daly City BART station after he refused to hand over mail containing welfare and Social Security checks, said Michael Baum, spokesman for the U.S. Postal Inspection Service. The robbers stole the carrier's wallet but ran off without taking any mail.

The next day, a gunman described as 25 to 30 years old stole an unspecified amount of cash from a postal clerk outside the North Oakland Postal Station, Baum said.

Anyone with information is asked to phone 415-550-5625 or 510-638-2800.

Encinitas mail thefts said to triple

By Mirna Alfonso
Staff Writer

Mail thefts in Encinitas have nearly tripled, a federal postal inspector said.

In 1992, 630 mail thefts were recorded, compared with 262 the year before, U.S. Postal Inspector David Fast said.

"We're extremely worried about the situation," he said. "It's just like a tide. You don't know when it's going to hit."

Officials reportedly suspect most of the thefts, which mainly target mailboxes, are committed by the "Route 78" bandits, a loosely knit crew whose members move up the North County coast, then onto Highway 78 into Escondido.

"They're starting to move into the wealthier areas," Fast said, adding that criminals term

Escondido "yuppie haven."

The group, which allegedly recruits new people as members are jailed, usually are methamphetamine users who burglarize mailboxes looking for checks, credit cards and identification, Fast said.

The method involves either following mail trucks, knowing when checks will arrive or watching for a mailbox's red flag to be up.

One arrest involved a man named Nick Bruno, also known as Nick Robertson.

On Jan. 4, Bruno was sentenced to five years in federal prison for stealing a number of credit cards and other mail in Carlsbad, Leucadia and Encinitas between 1990 and June 1992.

Bruno had rigged a device with which he quickly jimmied open post office boxes, Fast said.

He finally was caught when he broke into a box in the midst of 40 people at the Carlsbad Post Office.

Postal inspectors, who had staked out the office, arrested him outside, Fast said.

Officials urge residents not to have checks or credit cards sent to their homes, but leave mail in their boxes for pickup, and if possible, can arrange it, to be home when the mail carrier arrives.

People who suspect or know that mail has been stolen should call the postal inspector's office at 233-0610.

"People have to report this more in order to make arrests," Fast said.

"The most minuscule little thing maybe is the big thing that breaks these cases," he said.

Blade Citizen
Oceanside, CA
January 24, 1993
SAN DIEGO DIVISION



Steve Minton/News-Press

Santa Barbara police Officer Leonard Gómez checks out a U.S. Postal Service vehicle as mail carrier Steven Berg takes inventory after the Jeep was broken into Monday.

Mail thieves strike again, seize welfare checks off postal Jeep

By Jesse Chavarria
News-Press Staff Writer

They struck again.

Mail thieves broke into a U.S. Postal Service Jeep in Santa Barbara on Monday and took 1,500 letters, including government welfare checks, authorities reported.

The heist was a worrisome sign of the danger, when thousands of pieces of mail, including Social Security checks, were stolen from Postal Service Jeeps in the Westside, Lower Eastside and lower Westside neighborhoods.

"This is getting to be a problem," said Sgt. John Thayer. "Before December, I don't ever remember this sort of thing in Santa Barbara."

Police and postal officials said they suspect the same Los Angeles-based mail-theft ring pulled Monday's job. The thieves struck at the corner of San Andres and Valerio streets at 11:22 a.m.

"It's a pretty heartless thing," Thayer said. "They're taking money from needy people."

The burglary took place minutes after the postal carrier had locked the Jeep and started on door-to-door deliveries in the Westside neighborhood.

The robbers smashed the Jeep's rear window and pulled out two trays of mail. More might have been taken, but a nearby witness saw them, police said.

The trays contained letters bound for homes at the 1600-1900 blocks of San Pascual Street, the 1600-1900 blocks of San Andres Street, the 600 block of Mulberry Avenue, the 500 and 600 block of West Pedregosa Street and the 1800 block of Dutton Avenue, according to Santa Barbara's Post Office spokeswoman Mary Frink.

"As it happened, we were lucky," Frink said.

An off-duty mail carrier spotted the break-in and called 911, Frink said.

"He got a description of one of the suspects and took down the license plate," she said.

Police arrived quickly, but the two men had driven off toward the freeway and vanished.

Police believe their best chance of tracking down the pair is the getaway vehicle, described as a blue Ford Bronco with a white strip "in beat-up condition."

A computer check of the license number identified the truck's plates as from Los Angeles, police said.

Frink also is confident the thieves eventually will be caught.

Authorities already have nabbed suspects in the December mail theft in Santa Barbara, she said.

The arrests came in Phoenix after the suspects attempted to deposit stolen Social Security checks from Santa Barbara into a bank account, Frink said. She had no further details, however.

