current guidelines approach which may and, in our experience, does encourage federal prosecutors to pursue money laundering charges in non-narcotics cases simply because the resulting sentences under the money laundering guidelines sections are far harsher than for the underlying offense(s). As the Commission is certainly well aware, particularly in straight-forward fraud cases ordinarily sentenced under Section 2F1.1, the element of proof needed to establish the § 1956 or § 1957 violation is almost always present -- the receipt, use, and/or deposit of the proceeds of the fraud. See, e.g., United States v. Montoya, 945 F.2d 1068 (9th Cir. 1991). While the Commission's original structuring of Guideline §§ 2S1.1 and 2S1.2 may have been consistent with the Congressional intent of severely punishing the use of funds derived from drug trafficking, the application of those sections to non-drug-related offenses is simply draconian. In fact, as the October 14, 1992, Report to the Sentencing Commission Staff Director from the Commission's Money Laundering Working Group fully demonstrates, the government has routinely been able to obtain a significantly higher guideline sentencing range than would result from a calculation of the guideline section normally applicable to the underlying offense, simply by adding a violation of either 18 U.S.C. § 1956 or § 1957 to the indictment.

An additional reason for attempting to tie the Guidelines section for a money laundering conviction more closely to the offense level for the underlying conduct is to remove the incentive for prosecutors to influence plea negotiations by either threatening to include or actually including in an indictment counts charging violations of either § 1956 or § 1957. The proposed Amendment addresses this problem and will ultimately help the Commission achieve its stated goal of "eliminating unfair treatment that might flow from count manipulation." U.S.S.G., Chapter 1, Part A, ¶ 3.

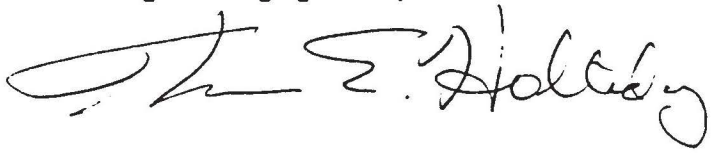
While we strongly support the proposed Amendment, we also urge the Commission to modify the proposed Amendment to better achieve the Commission's stated goal of "relating the offense levels more closely to the offense level for the underlying offense from which the funds were derived." With respect to proposed § 2S1.1(a), we suggest that the base offense level for the underlying substantive offense should be the base level for use in the money laundering guideline section calculation (absent any otherwise appropriate departure). Accordingly, we respectfully disagree with the proposal that the base offense level for the underlying offense be applied only where that base offense level would exceed the base offense levels set forth in proposed subsections (a)(2) and (a)(3). Instead, we suggest that after the underlying offense base level is determined, the revised section 2S1.1 then provide for an increase by an established number of levels to reflect any additional

punishable conduct comprising the money laundering offense, such as has been done in proposed subsection (b).

Alternatively, we propose that the base offense level in proposed § 2S1.1(a)(3) be the same as the base offense level for "fraud and deceit" under Guidelines § 2F1.1. In that manner, the base offense level for money laundering under § 2S1.1(a)(3) would be six, plus the number of offense levels from the 2F1.1 fraud table, depending upon the amount of the funds laundered. This has the benefit of uniformity and eliminates the severe effect of this guideline on prosecutors' charging decisions in "run-of-the-mill" fraud cases.

In sum, however, we believe the proposed changes to the money laundering guidelines are much needed and long overdue, and we support the Commission's efforts in this regard.

Very truly yours,



Gibson, Dunn & Crutcher

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March 17, 1994

UPS NEXT DAY AIR

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

Attention: Public Information Office

Dear Members:

I see that you are inviting public comment on your latest proposed round of amendments. Here goes.

I am enclosing a copy of my letter of April 15, 1992. If you find nothing redeeming in that letter, you can dispense with considering this one as well.

In six years, you have enacted 502 Amendments to the Guidelines. So far as I can tell, the only thing useful to be produced by these Amendments is more Amendments.

There is no elimination of disparity; there has been a proliferation of disparity in many cases from application of the Guidelines.

There has been no diminution in crime. Very few of the Guidelines, or the 502 Amendments, are carefully considered by those contemplating the commission of a federal offense.

No restraint on our country's unprecedented experiment in incarceration rates has been achieved.

If anything, the Guidelines and their Amendments have only added to pushing up the price of drugs, and thus the stakes of drug dealing and the seriousness of the crimes some people are willing to commit.

Improvement in America's sobriety would better be served by government telling the public the truth--that there is no supply-side answer (or any other government answer) to drug abuse. Armed with this indispensable piece of sober wisdom, we would be shocked at the millions of users who would take responsible steps on their own behalf.

I can't help but wonder about the Sentencing Commission's past and present criticisms of Congressional legislation that is in no important respect different from its own work. The Commission's criticism of mandatory minimums is especially hard to understand if one appreciates that the Commission's Guidelines are the largest and most unwieldy set of mandatory minimums ever enacted by any sovereign.

This country does not need any more Amendments to the Sentencing Guidelines. It needs someone to step forward to say that all of these penological measures (and even other appeals to government such as calls for federal treatment plans), are the problem--not the solution.

I am also enclosing a copy of a letter sent today to the Drug Policy Foundation. It might help to explain what I think is the growing view of middle America.

I really don't write a lot of letters taking positions on anything, and I don't want to be critical.

I am just wondering whether the silliness of all of this couldn't finally produce something extraordinarily healthy for this country.

Thanks kindly.

Sincerely,

Charles A. Asher

cd

Enclosures

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April 15, 1992

United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Attention: Public Information Office

Dear Members:

I am a sole practitioner with about 25 percent of my work concentrated in federal criminal defense. I am writing regarding what I see as an emergency presented by the Sentencing Guidelines. Although I draw on experiences and comments of judges, probation officers, prosecuting attorneys, and other defense attorneys, these opinions are mine alone.

I offer these thoughts with high regard for what obviously has been a tremendous commitment of time and energy on your part.

As you probably know, it was with considerable uneasiness that practitioners received the first draft of the Sentencing Guidelines that went into effect on November 1, 1987. It is with horror, however, that we are left to receive the dizzying number of amendments to the Guidelines, now totalling 434. Many of these separate amendments carry on for paragraphs and even pages of small print. Some of the amendments actually include separate amendments to dozens of separate Guidelines.

These amendments have been spread out over six separate effective dates. The 1987 West edition of the Guidelines was in about 300 pages. The 1991 edition covers over 800 pages. With each new edition, the West publisher now routinely, and correctly, warns that all prior editions of the Federal Sentencing Guidelines Manual "should be retained . . . in the event there is a need to refer to the text of a specific Guideline, Commentary, or Policy Statement at a particular point in time."

For our further direction, you suggest a doctrine of "selective retroactivity" for usually, but not always, applying the Guidelines in effect on the date of sentencing, not the date of the offense. (Even more mind-stimulating is the place where that doctrine is announced. It seems to be found in the answer to Question Number 71 of your list of "One Hundred Questions Most Frequently Asked

About the Sentencing Guidelines." With all due respect, this looks like a David Letterman Top Ten List run riot.)

Most of the separate Guidelines by this time have been amended. The most important of them seem to have been amended at least twice, often three or four times.

I wish to put aside for the moment substantive objections to the entire concept of the Guidelines. Surely you have heard them all, and obviously they are not a deterrent to this large-scale experiment in reflex penology.

I have a more limited suggestion, but one that I think is absolutely critical.

Stop. You must stop.

I am not recommending that you do anything or that you undo anything. You must simply stop.

I harbor no harsh thought about the members of the Commission or any of their support staff. Quite the opposite. I am personally struck that this pace of amendments could only be indulged by well-intentioned persons whose humility over past mistakes has regrettably caused them to embark on an endless mission to fix what very possibly is not fixable.

I am sure that you are mindful of the concerns for settledness in the sentencing law, thus that you would not have enacted 434 amendments unless you thought they were of genuine substantial importance in correcting <u>serious</u> earlier errors.

There are those more judgmental souls (people genetically disqualified to be good criminal defense attorneys) who would accuse you of runaway hubris.

But whether motivated by extreme humility or extreme hubris, much is said about how fine an idea the original Guidelines were if they have required hundreds of amendments, in thousands of important distinct parts, covering hundreds of pages of small print in a bare four years.

Indeed, if achieving predictability and avoiding disparity are the chief goals, it is especially hard to understand this pace of change.

I am not here complaining about the fact that we have departed from a system where defendants and their lawyers (and often prosecutors) went into sentencing hearings armed with realistic and sincere

programs to turn a person's life around, only to have embarked on a system that sees defendants, their lawyers, and their prosecutors enter sentencing hearings armed only with pocket calculators and bromo seltzers. Perhaps those criticisms are mistaken. Perhaps the fact that modern-day federal sentencing has virtually nothing to do with 95 percent of the significant information about the person being sentenced is appropriate, or at least it's the way Congress may have wanted it.

What I am talking about here is a crisis in the day-to-day adjudicative process. I am reminded of David Mellinkoff's observation in The Language of the Law of an insurance policyholder trying to figure out where he stands.

> By the time he has found his way to the end of an insurance policy, the alert and unusual householder (layman or attorney) cannot know what he is covered for--because there is more in his policy than he can read and retain even if he understood every word as he read it. The reading has left him--nay, made him--ignorant.

Your hard work has made us ignorant.

Not all of us practicing federal criminal law are brilliant. Approximately half of us graduated in the bottom half of our law school classes.

I would venture that the majority of us practice without large litigation budgets, much if any research assistance, regular access to legislative history, or even computerized research. Regardless of our resources, we are practicing under a flood of case law and amendments to the statutory law that are also burying us. (The Guidelines directly contribute to these explosions as well as evidenced by Appendix I to West's 1991 Guidelines edition showing over 5,000 case law treatments of the Guidelines since 1987.)

And for us, sentencing is not the only consideration. There is often the matter of defending the charge. The same penological aggressiveness that has brought about the Guidelines, endless mandatory minimum sentencing, bills to punish by death killers of federal egg inspectors, and what can fairly be called a federal infatuation with incarceration can, if unopposed, take innocent victims. Some of our clients are indeed innocent, and many are at the very least seriously over-charged.

We are called upon often to study thousands of pages of exhibits in a single case, wrestle with niggardly rules of discovery that were

written with witness-killing defendants in mind but which are applied indiscriminately against even the most non-violent defendants, study rapidly changing statutory and case law, and, yes, even actually try cases.

