REPORT

OF THE

PUBLIC CORRUPTION WORKING GROUP

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EXECUTIVE SUMMARY

Public corruption offenses comprise a relatively small portion of the cases sentenced under the federal sentencing guidelines over the last two and a half years. During this time period, over 600 cases involved the public corruption guidelines at Chapter Two, Part C. The vast majority of these cases are covered by §2C1.1 ((Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), with a sizable number also covered by §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity). (See section II-A of the report.) A substantial number of public corruption cases, primarily prison contraband, drug, and fraud cases are sentenced using other guidelines. (See section VII-F.)

This modest representation in numbers, however, belies a high-profile nature of public corruption offenses. Public corruption defendants are often powerful, well-known public officials holding high-level or elected office. Recent defendants include officials from every level of government, in every branch of government -- federal, state, and local -- including the United States Congress, the federal judiciary, the Pentagon, state governors and their staff, several state legislatures, state judges, mayors and aldermen, sheriffs and chiefs of police. In addition, public corruption offenses commonly involve bribes paid to IRS agents to reduce tax liability, bribes to secure immigration documents, prison contraband cases, and procurement and contract-related bribes and gratuities. (See Appendix IX.)

Public corruption defendants are generally White (45%), male (85%), American (76%), well-educated (54% completed college or received a graduate degree) first offenders (91% are criminal history category I), who plead guilty (85%) to their public corruption charges. A higher proportion of public corruption defendants are Asian (17% compared with less than 3% for all MONFY92 defendants) and a lower proportion are Hispanic (9% compared with 23%); and public corruption defendants have lower criminal histories and higher levels of education than the general MONFY92 defendant. Otherwise, these defendants generally match the characteristics of the typical MONFY92 defendant. (See section VI-B.)

Public corruption defendants have a median total offense level 14 and a median sentence of 6 months. However, a significant number of public corruption defendants in multiple count cases or who are cross referenced to other guidelines receive substantially higher sentences (median of 18 months). One-third of defendants receive probation. (See section VI-C.)

Upward and downward departure rates (1% and 6%, respectively) for public corruption defendants are consistent with overall guidelines. However, the substantial assistance departure rate is substantially higher (25% compared with 15%), and this contributes to the relatively low median sentence and the high proportion of probationers (indeed, 60% of §5K1.1 cases receive probation). The majority of substantial assistance departures, however, arise in a small number of districts. (See section VI-C.)

Comment from public corruption experts and criminal justice practitioners, and a review of literature, hotline calls, and case law revealed a number of concerns regarding application of the public corruption guidelines. (See sections IV and V.)

A primary issue raised by all sources centers on the distinctions between the offenses of bribery, gratuity, extortion under color of official right, extortion, and other public corruption offenses. Not only are the elements of the offenses similar (e.g., gratuity and bribery); in some statutes the key elements are subjective and not easily determinable (e.g., the requirement of a corrupt purpose for bribery under 18 U.S.C. § 201(b)). Moreover, the definitions for similar offenses often vary among statutes (see, e.g., bribery under 18 U.S.C. §§ 201(b) and 666). (See section III.) Related to this issue is the infrequent use of §§2C1.3 through 2C1.7, some of which offenses may be comparable in nature and may merit consolidation. (See section VII-E.)

A secondary issue involves the definition of an "official holding a high level decision-making or sensitive position." Concerns have been raised regarding the difficulties involved with applying this rather subjective adjustment (the adjustment is applied to some offenses involving line INS agents and not to certain cases involving high-level federal procurement officials) and regarding the extent of the adjustment (e.g., the 8-level adjustment is applied similarly to lower-level, elected, local officials and the highest-level official). This adjustment was applied in approximately 15 percent of the §§2C1.1 and 2C1.2 cases. (See section VII-D.)

Another concern with application is the determination of the value of the payment for purposes of the value table adjustment. Concerns have been raised regarding determination of value in some complex cases or cases where some facts are obscure (e.g., procurement or contract cases) or where the benefit is not readily determinable (e.g., INS document cases). Other concerns have focused on the complexity of or ambiguity in the commentary's definition of the relevant terms. Additional concerns have arisen over application of the adjustment for cases involving multiple bribes or gratuities. At least one of these two adjustments were applied in 83 percent of the public corruption cases. (See sections VII-B and VII-C.)

A final issue surrounds the use of departures on grounds of collateral consequences (e.g., debarment, loss of official position, vulnerability in prison) and cultural predisposition (e.g., to offer a gratuity for services rendered). (See section V-D.)

Numerous additional, relatively limited and technical changes have been identified as possibly meriting further consideration by the Commission. The Working Group will continue the ongoing research projects described in this report. At the Commission's direction, the Working Group will identify issues raised by this report and will suggest, for further consideration by the Commission, possible steps that can be taken to address those issues.

I. SCOPE OF THE WORKING GROUP AND REPORT

In 1992, the Commission established the Public Corruption Working Group and directed it to examine the public corruption guidelines. After consulting with Commissioners, Commission staff, members of the defense bar, the Department of Justice and a representative of its Public Integrity Section, the Working Group identified the following as its general purposes:

- To profile the categories of defendants and offense conduct covered by the public corruption guidelines;
- To profile sentencing practice under the public corruption guidelines;
- To determine the areas of concern involving application of the public corruption guidelines; and
- To determine whether revisions to the public corruption guidelines addressing these concerns should be considered.

This report presents the Working Group's findings based on work undertaken in these areas. When appropriate, the Working Group has suggested additional research be undertaken. At the Commission's direction, the Working Group will identify issues raised by this report and suggest possible steps that can be taken to address those issues.

II. SCOPE OF THE PUBLIC CORRUPTION GUIDELINES AND STATUTES

This section briefly describes the guideline and statutory provisions that apply to public corruption offenses.

A. Public Corruption Guidelines

The guidelines found in Chapter Two, Part C of the Guidelines Manual (the public corruption guidelines) cover offenses involving public officials and the statutes discussed below. Six of the seven public corruption guidelines went into effect with the initial promulgation of the sentencing guidelines on November 1, 1987. The seventh public corruption guideline, §2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions), went into effect on November 1, 1991 (see discussion below).

Consistent with the criminal code distinction between bribery and gratuity, the public corruption guidelines provide separate guidelines and penalties for these two offenses: §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) applies to bribery offenses; §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) applies to gratuity offenses. The guidelines recognize the higher degree of criminal intent required for bribery relative to gratuity (see discussion below and the background commentary to §2C1.2, which notes that "a corrupt purpose" is not an element of the offense of gratuity). Accordingly, §2C1.1 provides a base offense level 10 for bribery and §2C1.2 provides a base offense level 7 for gratuity. Specific offense characteristics for multiple payments (2-level increase), for the value of that payment (varying increases depending on the value), and for involvement of a high-level or elected official (8-level increase) also apply. These guidelines also have a number of cross references.

Also consistent with case law, the guidelines recognize that bribery of a public official is as serious a crime as extortion under color of official right. Accordingly, both receive a base offense level 10 under §2C1.1. Less common and, in some cases, less serious offenses covered by the public corruption statutes are covered by §§2C1.3-2C1.7. These offenses generally have relatively low base offense levels and few, or no, specific offense characteristics.

The Working Group's public corruption file contains all 582 cases involving application of the public corruption guidelines during fiscal years 1991, 1992, and 1993 (through April 30, 1993).[1] In 544 of those cases, the public corruption guideline produced the highest adjusted offense level (i.e., the public corruption guideline was the "guideline high"). In the remaining 38 cases, a public corruption guideline was applied in conjunction with another guideline that produced a higher adjusted offense level than the public corruption guideline. These cases primarily involved offenses covered by §2D1.1 (controlled substances) (13 cases) and §2F1.1 (Fraud) (8 cases).

The distribution of the 544 public corruption cases by fiscal year is shown in Table 1. (Note that fiscal year 1993 data represent only partial data for the year to date.)

[1] For additional information on the Public Corruption File, see section VI-A.

Table 1

Number of Public Corruption Cases by Fiscal Year

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Fiscal Year	Number of Cases[2]
1991	196
1992	260
1993 (to April 30, 1993)	88
Total	544

The Department of Justice reports that it lodged public corruption charges in 425 cases against 604 defendants in fiscal year 1992 and secured convictions of 505 defendants during the same period. U.S. Department of Justice, Statistical Report: United States Attorneys' Offices, Fiscal Year 1992. The Department's definition of a public corruption case is broader than the Commission's more narrowly defined term (essentially encompassing only cases sentenced under Chapter Two, Part C) in that it encompasses convictions of federal officials regardless of the offense of conviction. In addition, some of the fiscal year 1992 cases may still contain a small number of pre-guidelines cases. Relevant portions of the Department's report appear in Appendix 10.

