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BEFORE THE
UNITED STATES SENTENCING COMMISSION
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I am Mike Hearst, Deputy Chief Inspector for Criminal Investigations, United States Postal Inspection Service.

I want to thank the Commission for the opportunity to testify again this year on two issues of interest to the Postal Service. We have proposed two amendments for your consideration regarding multiple victim crimes and volume mail theft. These two proposals are separate and distinct and are discussed more fully in our written comments. We believe the concepts in our amendments have a great impact on the public, commerce, and the Postal Service, but are not adequately addressed by the Sentencing Guidelines.

As I have stated, our two proposed sentencing guideline amendments are found as Amendment 34 (multiple victim) and Amendment 35 (volume theft of mail). I will address Proposed Amendment 35 first.

Research was conducted by members of my staff on this proposal. To support this proposed amendment, they visited eight federal judicial districts, federal judges, Assistant United States Attorneys, federal probation personnel, victim witness personnel, postal inspectors, postal managers, and victim postal customers were interviewed. They provided input on the effectiveness of the current sentencing guidelines in deterring volume mail theft, as well as the impact the theft has on the Postal Service and on

victim postal customers. In addition, we studied statistical information provided by the Commission relating to the sentencing of individuals for violations of postal laws which relate to mail theft.

Our written comments submitted to the Commission include statistical data and news accounts, both written and on video, of mail theft. Included in the video segments are an actual volume mail theft as it is occurring, filmed with a hidden camera, video taped interviews of victims who give accounts of the effect the mail theft has had on their lives, and television accounts of volume mail thefts given during news broadcasts.

Also submitted, and sorted by federal judicial district, are case summaries which describe the types of volume mail theft cases our field inspectors routinely investigate.

In the typical volume mail theft crime, the offenders target postal vehicles, letter carrier carts and satchels, collection and relay boxes, and apartment and residential mail boxes. A significant amount of mail is stolen by those who organize these schemes, in order to obtain relatively few pieces of mail with monetary value such as checks, credit cards or other personal financial information. As an example, the average amount of mail taken during a vehicle attack is between 500 and 1000 pieces, impacting on hundreds of customers. During a collection box or

relay box attack, 4000 to 5000 pieces of mail may be taken. The items with value are kept and used while the remaining mail, with no monetary value for the thieves, is discarded or destroyed. The guidelines do not take into consideration this nonmonetary value of the items which are stolen.

The current sentencing guideline, 2B1.1(b)(4), recognizes the importance of the U.S. Mail by providing for a two-level increase in the offense level for the theft of mail. This two-level increase is adequate for mail theft as a crime of opportunity. However, the volume mail theft crimes are not crimes of opportunity, but rather are crimes committed by organized rings established for the sole purpose of stealing mail and negotiating items with monetary value. Although they include other crimes such as forgery or fraud, the basis of the crime is the theft of large volumes of mail. These rings are comprised of individuals with specified roles in the overall scheme. They include thieves, forgers, false identification providers, fences, and the individuals who use or negotiate the checks or credit cards. A majority of these crimes are committed primarily to support drug habits. Recent intelligence also shows an involvement of organized gangs that use the proceeds from mail theft to finance other criminal activities, such as drug trafficking.

Last year I advised the Commission of the continuing increase in the volume thefts of mail. That continues to be true today.

During this past year, overall mail thefts have decreased 35 percent over the prior year. However, volume mail thefts have increased by over 9 percent. The increase in this category represents the most serious type of mail theft and is primarily attributable to the criminal activities of mail theft rings.

In the volume theft crimes, numerous pieces of mail are taken in one criminal act. When this theft of mail occurs, not only are the citizens who send or receive mail victimized, but also the Postal Service, because such a crime is an attack on an essential governmental service provided to the American people. It erodes the public's confidence in the Postal Service. This has the potential for making our customers seek alternative means of delivery. Our proposed amendment addresses the serious nature of these organized schemes by increasing the offense level to a 14 for these specific offenses.