My most respected colleagues spend hours and hours getting to know their clients, including a sketch of their lives, their educational and vocational skills, their mental and physical conditions (including drug or alcohol dependence or abuse), employment history, family ties, community ties, and even the areas of their lives where they have shown strength and success in contributing to society such as military, civic, charitable, or public service. In other words, a good attorney expends a great deal of time and effort learning about the matters that the Commission has determined "are not ordinarily relevant in determining whether a sentence should be outside the applicable Guideline range."

That same attorney, even when there is no defense to the material elements of the charge, seeks to make his participation in the case an effective intervention against the parts of a client's life that are not working either for the client or for the community. He is part expert at client confrontation, part friend, part lay counselor, and part a referral source to experts who can interrupt a defendant's mismanagement (only part of which is normally criminal mismanagement) of his life.

The reader of the excellent article by Judge Sally H. Gray and Dr. Timothy J. Kelly, Counseling the Alcoholic--An Opportunity to Make a Difference, "Res Gestae" (March, 1989), will find a rare blueprint for what the responsible attorney regularly spends enormous efforts trying to accomplish with his clients, and often with great success.

For all of the rhetorical flights in modern-day politics that would lead the public to believe that judges are spineless, prosecutors incompetent, and defendants versions of Willie Horton (whatever we are lead to believe Mr. Horton represents), as you know, most people succeed on probation and respond favorably to these efforts.

But back to the emergency. Because only about a quarter of my practice (or perhaps less) is devoted to federal criminal defense, I would normally anticipate that studying, interpreting, and advocating regarding the Sentencing Guidelines would be a very small part of my practice. About federal sentencing I now feel lost. No, I am lost. I experience my clients' sentencing hearings in federal court as something of a lottery where the result is announced to me by people who, although themselves professing to be lost, know a little bit more by attending seminars, retreats, and structured readings of manuals.

But among my fellow criminal defense lawyers, I am what is called an expert. My colleagues call me. They think that I know something and can tell them something to advocate for their clients, or failing that, at least more deftly observe for human rights violations.

More often than not, federal criminal defendants in our mid-sized city are represented by attorneys appointed under the Criminal Justice Act, attorneys who may have only one or two federal criminal cases a year. These attorneys, although well-intentioned, are heard to ask laughable questions like "But if they're only guidelines, why would the judge get reversed if he doesn't follow them?" Studying five versions in four years of what constitutes "more than minimal planning" or "relevant conduct" is never reached.

None of this is to detract from the incredible effort all of you have expended on your amendments. It is simply too great an effort for the mortal practitioner (by which I include judges, prosecutors, and probation officers who, in my experience, also cannot keep up) to handle.

In all sincerity, I pause from my work to tell you that your commitment to amendments is not working.

As you know, many responsible observers have doubted that this attempt to mathematize the criminal justice system is even possible. Can even the grinding of the teeth between the statutory wheels and the Guideline wheels ever cease? Just last month I had a sentencing in a criminal contempt case under 18 U.S.C. § 401. As you know, that statute authorizes a sentencing court to fine a defendant or imprison him, but not both. Under Guideline 5E1.2(a), the Court is required to impose a fine in all cases (except where a defendant establishes that he is not able to pay). Did you mean the Guidelines to require a fine and thus preclude consideration of any imprisonment? (Please promise me you won't enact an amendment to answer this.)

The people with whom I work (criminal defense colleagues and others) may not be geniuses but they are serious-minded people. I think that it is fair to say that the consensus among them is that there is more disparity and more inexplicable sentencing under the Guidelines than there ever was before, and that all the tinkering in the world is not going to change that. The disparate sentences often required by the mechanistic approach of the Guidelines very often leave us wondering, or muttering, whether we should believe "science" or our lying eyes.

Worst of all, there is no accountability. Defense lawyers tell their clients that the prosecutor names the charge that pretty much determines the penalty. Prosecutors say they are just bringing the charges and that the judges sentence. Judges say that their hands are tied by the Guidelines. No one even asks what the right sentence should be--or what a right sentence is.

We used to have people who asked just that, and we called them judges. Right or wrong, they had the courage and responsibility to look at the facts, hear the arguments, and actually decide that a particular sentence was the most allowable under the law.

I offer even that observation advisedly because it invites the opposite of what I am recommending. I recommend absolute, unqualified, exceptionless, aggressive inertia. The Guidelines should be left alone long enough so that reasonable people (yourselves included) can try to see what we have and what the effect is on the criminal justice system, crime, and the general respect for law in society.

The punishment-oriented model of the Sentencing Guidelines seems to be either far behind, or perhaps far ahead, of the learning curve elsewhere. I ask that you please each, if you have not already done so, find a copy of the Winter, 1992 issue of "Criminal Justice," the publication of the Section of Criminal Justice of the American Bar Association. The articles there, particularly Americans Behind Bars: Why More People are Locked Up Here Than in Any Other Nation, seem now to reflect not just the opinion of criminal defense lawyers but the opinion of prosecutors as well. More and more people seem now at least vaguely suspicious that imprisonment has no more helpful effect over crime than an attempt to make sentencing a science has over the justness of sentencing.

Instead of amending 250 Guidelines this year I suggest you study these questions and any connection you can see between them and the Guidelines.

Consider also that if this large-scale experiment called the Sentencing Guidelines is to be evaluated, some of the variables need to be isolated. There cannot be 100, or even ten, amendments a year. No responsible social scientist could stop laughing at the idea of a review of your work that never sits still and thus presents as a kind of man-made instance of the Heisenberg uncertainty principle. By the time you look at it, it's gone.

Perhaps if the Guidelines could be left alone for a reasonable period (which in my opinion would be a minimum of three years given all the necessary judicial construction), the entire idea would then be seen as brilliant. Perhaps each of the 434 amendments

would be regarded as having made the whole idea incrementally even more brilliant. Perhaps the punishment model of reacting with an intentionally reflexive sanction to a certain class of misconduct (however much it seems most of our clients were raised by such ego-dismantling models) would be shown to bear fruit.

My own suspicion is that we would find that successful crime control and successful drug control require abandoning the notion "more government is the answer"; that we have been asking all the wrong questions (e.g., Does a one-time small-time marijuana seller's "relevant conduct" include the quantities of marijuana sold by thrice-removed drug dealers he never met but whose larger dealings were objectively foreseeable, but not subjectively foreseen, by him? or, as the Eleventh Circuit actually addressed in a published opinion on March 20, 1992, does the Sentencing Commission's amendments to a Guideline commentary, as opposed to a Guideline itself, nullify earlier contrary judicial interpretations of the Guidelines?); that we have been asking virtually none of the right questions (e.g., Why are our children poisoning themselves?); and that the greatest service that the Commission could perform would be to report to the public that there never has been and never will be much of a penological solution to these problems, only a penological response.

Interestingly, a typical federal drug case in Indiana often involves dealing in "ditch weed"--marijuana plants descended from massive crops planted by the federal government a half century ago. With no disrespect for the good intentions that are driving all of today's "policy," it may also turn out to be much more problem than solution.

The most intoxicating, addictive, simple, and wrong notion of all may turn out to be that attempted federal regulation of drug supply is a substitute for teaching our children one-by-one to love and esteem themselves, and thus not to ingest poison. My personal opinion--based on hundreds of cases of clients who have abused drugs, many of whom today spread the contagion of recovery--is that the simplistic appeal to federal criminal regulation to solve this problem is ultimately a dangerous hoax that worsens the problem immeasurably.

But we can never know any of this--one way or the other--unless and until the blizzard of amendments stops. We can never know anything unless and until the Commission distinguishes itself as one of the rare examples of government regulation that paused long enough from its mad pace of internal workings to invite objective evaluation of its original purpose and its ensuing degree of success.

Thank you for considering these thoughts.

And remember, please stop.

Sincerely,

Charles A. Asher

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cd

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March 17, 1994

Arnold S. Trebach, J.D., Ph.D.
President, Drug Policy Foundation
4455 Connecticut Avenue, N.W.
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Washington, D.C. 20008-2302

Dear Dr. Trebach:

With one extremely grave reservation, I recently renewed my support for the Drug Policy Foundation with a check and with the return of your recent questionnaire.

The Foundation is quite right that the criminal war on drugs should be abandoned as a dismal failure.

Now for the reservation. I think that the Foundation fails to appreciate that the criminal war on drugs was supposed to be a failure. A free society--not to mention a sober society--cannot in any measure entrust its sobriety to its government. The Foundation fails to appreciate this when it calls for a government treatment war on drugs.

The Foundation must get off this insane kick of calling for federal support for drug treatment programs.

I know that you mean well. My experience (as an attorney for 16 years representing many impaired clients, as a person who uses no drugs including alcohol or nicotine, and as a member of a family with several drug and alcohol issues), however, convinces me that this "new" appeal to government will be just as disastrous as the criminal war on drugs.

We have to overcome our own addictive thinking that government is the answer, or has the answer, to our problems. We need to start to realize that there is virtually no serious social problem in this country that our reliance on government did not in fact create.

Just as the federal criminal law enforcement assault on drugs pushed prices up to the point that more crime (and more serious crime) resulted, federal prevention and treatment efforts will create more addiction--and worse.

Let me ask you to look at just three reasons that reliance on government has necessarily, and will necessarily, make matters worse.

I.

As in all other things, the government's effort at treatment would be a picture of inefficiency.

With all due respect, has the Foundation thought about the math involved? What are the addictions that will be covered? If alcohol and tobacco addictions are covered (and it is hard to find a principled reason that they should not be if others are--they injure and kill hundreds of times more people than federally "controlled substances"), your pool of eligible patients would number in the tens of millions.

What about sexual addictions? Gambling addictions? Over-eating? Codependency?

But, ignore most of these. Even taking the most arbitrary and narrow definition of what is an addiction, federally funded "treatment" would have to be available to perhaps 25,000,000 addicts. At $35,000 per patient (a conservative sum, I would suggest), federal health care for addictions alone would approach $1,000,000,000,000 (as in trillion) a year.

I saw Dr. Lee Brown, the nation's Drug Czar (shouldn't our terminology alone alert us to a threat or two?), on C-Span a couple of months ago speaking to the National Conference of Mayors. This nice gentleman was introduced with a statement of solemn appreciation for his attempts to coordinate the work of 53 federal agencies fighting drugs. Venturing into treatment should get the number up over 100 in no time.

How good a job does the Foundation believe government will really do in providing treatment? Some of the finest programs in the country--ones run with standards far surpassing what government will ever be able to observe--can claim success in only about 25% of their cases.

II.

Believe it or not, just as the federal criminal war on drugs has created more crime, a federal treatment program for drugs would create more drug abuse and addiction.

There are always going to be people in government anxious to claim that if they were only given enough money, power, and prestige, they would be able to make others get sober. These people need to go to Al Anon. It sounds funny, but it's the truth.