PUB: Santa Barbara News-Press
CITY & ST: Santa Barbara
DATE: 2-2-93
LOS ANGELES DIVISION
CASE INSP:
DOMICILE:

LOS ANGELES TIMES FEB 27 1989

Mails Targeted in Thefts From Postal Trucks

SANTA ANA—Federal agents Friday arrested a man, Ann man who allegedly acted as a driver for a gang that is responsible for stealing checks and credit cards from mail trucks throughout Orange and Riverside counties.

Marcello Barragan, 19, was taken into custody Friday morning at his home after he sold stolen checks and credit cards to undercover federal agents twice within the past month, authorities said.

Postal inspectors, assisted by Secret Service agents and Santa Ana police, also seized mail found at Barragan's home that was addressed to others, several credit cards, several rifles, pistols and knives. About half a dozen more credit cards were found in the

trunk of Barragan's dilapidated car. Authorities also found several letters in the back yard that they believe might have been used for illegal outlaying.

Barragan's arrest followed a nearly two-month investigation by a special postal inspection task force formed to combat what authorities call an epidemic-like increase in mail theft from postal vehicles throughout Southern California. In the last five months, about 220 mail trucks have been broken into in Los Angeles, Orange, Ventura, Riverside and San Bernardino counties.

The surge in thefts is attributed to such factors as the weak economy and high unemployment, and to mail theft evolving into an organized crime.

Authorities say gang members

roved neighborhoods in search of mail vehicles that have been left unattended while carriers make their rounds on foot. They smash the truck's windows and steal bags of mail containing government documents and business checks and credit cards. Other gang members sell the checks, or cash them using phony identification or by altering the names of the payees. Credit cards are often taken to Las Vegas, where they are quickly changed to their bank.

Postal inspectors said the gang Barragan was associated with has stolen hundreds of thousands of dollars worth of checks and credit cards in recent months. The gang also may be involved in armed robberies of mail carriers and drug sales, they said.



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CHIEF POSTAL INSPECTOR
INSPECTION SERVICE

March 15, 1993

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, DC 20002-8002

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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separateness and that the concept of "closely related" offenses should not apply. The commentary of the proposed guideline also draws a distinction which is not supported by the legislative intent or statutory definitions of "actual money laundering" as compared to "other money laundering." Simply stated, we believe if the government proves the elements of the statute, the defendant should be sentenced accordingly, without a further analysis of the criminal intent by the sentencing court. In view of our concerns with these proposed amendments, we support the existing guidelines which provide for a separate and higher offense level for money laundering not tied to the offense level of the specified unlawful activity. For the above reasons, the Postal Service endorses the position of the Department of Justice to maintain higher levels for money laundering offenses.

Proposed Amendment 23, § 3B1.3. We disagree with this proposed amendment's application to employees of the Postal Service, and submit in the alternative a revision to the commentary portion of this section which would make the public trust guideline specifically applicable to postal employees (Amendment 46). Historically, postal employees have held a special fiduciary relationship with the American public because their personal correspondence is entrusted to the care and custody of the agency. This special trust is corroborated in the oath of employment and the long-standing federal criminal statutes which relate to the theft or obstruction of mail and embezzlement which apply exclusively to postal employees. In addition, these types of crimes significantly impair the Postal Service function and negatively impact on the public's trust in the institution.

Our proposed revision to the commentary would make the public trust guideline apply to employees of the Postal Service sentenced for theft or obstruction of United States Mail, (18 U.S.C. §§1703, 1709); embezzlement of Postal Service funds (18 U.S.C. §1711); and

theft of Postal Service property (18 U.S.C. §§1707, 641). To make this amendment comport to guideline commentary format, the statute citations are deleted. Application Note 1 is amended by inserting the following paragraph at the end:

"This adjustment, for example, will apply to postal employees who abuse their position to steal or obstruct U.S. Mail, embezzle Postal Service funds, or steal Postal Service property."

It is our opinion the enhancement is justified because these crimes disrupt an important governmental function--the nation's postal system--as prescribed in § 5K2.7. Moreover, without the offense enhancement provided by § 3B1.3, the monetary value of the property damaged or destroyed may not adequately reflect the extent of the harm caused by the offense under similar rationale discussed in § 2B1.3, comment (n.4). For example, the theft or destruction of mail by employees of the Postal Service necessarily impacts numerous victims, while the total dollar loss may be minimal.

Our proposal clarifies that the special trust relationship a postal employee has with the public and its written correspondence is significantly different from that of the employment relationship of the ordinary bank teller as cited by example in §3B1.3, comment (n.1), of the current guideline. Adoption of our proposed amendment would also provide for consistency in the application of this guideline in light of several court decisions, United States v. Milligan, 958 F.2d 345 (11th Cir. 1992) (court held that a postal clerk who embezzled funds had occupied a position of trust); United States v. Lange, 918 F.2d 707 (8th Cir. 1990) (postal employee who had access to certified and Express Mail was in a position of trust); United States v. Arrington, 765 F. Supp. 945 (N.D.Ill 1991)(a casual mail handler

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