The volume mail theft problem is not unique to any one locality, but is a problem we face nationally. Because of the impact this crime has on our customers and operations, our field offices have aggressively sought methods to prevent these thefts. Modifications have been made to postal vehicles, collection and relay box locking mechanisms have been reinforced, and postal customers have been alerted via the news media regarding the precautions they should take in order to avoid being victimized.

The cost to the Postal Service to implement these preventative efforts has been substantial. As an example, in Queens, New York, the Postal Service experienced a period where one collection or relay box attack was committed each day. Each attack affected 100 to 1000 families. To remedy the box break-in problem, a modification was made to each collection and relay box in Queens. This cost the Postal Service approximately \$400,000.

When the thieves could no longer break into the boxes in Queens, they migrated to Brooklyn, and then Jamaica, New York. The Postal Service then modified the boxes in those boroughs, at an approximate cost of \$250,000. In addition, the Postal Service was required to expend an average of 16 workhours to process the customer complaints which resulted from each break-in.

Given time, most security systems can be compromised by the criminal. Our investigations in Los Angeles typify the value mail has to the criminal, and the extremes they will go to in order to acquire the mail. After experiencing a rash of vehicle break-ins, modifications were made to the postal vehicles in Los Angeles, with a number of the more vulnerable vehicles being replaced with ones which were more secure. Because of these preventative efforts, the criminals sought another course of action to acquire the mail, robbery. During Fiscal Year 1993, the Los Angeles Division of the Postal Inspection Service

suffered 91 robberies. In FY 1992, the number was 41. From October 1, 1993, to January 31, 1994, the Los Angeles Division had 57 robberies. Of these, 39 were postal carriers who were robbed, and mail or arrow keys, which provide access to collection and relay boxes, were taken.

The sentencing information which was provided to us by the Commission indicates 60 percent of all criminals that are sentenced for a mail theft related crime receive no sentence of incarceration, 25 percent receive incarceration of 1 to 12 months, and only 15 percent of all criminals sentenced for a mail theft related offense receive incarceration of more than 12 months.

Because of the low sentencing guidelines for mail theft, many federal districts defer prosecution of mail theft to local jurisdictions where the sentencing is more representative of the severity of the crime. Others have charged the defendants in mail theft cases with a federal violation in which the sentencing enhancements are greater than the mail theft enhancement.

In one instance, a federal judge wanted the mail theft defendant sentenced under 2B1.1(b)(6), because the base level for the offense was 14, and the crime involved an "organized scheme." As you are aware, this guideline refers to vehicle thefts.

This same concept that caught the judge's eye, the "organized scheme," is the key to our proposed amendment. These offenses satisfy the requirement of more than "minimal planning." The planning and repeated acts show both the intention and potential to do considerable harm. In addition, they constitute a jointly undertaken criminal activity. These organized schemes follow a pattern with each participant engaging in a similar course of conduct in the series of mail thefts committed for criminal gain.

Proposed Amendment 35 is patterned after the organized scheme to steal vehicles as found in 2B1.1(b)(6). A reading of the commentary to this guideline describes offense characteristics analogous to the organized scheme to steal mail. As previously described, these mail theft cases, like the organized thefts of vehicles, represent substantial criminal activity. Furthermore, the value of the mail stolen is difficult to ascertain, due to the intrinsic value of the majority of the mail stolen, and its quick destruction in the course of the offense.

From the sentencing data reviewed, the vehicle theft offense characteristic has only been used in 95 cases over the past five years. We believe this is due in a large part to the extrinsic value of vehicles and the corresponding high dollar loss which results from the theft of a relatively few vehicles. For example, once the dollar loss of the vehicles reaches \$70,000, the dollar loss for the specific offense characteristic as a

floor offense level is met. In comparison, a similar guideline which creates a floor level of 14 for an organized scheme would apply in the majority of our volume mail theft offenses. Under the current guidelines, a significant dollar loss is involved in these crimes if all relevant conduct in the scheme can be considered. However, the total loss attributed to relevant conduct can only be proven at a substantial cost to the government, and even if the total dollar loss is proven, it still would not take into consideration the nonmonetary harm attributed to the crime.

