Proposed Guideline (changes appear in bold)

§2S1.3 Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements

(a) Base Offense Level:

(1) 13, if the defendant:

(A) structured transactions to evade reporting requirements; or

(B) knowingly filed, or caused another to file, a report containing materially false statements; or

(2) 9, for a wilful failure to file; or

(3) 5, otherwise.

(b) Specific Offense Characteristics

(1) If the defendant knew or believed that the funds were criminally derived property, increase by 4 levels. If the resulting offense level is less than level 13, increase to level 13.

(2) If the base offense level is from (a)(1) **or (a)(2)** above and the value of the funds exceeded $100,000, increase the offense level as specified in §2S1.1(b)(2).

(c) Special Instruction for Fines -- Organizations [unchanged]

Commentary

Statutory Provisions: 26 U.S.C. § 7206 (if a willful violation of 26 U.S.C. § 6050I); 31 U.S.C. §§ 5313, 5314, **5316**, 5322, 5324. For additional statutory provision(s), see Appendix A (Statutory Index).

Background:
[add as indicated:] A base offense level of 13 is provided for those offenses where the defendant either structured the transaction to evade reporting requirements or knowingly filed, or caused another to file, a report containing materially false statements. **A base level of 9 is provided for willful failure to file and for the mere denial of reportable assets, in response to routine questioning at a border crossing.** A lower alternative of 5 is provided in all other cases.

[§2S1.4 IS DELETED]

PORTER, WRIGHT,
MORRIS & ARTHUR
Attorneys & Counselors at Law

41 South High Street
Columbus, Ohio 43215-3406
Telephone: 614-227-2000
Fax: 614-227-2100
Telex: 6503213584

Daniel A. Brown
614-227-2171

March 17, 1993

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8003

Dear Mr. Courlander:

I am a federal criminal defense practitioner in Columbus, Ohio. 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 31, 1992 edition of the Federal Register (Vol. 57, No. 252, Part IV). The purpose of this letter is to comment on proposed amendment numbers 20 and 58, which govern money laundering offenses and violations for failing to file certain currency and monetary instrument reports.

I strongly recommend adoption of amendment number 20, which would amend U.S.S.G. §§2S1.1 and 2S1.2 governing money laundering offenses. This amendment would tie the base offense levels for money laundering violations more closely to the underlying conduct that was the source of the illegal proceeds.

This constitutes a much needed reform. As the report of the Commission staff on money laundering demonstrates, there are cases around the country in which the government has been able to obtain a significantly higher guideline sentencing range than the underlying offense would yield simply by adding a violation of 18 U.S.C. §§1956 or 1957 to the indictment. As the proposed amendment seems to recognize, these statutes are quite broad and can apply even in relatively simple fraud and other cases. Such cases often involve monetary transactions that are normally not thought of as sophisticated "money laundering," but which nonetheless are proscribed by §§1956

and 1957. United States v. Montoya, 945 F.2d 1068 (9th Cir. 1991), is a perfect example. In that case, a state public official was convicted for money laundering under 18 U.S.C. 1956 based upon the deposit into his personal checking account of a single $3,000 check representing a bribe.

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 strongly recommend adoption of amendment number 20, I strongly urge the Commission to reconsider amendment number 58, which would amend §2S1.3 governing violations of the currency transaction and IRS Form 8300 reporting requirements. Although I support the Commission's efforts to harmonize its treatment of violations under §2S1.3 with violations under §2S1.4, I think that a base level of 9 is too high for all of these offenses, particularly if the currency is not the proceeds of, or being used to further, criminal activity. To be consistent with the base offense level for structuring transactions to evade these same reporting requirements and the Commission's overall goal in harmonizing its treatment of similar offenses, I strongly urge the Commission to seriously consider a base offense level of 6 for both §2S1.3 and §2S1.4 for failures to file Currency Transaction Reports, IRS Forms 8300 and Currency and Monetary Instrument Reports. As with structuring, the offense level could be increased by the number of offense levels in the fraud table (§2F1.1) if the defendant knew or believed that the funds were intended to be used to promote criminal activity.