Table 2 shows the distribution of cases among the seven public corruption guidelines. As the table demonstrates, §2C1.1 (Bribery; Extortion Under Color of Official Right) was the most frequently applied guideline, with 448 cases applying that guideline as the guideline "high." The gratuity guideline, §2C1.2, also involved a significant number of cases (58 cases). The remainder of the guidelines accounted for a total of 38 cases. It should be noted that §2C1.7, which applies to many frauds involving public officials, is a relatively new guideline. Because §2C1.7 was only enacted in November 1991, its seven cases are underrepresented relative to the other six public corruption guidelines that have been in effect since November 1987.

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[2] Counts only cases where any Part 2C guideline was the guideline high. Thirty-eight (38) additional cases involved Part 2C guidelines that were not the guideline high.

Table 2

Number of Public Corruption Guideline Cases by Guideline

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Guideline	Number of Cases
§2C1.1 (Bribery, Extortion Under Color of Official Right)	448
§2C1.2 (Gratuity)	58
§2C1.3 (Conflict of Interest)	19
§2C1.4 (Unauthorized Compensation)	8
§2C1.5 (Payments to Obtain Public Office)	1
§2C1.6 (Loan/Gratuity to Bank Examiner)	3
§2C1.7 (Fraud Involving Deprivation of Honest Services)	7
Total	544

B. Amendments to Guidelines

1. Amendments to Sections 2C1.1 and 2C1.2

Section 2C1.1(b)(1) and the Commentary were clarified by amendment number 120 (effective Nov. 1, 1989), which replaced "action received" with "benefit received, or to be received" in order to more clearly identify benefit as the determinant of value.

Amendment number 121 (effective Nov. 1, 1989) provided for a 2-level adjustment under §§2C1.1(b) and 2C1.2(b) where the offense involved more than one bribe, extortion, or gratuity. The amendment corrected an anomaly in the guidelines whereby multiple unconvicted bribes, extortions, or gratuities that formed part of the same course of conduct or a common scheme or plan were excluded from consideration, but multiple acts of theft or fraud would be considered under the second ("repeated acts") prong of the "more than minimal planning" definition. The amendment also

corrected anomalies arising from the fact that the multiple count rule increased offense levels differently than the monetary table, by adding §§2C1.1 and 2C1.2 to the list of guidelines to be grouped under §3D1.2(d).

Amendment number 367 (effective Nov. 1, 1991) added the factor of government loss to the offense level calculation. The amendment also --

- distinguished between an offense committed for the purpose of facilitating the commission of another offense and an offense committed to obstruct justice with respect to another offense;
- clarified the meaning of "value of the benefit received" as the net value of the benefit from the payment; and
- substituted "payment" for "bribe" and added "or extortion" where appropriate to reflect the guideline's coverage of both bribery and extortion under color of official right.

2. Addition of Section 2C1.7

Section 2C1.7 was added by amendment number 368 (effective November 1, 1991) to cover certain offenses involving public corruption that do not fall within the other public corruption guidelines. The guideline was added at the request of the Department of Justice to cover public corruption charged under 18 U.S.C. §§ 371 (Conspiracy), 1341 (Mail Fraud), 1342 (Using False Name at Post Office), and 1343 (Wire Fraud) that might otherwise fall under the guidelines for fraud.

C. Public Corruption Statutes

Following is a summary of the fundamental public corruption statutes -- statutes that are either used frequently (e.g., 18 U.S.C. § 201 (bribery and gratuity)) or that proscribe fundamental public corruption conduct. A comprehensive summary of all statutes expressly covered by the public corruption guidelines appears in Appendix I.

PUBLIC CORRUPTION STATUTES

Offense	Summary	Guide-line	Statutory Maximum
18 U.S.C. § 201(b)	Bribery -- prohibits the corrupt giving, offering, solicitation, or receipt of any thing of value to or by any federal or District of Columbia public official for the purpose of influencing an official act. (1962)	2C1.1	15 years; fine of three times the monetary value of the thing of value.
18 U.S.C. § 201(c)	Gratuity -- prohibits the giving or receipt of any thing of value to or by any public official because of an official act performed or to be performed. (1962)	2C1.2	2 years; fine.
18 U.S.C. § 208	Conflict of Interest -- prohibits officers and employees of the executive branch or of any independent agency, Federal Reserve bank, or of the District of Columbia, from participating as a government employee in decisions or proceedings in matters in which the employee, his family members, general partners, or any organization with which the individual is negotiating or has an arrangement for employment, have a financial interest. (1962)	2C1.3	1 year; fine (for engaging in conduct). 5 years; fine (for willfully engaging in conduct).
18 U.S.C §666(a)(1)(B)	Prohibits any agent of an organization, or state, local, or tribal government which receives more than $10,000 annually under a federal program from soliciting or accepting anything of value with intent to be influenced in any business or transaction involving a value of $5000 or more. (1984)	2C1.1, 2C1.2	10 years; fine.
18 U.S.C. § 666(a)(2)	Prohibits corrupt giving of anything of value to any person with intent to influence or reward an agent described above, in connection with any business or transaction involving a value of $5000 or more. (1984)	2C1.1, 2C1.2	10 years; fine.
18 U.S.C. § 1341	Mail fraud -- prohibits use of the mails in furtherance of a scheme to defraud. (1948)	2C1.7	5 years; fine of $1000 (if fraud involves a financial institution, the maximum penalty is 30 years and fine of $1,000,000).
18 U.S.C. § 1951	Hobbs Act -- prohibits the obstruction or delay of interstate commerce by any act of robbery, extortion, or extortion under color of official right. (1946)	2C1.1	20 years; fine of $10,000.

Table 3 indicates the distribution of counts of conviction for public corruption defendants.

Table 3

Number of Counts of Conviction by Statute for Public Corruption Defendants

(Source: Public Corruption File (1993))

Statute of Conviction	Number of Counts	Percentage of all Counts
18 U.S.C. § 201(b) (Bribery)	330	26.44%
18 U.S.C. § 201(c) (Gratuity)	70	5.60%
18 U.S.C. § 201 (Unspecified)	33	2.64%
18 U.S.C. § 203 (Conflict of Interest)	12	0.96%
18 U.S.C. § 208 (Conflict of Interest)	5	0.40%
18 U.S.C. § 209 (Compensation)	8	0.64%
18 U.S.C. § 666 (Bribery or Gratuity)	71	4.69%
18 U.S.C. § 872 (Extortion Under Color of Official Right by Officer)	4	0.32%
18 U.S.C. § 1341 (Mail Fraud)	26	2.08%
18 U.S.C. § 1951 (Hobbs Act Extortion Under Color of Official Rt)	108	8.65%
Other Statutes	585	47.90%
Total	1248	100.00%

D. Legislative History

The Working Group found almost no substantive history concerning sentencing of public corruption offenses or concerning other issues relevant to this report. A summary of the limited legislative history of the basic public corruption statutes (e.g., 18 U.S.C. § 201 (bribery and gratuity) appears in Appendix II.

E. Proportionality of Punishment Relative to Guidelines for Bribery, Extortion, and Gratuity Involving Other than Public Officials

In order to compare the relative seriousness of the public corruption guidelines with other guideline offenses, the Working Group examined guidelines for offenses similar to the public corruption guidelines.

Section 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery) applies to commercial bribery and kickbacks, which the guidelines define as "violations of various federal bribery statutes that do not involve governmental officials." U.S.S.G. §2B4.1 comment. (backg'd). Section 2B4.1 imposes a base offense level 8 for this offense compared with a base offense level 10 for public corruption bribery. This differential may be based in part on the fact that the 2-level §3B1.3 (Abuse of Position of Trust or Special Skill) adjustment remains available under the commercial bribery guideline (§2B4.1) but not under the public corruption bribery guideline (§2C1.1), or on the presence of a 2-level multiple payment adjustment in the public corruption guideline but not in the commercial bribery guideline. However, §2C1.6, which applies to the offense of giving a gratuity for procuring a bank loan, imposes a base offense level 7 for apparently comparable conduct.

Section 2B3.2 applies to extortion by force or threat of injury or serious damage. This section expressly precludes its application in cases of extortion under color of official right unless the offense is accompanied by force or a threat of force. See U.S.S.G. §2B3.2 comment. (n.3). Section 2B3.2 imposes a base offense level 18, compared with a base offense level 10 for extortion under color of official right. This differential may be based on the absence of an element of use or threatened use of force in the offense of extortion under color of official right. See 18 U.S.C. § 1951(b).