Consider the model of the alcoholic family. Capable addictionologists (ones not looking for a federal hand-out themselves) know that the best way to treat an alcoholic family is to begin with the "least sick" people. Behind every drunk or otherwise addicted husband is a wife who is trying to "help" him. (The genders are often reversed.) The capable addictionologist will point out to the well-meaning wife that everything--everything--that she is doing is necessarily making matters worse.

The co-addicts even have slogans to learn. Things like "I didn't cause this, I can't fix this, all I can do by being involved is to make it worse." The addictionologist tells her to just stop all efforts on his behalf--stop hiding the booze, stop pleading, and stop yelling.

The entire lesson she must learn is "detach with love." And it is one tough lesson.

When the husband is left to assume responsibility for the consequences of his own behavior, lo and behold he goes to A.A. and becomes sober.

Government must also learn to stop hiding the drugs (interdicting), stop pleading (treating), and stop yelling (incarcerating).

People stay away from dangerous drugs (including the two drugs that are by far the most dangerous--alcohol and nicotine) by assuming responsibility for themselves, their own health, and their own children. The very notion that the government is going to be able to help people with these private choices is a horribly cruel hoax.

People with addictions get well in one place, and one place only. They get well in A.A. or one of its brother programs. The cost is zero. The emphasis is entirely upon two things--a real desire to stay sober and the fellowship of those who have achieved sobriety. Even for those able to come up with the $15,000 to $50,000 necessary to go through some fancy program in a "clean, well-lit place," if such a program works well, it lands the individual (where else?) in A.A.

In fact, I think that there is only one way to stop the great power of A.A.--government assistance.

In part because life is difficult, all of us (particularly addicts) are invariably prone to diminish our own efforts when we have been led to believe that the government is taking care of a problem.

In short, one of the reasons that government treatment efforts would necessarily fail is that their very existence puts off the day that impaired individuals are confronted with the stark reality that they are solely responsible for their sobriety.

III.

The non-financial costs of government treatment would be overwhelming.

We can have our government take responsibility for our sobriety, or we can have our freedom. We just can't have both.

From John Stuart Mill's interesting inclusion of the discussion of temperance laws in On Liberty to today's mad reality of an ever-burgeoning government, it should be plain that the attempt to transform a matter of personal responsibility into one of government responsibility would destroy constitutional limitations on government. There is no more personal decision than whether one is going to take an intoxicant into his body.

While the sovereign may punish a constable for being drunk on duty, it may not, if we are to value liberty at all, punish someone for being drunk. Or for eating pork. Or, as some like to do in Indiana, for picking from the thousands of acres of marijuana descended from crops planted by (who else?) the federal government 50 years ago in an earlier brilliant campaign.

If government treatment programs are enacted (or, in some cases, continued), they will fail miserably. And the inevitable failure of these programs to achieve less drug use will create a new bunch of hard-liners intent on "getting tough on drugs" with a new criminal war, and playing fast and loose with the Bill of Rights to get the job done.

The cycle will go on and on, but with even higher stakes and worse excesses.

I wonder if there isn't at least one additional cost that the Foundation should consider. Recovery programs are in large part spiritual. They recognize that the addict is suffering not merely physically, but spiritually as well. By my count, seven of the 12 steps of A.A. (and any of the other 12-Step programs) refer to God, a Higher Power, or prayer.

Has the Foundation given any thought to the constitutional and social implications of hundreds of billions of dollars of taxpayer money being used to subsidize spirituality?

Perhaps, just as constitutionally corruptly, the federal government could go about reinventing A.A., deleting the spiritual Steps, and spending hundreds of billions of dollars in service of the secularization of America.

If the Foundation thinks that this is an illusory threat, consider the recent comments of the Surgeon General Dr. Jocelyn Elders on

the need for government to tap the resources and influence of churches to implement her medical plan for America. "We always talked about the separation of church and state. I want to forget about the separation. Let's try to integrate church and state so we can come together and begin to do things that make a difference to people in our community." New York Times, February 26, 1994, p. 7. (You may recall this as the "White Male Slave Owner" speech, and this should give the Foundation serious pause when considering, as it did in its recent Survey, making Dr. Elders a spokesperson for an agenda of less government.)

Let's get sober together. How about this for the First Step of a new recovery movement--"We admitted we were powerless over thinking of Big Brother as our savior, and our lives had become unmanageable."

Thanks for considering these thoughts. I assure you that I am not as nuts as I may sound. Outside the Beltway, I'm really a middle-of-the-road, ordinary kind of sober guy.

Sincerely,

Charles A. Asher

cd

KENNETH J. HUNTER
CHIEF POSTAL INSPECTOR

043

UNITED STATES POSTAL SERVICE

March 18, 1994

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

Attention: Public Information

AMENDMENTS TO THE U.S. SENTENCING GUIDELINES

The Postal Service respectfully submits written comments on the 1994 sentence guideline amendments. Our comments are intended to explain and clarify the two amendments submitted by the Postal Service: Amendment 34 (multiple victim offenses) and Amendment 35 (volume mail theft offenses). In addition, we offer comment on Amendments 12(A), 12(B), and 15. As a final matter, we ask the Commission address an apparent inconsistency in the computation of loss in credit card thefts under §2B1.1.

Our narrative comment is extensive and includes as exhibits summaries of Inspection Service investigations of volume mail theft and multiple victim fraud crimes, memorandums of interview, victim impact statements, sentencing statistical data, and written and video news accounts of volume mail thefts. A listing of the exhibits follows our narrative comment.

K. J. Hunter

Enclosures:

1. Comment
2. Exhibits

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March 21, 1994

MEMORANDUM:

TO: Chairman Wilkins
Commissioners
Senior Staff

FROM: Mike Courlander

SUBJECT: U.S. Postal Inspection Service

The U.S. Postal Inspection Service has submitted, as part of its public comment, a videotape containing news clips of volume mail thefts. The Service has provided copies of the tape to the Commissioners and I have an extra, loaner copy for anyone who wishes to view it.

U.S. POSTAL INSPECTION SERVICE

PUBLIC COMMENTS ON PROPOSED AMENDMENTS

TO THE U.S. SENTENCING GUIDELINES

The theft and fraud sentencing guidelines are driven primarily by the dollar loss tables. In many instances, a dollar loss does not adequately reflect the total harm of the crime. This is especially true where the property stolen has an intrinsic value or where the crime impacts on numerous victims. In addition, the harm related to loss depends on a victim's socioeconomic status. For example, a loss of $200 to a victim near the poverty line is much more significant and harmful than the same loss to a victim of means. The current guidelines do not consider these important elements of the total criminal conduct.

For those crimes where the dollar loss is difficult to determine, the guidelines have commentary dealing with the nonmonetary or unique value of property. For example, §2B1.3, comment.(n.4), states that an upward departure may be warranted where the monetary value of harm may not reflect the extent of the harm. The commentary gives as an example the destruction of a telephone line with a minimal dollar loss which in turn results in disrupted service for thousands of subscribers.

The loss need not be determined with precision and the court need only make a reasonable estimate of the loss, based on the information available, §2F1.1, comment.(n.8), §2B1.1, comment. (n.3). A nonmonetary loss may authorize an upward departure where the loss table does fully capture the harmfulness and seriousness of the conduct, §2F1.1, comment.(n.10).

The two amendments submitted by the Postal Service are based on the principle of proportionality of harm. It is our opinion that the current guidelines do not provide for a proportional increase in the penalties for multiple victim offenses and for organized mail theft rings. In addition, the actual harm caused by the conduct may not be adequately reflected by a loss table based on pecuniary value. As proposed, our amendments are separate and distinct. The Commission may adopt the volume mail theft amendment (Amendment 35) without adopting the multiple victim amendment (Amendment 34).

Proposed Amendment 35, § 2B1.1(b)(8)

> **"If the offense involved an organized scheme to steal undelivered United States mail, and the offense level as determined is less than a level 14, increase to a level 14."**

DESCRIPTION OF VOLUME MAIL THEFT

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 involved in these organized 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, which has an impact on hundreds of customers. The impact is even greater in collection box or relay box attacks, where 4000 to 5000 pieces of mail may be taken. Those items with value are kept and used while the remaining mail, which has no monetary value, is destroyed.

These volume mail theft crimes are not crimes of opportunity, but rather, organized schemes established for the sole purpose of stealing mail to obtain mail items with monetary value. Although these schemes include other crimes, such as forgery or fraud, the crux of the crime is the theft of large quantities 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 significant percentage of these crimes are committed to support drug habits. Recent intelligence also shows organized gangs are becoming involved in mail theft and use the proceeds to finance other criminal activities.

TRENDS

The volume mail theft problem is a nationwide problem, with the majority of these offenses occurring in urban areas. For example, during the past year, mail theft crimes in general decreased by 35 percent, while volume theft cases increased by over 9 percent. The increase in this category represents the most serious type of mail theft and is attributable to the criminal activities of mail theft rings.

IMPACT

When mail is stolen, it results in a significant disruption of an essential government function. In addition, these crimes destroy the public's confidence in the Postal Service as a company, which has the potential of making our customers seek alternative means of delivery. The "loss of confidence" factor is cited as grounds for an upward departure in §2F1.1, comment.(n.10).

In terms of victim impact, the theft of mail is an intrusion upon personal privacy. Further, the harm caused by the theft and destruction of large quantities of mail is disruptive both to consumers and businesses, because the mails are essential to the nation's commerce.

DETERRENCE, DEPARTURES AND REPEAT OFFENDERS

The Commission provided sentencing data which indicates 60 percent of all criminals sentenced for a mail theft related crime receive no imprisonment, 25 percent receive imprisonment of 1 to 12 months, and only 15 percent receive imprisonment of more than 12 months.

Since the majority of these volume theft offenders are sentenced to probation or receive minimal incarceration due to the low guideline range, there is no deterrent for the crime. Offenders explain the returns they obtain from the crime are worth the relatively low risk of incarceration, even if convicted. From our experience, recidivism is prevalent in these offenses, due to the low deterrence provided by the sentencing guidelines. Repeat offenders are generally the principals in these organized schemes to steal mail.

Further, this lack of a deterrent has attracted other offenders into the lucrative area of mail theft. Traditionally, many of the offenders had engaged in more violent criminal activities, such as armed robbery of banks and convenience stores. However, the sentence enhancements for crimes of violence and the use of weapons have caused these criminals to look for offenses with less risk. Mail theft offers the perfect alternative. Credit cards and checks stolen from the mail are quickly converted into cash or merchandise. Personal financial information can be used by the offenders to obtain credit cards or perpetrate some different type of financial fraud on consumers or businesses.