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

Very truly yours,

Daniel A. Brown

PORTER • WRIGHT • MORRIS & ARTHUR

LAW OFFICES
OF
J. W. COYLE III, INC.
A PROFESSIONAL CORPORATION
ROBINSON RENAISSANCE
119 NORTH ROBINSON, SUITE 320
OKLAHOMA CITY, OKLAHOMA 73102

J. W. COYLE III
GLOYD L. McCOY

TELEPHONE
(405) 232-1988
TELECOPIER
(405) 272-0859

March 15, 1993

VIA FAX (202) 273-4529

United States Sentencing Commission
1 Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002
ATTN: Public Information

To: Honorable Sentencing Commission:

I am an active criminal defense lawyer and am writing to comment on two of the most serious areas of abuse that I have personally witnessed in my law practice.

AMENDMENT NO. 20 - (pg. 25) - Money Laundering (Chapter Two, Part S) - Consolidate Sections 2S1.1 and 2S1.2 in Sections 2S1.4 and 2S1.4; Ties offense level closer to seriousness of offenses.

In the area of white collar crime this area of the guidelines is the one most frequently abused by prosecutors. In plea bargaining negotiations, we are frequently told "if you don't plead to the mail fraud, then we will charge him with money laundering". It is very unfair when someone can get 6 to 10 months for a mail fraud scheme, and then 40-something months for depositing the check that was the object of the mail fraud. In the first place it does not make good sense, and in the second place it is a very unfair advantage for the Government. Further, it does not in any way mete out fair punishment.

It is very simply an arrow that should be removed from the Government's quiver.

AMENDMENT NO. 40 - (pg. 63) - 100 to 1 Ratio of Crack vs. Powder Cocaine; There is in fact little scientific support for the 100 to 1 Ratio, and unquestionably black persons are impacted by this very unfair requirement. I proved in the case of United States v. Hutchinson, in the United States District Court for the Western District of Oklahoma, Case No. CR-92-31-T, that of all

J. W. COYLE III, INC.

crack cases since the guidelines (November 1, 1987) in the Western District, 94.39% of the defendants were black.

The enormous disparity in sentences, and the unduly harsh requirements of the guidelines have resulted in the life imprisonment of many persons who deserve a substantially shorter sentence. This should be done immediately, and retroactively.

Thank you for the opportunity to comment on the guidelines.

Respectfully yours,

J. W. Coyle, III

JWC/sm
L-JW.SC

BAKER & MOSCOWITZ
ATTORNEYS AT LAW
3130 SOUTHEAST FINANCIAL CENTER
200 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131-5306

JANE W. MOSCOWITZ

TELEPHONE
(305) 379-6700
FACSIMILE
(305) 379-2215

March 15, 1993

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8003

Dear Mr. Courlander:

I am a federal criminal defense practitioner in Miami, Florida. 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 31, 1992 edition of the Federal Register (Vol. 57, No. 252, Part IV). The purpose of this letter is to comment on amendment numbers 20 and 58, which govern money laundering offenses and violations for failing to file certain currency and monetary instrument reports.

I strongly recommend adoption of amendment number 20, which would amend U.S.S.G. §§ 2S1.1 and 2S1.2 governing money laundering offenses. This amendment would tie the base offense levels for money laundering violations more closely to the underlying conduct that was the source of the illegal proceeds.

This constitutes a much needed reform. As the report of the Commission staff on money laundering demonstrates, there are cases around the country in which the government has been able to obtain a significantly higher guideline sentencing range than the underlying offense would yield simply by adding a violation of 18 U.S.C. §§ 1956 or 1957 to the indictment. As the proposed amendment seems to recognize, these statutes are quite broad and can apply even in relatively simple fraud and other cases. Such cases often involve monetary transactions that are normally not thought of as sophisticated "money laundering," but which nonetheless are proscribed by §§ 1956 and 1957. United States v. Montoya, 945 F.2d 1068 (9th Cir. 1991), is a perfect example. In

that case, a state public official was convicted for money laundering under 18 U.S.C. 1956 based upon the deposit into his personal checking account of a single $3,000 check representing a bribe.