Section 2B3.3 applies to blackmail and similar forms of extortion. This section applies to extortion where no threat to person or property is involved. See U.S.S.G. §2B3.3 comment. (n.1). Section 2B3.3 imposes a base offense level 9, compared with a base offense level 10 for extortion under color of official right. Extortion under color of official right also lacks threatened force as an element of the offense, but unlike blackmail involves a public official and is not subject to a §3B1.3 enhancement.

Section 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan) and **§2E5.6 (Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations)** impose a base offense level 10 in cases involving bribery and base offense level 6 in cases involving a gratuity, compared with a base offense level 10 under §2C1.1 (Bribery) and base offense level 7 under §2C1.2 (Gratuity). "Bribery" and "gratuity" are defined in terms similar, but not identical, to those used in the public corruption statutes.

F. Proportionality of Punishment Relative to Statutory Maximum

The Working Group reviewed the statutory maximums for public corruption offenses of conviction to determine whether the base offense levels imposed for each offense was proportional to the statutory maximum. A list of the statutes and their respective statutory maximums can be found in Appendix I.

Table 4 provides a cross-tabulation of the statutory maximums with the base offense level for the public corruption offense that corresponds to that statutory maximum. For example, the offense of bribery (18 U.S.C. § 201(b)), which has a fifteen-year statutory maximum, receives a base offense level 10 under §2C1.1. The table shows there is only one such combination among the statutes reviewed.

Table 4

Number of Public Corruption Statutes by Statutory Maximum and Base Offense Level

(Source: Public Corruption File (1993))

Base Offense Level	Statutory Maximum							
	Total	1 year	2 years	3 years	5 years	10 years	15 years	20 years
level 6	21	11	4	-	6	-	-	-
level 7	6	4	1	-	1	-	-	-
level 8	2	2	-	-	-	-	-	-
level 10	12	1	-	2	5	2	1	1
Total	41	18	5	2	12	2	1	1

The majority of the offenses appeared to have base offense levels proportional to the statutory maximum. However, eleven of the statutes had base offense levels that seemed somewhat less proportional than usual when viewed solely in light of their statutory maximums.

Three of these eleven statutes had a relatively high base offense level 10 in light of their statutory maximum: 18 U.S.C. § 665(b) (bribery or gratuity in connection with Job Training Partnership Act) (1-year statutory maximum); 18 U.S.C. § 872 (extortion by public official) (3-year statutory maximum; 1-year if less than $100 extorted); and 21 U.S.C. § 622 (bribery or gratuity to FDA inspector) (3-year statutory maximum).

Eight of these eleven statutes had relatively low base offense levels in light of their statutory maximum: 18 U.S.C. § 1951 (Hobbs Act extortion under color of official right) (20-year statutory maximum); 18 U.S.C. § 1422 (gratuity in connection with immigration proceeding); and 18 U.S.C. §§ 203, 204, 205, 207, 208, 209 (various conflict of interest offenses) (5-year statutory maximum where willful conduct involved).

G. Pending Legislation

The Working Group understands that Congress is most likely to take up as its crime bill for this Congress a version similar to the Violent Crime Control and Law Enforcement Act of 1991 that reached the Conference Committee last Congress. A review of that legislation (H.R. 3371) reveals only one possible provision impacting on public corruption offenses: section 3051 of the bill would add a new section 880 to title 18, United States Code, proscribing receipt, possession, concealing, or disposing of proceeds of a felony extortion offense, when the individual knows that the proceeds were unlawfully obtained. The penalty for this offense is three years or a fine available under the title, or both. For the text of the amendment, see Appendix III.

The Working Group will examine the need for an amendment to the public corruption guidelines should this new offense become law. In addition, the Working Group will track any new crime bill and any pending free-standing bills, to the extent they address public corruption offenses.

III. COMMON LAW AND STATUTORY DEFINITIONS

This section addresses the common law and statutory distinctions in the primary types of criminal conduct falling under the general heading of "public corruption": bribery, gratuity, and extortion under color of official right. The criminal code and the sentencing guidelines treat each of these crimes as distinct, yet each shares elements with the others. This section delineates each offense, stating its elements and its relation to the other offenses and notes its treatment under the guidelines.

A. Bribery and Gratuity

The payment or receipt of a bribe is a voluntary act corruptly intended to influence a public official in the performance of his or her duties. See United States v. Muldoon, 931 F.2d 282, 287 (4th Cir. 1991). To commit bribery, the defendant must act corruptly to influence the actions of a public official with respect to a specific action (a quid pro quo) for which the payment is made. A gratuity, in contrast, is a payment made to a public official "simply because of ... [the] official position, in appreciation for [the] relationship, or in anticipation of its continuation." United States v. Secord, 726 F. Supp. 845, 847 (D.D.C. 1989) (emphasis omitted). Thus, bribery is distinguished from gratuity by the former's requirements of specific intent and a quid pro quo.

1. Specific Intent

Bribery requires that the payment be made or received "corruptly," 18 U.S.C. § 201(b); the corresponding definition of gratuity provides that the payment must be made or received "otherwise than as provided by law." 18 U.S.C. § 201(c). Therefore, bribery is distinguished from gratuity by the former's higher degree of criminal intent. See, e.g., United States v. Fenster, 449 F. Supp. 435 (E.D. Mich. 1978); United States v. Brewster, 506 F.2d 62, 71 (D.C. Cir. 1974). In Fenster, there was "no question" that the manager of a meat-packing plant made illegal payments to a plant inspector, the issue was the nature of the defendant's intentions. The court found that the payments were bribes and not gratuities because "[i]t is clear that in offering the payments and later in making them [the defendant] had a more focused purpose in mind than merely to build a reserve of good will toward his company ... ." Id. at 438.

Bribery further requires that the corrupt payment be made with an intent to influence official action. One court distinguished this element of bribery from gratuity by creating a temporal distinction between the two: bribery is a payment in return for an action to be taken in the future (which the official may, or may not, take), while a gratuity is a payment made in appreciation for an official action already taken or that the official has already decided to take. United States v. Campbell, 684 F.2d 141, 148 (D.C. Cir. 1982).

Because gratuities are not given to influence a specific action, but are instead intended to foster good will and generally favorable consideration, it is sometimes difficult to distinguish between a gratuity and a legitimate campaign donation. The court in United States v. Passman, 460 F. Supp. 912 (W.D. La. 1978), suggested that the difference lies in the relationship between the action taken by the official and the money donated:

> If an elected official receives campaign money given by a grateful constituent who is pleased by a vote that has already been made, then clearly there is no violation of [18 U.S.C. § 201(c)]. However, if this grateful constituent attaches a note saying this is for your vote which you cast last week in favor of our labor bill which was pending before you, then subsection [c] would be applicable. The difference between the two hypotheticals is that in the first example the contribution was unrelated to an official act while in the second example the elected official knows that the contribution was due to an official act.

Id. at 915.

2. Quid Pro Quo

Bribery also requires "an explicit quid pro quo" that is not required in the case of a gratuity. United Sates v. Brewster, 506 F.2d at 72. That is, a bribe must be made in return for some specific action on the part of the official. Thus, in Mariano, the defendants were properly sentenced under the bribery guideline because they made payments to city officials by which "each sought to receive a quid pro quo, in the form of future (favorable) treatment" in the award of contracts. 983 F.2d at 1159. See also Muldoon, 931 F.2d at 287 (the accused's knowledge that a payment was made in return for a specific action is an essential element of bribery).

B. Extortion by Threat of Force and Extortion Under Color of Official Right

The Hobbs Act defines extortion as "[t]he obtaining of property from another individual ... induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2) (emphasis added). Extortion by threatened force, violence, or fear[3] is a different offense than extortion under color of official right, as evidenced by the disjunctive phrasing in the Hobbs Act.

1. Primary Distinction Between the Two Extortions: Private Versus Public Actor

The distinction between the two offenses turns on whether the offender is a public official or a private individual. Private citizens cannot commit the crime of extortion under color of official right. See, e.g., United States v. Hathaway, 534 F.2d 386, 393 (1st Cir.) (noting Congress added "threatened force, violence, or fear" language to extend

[3] In the interest of brevity, "extortion by threatened force, violence, or fear" is referred to simply as "extortion" throughout this section.

crime of extortion to activities of private individuals), cert. denied, 429 U.S. 819 (1976).[4] In United States v. McClain, 934 F.2d 822 (7th Cir. 1991), a private citizen claiming to have influence over various city officials was convicted of conspiracy to commit extortion under color of official right. The Seventh Circuit reversed the defendant's conviction, noting that a private citizen could not commit that crime.[5] As the Seventh Circuit noted, "extortion under color of official right" can occur only when a public official accepts a bribe:

Moreover, a public official need not resort to threats of force or violence in order to commit extortion under color of official right. See United States v. Stodola, 953 F.2d 266, 272 (7th Cir. 1992) ("the coercive nature of the official office provides all the inducement necessary") (quoting Evans v. United States, 112 S. Ct. 1881 (1992)), cert. denied, 113 S. Ct. 104 (1993). Indeed, no threats need be made at all. As the Seventh Circuit noted in McClain, "a public official is in a position such that unsolicited bribes are indistinguishable from money received after threat of harm." McClain, 934 F.2d at 830.