Sentencing enhancements, driven by dollar loss, do not address the full impact mail theft has on its victims. Mail theft involves an invasion of one's privacy. It is a crime that steals some of the victim's dignity by prying into their personal affairs. It also places the victim in fear that the theft may occur again.

What dollar value can be placed on a box of blank checks stolen from the mail? How does one replace the greeting card sent by a grandmother, which is stolen along with hundreds of other pieces of mail, and then disposed of in the trash?

Even for items that have a monetary value, the actual "loss" is dependent on the victim's socioeconomic status. For example, one victim in Los Angeles who was interviewed by my staff detailed

the long, drawn out process of replacing her welfare check which had been stolen during a postal vehicle attack. She and her children experienced great hardship during the replacement period. They were forced to borrow money from friends, forced to buy groceries on credit, and the store where she bought clothes for her children closed her charge account since she could not make the monthly payment. The most difficult experience for this victim was not being able to buy even the smallest of gifts for her children at Christmas, as the theft occurred December 15.

Prosecutors have advised that mail theft, for the criminal, is an "easy money" operation, with minimal risk. One suspect, when arrested in his home by postal inspectors for mail theft, had a sign hung above one of the doorways. The sign read, "The pen is mightier than the sword," referring to forgery versus robbery.

In another case, a foreign national convicted of mail theft said, "I was told the streets of America were paved with gold. I now know it's the mail boxes, not the streets, that have the gold."

As these examples show, the suspects are well aware of the profit to be made from volume mail theft. They are also well aware of the minimal risk and punishment for mail theft, as compared to that for a violent crime.

The impact on the postal customer, however, is one of dire consequences. One victim, who was interviewed in Dallas, Texas, advised that due to the theft of her and her husband's blank personal checks, and the subsequent cashing of the checks by the suspect, an arrest warrant was issued for her husband.

By adding a guideline with a base level of 14 for the organized scheme to steal mail, the Commission would be addressing the fact that this type of theft offense is a more serious crime than general mail theft, with an impact that cannot be properly measured by a dollar loss value.

Personnel from my staff have also conducted background research on proposed Amendment 34. We have found, based on interviews of our field inspectors, prosecutors, probation officers, and judges in the federal judicial system, there is no proportionality in the sentencing of criminals who prey on multiple victims.

From a layman's perspective, which crime would the average person view as a more serious offense, one that involves a \$100,000 aggregate loss to 100 victims, or one that involves a \$100,000 aggregate loss to 1,000 victims? Most people would agree the crime that affects the 1,000 victims has a greater societal harm. However, the current sentencing guidelines treat both crimes equally.

The Postal 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 sentence computation. As our amendment proposes, a table based on the number of victims would be used during the sentencing computation.

In our testimony last year, we asked the Commission to study the multiple victim issue. When the Commission asked for topical issues for study this year, we again submitted the issue of multiple victims. As an alternative to our proposed victim table, we again would urge the study of what we deem to be an important aspect of a crime's total harm--that being multiple victims.

Our written testimony also contains comments on other amendments published by the Commission, as well as comments on the determination of loss in cases involving credit card theft. One amendment I would like to comment on before the Commission is Amendment 12(B) which provides for an increase in the base offense level for the loss table in 2B1.1.

We agree with the increase in the base offense level for 2B1.1 to the extent it brings the loss table in conformance with that of 2F1.1. We strongly disagree, however, with the elimination of the mail theft offense characteristic (b)(4). The basis for the current two-level increase for mail theft is attributed to the unique character of mail as the stolen property referred to in the commentary background. For a consistent application of this statutory distinction, a corresponding two-level increase above the base offense level should be provided for in theft of mail offenses, regardless of the dollar loss amount. Thus, if the base offense level is increased for 2B1.1 to a 6, the specific offense characteristic for mail theft should provide a floor guideline of 8, regardless of the dollar loss involved. This will establish a floor offense level for the general mail theft offenses committed as crimes of opportunity as distinguished from the "organized schemes" to steal mail covered in proposed Amendment 35.

I want to thank you for this opportunity to summarize our written presentation, and will now entertain any questions concerning our comments.