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 and 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 strongly recommend adoption of amendment number 20, I strongly urge the Commission to reconsider amendment number 58, which would amend § 2S1.3 governing violations of the currency transaction and IRS Form 8300 reporting requirements. Although I support the Commission's efforts to harmonize its treatment of violations under § 2S1.3 with violations under § 2S1.4, I think that a base level of 9 is too high for all of these offenses, particularly if the currency is not the proceeds of, or being used to further, criminal activity. To be consistent with the base offense level for structuring transactions to evade these same reporting requirements and the Commission's overall goal in harmonizing its treatment of similar offenses, I strongly urge the Commission to seriously consider a base offense level of 6 for both § 2S1.3 and § 2S1.4 for failures to file Currency Transaction Reports, IRS Forms 8300 and Currency and Monetary Instrument Reports. As with structuring, the offense level could be increased by the number of offense levels in the fraud table (§ 2F1.1) if the defendant knew or believed that the funds were intended to be used to promote criminal activity.

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

Yours very truly,

Jane W. Moscowitz

Jane W. Moscowitz

JWM:cnt

LAW OFFICES OF
KATRINA C. PFLAUMER
2300 SMITH TOWER
506 SECOND AVENUE
SEATTLE, WA 98104
(206) 622-5943
FAX: (206) 682-9937

March 15, 1993

Via Facsimile
(202) 273-4529

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500 South Lobby
Washington, D.C. 20002-8003

Dear Mr. Courlander:

I strongly recommend adoption of amendment number 20, which would amend U.S. Sentencing Guidelines §§ 2S1.1 and 2S1.2 governing money laundering offenses. My experience with the Sentencing Reform Act convinces me that it is critical to bring the sanctions for money laundering into proportion with the underlying offense. Because the language of the money laundering laws is so broad, federal prosecutors use it as a threat in a significant proportion of underlying cases, with inequitable results. Defendants are then simply not in a position to contest the underlying offense because of the enormous threat of the money laundering sanctions.

I also strongly urge the Commission to adopt the modification of the Guidelines which would preclude a court from considering conduct on which a defendant was acquitted at the sentencing phase.

Very truly yours,

Katrina C. Pflaumer

KCP:nz

BAROCAS & SCHMIDT, P.C.

ATTORNEYS AT LAW
35 WORTH STREET
NEW YORK, NEW YORK 10013

LAWRENCE ALAN BAROCAS
SAM A. SCHMIDT

TEL: (212) 941-0775
FAX: (212) 431-7431

March 11, 1993

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

Re: Public comment on sentencing guideline proposals

Dear Chairman Wilkins:

It is my understanding that one of the proposals up for consideration to amend the sentencing guidelines involves the money laundering section, §2S1.1. I am writing because the present money laundering guideline requires sentences, in some cases, that are totally out of line with the underlying crime itself. I am an attorney that represents someone who faces this problem.

My client is alleged to have participated as an assistant in a company that allowed escort services to use their merchant number to process credit card charges. The company also assisted in processing the charges for the escort services and paid them the face value of the charge less a percentage for their service. The Government's position is that this is money laundering because following certain sections in the racketeering chapter of the United States Code, the specified criminal conduct leads to the travel act violation, 18 U.S.C. §1952, promoting prostitution by interstate conduct.

This is a unique case. All previous prosecutions concerning this type of activity, using merchant numbers to process credit card charges for escort services, have been prosecuted under the travel act as a travel act violation under 18 U.S.C. §1952.

Travel act violations under §2E1.2 would have a base offense level of 6 or the 14 under §2G1.1, transportation for the purpose of prostitution, if applicable under §2E1.2(2). The relevant guideline for that, without any adjustment for acceptance of responsibility, would either be 0-6 under offense level 6 or 15 to 21 months under offense level 14.

However, since defendant is charged under 18 U.S.C. §1956(a)(1)(A), the base offense level is 23. Moreover, since the amount of funds that have passed through the company on the way to the credit card companies is substantial, approximately 5 or 6 additional points would be added on.[1]

Thus, the base offense level for my client would be 28 or 29. This offense level would require my client to be sentenced to either 78-97 months or 87-108 months.

It is my understanding that the proposed amendment to the sentencing guidelines would cause the offense level of money laundering to relate to the underlying offense. This is reasonable and rational. Money laundering of proceeds from gambling should be treated differently than money laundering of proceeds from drug dealing. The same thing is true with money laundering of prostitution proceeds.