2. Elements of Extortion Under Color of Official Right

No substantial distinction appears to exist between extortion under color of official right and the acceptance of bribes by a public official. Indeed, the Supreme Court has gone so far as to refer to an extorting public official as "the recipient of the bribe." Evans, 112 S. Ct. at 1888. The Seventh Circuit maintains that extortion under color of official right is nothing more than the "knowing receipt of bribes." Stodola, 953 F.2d at 272 (7th Cir. 1992) (quoting United States v. Holzer, 840 F.2d 1343, 1351 (7th Cir.), cert. denied, 486 U.S. 1035 (1988)). The Stodola court did not, however, elaborate on what a public official must "know" about the receipt of a bribe in order for it to become extortion. Unlike extortion, extortion under color of official right does not include solicitation of a payment as an element of the offense. However, extortion under color of official right does require the existence of a quid pro quo and specific intent.

a. Solicitation of Payment

Solicitation of a payment by a public official is not a necessary element of extortion under color of official right. The Supreme Court recently clarified that the

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[4] See also United States v. Trotta, 525 F.2d 1096, 1100 (2d Cir.), cert. denied, 425 U.S. 971 (1975); United States v. Braasch, 505 F.2d 139, 151 & n.8 (7th Cir.), cert. denied, 421 U.S. 910 (1974); United States v. Kenny, 462 F.2d 1205 (3d Cir.), cert. denied, 409 U.S. 914 (1972).

[5] The court noted that this analysis would not apply to the case of a private citizen posing as a public official. Id.

government need not prove solicitation of a payment when the offense is extortion under color of official right; solicitation is only a part of extortion. Evans, 112 S. Ct. at 1888. Nonetheless, the court noted that even if extortion under color of official right included an element of solicitation, "the wrongful acceptance of a bribe is all the inducement that the statute requires." Id. Thus, a public official can extort even if s/he does not initiate the transaction. Id.

b. Quid Pro Quo

Although the payment need not be induced by the public official, the crime of extortion under color of official right does necessarily involve a specific promise of action or inaction (a quid pro quo) in return for the payment. The Supreme Court has clarified this requirement in two recent cases, McCormick v. United States, 111 S. Ct. 1807 (1991), and Evans, 112 S. Ct. 1881.

McCormick involved "campaign contributions" that were allegedly extorted payments to a state legislator. The Court held that campaign contributions are actually extortionate payments taken under color of official right when "the payments are made in return for an explicit promise or undertaking by the official." 111 S. Ct. at 1816. Subsequently, in Evans, the court implicitly extended this holding to all cases involving extortion under color of official right when it approved a jury instruction that satisfied "the quid pro quo requirement of McCormick." 112 S. Ct. at 1889. The Evans court concluded that "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." Id. (footnote omitted). See also United States v. Taylor, 993 F.2d 382 (4th Cir. 1993) (requiring government to prove specific quid pro quo in cases of extortion under color of official right); United States v. Garcia, 992 F.2d 409 (2d Cir. 1993) (same).

c. Mens Rea

The First Circuit requires proof of specific intent in all Hobbs Act cases. United States v. Boylan, 898 F.2d 230, 253 (1st Cir.), cert. denied, 498 U.S. 849 (1990). In Boylan, the First Circuit required a finding that the defendants "willfully and knowingly obtained property from the person." "Willfully and knowingly" were defined as "purpose either to disobey or disregard the law." The court noted, however, that the mens rea requirement must not be drawn so narrowly as to necessitate an examination of the payer's motives; rather, the focus should be on the public official's "perception of the contributor's motive." Id. (quoting United States v. Dozier, 672 F.2d 531, 542 (5th Cir.), cert. denied, 459 U.S. 943 (1982)).

C. Extortion and Extortion Under Color of Official Right as Crimes of Violence

Extortion by threat or force is undoubtedly a "crime of violence" as defined under various provisions of the criminal code and under the sentencing guidelines. See, e.g., United States v. Patriarca, 948 F.2d 789, 791 (1st Cir. 1991) ("at least two of the Travel Act violations related to extortion and credit transactions, which are crimes of violence, 18 U.S.C. § 3156(a)(4)(A)"); United States v. Schweihs, 1988 U.S. Dist. LEXIS 13550, at *2 (E.D. Ill. 1988) ("[i]t is undisputed that the extortion charges ... are crimes of violence").

Extortion under color of official right may not be considered a crime of violence. In the only reported case on the issue, the district court determined that extortion under color of official right is not a crime of violence for purposes of imposing a five-year mandatory sentence under 18 U.S.C. § 924(c) (use of a firearm during a crime of violence).[6] United States v. Clark, 773 F. Supp. 1533 (M.D. Ga. 1991). The court first found that the use or attempted use of physical force is not an element of extortion under color of official right. Id. at 1534. Moreover, a substantial risk of the use of physical force is not inherent in the crime of extortion under color of official right: "[a] public official gets what he wants merely because he is a public official; he has no need for force. Thus, extortion under color of official right ... 'by its nature,' is not a crime of violence." Id. at 1536.

D. The "McNally Fix" -- Application of Generic Fraud Statutes to Public Corruption Offenses

Sections 1341 (mail fraud) and 1343 (wire fraud) of title 18, United States Code, are "generic," well-established federal fraud statutes. The scope of these statutes covers a broad range of schemes or artifices to defraud using the mails or wires, including public corruption cases involving intricate schemes to defraud or to obtain money by false pretenses. Often these cases involve high-level officials and generate a great deal of public interest. For example, public corruption mail fraud cases have involved a state Governor convicted of defrauding the citizens of his state of the salary, use of the Governor's mansion, services, food, transportation, security, and retirement and pension benefits he accrued as Governor based on his collection and use of $100,000 cash during the gubernatorial campaign, which was used influence and retain votes. The Governor failed to report the illegal receipts and expenditures of cash on financial statements

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[6] Section 924(c)(3) defines "crime of violence" as a crime that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," or "that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

mailed to the Secretary of State. Another case involves the chief fundraiser and finance manager for a recent presidential candidate's campaign committee who is alleged to have obtained money and property from individuals who attempted to make campaign contributions or loans to the Committee and defrauded the committee and the candidate of his loyal faithful and honest services as chief fundraiser and finance manager. The defendant is charged with diverting approximately $1 million from the committee to his personal use. The mailings alleged were campaign contribution checks and the Federal Election Commission report.

On June 24, 1987, the United States Supreme Court overturned twenty years of case law when it struck a jury instruction for allowing a conviction based on deprivation of "the intangible rights of the citizenry to good government." United States v. McNally, 107 S. Ct. 2875, 2879 (1987). This mail fraud theory is sometimes referred to as deprivation of the intangible right to honest government services. McNally held that the mail fraud statute is "limited in scope to the protection of property rights." Id. at 2881.

Following McNally, there was uncertainty as to what theories could properly be charged under the mail fraud or wire fraud statutes. Accordingly, prosecutors generally did not charge this these offenses in public corruption cases. However, new case law demonstrated that the mail and wire fraud statutes could be charged in many public corruption cases under other theories of governmental property rights such as deprivation of value of salary paid the official, control over property, and constructive trust. For example, a public official could continue to be charged with defrauding citizens and the government with something of actual worth -- the services or the official whose compensation, office and expenses are paid for by the government. United States v. Curry, 681 F.2d 406 (5th Cir. 1982); United States v. Schermerhorn, 713 F.Supp. 88 (S.D.N.Y. 1989) (approving indictment based on scheme to deprive "salary and monetary benefits that inure with election as a state senator"). Another theory of mail fraud that survived McNally was that if the principal had known that defendant received a bribe in return for business, the principal would have paid less for the deal; hence the principal was deprived of money or property in the amount of the bribe. United States v. Little, 889 F.2d 1367 (5th Cir. 1989) (kickback scheme deprived state of "knowledge that the contractor would sell for less; i.e., the actual price less the kickback amount), cert. denied, 110 S.Ct. 2176 (1990).