The shortcomings of the current guidelines are treated in a more practical manner by prosecutors, judges, and probation officers who creatively use other guidelines and

enhancements to increase the offense level. There is an inconsistency among the judicial districts, however, in the application of these guidelines and commentary. As a general rule, some districts consider the scope of the relevant conduct to include the estimated dollar loss, number of victims, and overall impact of the crime in making upward departures. In other districts, upward departures are rarely given for these types of offenses with the same offense characteristics.

As an example, the prosecutor in one district charges defendants in mail theft cases with bank fraud, in order to use the enhancements provided in the commentary regarding financial institutions. In another instance, the court considered the application of §2B1.1(b)(6), stating this guideline more appropriately fit the offender's conduct, based in large part on the "organized scheme" element, even though this guideline is applicable only to schemes to steal vehicles or vehicle parts.

Although theft of mail is a federal felony which is investigated by federal law enforcement officers and involves an instrumentality of the federal government, a significant percentage of these crimes are prosecuted in the state systems. In many instances, these cases are deferred by federal prosecutors because the state's penalties are higher and therefore more representative of the seriousness of the crime.

PREVENTIVE MEASURES

Because of the serious impact on its customers and operations, the Postal Service has aggressively implemented security measures to prevent these thefts from occurring. For example, modifications have been made to postal vehicles, and collection and relay box locking mechanisms have been reinforced. The public has been alerted by media accounts regarding the theft schemes and suggested precautions to follow 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. To remedy the box break-in problem, a modification was made to each collection and relay box in Queens at a cost of 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 those boxes at an approximate cost of $250,000. In addition to the direct costs associated with the thefts, 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 criminals. If the system cannot be compromised, then the criminals seek alternative means to obtain the mail. In those cities where the security measures have been effective, we have seen an alarming increase in the number of armed robberies of our carriers. For example, in 1993, Los Angeles experienced 544 mail thefts from vehicles, which resulted in substantial losses. To combat the problem, some vehicles were modified with security equipment. When the thieves could not gain easy entry into the vehicles, they chose the alternative of armed robbery of the mail carriers. The number of armed robberies increased from 41 in 1992 to 91 in 1993. This trend continues to show a dramatic increase into 1994. Our Los Angeles Division reports that in the first four months of this fiscal year, 39 mail carriers have been robbed of mail or postal keys which provide access to collection and relay boxes.

ORGANIZED SCHEME

The key concept in our proposed amendment is the "organized scheme." These volume mail theft offenses satisfy the requirement of more than "minimal planning," §1B1.l(f), as repeated or multiple acts of theft which show both the intention and potential to do considerable harm. In addition, they constitute a jointly undertaken criminal activity, §1B1.3, comment.(n.3). These organized schemes are a common

plan with each participant engaging in a similar course of conduct in the series of mail thefts committed for criminal gain, §1B1.3, comment.(n.9).

COMPARISON TO §2B1.1(b)(6)

Proposed Amendment 35 is patterned after the guideline for the organized scheme to steal vehicles, §2B1.1(b)(6). 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 comprised of a series of multiple thefts and involve "more than minimal planning." 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 sentencing data reviewed, the vehicle theft guideline has only been used in 95 cases over the past five years. We believe this is due to the extrinsic value of vehicles and corresponding high dollar loss which results from the theft of relatively few vehicles. For example, at a dollar loss of $70,000, the resulting increase in the offense level reaches the floor offense level provided by the guideline. In comparison, a similar organized scheme offense characteristic would apply in the majority of our volume mail theft offenses. 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; even if the total loss is proven, it still would not reflect the nonmonetary harm of the offense.

INADEQUACY OF §2B1.1(b)(4)

The current guideline applicable to mail theft, §2B1.1(b)(4), considers the unique character of undelivered mail by providing a two-level increase in the base offense level based on the statutory distinctions for mail theft offenses. This two-level increase establishes a floor offense level of 6, regardless of the dollar loss. As the commentary points out, this is attributed to the crime's interference with a governmental function and the difficulty in ascertaining the scope of the theft.

In volume mail theft offenses the actual harm caused by the relevant conduct is difficult to prove when measured exclusively in terms of a dollar loss and without consideration of the number of victims impacted or the intrinsic value of nonmonetary mail. Since the total harm is from factors not expressly considered by the guidelines, the resulting offense level is not commensurate with the seriousness of the offense. For these reasons, our amendment would add a specific offense characteristic to target these types of crimes as the most serious of mail theft offenses.

The volume theft amendment would establish an alternate means for determining loss based on the gravamen of the offense (e.g., mail theft rings engaged in organized schemes) rather than the dollar loss. Although the total dollar loss may be encompassed in relevant conduct, this can only be proven at a tremendous cost to the government by parading numerous victims before the court in multiple hearings on the sentencing issues. This is currently required to prove up the total loss because defendants are unwilling to stipulate or agree to other losses as relevant conduct indicative of the total harm.

The two-level enhancement currently provided by the guidelines is adequate for a simple mail theft crime as a crime of opportunity with little or no dollar loss. For the organized schemes to steal quantities of mail, however, the guidelines should provide for significantly higher floor offense level, based on the nature of the offense and increased harm.

Proposed Amendment 34, § 3A1.4:

If the offense affected more than one victim, increase the offense level as follows:

Number of Victims	Increase in Level
2-99	2
100-349	4
350-649	6
650 or more	8

The Postal Service believes the number of people affected by a crime is an important element in measuring the crime's societal harm and should be reflected in the sentencing. The current guidelines lack proportionality in the sentencing for offenses which result in multiple victims because they fail to provide for increased punishment for increased harm.

The fraud guideline, §2F1.1(b)(2) provides a specific offense characteristic and commentary on the number of victims: a two-level increase if the scheme to defraud involved more than one victim. The increase provided in this specific offense characteristic is not proportional and is an alternative to "more than minimal planning." For example, the guideline treats a fraud offense impacting two victims the same way it does a crime impacting 2,000 victims. In addition, the commentary found in §2F1.1, comment.(n.8), explains that the approximate number of victims and average loss to each victim are factors to be considered in determining the dollar loss.

Our proposed amendment provides an increase to the offense level based on the number of victims in the form of a "victim table." Since its publication in the Federal Register, we have received suggestions to provide more uniformity in the number of victims in each table range. In our proposed amendment, the first two-level increase corresponds to a maximum of 99 victims; the second increase corresponds to an additional 249 victims; the third increase corresponds to an additional 300 victims. This progression--99 to 249 to 300--has the higher offense level being driven by an increasing number of victims per range. It has been suggested the table provide for the same number of victims for each victim range, (e.g., 200 victims per range) and a corresponding two-level increase per range.

The Commission solicited public comment on the issue of multiple victims and alternative means to address this factor in the sentencing guidelines. As an alternative to our victim table as a Chapter Three adjustment, the victim table could be included as specific offense characteristic for offenses which generate a significant number of victims, such as §2B1.1 (Theft, Embezzlement) and §2F1.1 (Fraud, Forgery).

As another alternative, the Chapter Five guidelines could include a significant number of victims as specific grounds for an upward departure. As a final alternative, the Commission should assign the multiple victim issue as one of its priority study topics for the upcoming year. Should the Commission establish such a working group, the Postal Service will commit its resources to support this effort.

ADDITIONAL COMMENTS

Amendment 12(A)

We strongly disagree with the substitution of "sophisticated planning" for "more than minimal planning." We agree that a more sophisticated crime should result in a higher

offense level; however, this proposed amendment eliminates certain other elements currently contained in the "minimal planning" concept which we feel are equally important in the measurement of culpability and actual harm. For example, this amendment strikes the factor of "repeated acts" from consideration, which the current guideline states is "indicative of the intention and potential to do considerable harm." For these reasons, we oppose the proposed wording, but would support a guideline and commentary which would provide for an additional increase if the offense required complicated or sophisticated planning above those crimes involving "more than minimal planning." In addition, we would support a "sophisticated plan" concept which retains the factors of "repeated acts, a series of conduct or ongoing criminal activities," as factors currently satisfying the "sophisticated planning" requirement.

Amendment 12(B)

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, §2B1.1(b)(4). The basis for this two-level increase is the unique character of mail as the stolen property as stated 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 in theft of mail offenses, regardless of the dollar loss amount. As an example, if the base offense level is increased for §2B1.1 to a 6, the specific offense characteristic for mail theft would provide a floor offense level of 8.

In the event the Commission adopts any change to the base offense level in §2B1.1, a specific offense characteristic with a corresponding two-level enhancement for the theft of undelivered mail should be maintained. Such an enhancement will establish a floor offense level for general mail theft offenses committed as crimes of opportunity as distinguished from the "organized schemes" to steal mail covered in our proposed Amendment 35.

Amendment 15

We agree with the consolidation of mail destruction guidelines under §2B1.3 with the mail theft offenses in §2B1.1. In addition, we agree with the consolidation of the destruction of mail guideline with the theft of mail in §2H3.3. As previously stated in our comment to Amendment 12(B), the base offense level in §2B1.1 should be increased if the mail is obstructed or destroyed.

Determining loss - credit card offenses, §2B1.1. Another issue of interest to the Postal Service relates to calculating the dollar loss in credit card thefts. For these theft offenses, §2B1.1, comment.(n.4), values the loss at the amount of any unauthorized charges made on the card but in no event less than $100. In comparison, §2B1.1, comment.(n.2), provides that for checks and money orders stolen, the loss is the value of the instrument as if it had been negotiated. For consistency between these two provisions, the loss due to the theft of a credit card should be set at the credit limit of the card, as a more accurate measurement of the intended loss and harm to the consumer, merchant, and financial institution. Presently, there is an inconsistency among the judicial districts regarding valuation of loss for credit cards stolen but not used. In some instances, the value is considered the credit limit of the card, while in other instances, the loss is determined to be a maximum of $100 per card as specified in the guideline. We ask the Commission clarify the commentary language to make the loss determination more consistent.

INDEX OF EXHIBITS

EXHIBIT	CONTENT
A	VOLUME MAIL THEFT BRIEFS
B	SENTENCING COMMISSION DATA
C	INSPECTION SERVICE VOLUME MAIL THEFT DATA
D	MEMORANDUMS OF INTERVIEW
E	VICTIM AFFIDAVITS
F	LETTER OF ENDORSEMENT - NORTHERN DISTRICT OF TEXAS
G	NEWSPAPER ARTICLES ON VOLUME MAIL THEFT
H	MAIL FRAUD CASE BRIEFS (MULTIPLE VICTIM CASES)
I	TESTIMONY OF K. M. HEARST, DEPUTY CHIEF INSPECTOR
J	INDEX OF VIDEO CLIPS
K	VIDEO

UNITED STATES POSTAL SERVICE

P. O. BOX 224985 DALLAS, TX 75222-4985

DATE: February 23, 1994

OUR REF:

SUBJECT: Sentencing guidelines amendments

TO:

Robert E. Vincent
Postal Inspector
Office of Criminal Investigations
475 L'Enfant Plaza W., S.W., Rm. 3327
Washington, DC 20260-2160

Reference is made to my previous letter dated February 11, 1994, concerning sentencing guidelines amendments.