It goes without explanation that escort services are rarely, if ever, prosecuted for promoting prostitution. On the rare cases that they are, such as the Mayflower Madam case, the charges are misdemeanors, punishable with a maximum of one year in jail. To punish someone for assisting a misdemeanor offense as they would punish someone assisting a large scale drug operation, makes no sense and is repugnant to our sense of fairness and justice.

I implore you and the sentencing commission to adopt the proposal that will relate the offense level for money laundering to the offense level of the underlying criminal activity.

Thank you for your consideration of this matter.

Sincerely yours,

Sam A. Schmidt

SAS/jr

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1. It is important to note that there is no claim of loss to any party.

MILBANK, TWEED, HADLEY & McCLOY

INTERNATIONAL SQUARE BUILDING
1825 EYE STREET, N.W.
WASHINGTON, D.C. 20006

(202) 835-7500
FAX: (202) 835-7586
I. T. T. 440667

1 CHASE MANHATTAN PLAZA
NEW YORK, N.Y. 10005-1413

NIPPON PRESS CENTER BUILDING
2-1 UCHISAIWAI-CHO 2-CHOME
CHIYODA-KU, TOKYO 100

ALEXANDRA HOUSE
16 CHATER ROAD
HONG KONG

ROPEMAKER PLACE
25 ROPEMAKER STREET
LONDON, EC2Y 9AS

1903/04 SHELL TOWER
50 RAFFLES PLACE
SINGAPORE 0104

601 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90017

AMY G. RUDNICK
OF COUNSEL
DIRECT DIAL NUMBER
(202) 835-7554

March 11, 1993

BY TELECOPY AND REGULAR MAIL

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8003

Dear Mr. Courlander:

I am a federal criminal defense practitioner in Washington, D.C. and Co-chair of the American Bar Association, Criminal Justice Section, White Collar Crime Committee, Money Laundering Subcommittee. I am writing in my individual capacity to respond to the United States Sentencing Commission's request for public comment on the proposed amendments to the Sentencing Guidelines published in the December 31, 1992 edition of the Federal Register (Vol. 57, No. 252, Part IV). The purpose of this letter is to comment on proposed amendment numbers 20 and 58, which govern money laundering offenses and violations for failing to file certain currency and monetary instrument reports.

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

Very truly yours,

Amy G. Rudnick

440908

richard crane
attorney at law • corrections & sentencing law
200 hillsboro road • suite 310
nashville, tennessee 37212
(615) 298-3719 • FAX 298-2467

February 18, 1993

U.S. Sentencing Commission
1 Columbus Circle, N.E.
Suite 2500
Washington, D.C. 20002-8002

Re: Amendments 28(G), 37 and 38
Amendment 25

Gentlemen:

I am writing in support of proposed amendment 28 (G). Some of the problems with the loss definition under § 2B1.1 and § 2F1.1 have been resolved because of the 1992 amendment to the statutory index specifying that either of these guidelines could be appropriate for violation of 18 § 656.

But, the problem persists in other areas. For example, I had a client convicted this past year for conspiring to embezzle from an employee benefit plan. (18 § 371) The offense involved the use of a certificate of deposit from a union pension fund as collateral for a loan. The CD greatly exceeded the amount of the loan, so when the loan was defaulted on, only a portion of the CD was seized to cover the loss. Because the offense involved pension fund money, my client's sentenced was calculated under § 2B1.1 using the full value of the CD , rather than the actual loss. Your proposed amendment 28(G) would, hopefully, resolve this problem.

I also very much favor amendment No. 25 regarding disclosure of information relative to guideline calculations. I practice around the country and there are great differences from one U.S. Attorney's Office to another in providing this information.

Additionally, I think that the amendment should include a requirement

that the government stipulate as often as possible in plea agreements to any facts which impact on guideline calculations. Again, as I practice in various states, some U.S. Attorney's offices are readily agreeable to incorporating stipulations or a separate statement of the offense, while other U.S. Attorney's offices have a "policy" of never stipulating to anything. This only increases the work for the probation officer and for the court, when these matters could easily be resolved during plea negotiations.

Sincerely,

Richard Crane

RC/cm