On the other hand, some prosecutors advanced the theory of "constructive trust" after some encouragement in the McNally dissent by Justice Stevens. Under the constructive trust theory, prosecutors charged that the defendant had a fiduciary duty to turn over proceeds of fraudulent activity to his employer, and that his failure to do so constituted deprivation of money or property -- the bribe money. While the Sixth Circuit accepted this theory shortly after McNally in United States v. Runnels, 833 F.2d 1182 (6th Cir. 1987), most circuits rejected the constructive trust theory of mail fraud. United States v. Ochs, 842 F.2d 515 (1st Cir. 1988); United States v. Zauber, 857 F.2d 137 (3d Cir. 1988); United States v. Holzer, 840 F.2d 1343 (7th Cir. 1988); United States v.

Walgren, 885 F.2d 1417 (9th Cir. 1989); United States v. Shelton, 848 F.2d 1485 (10th Cir. 1988); United States v. Goodrich, 871 F.2d 1011 (11th Cir. 1989).

It also became clear that the Supreme Court in McNally did not intend to prohibit use of any deprivation of any intangible rights theory by its opinion in McNally. See Carpenter v. United States, 108 S. Ct. 316 (1987) (upholding conviction of defendant who appropriated the Wall Street Journal's intangible property by selling inside information).

In addition, Congress enacted a partial "fix" at 18 U.S.C. § 1346 which defines a scheme or artifice to defraud to include the deprivation of the intangible right to honest services. While the legislative action assisted in clarifying the applicability of the mail fraud statute in many public corruption cases, there are still areas of uncertainty (i.e., in cases involving a candidate for office).

As a result of the "fix" and developing case law interpretations, then, many prosecutors have returned to the mail and wire fraud statutes as effective vehicles for prosecuting public corruption cases.

IV. EXPERT ASSISTANCE, PUBLIC COMMENT, HOTLINE CALLS, LITERATURE REVIEW

The Working Group sought to identify specific issues and concerns regarding application of the public corruption guidelines that may warrant further analysis, training, or formal action by the Commission. Accordingly, the Working Group sought assistance from experts in the public corruption field, reviewed general public comment to date, reviewed Attorney and TAS Hotline calls to date, and reviewed relevant literature.

A. Expert Assistance

The Working Group solicited comment, data, and technical information from various public corruption specialists, including the Department of Justice and its Public Integrity Section, the Practitioners' Advisory Group, other defense practitioners, the U.S. Probation Officers' Advisory Group, and training staff, including visiting U.S. probation officers.

1. Department of Justice

Early this year, the Working Group met with Department representatives and a representative of the Department's Public Integrity Section, Mr. Robert Storch. The Department of Justice identified concerns with the adequacy of the offense levels available under §§2C1.1, 2C1.2, and 2C1.7, and with application of the public corruption

guidelines, including the concern that the 8-level high-level official adjustment was not cumulative with the amount of payment adjustment. These concerns reiterate the primary concerns expressed in the Department's previous correspondence with the Commission. A copy of this correspondence appears in Appendix IV.

At the June 16, 1993, Commission meeting, Mr. Storch summarized the comments of the United States Attorneys who had been surveyed regarding the public corruption guidelines. The United States Attorneys who responded to the survey based their opinions on approximately 200 cases that their offices prosecuted. Mr. Storch reported the United States Attorneys uniformly sought higher penalties under the public corruption guidelines.

The Working Group has requested that the Department provide data, case summaries, other information, and comment for inclusion in the Working Group's September report to the Commission. To date, the Working Group has not received a response from the Department.

2. Practitioners' Advisory Group

The Working Group has requested that the Practitioners' Advisory Group provide data, case summaries, other information, and comment for inclusion in the Working Group's September report to the Commission.[7] To date, the Working Group has received an initial written response from the Advisory Group, indicating that it has solicited the assistance of practitioners who have recently handled public corruption cases. A copy of this correspondence appears in Appendix V.

3. Other Defense Bar Practitioners

The Working Group conducted a telephone conference call with several practitioners who had recently handled public corruption cases. This call took place early in the Working Group's investigation so that the practitioners could identify areas of concern that might warrant further study by the Working Group.

The practitioners identified a number of concerns with respect to the sentences available under the public corruption guidelines and with respect to application difficulties under the guidelines.

With respect to sentences, the practitioners indicated a general sense that the public corruption guidelines would limit the broad disparity experienced prior to the guidelines, although the practitioners expected generally increased sentences for

[7] Mr. Justin Thornton, a local practitioner, has been designated the Advisory Group's liaison to the Working Group.

defendants sentenced under the guidelines. The practitioners did not favor the 2-level enhancement at §§2C1.1(b)(1) (enhancement for multiple bribes) and 2C1.2(b)(1) (enhancement for multiple gratuities) because virtually all bribes and gratuities involved multiple payments and because these adjustments tend to double count offense characteristics already considered by the value table. The practitioners considered the value involved more representative of the venality of the offense and preferred this measure as the measure of culpability. The practitioners felt the 3-level differential between §2C1.1 (Bribery) (base offense level 10) and §2C1.2 (Gratuity) (base offense level 7) may not sufficiently reflect the different levels of culpability for these offenses. Finally, the practitioners sought some reduction or suggested downward departure, particularly in cases where the public official had done tremendous good for the community in his or her public life.

With respect to application concerns, the practitioners identified a number of specific problems, including the need for clarification of the method for determining the value in §§2C1.1(b)(2)(A) and 2C1.2(b)(2); the need to narrow the overly broad enhancement at §2C1.1(b)(2)(B) (8-level increase for high-level and elected officials), which is triggered by even low-level "elected" officials; and the need to modify what they believed to be an overly broad cross reference at §2C1.1(c)(1) that applied the non-public corruption guideline regardless of the defendant's intent to commit that other offense.

4. U.S. Probation Officer Advisory Group

The Working Group will request that the U.S. Probation Officer Advisory Group provide data, case summaries, other information, and comment for inclusion in any subsequent Working Group report to the Commission. The Working Group was advised that the Advisory Group would be most useful providing feedback on proposed amendments, given that few if any of the officers on the Advisory Group will have dealt with these cases directly.

5. Training Staff

Commission training staff and visiting probation officers commented on the relatively few cases they encounter that involve a public corruption guideline. The common issues of concern mirrored the issues in §2C1.1 that generated the most calls, i.e., the determination of whether an official holds a "high level decision-making or sensitive position," and the determination of the "value of the payment, the benefit received ... or the loss to the government," particularly the definition of "benefit received."

B. Public Comment

A review of the public comment files showed several statements relating to guideline amendment number 9, proposed for enactment in 1991, which would have applied cumulatively (instead of in the alternative) the §2C1.1 specific offense characteristics for value of the bribe and for high-level decision-making or elected officials. The National Association of Criminal Defense Lawyers (NACDL) submitted a statement opposing the proposed change indicating that the "eight level increase already within the guidelines seems more than adequate without an additional rationale being provided to go any higher." The question of the rationale and research bases for the proposed change was also raised by the ABA, the Washington Legal Foundation, and the Federal and Community Public Defenders, all noting that the changes that are proposed do not reflect or reveal empirical work conducted by the Commission. The text of these statements appears in Appendix VI.

In addition, comments marginally related to the public corruption guidelines involved an amendment to §3B1.3 (Abuse of Trust). See amendment 46 in the 1993 cycle.

C. ATTORNEY AND TAS HOTLINE CALLS

From October 1, 1990, to June 15, 1993, there were forty-seven calls to the training and attorney hotlines regarding the public corruption guidelines in Chapter Two, Part C. The overwhelming majority of the calls (85.1%) concerned §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right). Table 5 identifies the number of calls pertaining to each guideline and broken down by hotline.

Table 5

Calls Received by TAS and Attorney Hotlines on Public Corruption Guidelines

(Source: U.S. Sentencing Commission, TAS and Attorney Hotline Databases (October 1, 1990 to June 15, 1993))

Guideline	Total	TAS Hotline	Attorney Hotline
§2C1.1	41	36	5
§2C1.2	3	3	--
§2C1.3	0	--	--
§2C1.4	0	--	--
§2C1.5	0	--	--
§2C1.6	1	1	--
§2C1.7	3	2	1
Total	48	42	6

1. Primary Issues in Section 2C1.1

The number of calls received on the public corruption guidelines amounts to just under 10 percent of all cases sentenced under the public corruption guidelines -- an unusually high number of calls. In comparison, the hotlines received approximately 4300 calls over a two-year period during which approximately 72,000 cases were sentenced (about a 6% rate). The most likely reason for the high frequency of calls on the public corruption guidelines is confusion in the field about application of the adjustments for "high level official" and "value of payment."

Nine (30.0%) of the thirty known calls[8] concerned whether a specific individual would be considered an "official holding a high level decision-making or sensitive position" for purposes of applying the specific offense characteristic at §2C1.1(b)(2)(B).