I am attaching a more recent judgment in a Dallas criminal case which was prosecuted in the Fort Worth Division by the Northern District of Texas. Defendant Leland Stewart Anderson, ISN 735557, case No. 216-1116205-ECMT(2) was sentenced on January 24, 1994. The sentencing judge departed upwards from the sentencing guidelines. His reasons are on the last page of the judgment.

As information, the victim, Dr. Cheryl K. Anderson (unrelated to defendant), Southwestern Medical School, 5323 Harry Hines Blvd., Dallas, TX 75235-9031, advised this Service she would gladly cooperate in any legislation involving victims.

H. Herrera
Postal Inspector

Attachment

cc: Bill Cunningham
Assistant Inspector in Charge
Fort Worth, TX 76161-2929

UNITED STATES SENTENCING COMMISSION
ONE COLUMBUS CIRCLE, NE
SUITE 2-500, SOUTH LOBBY
WASHINGTON, DC 20002-8002
(202) 273-4500
FAX (202) 273-4529

February 9, 1994

K.M. Hearst
Deputy Chief Inspector
Office of Postal Inspector/Criminal Investigations
475 L'Enfant Plaza West, SW
Washington, DC 20260-2160

Dear Deputy Chief Inspector Hearst:

Enclosed please find the statistical information you requested on guideline defendants sentenced for violations of Postal statutes.

Table 1 describes the number of cases convicted between 1989 and 1993 under each of the statutes listed in your request. Note that a small number of cases was convicted under two or more of these statutes. Table 2 lists the number of cases convicted per year between 1989 and 1993. Table 3 provides the distribution of final offense levels assigned under the guidelines to the total of 3,679 cases.

Table 4 identifies the number of cases form the total of 3,679 that involved more than minimal planning (n=920), or the taking of undelivered mail (n=1,056). Table 5 presents the frequency of primary guidelines applied to the 3,679 cases, with §2B1.1 being the most frequent, followed by §2B1.2 and §2F1.1. Table 6 provides sentence information for the 3,679 cases. 2,149 defendants (or 60%) received no sentence of incarceration. For the remaining 40 percent, the mean prison term was 13.8 months, median 10 months.

Finally, Table 7 references information about cases sentenced under §§2B1.1 and 2F1.1 regardless of the statute of conviction, and provides the number and percentage of cases between 1989 and 1993 to which 2B1.1(b)(6) or 2F1.1(b)(2) was applied.

We hope you will find this information useful. If you have any questions, please feel free to call me at: (202)273-4530.

Sincerely,

Susan Katzenelson
Director of Policy Analysis

Enclosures

Cases Sentenced Under the Guidelines 1989-1993 Involving One or More of the Following Statutes of Conviction:

TYPSTAT	Frequency	Percent	Cumulative Frequency	Cumulative Percent
0	3513	95.5	3513	95.5
1702	166	4.5	3679	100.0

TYPSTAT	Frequency	Percent	Cumulative Frequency	Cumulative Percent
0	3193	86.8	3193	86.8
1703	486	13.2	3679	100.0

TYPSTAT	Frequency	Percent	Cumulative Frequency	Cumulative Percent
0	3629	98.6	3629	98.6
1707	50	1.4	3679	100.0

TYPSTAT	Frequency	Percent	Cumulative Frequency	Cumulative Percent
0	1602	43.5	1602	43.5
1708	2077	56.5	3679	100.0

TYPSTAT	Frequency	Percent	Cumulative Frequency	Cumulative Percent
0	2700	73.4	2700	73.4
1709	979	26.6	3679	100.0

Fiscal Year Sentenced

FY	Frequency	Percent	Cumulative Frequency	Cumulative Percent
89	478	13.0	478	13.0
90	804	21.9	1282	34.8
91	736	20.0	2018	54.9
92	768	20.9	2786	75.7
93	893	24.3	3679	100.0

Table 3

Final Offense Level

FOL	Frequency	Percent	Cumulative Frequency	Cumulative Percent
2	27	0.7	27	0.7
3	51	1.4	78	2.1
4	956	26.0	1034	28.1
5	196	5.3	1230	33.4
6	548	14.9	1778	48.3
7	237	6.4	2015	54.8
8	264	7.2	2279	61.9
9	162	4.4	2441	66.3
10	146	4.0	2587	70.3
11	93	2.5	2680	72.8
12	71	1.9	2751	74.8
13	55	1.5	2806	76.3
14	33	0.9	2839	77.2
15	17	0.5	2856	77.6
16	12	0.3	2868	78.0
17	5	0.1	2873	78.1
18	2	0.1	2875	78.1
20	2	0.1	2877	78.2
21	3	0.1	2880	78.3
22	3	0.1	2883	78.4
23	3	0.1	2886	78.4
24	1	0.0	2887	78.5
25	2	0.1	2889	78.5
28	1	0.0	2890	78.6
29	1	0.0	2891	78.6
37	1	0.0	2892	78.6
43	1	0.0	2893	78.6
Missing	786	21.4	3679	100.0

Table 4

More than Minimal Planning Applied

MINPLAN	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Unknown	1132	30.8	1132	30.8
Missing	73	2.0	1205	32.8
No	1554	42.2	2759	75.0
Yes	920	25.0	3679	100.0

Undelivered Mail Taken

UNDELIVR	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Unknown	1132	30.8	1132	30.8
Missing	73	2.0	1205	32.8
No	1418	38.5	2623	71.3
Yes	1056	28.7	3679	100.0

Table 5

Primary Guideline Applied

GDLINEHI	Frequency	Percent	Cumulative Frequency	Cumulative Percent
2A1.1	1	0.0	1	0.0
2A2.3	1	0.0	2	0.1
2A2.4	1	0.0	3	0.1
2B1.1	2426	65.9	2429	66.0
2B1.2	573	15.6	3002	81.6
2B1.3	136	3.7	3138	85.3
2B2.2	14	0.4	3152	85.7
2B3.1	10	0.3	3162	85.9
2C1.1	5	0.1	3167	86.1
2D1.3	1	0.0	3168	86.1
2F1.1	358	9.7	3526	95.8
2G2.2	1	0.0	3527	95.9
2H3.3	53	1.4	3580	97.3
2J1.6	2	0.1	3582	97.4
2K2.1	4	0.1	3586	97.5
2K2.2	1	0.0	3587	97.5
2L1.1	1	0.0	3588	97.5
2L1.2	1	0.0	3589	97.6
2P1.1	2	0.1	3591	97.6
2S1.1	2	0.1	3593	97.7
2X1.1	2	0.1	3595	97.7
Unknown	11	0.3	3606	98.0
Missing	73	2.0	3679	100.0

Table 6

Length of Imprisonment

TOTPRISN	Frequency	Percent	Cumulative Frequency	Cumulative Percent
0	2149	59.6	2149	59.6
1	31	0.9	2180	60.4
2	56	1.6	2236	62.0
3	83	2.3	2319	64.3
4	118	3.3	2437	67.6
5	48	1.3	2485	68.9
6	226	6.3	2711	75.2
7	37	1.0	2748	76.2
8	75	2.1	2823	78.3
9	41	1.1	2864	79.4
10	69	1.9	2933	81.3
11	5	0.1	2938	81.5
12	158	4.4	3096	85.8
13	14	0.4	3110	86.2
14	30	0.8	3140	87.1
15	63	1.7	3203	88.8
16	34	0.9	3237	89.7
17	1	0.0	3238	89.8
18	91	2.5	3329	92.3
19	5	0.1	3334	92.4
20	10	0.3	3344	92.7
21	42	1.2	3386	93.9
22	3	0.1	3389	94.0
23	2	0.1	3391	94.0
24	52	1.4	3443	95.5
25	1	0.0	3444	95.5
26	1	0.0	3445	95.5
27	24	0.7	3469	96.2
28	1	0.0	3470	96.2
29	2	0.1	3472	96.3
30	28	0.8	3500	97.0
33	19	0.5	3519	97.6
34	1	0.0	3520	97.6
35	1	0.0	3521	97.6
36	14	0.4	3535	98.0
37	7	0.2	3542	98.2
38	2	0.1	3544	98.3
39	3	0.1	3547	98.3
40	4	0.1	3551	98.4
41	9	0.2	3560	98.7
42	2	0.1	3562	98.8
46	8	0.2	3570	99.0
48	3	0.1	3573	99.1
49	1	0.0	3574	99.1
51	4	0.1	3578	99.2
52	1	0.0	3579	99.2
57	2	0.1	3581	99.3
60	10	0.3	3591	99.6
64	1	0.0	3592	99.6

Table 6 (cont.)

TOTPRISN	Frequency	Percent	Cumulative Frequency	Cumulative Percent
70	1	0.0	3593	99.6
71	1	0.0	3594	99.6
72	2	0.1	3596	99.7
84	2	0.1	3598	99.8
87	2	0.1	3600	99.8
94	1	0.0	3601	99.8
96	1	0.0	3602	99.9
120	1	0.0	3603	99.9
150	1	0.0	3604	99.9
216	1	0.0	3605	99.9
240	1	0.0	3606	100.0
Life	1	0.0	3607	100.0

Frequency Missing = 72

Of the forty percent sentenced to a term of imprisonment:
mean sentence= 13.8 months
median sentence= 10.0 months

Application of guideline 2B1.1 regardless of statute of conviction:

- 15,176 (of 162,080 cases with complete information from 1989-93)
- 5 of the 15,176 cases involved the application of adjustment 2B1.1(b)(6).

Application of guideline 2F1.1 regardless of statute of conviction:

- 21,330 (of 162,080 cases with complete information from 1989-93)
- 14,919 of the 21,330 cases involved the application of adjustment 2F1.1(b)(2).

ISDBIS--H24420.CULPRIT.ADHOC421--
U. S. POSTAL INSPECTION SERVICE
VOLUME MAIL THEFTS BY DIVISION
---- FISCAL YEAR - 1993 ----

DIVISION	221 COLLECTION BOX	222 COOP MAILING RACK	223 RELAY BOX	224 & 225 VEHICLE ATTACK	226 CARRIER CART/SATCHEL	227 NDCBU/APT ARROW LOCK	228 P.O. BOX	TOTAL
ATLANTA	1		14	19		27	2	63
BOSTON	5		30	17		3	1	56
BUFFALO	2			1	2		1	6
CHARLOTTE	1			4				5
CHICAGO	15	3	6	73	87	61		245
CINCINNATI	16			4				20
CLEVELAND	2			28				30
DENVER	3			1		1	1	6
DETROIT	3			12	1			16
FT. WORTH	77			4		140	3	224
HOUSTON	1			14		40	10	65
KANSAS CITY	10			8				18
LOS ANGELES	42			544	17	324	11	938
MEMPHIS	2			8		3		13
MIAMI	3			59	2	1	1	66
NEW ORLEANS	3			16	1		1	21
NEW YORK	9	2	520	216	387	1		1,135
NEWARK	10		6	14	21	1		52
PHILADELPHIA	4		1	41	5			51
PHOENIX	37			28		191		256
PITTSBURGH				1			2	3
SAN DIEGO	60			16		425		501
SAN FRANCISCO	24	1	32	84	5	8		154
SAN JUAN	1			2				3

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DIVISION	221 COLLECTION BOX	222 COOP MAILING RACK	223 RELAY BOX	224 & 225 VEHICLE ATTACK	226 CARRIER CART/SATCHEL	227 NDCBU/APT ARROW LOCK	228 P.O. BOX	TOTAL
SEATTLE	136		21	4		8		169
ST. LOUIS	6			4		1	4	15
ST. PAUL	2			1				3
TAMPA	1						2	3
WASHINGTON			4	49	2			55
TOTAL:	476	6	634	1,272	530	1,235	39	4,192

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U.S. Department of Justice

United States Attorney
Northern District of Texas, Dallas Division

1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699

214-767-0951
Fax 214 767-8764

February 2, 1994

Mike Hearst
Deputy Chief Inspector
United States Postal Inspection Service
Office of Criminal Investigations
475 L'Enfant Plaza West, SW, Room 3335
Washington, DC 20260-2160

Dear Mr. Hearst,

I am writing to endorse proposed amendments 34(A) and 35 of the United States Sentencing Guidelines. As I understand it, the United States Postal Service has submitted these proposed amendments regarding guidelines calculations for postal offenses. Proposed amendment 34(A) calls for an increase in the offense level based on the number of victims involved. Proposed amendment 35 calls for an increase in the base level if the offense involved an organized scheme to deliver mail. Both amendments are appropriate and should be adopted.

I have prosecuted numerous postal cases in the three years I have been assigned to this office. The impact on the victims in these cases is significant and long lasting. The guidelines simply do not adequately address this impact as they are currently configured. The theft of personal mail involves the violation of a victim's most private matters. It violates the public's trust in the postal system. As is frequently the case, postal violations may include the theft of credit cards or personal monetary instruments. These thefts can cause irreparable damage to credit records and financial status. These harms are simply not adequately addressed in the currently guideline scheme.

I urge you to pursue these amendments with the sentencing commission. I believe that they represent a fair and just approach to the sentencing of postal offenders.

Yours truly,

PAUL E. COGGINS
United States Attorney

Michael R. Snipes

Michael R. Snipes
Assistant United States Attorney

PUGET SOUND NEWSWATCH

U.S. District Court, Seattle

In custody: Four Seattle-area residents allegedly responsible for the theft of hundreds of checks out of mailboxes were facing federal criminal charges.

Tuesday's arrest of John Heckendorn, 24, of Issaquah was the latest in a series of arrests stemming from a yearlong investigation by the U.S. Postal Inspection Service.

Three others also have been charged: Cynthia Minnick, 40, of Auburn; Hugh McDonald, 48, of Seattle; and Nina Jordan, 41, of Renton. The four face charges of possession of stolen mail and bank fraud.

Postal inspectors say the four took letters from mail collection boxes in the Seattle area and from rural mailboxes from Olympia to Stanwood, chemically removed the handwriting from checks and made them payable to others.

– Jolayne Houtz

SEATTLE DIVISION
DATE: 2-24-94
PUBLICATION: Seattle Times
CITY & ST: Seattle, WA
CASE INSPECTOR: STAN PILKEY

Four stole thousands in checks from mail boxes

By IRENE SVETE
Valley Daily News

Federal authorities claim four South King County residents are responsible for the theft of hundreds of checks from rural mailboxes up and down the Interstate 5 corridor.

John D. Heckendorn, 23, of Issaquah was arrested Tuesday by U.S. Marshals and postal inspectors, said James Bordenet of the U.S. Postal Inspection Service.

The arrest came less than a week after a federal grand jury indicted Cynthia Minnick, 40, and Hugh S. McDonald, 48, of Auburn on charges of bank fraud and possession of stolen mail.

In a third case, the grand jury indicted Nina K. Jordan, 41, of Renton on the same charges.

Bordenet, a postal inspector, said it appears only Minnick and McDonald were working together.

Although most of the mail was stolen from blue mail collection boxes in Seattle and rural boxes, several apartment boxes also were struck, Bordenet said.

"Basically, they went where the mail was," he said.

The case followed an 11-month investigation into losses that amounted to hundreds of thousands of dollars but probably less than $500,000, Bordenet said.

Heckendorn was arrested without incident at the Bridge Motel in Seattle. Over 100 checks, believed stolen from Seattle collection boxes, were recovered, he said.

A U.S. District Court magistrate Tuesday ordered Heckendorn held without bail.

According to federal court papers, the checks were chemically "washed" to remove all handwriting, then made payable to various individuals from whom identification had been either stolen or faked.

Authorities claim the suspects then used the identification to cash the altered checks at banks in Seattle and Tacoma.

If convicted of possession of stolen mail, the four face up to five years in prison and a fine of $250,000. A bank fraud conviction carries a sentence of up to 30 years in prison.

Gerald A. Miera, inspector in charge, said the postal inspection service is working with the Seattle post office to modify collection boxes so they are less vulnerable.

Postal authorities advise residents not to put their outgoing letters in rural mailboxes.

"I wouldn't say this 10 years ago, but that's just the way it is," Bordenet said. "That red flag for the carrier is a red flag for the thief."

Postal inspectors also caution residents to note the pick-up times posted on the collection boxes and not make deposits after the last collection. They also suggest using the mail slots in the post office lobby, if that service is available.

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SEATTLE DIVISION
DATE: 2-24-94
PUBLICATION: Valley News
CITY & ST: Kent, WA
CASE INSPECTOR: Stan Pilkey
Linda Russo

Key suspect in mail-theft, bank-fraud ring held

BY MARY F. POLS
Seattle Times staff reporter

A man described as a major player in a series of mail thefts and bank frauds in Seattle was arrested yesterday and brought before a federal magistrate.

John Heckendorn, 24, of Seattle was one of several people taken into custody yesterday. He appeared in federal court to hear a complaint of bank fraud and possession of stolen mail filed against him.

Postal Inspector Jim Bordenet said the U.S. attorney's office would ask for Heckendorn to be held without bail at a hearing scheduled today.

"We believe he poses a flight risk and is a threat to the community," said Bordenet.

Heckendorn was suspected in several cases in which checks were chemically "washed" and altered to be made out to one of five aliases he allegedly had used.

He was believed to be part of a loosely affiliated ring of mail thieves who operated mostly in the Capitol Hill area, beginning in 1992. In the scheme, mail was taken from public collection boxes and the large olive-brown boxes where postal employees put mail for delivery.

Counterfeit keys gave the group access to the postal boxes. In some cases, the thieves entered apartment buildings to clean out mailboxes inside.

Credit cards, boxes of blank checks and signed checks in outgoing mail were their primary targets.

More than a dozen arrests were made last year in the fraud scheme. Among those arrested was a woman who had lived with Heckendorn. Postal inspectors went to her after Seattle Telco Federal Credit Union employees identified Heckendorn from photographs as the man who had tried to cash a forged check there last April.

She told inspectors Heckendorn had been her partner in the scheme.

Heckendorn allegedly used two local men's names as aliases after obtaining their driver's licenses, lost or stolen last year.

The two stolen checks listed in the complaint against Heckendorn had been mailed from post-office boxes at the Magnolia and West Seattle stations.

But Bordenet characterized the crimes as reaching "all over metropolitan Seattle."

He said the post office is taking further precautions to make collection boxes harder to break into. Extra padlocks were put on boxes in North Seattle and on Capitol Hill.

Anyone convicted of stealing or possessing stolen mail faces up to five years in prison and a $250,000 fine for each count.

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SEATTLE DIVISION
DATE: 2-23-94
PUBLICATION: Times
CITY & ST: Seattle, WA
CASE INSPECTOR: Stan Pilkey
Linda Russo

Wednesday
February 23, 1994
Seattle Post-Intelligencer

Seattle man faces federal charges in stolen-check case

By Mike Merritt
P-I Reporter

A 24-year-old Seattle resident was charged yesterday with bank fraud and mail theft after an 11-month investigation by postal inspectors of stolen checks.

John D. Heckendorn was charged in a federal complaint with altering checks he allegedly had stolen from U.S. mail collection boxes. Heckendorn chemically "washed" the checks, then wrote in new amounts and made the checks payable to one of his numerous aliases, the complaint said.

Court records said Heckendorn stole more than $250, but that amount "is just the tip of the iceberg," said Jim Bordenet, a postal inspector. Other people believed involved in the scheme were arrested yesterday, but Bordenet could provide no further details.

Heckendorn is in custody, and he will appear today before a U.S. magistrate for a detention hearing. Heckendorn was convicted of burglary in 1991 and forgery in 1993, according to King County Superior Court records.

In an affidavit, Postal Inspector Stanley Pilkey said that on Feb. 4, 1993, Heckendorn cashed a $250 check he had stolen from a mailbox at the West Seattle post office and "washed," using a stolen driver's license for identification.

On April 5, 1993, Heckendorn tried to cash a $600 check at a Seattle credit union, again using a stolen driver's license. Tellers were suspicious, however, and they refused to cash the check, the affidavit said.

Three days later, Heckendorn tried to cash a "washed" check at a Seattle savings-and-loan branch, according to the affidavit. He was later arrested by Seattle police and convicted of forgery.

According to Pilkey's affidavit, a former girlfriend confirmed the scheme in a statement to authorities. She identified one check she had falsified and made payable to one of Heckendorn's aliases.

An examination of Heckendorn's handwriting confirmed that he had altered at least one of the stolen checks.