[8] Of the forty calls relating to §2C1.1, ten calls were "missing." That is, the written text in ten of the VIEW files was blank, either as a result of the calls being considered "standard" or because of data entry errors. The percentages indicated above are based on the thirty known calls.

Of these nine calls, four concerned whether an IRS agent would be considered such an official. Other officials referenced in the calls included immigration officers of various levels, American Embassy employees, and a USDA county administrator.

Eight (26.7%) of the thirty known calls concerned determination of "the value of the payment, benefit received or to be received in return for the payment, or the loss to the government from the offense" under §2C1.1(b)(2)(A). Six of the calls concerned calculation of the "benefit received"; one caller asked whether to use a certain bribe amount or loss to the government; and one caller asked whether the bribe amount should be subtracted from the amount of the benefit received. (This last call was made before the amendment clarifying that issue was promulgated.)

2. Additional Issues in Section 2C1.1

The seventeen remaining calls covered a number of areas including two calls each on: the application of §3B1.3 (Abuse of Position of Trust or Use of Special Skill); other role in the offense; grouping; and, relevant conduct. In addition, there was one departure question. There were two calls concerning which guideline, §2B3.2 (Extortion) or §2C1.1, was the appropriate choice. Finally, there were six miscellaneous calls on issues not directly related to the technical application of §2C1.1 or the terms used in the guideline, e.g., an evidence question, a question concerning which guideline to use in applying the cross reference at §2C1.1(c)(1).

3. Issues in Sections 2C1.2-2C1.7

Of the three calls received concerning §2C1.2, two sought clarification of application note 4's description of "related payments," and one involved an ex post facto issue.

The only caller with a question on §2C1.6 wanted to know whether the specific offense characteristic enhancing for the value of the gratuity could apply to a loan as well.

Of the three calls concerning §2C1.7, one was "missing," one concerned whether a certain defendant would be considered a "public official," and one concerned whether §2C1.7 could be used if no public official was involved in the offense.

D. LITERATURE REVIEW

The Working Group sought through a review of the literature to identify research that has been conducted on public corruption issues, particularly with respect to the public corruption guidelines, and broader issues regarding public corruption offenses and

defendants, such as definition of public corruption issues, profiles of public defendants, comments on specific trial proceedings and the like.

The Working Group located very little material directly discussing the public corruption guidelines. A LEXIS search of Federal Sentencing Reporter (FSR) articles and law review articles showed twenty-five FSR articles and three law review articles referring to the public corruption guidelines. However, only one of the articles made any substantive reference to the public corruption guidelines. This reference appeared in the context of fines for corporations, and described one scenario in which a fine based on offense levels determined under the individual guidelines might be greater than the Chapter Eight fine. Richard Gruner, Symposium for Federal Sentencing: Just Punishment and Adequate Deterrence for Organizational Misconduct: Scaling Economic Penalties Under the New Corporate Sentencing Guidelines, 66 S. CAL. L. REV. 225 (1992).

The Working Group recently discovered a two-part article examining federal prosecution of public officials, Michael W. Carey, Federal Prosecution of State and Local Public Officials: The Obstacles to Punishing Breaches of the Public Trust and a Proposal for Reform, 94 W. Va. L. Rev. (1992), and is reviewing the article for relevant information.

Additional material has been located on general issues connected to some degree with public corruption, including areas such as government/professional ethics (e.g., disbarment procedures), election reform, independent counsel, procurement and conflict-of-interest regulations, securities law, organizational sanctions, and general jurisprudential issues. If the Commission deems necessary, selected works in some of these areas may be reviewed in greater detail to determine if they are applicable to issues of concern for this Working Group.

V. CASE LAW REVIEW

The Working Group reviewed the fifty-two appellate and district court opinions issued since the promulgation of the guidelines through July 26, 1993, that contained at least one reference to the public corruption guidelines. See Appendix VII for a detailed summary of the cases reviewed.

The Working Group reviewed relevant case law to identify primary issues of interest and to determine how courts address those issues. Four issues surfaced repeatedly: (1) the determination of the appropriate guideline; (2) the determination of value; (3) the application of the high-level official adjustment; and (4) the review of departures. These issues are summarized below.

A. The Determination of Value

Section 2C1.1(b)(2)(A) provides a specific offense characteristic based on the valuation of the payment, benefit, or loss involved in the offense.[9] The offense characteristic reads:

> If the value of the payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest, exceeded $2,000, increase by the corresponding number of levels from the table in §2F1.1 (Fraud and Deceit).

Application note 2 further explains :

> "Loss" is discussed in the Commentary to §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) and includes both actual and intended loss. The value of "the benefit received or to be received" means the net value of such benefit. Examples: (1) A government employee, in return for a $500 bribe, reduces the price of a piece of surplus property offered for sale by the government from $10,000 to $2,000; the value of the benefit received is $8,000. (2) A $150,000 contract on which $20,000 profit was made was awarded in return for a bribe; the value of the benefit received is $20,000. Do not deduct the value of the bribe itself in computing the value of the benefit received or to be received. In the above examples, therefore, the value of the benefit received would be the same regardless of the value of the bribe.

Courts have grappled with application of these provisions. The Fourth Circuit, for example, has developed several formulations for determination of value. In United States v. Muldoon, 931 F.2d 282 (4th Cir. 1991), the court focused on the bribe amount given to the officer and not the actual benefit to the defendant. A different Fourth Circuit panel later criticized the approach in Muldoon, focusing instead on the personal benefit the defendant would have received. United States v. Ellis, 951 F.2d 580 (4th Cir. 1991) (Powell, J.), cert. denied, 112 S. Ct. 3030 (1992). However, the court did not include the benefit to be enjoyed by co-defendants. Accord, United States v. Kant, 946 F.2d 267 (4th Cir. 1991) (valuation is benefit to be received rather than amount of bribe).

[9] Sections 2C1.2(b)(2)(A) and 2C1.6(b)(1) have similar provisions, but these provisions adjust the offense level only "[i]f the value of the gratuity exceeded $2,000." Section 2C1.7(b)(1)(A) provides for an adjustment "[i]f the loss to the government, or the value of anything obtained or to be obtained ... exceeded $2,000."

The Seventh Circuit's approach differs from the Fourth Circuit's. While the Fourth Circuit looks at each conspirator's personal benefit, the Seventh Circuit looks to all conspirators. See United States v. Narvaez, 995 F.2d 759 (7th Cir. 1993). In Narvaez, the Seventh Circuit held a defendant accountable for all the bribery funds the conspiracy received, not just the amount he alone received. The court's rationale, which seems to comport with the guidelines, is that the benefit to the entire conspiracy becomes the valuation benchmark in sentencing the conspirators.

B. Application of High-Level Official Adjustment

A second specific offense characteristic in §2C1.1 concerns an 8-level upward adjustment if the defendant is found to hold "a high level decision-making or sensitive position." The offense characteristic reads as follows:

> If the offense involved a payment for the purpose of influencing an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.

Application note 1 clarifies the application of this provision:

> "Official holding a high level decision-making or sensitive position" includes, for example, prosecuting attorneys, judges, agency administrators, supervisory law enforcement officers, and other governmental officials with similar levels of responsibility.

Courts have had difficulty applying this adjustment. In United States v. Stephenson, 895 F.2d 867 (2d Cir. 1990), the Second Circuit considered whether a defendant who was an export licensing officer for the Department of Commerce qualified as an official holding a high-level decision-making or sensitive position. Despite the fact that the defendant handled applications for exporting high technology to foreign governments, the appellate court found the adjustment to be inapplicable, reasoning that the defendant was on a par with numerous other federal officers who handled such important documents.

The Fourth Circuit used the Stephenson rationale in United States v. Weston, 962 F.2d 8 (4th Cir. 1992) (unpublished). In Weston, the court reversed an adjustment that was applied to the public works officer at the Naval Academy, who, despite having authority to award contracts worth up to a million dollars, was determined not to have the type of decision-making authority required by the adjustment.

Lastly, the Sixth Circuit was troubled with the adjustment for an appointed chief of police in a small town. United States v. McIntosh, 983 F.2d 1070 (6th Cir. 1992) (unpublished). Although the defendant was arguably a "supervisory law enforcement

officer" subject to the adjustment, the court precluded application of the adjustment because of the appointive nature of the office, the small size of the police force (three members), the small town population (only 1000 residents), and because the local town government retained all important decision-making authority.