SEATTLE DIVISION
DATE: 2-23-94
PUBLICATION: Post-Intelligencer
CITY & ST: Seattle, WA
CASE INSPECTOR: Stan Pilkey

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NEWS RELEASE

OFFICE OF THE INSPECTOR IN CHARGE
UNITED STATES POSTAL INSPECTION SERVICE
P.O. BOX 400
SEATTLE, WA 98111-4000
206/442-6300

FOR IMMEDIATE RELEASE
SEA NO. 94-06
DATE: FEBRUARY 23, 1994

FOR FURTHER INFORMATION CALL:

JAMES D. BORDENET
POSTAL INSPECTOR
TELEPHONE: (206) 442-6134

CHECK WASHERS ARRESTED

So your creditors didn't believe you when you told them the check was in the mail? Well, they probably should have, according to Postal Inspector in Charge Gerald A. Miera. Today, the Postal Inspection Service, Seattle Division, announced the results of a year-long series of investigations which resulted in arrests of four persons in connection with the theft of hundreds of check letters from the mail. According to court documents, most of the stolen mail was taken from U. S. Postal Service blue collection boxes throughout the Greater Seattle area and from rural mailboxes all the way from Olympia to Stanwood, WA.

In the first case, U. S. Marshals arrested CYNTHIA K. MINNICK, born December 26, 1953 of Auburn, Washington, and HUGH S. MCDONALD, born September 25, 1945, of Seattle, on February 8, 1994 at Auburn. Their arrests were based on a criminal complaint filed on December 29, 1993 in Federal District Court at Seattle charging them with possession of stolen mail.

In a separate case, U. S. Marshals arrested NINA K. JORDAN, born June 16, 1952, of Renton, Washington, on February 15, 1994. This arrest was based on a January 21, 1994 criminal complaint charging her with possession of stolen mail and bank fraud.

The most recent arrest was made by Postal Inspectors and U. S. Marshals on February 22, 1994. They arrested JOHN D. HECKENDORN, born January 18, 1970, of Issaquah, Washington, at the Bridge Motel in Seattle. Heckendorn's arrest was based on the filing of a January 21, 1994 criminal complaint charging him with possession of stolen mail and bank fraud. Heckendorn appeared in Federal Court on the afternoon of February 22. During this initial appearance, information was provided that incident to his arrest, over 100 check letters believed stolen from Seattle area collection boxes were recovered.

According to the criminal complaints filed against these defendants, letters containing checks were stolen from either Postal Service collection boxes or rural mailboxes. The checks were chemically "washed" to remove all handwriting. They were then made payable to various individuals from

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whom the defendants had either stolen or obtained identification documents, such as drivers' licenses. The documents were altered to display photographs of the defendants, who then used them in cashing or attempting to cash these altered checks at Seattle and Tacoma area banks.

The collection boxes referred to in the criminal complaints are the blue street boxes utilized by the public to place letters which will be picked up by the U. S. Postal Service for processing and delivery. Other check letters were allegedly stolen from individual rural mailboxes. Inspector in Charge Miera stated that the Postal Inspection Service is working with the Seattle Post Office to modify collection boxes so they are less vulnerable to criminal attack. Miera cautioned that customers should also note the last scheduled pick-up time which is posted on all collection boxes; that it is a good practice not to deposit mail after the last pick-up for that day.

Inspector in Charge Miera also cautioned the public not to place their outgoing letters in rural mailboxes. "Unfortunately, the red flag customers raise to alert our employees that outgoing mail is in the box is also a red flag for the thief. A prudent crime prevention practice is to deposit those letters inside a post office or mail them from your work place."

Inspector in Charge Miera noted that key information which assisted Postal Inspectors in these cases came from concerned citizens who observed, and reported, suspicious activity around collection boxes. "We appreciate the public's help in identifying postal thieves. We are offering a reward of up to $10,000 for information which leads to the arrest and conviction of anyone stealing mail," Inspector in Charge Miera said. Persons can contact the Seattle Postal Inspectors' Office at 442-6300. All information will be kept in confidence.

Following the earlier arrests, on February 16, 1994, a Federal Grand Jury at Seattle returned Indictments against MINNICK, McDONALD, and JORDAN. These indictments charge them with one count each of bank fraud and possession of stolen mail, and are related to the violations detailed in earlier criminal complaints. MINNICK, McDONALD, and JOHN HECKENDORN remain in Federal custody. On February 17, JORDAN was released to home detention with electronic monitoring.

The penalty upon conviction for possession of stolen mail is up to five years and/or a $250,000 fine. The penalty upon conviction for bank fraud is up to $1 million and/or thirty years imprisonment. The charges contained in the indictments and criminal complaints in these cases are accusations and the defendants are presumed innocent until proven guilty by a jury at trial.

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Wedgwood

COMMUNITY NEWS

Feb./March 1994 | A Community Council Publication | Vol. 8 No. 2

Post office mailboxes raided by thieves looking for cash

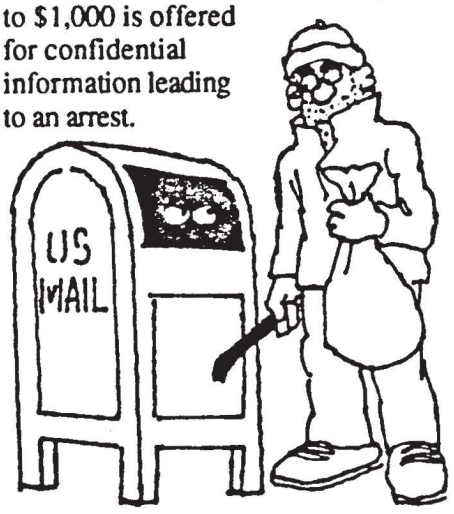
Postal inspectors are investigating thefts from the mail collection boxes outside the Wedgwood post office. The thefts apparently started in mid-January and occurred between 5 p.m. Saturday and 6 a.m. Monday. Suspects have been identified and arrests are expected soon.

Postal Inspector Jim Bordenet said he believes the thefts are "drug-driven" and the thieves are looking for cash, credit cards or checks that can be washed, rewritten and cashed. The thieves apparently used a counterfeit key to open the collection boxes.

Reports also have been received concerning mail stolen from home mailboxes in the Wedgwood area. Bordenet said most mail theft is from home mailboxes and it has increased significantly since 1987.

To guard against future thefts, the post office plans to provide an indoor mail slot that is available at all times. Drop your mail in the indoor slot or mail it from your business. Never leave mail at your home mailbox for your carrier to pick up, and don't leave incoming mail sitting in your mailbox.

Please report any suspicious activity around any mailboxes by calling 911 and the postal inspectors at 442-6300. A reward of up to $1,000 is offered for confidential information leading to an arrest.



SEATTLE DIVISION
DATE: 2-20-94
PUBLICATION: Wedgwood News
CITY & ST: Seattle, WA
CASE INSPECTOR: Stan Pilkey
Linda Russo

The News Tribune

Saturday, January 22, 1994

Thieves picking up mail at Tacoma boxes

No arrests yet, but several warrants issued

By Paul Chavez
The News Tribune

Grandkids say they never got that $10 you sent them for Christmas?

Maybe they didn't.

Thieves believed armed with counterfeit keys have made their own rounds, stealing mail dropped in some Tacoma collection boxes, U.S. postal officials said this week.

A collection box in front of the Proctor Station, 3801 N. 27th St., was emptied Dec. 26, and a mailbox at North 30th and Stevens streets was hit Dec. 30.

"We've gotten reports of thefts from several parts of Tacoma," said Jim Bordenet, a U.S. postal inspector in Seattle. "Mostly in the North End and east of Interstate 5."

Postal inspectors investigating the Tacoma thefts have issued warrants for several suspects, Bordenet said. No arrests, however, have been made yet, he said.

"It appears the thefts are tied to a loose-knit association," he said. "People coming and going."

Investigators said they don't know how much mail the ring has stolen. It's hard to keep track, officials said, since the thefts aren't reported for a while. People don't learn their mail has been stolen until well after the fact, investigators said.

Lisa Starkey, who lives in Tacoma's North End, said she dropped four bill payments into the collection box at the Proctor Station on Dec. 26.

"About two weeks ago, I got a late notice for my City Light bill," said Starkey, 31.

Shortly after the utility notice, Starkey said, her credit card company sent her a late notice.

"I called the post office and said, 'Hey, is there something going on I should know about?'"

The Proctor station manager told her about the stolen mail.

"I was just livid," Starkey said. "I always drop my mail in those kinds of boxes. I just walked out of there shaking."

The thefts meant Starkey had to negotiate late fees, cancel payment on her checks and change her unlisted telephone number.

"It's just a big hassle," she said. "I'm a private person and now somebody knows everything about me. You'd think the post office would be a safe place to drop your mail."

Think again, postal officials said.

"You've got today's environment," Bordenet said. "Nothing's sacrosanct. We've got to alert people. This is reality."

Bordenet said people should mail from either work or at a post office.

"Go in and put it in the chute in areas that have experienced problems with collection boxes," Bordenet said.

And if you do use a collection box, check the pick-up schedule printed on the box.

"I wouldn't use a box where it wouldn't be picked up for a while," Bordenet said. "Mail only within a short time frame of the next scheduled pick-up."

For its part, the Postal Service plans to

Please see Mail, B3

Mail

Continued from B1

add second locks to some Tacoma boxes, Bordenet said. The locks, which require a different type of key, have been added to some Seattle boxes.

Investigators suspect counterfeit keys that can open mailboxes have been used in the thefts.

"We've had problems in the past with counterfeit keys," Bordenet said. "It's not that easy to get them, but it's not that difficult."

A Federal Way man who forged checks he stole from mailboxes was sentenced in 1992 to 20 months in prison. His girlfriend, who participated in the Puget Sound-area scam, was sentenced to eight months.

The couple took checks taken from the large blue and green streetside boxes and altered them with a chemical wash. They then tried to cash the checks using false identifications.

That sounds similar to what happened recently to Kathy Vlasak of Tacoma.

Vlasak said her husband dropped mail at 6:40 a.m. at the collection box at North 30th and Stevens streets on Dec. 30.

"A little after 4 o'clock on the same day, my bank called and said they had a suspicious check," Vlasak said. "The amount and pay to person had been changed."

Bankers told Vlasak the check had been through a chemical wash. A person's name had replaced the telephone company, and $79.72 had been changed to $300.

The episode shattered Vlasak's trust in the collection box.

"That's where we've been taking it as long as we've had the house, and we've been there 10 years," Vlasak said. "I bring it down to work, and I hand it to the mailman. Now I know who's got it."

SEATTLE DIVISION
DATE: 1-22-94
PUBLICATION: News Tribune
CITY & ST: Tacoma
CASE INSPECTOR: Breault/
Pilkey

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Don't leave your mail in the mailbox

Whether postal inspector, detective, bank official or victim, the advice for Lakewood is pretty simple.

Don't use your rural-type mail box.