C. Determination of Appropriate Guideline

Many of the issues discussed above regarding distinctions in the elements of the offenses of extortion under color of official right, bribery, and gratuity (see sections III-A and III-B above) carry over to sentencing and the determination of an appropriate guideline. In United States v. Mariano, 983 F.2d 1150 (1st Cir. 1993), the First Circuit affirmed the use of the bribery guideline rather than the gratuity guideline, finding that the conduct was bribery because of the defendant's specific intent. The court stressed the differing intent requirements of the two crimes:

> [Bribery occurs when] the payer, by the greasing of palms, [intends] to affect the future actions of a public official. ... [U]nder the gratuity guideline, there is no requirement that the gift be "corruptly" given with the intent to affect the payee's mindset or actions ... the gratuity guideline presumes a situation in which the offender gives a gift without attaching any strings.

Id. at 1159.

The Second Circuit adopted Mariano's reasoning in United States v. Santopietro, 1993 WL 196055 (2d Cir. June 9, 1993). In Santopietro, a defendant claimed that the payments were "rewards" rather than bribes, and that he should have been sentenced under §2C1.2. The court acknowledged that the difference between a reward and a bribe is often one of timing, but found that the distinction was irrelevant for sentencing purposes. Because a corrupt purpose was an element of 18 U.S.C. § 666(a)(1)(B), the offense of conviction, the defendant was properly sentenced under §2C1.1.

In a RICO case, the First Circuit upheld the use of the RICO guideline (§2E1.1) even though the predicate offenses were bribery scams run by police officers. The court found that RICO, as a separate and distinct offense, warranted its own guideline given the gravity of the offense. See United States v. Butt, 955 F.2d 77 (1st Cir. 1992); see also United States v. Williams, 952 F.2d 1504 (6th Cir. 1991) (upholding use of extortion guideline §2B3.2 instead of §2C1.1 in Hobbs act conviction).

In a related issue, the Fifth Circuit considered whether a defendant convicted under a commercial bribery statute should be sentenced under the public corruption guideline for bribery. United States v. Brunson, 882 F.2d 151 (5th Cir. 1989). In Brunson, the defendant wore multiple hats: banker, director, and part-time district

attorney. He sought to extort sexual favors in exchange for dropping a check-kiting charge. Though he acted at times as the prosecutor, he was convicted under a statute that did not have the element of acting as a public official. Consequently, the court held, he could not be sentenced under the public corruption guideline.

D. Review of Departures

In cases involving departures from public corruption guidelines, the courts have most frequently considered, and have upheld, upward departures where the defendant's actions constituted a pervasive and systematic scheme that disrupted government operations. See United States v. Alter, 985 F.2d 105 (2d Cir. 1993) (operator of BOP contract halfway house who extorted sex from inmates had disruptive impact on prison corrections system); United States v. Sarault, 975 F.2d 17 (1st Cir. 1992) (mayor's extortion of municipal vendors over a two-year period was disruptive); United States v. Reeves, 892 F.2d 1223 (5th Cir. 1990) (extortion scheme of Board of Commissioners for Harbor and Terminal District threatened to be pervasive and lengthy).

The recent Ninth Circuit decision in United States v. Aguilar, 1993 WL 151376 (9th Cir. May 12, 1993), is of special interest for its possible broad implications for white collar offenses, including public corruption offenses. As can be seen in Appendix I, three of the public corruption statutes require, in addition to the penalties of imprisonment and fines authorized by each specific public corruption statute and the criminal code generally, removal from the public office held by the defendant public official and bar future holding of that office: 18 U.S.C. § 213 (Loan or Gratuity to Bank Examiner); 18 U.S.C. § 1901 (Use of U.S. Funds by Revenue Officer); and 26 U.S.C. § 7214 (Bribery, Gratuity, Extortion by IRS Agent). These "collateral" consequences or penalties may often be taken into account by the district judge when determining a sentence, including whether that sentence should be within the guideline range or a departure.

In Aguilar, a federal district judge was convicted on a charge of wiretap disclosure.[10] At sentencing, the court departed downward on the basis of the additional collateral punishment the defendant would suffer: impeachment, bar against holding any other government office, forfeiture of pension, and humiliation. While the departure was upheld, the case was remanded for the district court to give a reasoned explanation for the extent of the departure. The departure basis was criticized in a vigorous dissent as involving socioeconomic factors barred by the guidelines.

Similar departures with possible broad application to public corruption offenses include a departure based on the defendant's status as a law enforcement officer (making one more vulnerable in prison) (similar to the departures applied in the Laurence Powell

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[10] The defendant was acquitted on a number of public corruption counts.

and Stacey Koons civil rights cases) and the defendant's culture (a number of cases reviewed indicate a concern that certain races or nationalities are predisposed by culture to offer a bribe or gratuity to a public official).

VI. MONITORING DATA

A. Data Source: The Public Corruption File (1993)

The Working Group established a data set that includes the 582 public corruption guideline cases sentenced in fiscal years 1991, 1992, and 1993 (through April 30, 1993). Both single- and multiple-count cases are included in the pool, regardless of whether the public corruption guideline resulted in the highest adjusted offense level (544 cases) or a non-public corruption guideline resulted in the guideline high (38 cases).

An additional, indeterminable number of cases involving application of the public corruption cross references to other guidelines has not been included in the pool at this time. Monitoring began identifying these cases as involving cross references early last year so only a subset of the cases sentenced during fiscal years 1991-1993 (25 cases) were identifiable and available for analysis. Accordingly, the Working Group has not included them in its data pool, but will examine them in more detail for its report next spring. (For a preliminary discussion of the cases, see section VI-F-2 below.)

The following sections provide defendant, offense, and guideline application data derived from the 1993 Public Corruption File. Comparisons are made to all guideline cases in the MONFY92 data file unless otherwise noted. Breakdowns by guideline have not been attempted because of the overwhelming number of §2C1.1 cases and the paucity of §2C1.3-2C1.7 cases. The Working Group will examine and report in its spring report on any meaningful distinctions between data for §2C1.1 cases and §2C1.2 cases.

B. Defendant and Offense Data

Public corruption defendants, in general, are White (45%), male (85%), American (76%), well-educated (54% completed college or received a graduate degree) first offenders (91% are criminal history category I), who plead guilty (85%) to their public corruption charges. A higher proportion of public corruption defendants are Asian (17% compared with less than 3% for all MONFY92 defendants) and a lower proportion are Hispanic (9% compared with 23%); and public corruption defendants have lower criminal histories and higher levels of education than the general MONFY92 defendant. Otherwise, they generally match the characteristics of the typical MONFY92 defendant.

1. Criminal History Category

Public corruption defendants appear to have significantly less serious criminal histories than those of MONFY92 guideline defendants. Of the 456 cases in the public corruption file where criminal history was known,[11] the vast majority 417 (91.4%) were in criminal history category I. This compares with MONFY92 data for all guideline defendants that show only 61.7 percent of defendants in criminal history category I. U.S. Sentencing Commission, Annual Report 84 (1992). Table 6 summarizes the findings with respect to public corruption defendants.

Table 6

Criminal History Category of Public Corruption Defendants by Fiscal Year

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Criminal History Category	Total		Year					
			FY 1991		FY 1992		FY 1993 (to date)	
	N	%	N	%	N	%	N	%
I	417	91.4	141	92.8	217	92.7	59	84.3
II	22	4.8	6	3.9	10	4.3	6	8.6
III	8	1.8	4	2.6	2	0.9	2	2.9
IV	5	1.1	--	--	3	1.3	2	2.9
V	1	0.2	--	--	1	0.4	--	--
VI	3	0.7	1	0.5	1	0.4	1	1.4
Total	456	100.00	152	100.00	234	100.00	70	100.00

[11] In some cases, a particular offender, offense, or sentencing characteristic may not be available in the Monitoring case file. Throughout this report, the characteristic is treated as "unknown" and has not been included for data analysis purposes. Thus, while the Public Corruption File (1993) comprises 582 cases, criminal history was only available or known in 456 of those cases.

2. Race

More public corruption defendants are Asian than MONFY92 defendants and fewer are Hispanic. Of the 554 cases in the public corruption file where race was known, 249 (44.9%) were White, 136 (24.5%) were Black, 92 (16.6%) were Asian, 49 (8.8%) were Hispanic, and 13 (2.3%) were American Indian. MONFY92 data for all guideline defendants show 45.4 percent of all defendants were White, 28.3 percent were Black, 22.9 percent were Hispanic, and 3.4 percent were of another race. U.S. Sentencing Commission, Annual Report 46 (1992).