"That red flag is a red flag for the thief," said postal inspector Jim Bordenet.

For incoming mail, Bordenet suggested that people have a trusted neighbor pick up the mail. For outgoing, he suggests people drop their mail off at the post office, rent a post office box or get several neighbors together to purchase a locked neighborhood collection box.

"We're going to get a Post Office box," said recent mail theft victim Carrie Lindsay.

And if you do notice suspicious activity, try to get a physical description and license plate and report the incident to local police and the postal inspector's office.

The nearest postal inspectors office can be reached by calling (206) 442-6300. The Postal Inspection Service has an ongoing reward program, with rewards payable for up to $1,000 for information leading to arrest anc conviction of anyone stealing mail.

To report check forgeries with the Pierce County Sheriff's office, call 591-7530.

SEATTLE DIVISION
DATE: 11-5-93
PUBLICATION: Valley News
CITY & ST: Tacoma, WA
CASE INSPECTOR: Stan Pilkey

Thieves steal mail, forge checks

W46

By Daven Rosener
Editor

That little flag on your mailbox is not helping your mail man.

It's alerting mail thieves of ready-to-steal mail — mail that often includes personal checks.

Ask Lakewood resident Carrie Lindsay.

A ready-for-the-mail stack of bills was recently stolen. The thief altered her checks, making them payable to someone else and payable for a new, higher amount of money.

"I did all my bills — had them all stacked up and put them in my mailbox," she said. Everything was fine until her bank called three days later telling her one of her checks had been altered.

One check, written for $5.61, had been altered to $150, payable to someone she didn't know.

Lindsay was a victim of a relatively new form of fraud where forgers chemically wash the ink off checks, writing in new "payee" names and new amounts.

So far, Lindsay and at least 25 other Lakewood residents have had checks stolen and chemically washed this year.

"It's when they see the red flag on the mail box that they spring into action," said Pierce County Sheriff Detective Rob Floberg. He suspects there are four rings of check washers operating in Pierce and neighboring counties.

"Some of the erasures have been done so well, even if it is a forgery, you look at it real close and can't even see the old ink," Floberg said.

Typically, check washers keep the new amount to under $400. "They try to keep it under a greedy amount because it attracts attention," he said.

Roughly 90 percent of the payee names are stolen IDs. The other 10 percent "are either so dumb they use their own name, or they want drugs so bad they don't care if they get caught for the forgery," Floberg said. Floberg, along with bank loss investigators, U.S. Postal inspectors, and even the FBI are after check washers.

"They love mortgage checks, because they know they're fairly good sized," said a Seafirst loss investigator.

And often times, victims don't know about the theft of checks from their mailboxes until much later. Victims realize something is wrong when they find out the bill they mailed is overdue, or when their checks start bouncing.

Who pays the price for check washing crimes?

Whoever cashes it. That means the banks. But more often, it means the retail merchant, said Jason Moulton, FBI white collar crime supervisor for the state of Washington.

According to Moulton, roughly $14 million was lost in bank fraud of one form or another in 1992.

Beyond not using the mailbox in front of your home for outgoing bills and mail, bank loss investigators suggest that people keep up with balancing their checkbooks against their statements.

And once you find out your personal check has been altered, "you need to get down to the bank and close the account," said recent victim Carrie Lindsday.

From what she has learned, her stolen checks somehow mixed with checks stolen fro individuals in Spanaway an South Tacoma.

And one of Lindsay's fo missing checks is still missin

"It turns your life upsi down," she said, after closin her checking account, opening new one and replacing all of h bank cards.

SEATTLE DIVISION
DATE: 11-4-93
PUBLICATION: Lakewood Journal
CITY & ST: TACOMA, WA
CASE INSPECTOR: Stan PiLKey

Mail theft on the rise in South King County

W-48

Mail theft is on the rise again in our area. Residents should be on alert, as checks are being removed from mailboxes, washed, and re-written for hundreds of dollars more than the original amount, and are being cashed. Most victims don't realize it has happened to them until it's too late ... their checking accounts are over drawn.

Most mail thefts occur on isolated roads. Many suspects know the scheduled time of the carriers and watch for them.

Here is some advice on how people can safeguard their own mail:

•Form a neighborhood watch to protect the mail.

•Remove mail as soon as it is delivered.

•If planning to be out of town, have a neighbor pick up the mail, or it can be held at a local post office for up to 30 days.

Outgoing mail should be put in the mailbox just before the carrier is scheduled to arrive. It should never sit in the box overnight. The raised red flag carries a double meaning to vandals.

The best and safest place for outgoing mail is a letter slot in the lobby of a post office. Second to that is a collection box.

It is a federal offense to tamper with the U.S. mail. However, it is best not to confront the suspect(s) yourself. Obtain a description of the vehicle and the suspect(s) if possible and the license number of the vehicle. Then call the postal inspector's office at 442-6300. This is a 24-hour number.

SEATTLE DIVISION
DATE: 9-10-93
PUBLICATION: Voice of the Valley
CITY & ST: Federal Way, WA
CASE INSPECTOR: Dave Breault

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Check washers hitting postal drop boxes

W-48

NORMANDY PARK—Police are warning citizens to be careful with their mail.

At least three times in the past month, thieves have stolen letters from blue collection boxes and cashed checks swiped from envelopes.

Two of the thefts occurred at the mailbox next to Warren's Drugs, 19919 First Ave. S. The other was at a mailbox next to Manhattan Pharmacy, 17833 First Ave. S.

The culprits apparently have a key, because neither box was forced open or damaged.

Their modus operandi is to wash out the "payable to" and "amount" sections on checks, then fill in inflated totals and cash them.

"People don't know it until they get their statements and find that instead of a $25 check to Texaco, it's $390," said Don Weikart, the city crime-prevention officer.

Weikart said 10 to 12 altered checks have been cashed so far, all in the neighborhood of $400. Most were cashed in Pierce County.

"Apparently the check washing is very good," Weikart said. "it's going to be very hard to catch these guys unless someone gets a description or a cop happens to get lucky and stumble across something going on."

Jim Bordenet, a U.S. postal inspector spokesperson, said crimes such as this tend to be drug-related.

"The drug problem is endemic. It unfortunately is a sign of the times we live in," he said.

Bordenet said the thieves also are likely to steal mail from home boxes with red flags up indicating outgoing letters.

Weikart recommends that citizens either hand letters directly to their mail carriers, watch their mailbox until a carrier stops by, or else deposit mail inside post-office branches.

If anyone thinks their checks have been swiped, they should contact the Postal Inspectors Office at 442-6300 and report that someone has manipulated their checking account.

Said Bordenet: "They'll get all different kinds of indicators...that somebody's stolen their mail."

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SEATTLE DIVISION
DATE: 8-9-93
PUBLICATION: HighLine Times
CITY & ST: Des Moines, WA
CASE INSPECTOR: S.R. Pilkey

The Courts

U.S. District Court, Seattle
Sentenced: Two Renton residents for their part in a scheme to use counterfeit keys to steal checks and credit cards from private mailboxes and Postal Service boxes on Capitol Hill in Seattle.

Federal Court Judge Barbara Rothstein sentenced William Bridwell, 28, to 21 months in prison and Kelly Whitaker, 27, to 37 months for the thefts last fall. The judge also ordered the two to pay $31,000 in restitution.

Authorities arrested 13 people last spring in connection with the thefts. The thieves stole credit cards, outgoing mail containing signed checks and packages of blank checks sent to bank customers by check-printing firms.

SEATTLE DIVISION
DATE: 7/8-93
PUBLICATION: Times
CITY & ST: Seattle, WA
CASE INSPECTOR: B. Vranizan

Police crack down on 'check-washing' scam

W-48
by Andrew McKean

Thanks to an alert bank teller and a nervous crook, Issaquah Police are on the verge of cracking a check-theft and forgery operation.

Though the prime suspect is still at large, police have his driver's license, a forged check and a bulging case file in hand. They hope to arrest the man, a 28-year-old Kent resident, in a matter of days.

Police and postal inspectors have been working the case since May 21, when the suspect walked into Issaquah's Seafirst Bank and tried to cash an altered check.

But the crime began several days earlier, when mail belonging to Mirrormont resident Ken Evans was stolen from the mailbox at the end of his driveway.

Three signed checks that Evans enclosed as payment for bills were removed and the rest of the mail was discarded. At least one check was "washed" in an acid solution that dissolved the signature, amount and payee information while retaining the pre-printed information.

> ***'This wasn't the smartest criminal around.'***
>
> — Forgery victim

The suspect then wrote the check to himself, forged Evans' signature, and tried to cash it.

The scam might have worked if the suspect hadn't broken two cardinal rules of forgery: first, he made the check out to himself; second, the amount he wanted in cash—$931—was sure to raise suspicions.

"This wasn't the smartest criminal around," said Evans.

It might also have worked if Seafirst teller Judy Root hadn't just finished a training session about how to spot altered checks.

Issaquah Police said that Root immediately suspected that the slightly faded check was forged. She asked for the suspect's identification, and then alerted the branch manager, who turned on security cameras and called Issaquah Police.

The suspect, who apparently grew nervous over the wait, fled the bank without retrieving his drivers license. He hopped in a waiting blue Mercedes just as Issaquah Police officers arrived at the opposite side of the bank.

"It was one of those cases where you have to pick one side of the bank or the other," said Issaquah Officer Bob Porter, who has been investigating the case. "Luckily for the bad guy, we picked the wrong side."

As a result, the suspect got away, but the bank was able to record the Mercedes' license number, given by an accomplice. Combined with the bank's videotape and witness descriptions, the police say they know who they're after. Search warrants and arrests are forthcoming, said Porter.

According to Issaquah and King County Police and U.S. Postal Service inspectors, the Seafirst check-washing scam seems to be an isolated incident locally, though the Kent man is a suspect in forgeries elsewhere in the county.

Inspector Gerald Miera noted that the crime was a favorite activity of metropolitan Seattle gangs earlier this year. Last year, stolen checks valued at $80,000 were forged in Seattle.

Miera and Officer Porter said the activity is growing in popularity on the Eastside, though it's still a anomaly to area police.

The crime is relevant to anyor who sends or receives mail in a rur mailbox.

The inspector said that the forge apparently cruise neighborhoo looking for mailboxes with r flags, signaling outgoing mail. On they obtain the checks, the washir is easily accomplished with ingred ents available at grocery or dr stores.

Porter said that residen shouldn't let mail linger in their l ter boxes.

"The prevention, obviously, is remove your mail from your ma box as soon as you get home," said. "And if you're paying a b take it to the local post office postal drop box."

If you're the victim of a che theft or forgery, call local police the post office immediately.

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