Table 7

Race of Public Corruption Defendants by Fiscal Year

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Race	Total		Year					
			FY 1991		FY 1992		FY 1993 (to date)	
	N	%	N	%	N	%	N	%
White	249	44.9	80	39.2	118	46.1	51	58.0
Black	136	24.5	54	26.5	63	24.6	19	21.6
American Indian	13	2.3	3	1.4	8	3.1	2	2.3
Asian	92	16.6	34	16.2	47	18.4	11	12.5
White Hispanic	36	6.5	22	10.5	11	4.3	3	3.4
Black Hispanic	3	0.5	1	0.5	2	0.8	--	--
Hispanic (Unknown [redacted])	10	1.8	10	4.8	--	--	--	--
Other	15	2.7	6	2.9	7	2.7	2	2.3
Total	554	100.0	210	100.0	256	100.0	88	100.0

3. Gender

The proportion of male and female public corruption defendants appears to be similar to that for all MONFY92 guideline defendants. Of the 582 cases in the public corruption file where gender was known, 493 (84.7%) were male and 89 (15.3%) were female. MONFY92 data for all guideline defendants show 83.6 percent of all defendants were male and 16.4 percent were female. U.S. Sentencing Commission, Annual Report 48 (1992).

Table 8

Gender of Public Corruption Defendants by Fiscal Year

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Gender	Total		Year					
			FY 1991		FY 1992		FY 1993 (to date)	
	N	%	N	%	N	%	N	%
Male	493	84.7	176	83.8	236	85.5	81	84.4
Female	89	15.3	34	16.2	40	14.5	15	15.6
Total	582	100.00	210	100.00	276	100.00	96	100.00

4. Citizenship

Citizenship rates for public corruption offenses appear to be similar to the rates for all MONFY92 guideline defendants. Of the 579 cases in the public corruption file when citizenship was known, 439 (75.8%) were U.S. citizens and 140 (24.1%) were non-U.S. citizens.[12] This is consistent with MONFY92 data for all guideline defendants. That data show 78.4 percent were U.S. citizens and 21.6 percent were non-U.S. citizens. U.S. Sentencing Commission, Annual Report 51 (1992).

[12] Rates remained substantially similar over time.

Table 9

Citizenship Status of Public Corruption Defendants by Fiscal Year

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Citizenship Status	Total		Year					
			FY 1991		FY 1992		FY 1993 (to date)	
	N	%	N	%	N	%	N	%
U.S.	439	75.8	159	75.7	209	76.7	71	74.0
Resident Alien	98	16.9	31	14.8	48	17.6	19	19.8
Non-Resident Alien	18	3.1	6	2.9	9	3.3	3	3.1
Alien (Status Unknown)	24	4.1	14	6.7	7	2.6	3	3.1
Total	579	100.00	210	100.00	273	100.00	96	100.00

Among non-U.S. citizen public corruption defendants, country of citizenship included the Dominican Republic (22 defendants; 15.7%); India (16 defendants; 11.4%) (frequently involve INS offenses); China (15 defendants; 10.7%); Korea (12 defendants; 8.6%) (primarily involve IRS offenses); Vietnam (11 defendants; 7.9%) (same); and Nigeria (10 defendants; 7.1%). This shows a significantly higher representation of defendants from Asian countries than appeared in MONFY92 data for all guideline defendants (27.2% of public corruption non-citizens compared with less than 3% of all guideline non-citizens). U.S. Sentencing Commission, Annual Report 52 (1992).

Table 10

Country of Citizenship of Public Corruption Defendants

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Country of Citizenship	Total		Year					
			FY 1991		FY 1992		FY 1993 (to date)	
	N	%	N	%	N	%	N	%
China	15	10.7	4	7.8	9	14.1	2	8.0
Dominican Republic	22	15.7	4	7.8	17	26.6	1	4.0
India	16	11.4	2	3.9	10	15.6	4	16.0
Korea (North and South)	12	8.6	3	5.9	6	9.4	3	12.0
Nigeria	10	7.1	4	7.8	2	3.1	4	16.0
Vietnam	11	7.9	6	11.8	4	6.2	1	4.0
Total	86	61.4	23	45.0	48	75.0	15	60.0

5. Education

Public corruption defendants appear to be relatively well-educated. Of the 579 cases in the public corruption file where educational status was known, 130 (22.5%) completed high school, 125 (21.6%) completed some college, 105 (18.1%) completed college, and 84 (14.5%) received a graduate degree. No MONFY92 data for all guideline offenses was immediately available.

Table 11

Level of Education Attained by Public Corruption Defendants

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Level of Education	Total	
	N	%
Didn't Complete High School	135	23.3
Completed High School	130	22.5
Completed Some College	125	21.6
Completed College	105	18.1
Received Graduate Degree	84	14.5
Total	579	100.0

6. District Analysis

A small number of districts have handled a sizable majority of the public corruption cases. As Table 12 shows, almost sixty percent of the public corruption cases were handled by ten districts.

Table 12

Ten Districts Having the Most Public Corruption Cases

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

District	Number of Public Corruption Cases	Percentage of All Public Corruption Cases
E.D. Pennsylvania	63	10.8%
S.D. New York	49	8.4%
E.D. Virginia	39	6.7%
C.D. California	39	6.7%
New Jersey	35	6.0%
E.D. New York	34	5.8%
N.D. Illinois	24	4.1%
S.D. Florida	20	3.4%
S.D. Texas	19	3.3%
South Carolina	18	3.1%
Total	340	58.4%

As the table shows, almost eleven percent of all cases sentenced under the public corruption guidelines were handled by a single district, the Eastern District of Pennsylvania. A significant number of the cases in this district arose out of two prosecutions, one involving individuals seeking employment cards from the INS, the other involving individuals and corporations seeking tax relief from the IRS. Large investigations also resulted in a substantial number of cases (10-15 in each investigation) in the Eastern District of Virginia ("Ill Wind"), New Jersey (IRS), and South Carolina (Operation Lost Trust).

7. Plea and Trial Rates

Plea and trial rates for public corruption offenses appear to be similar to the rates for other guideline offenses. Of the 581 cases in the public corruption file where mode of disposition was known, 489 (84.2%) cases were disposed of by plea and 91 (15.7%) cases by trial. This compares with MONFY92 data for all guideline defendants that show 87.0 percent of the guideline cases were disposed of by plea and 13.0 percent by trial. U.S. Sentencing Commission, Annual Report 59 (1992).

Table 13

Mode of Conviction of Public Corruption Defendants

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Mode of Conviction	Total	
	N	%
Guilty Plea	489	84.2
Nolo Contendere	1	0.2
Jury Trial	86	14.8
Bench Trial	1	0.2
Both Trial	4	0.7
Total	581	100.1

C. Guideline Application Data

1. Specific Offense Characteristics

The Working Group profiled the frequency with which the specific offense characteristics in §§2C1.1 and 2C1.2 were applied. Because of the limited number of cases involved in the remaining five public corruption guidelines (38 cases among all five), no frequencies were run on specific offense characteristics for those guidelines.

a. Section 2C1.1 (Bribery)

The vast majority of the §2C1.1 cases (351 (86.2%) of the 407 cases where the data was available) involved application of at least one specific offense characteristic; only 56 cases (13.8%) had no specific offense characteristic applied.

Multiple bribes or extortions were involved in the majority of the §2C1.1 cases. The specific offense characteristic at §2C1.1(b)(1), for more than one bribe or extortion, was applied in 218 (53.6%) of the 407 cases.

A considerable majority of cases involved total payments or benefits valued between $2000 and $120,000. The specific offense characteristic at §2C1.1(b)(2)(A), for the value of the bribe or payment, was applied in approximately 305 (74.9%) of the 407 cases. Two-thirds of these adjustments involved adjustments of 1 to 6 levels; the adjustments were evenly distributed among these 6 levels. Adjustments greater than 8 levels were rarely used.

High-level officials were involved in a small, but not insignificant, number of cases. The specific offense characteristic at §2C1.1(b)(2)(B), for high-level official (which is applied only in the alternative to the adjustment for the value of the payment), was applied in approximately 66 (16.2%) of the 407 cases. High-level officials appeared to be involved in a handful of cases in which the value of the payment resulted in an adjustment of greater than 8 levels.

b. Section 2C1.2 (Gratuity)

Thirty-two (62.7%) of the 51 §2C1.2 cases in which data were available involved application of at least one specific offense characteristic; only 19 cases (37.3%) had no specific offense characteristic applied.

The specific offense characteristic at §2C1.2(b)(1), for more than one gratuity, was applied in only 19 (37.3%) of the 51 cases -- relatively infrequently compared with the higher rate for bribery offenses.

The specific offense characteristic at §2C1.2(b)(2)(A), for the value of the gratuity, was applied in approximately 24 (47.1%) of the 51 cases. Sixty percent of these adjustments involved adjustments of 1 to 3 levels, with the adjustments evenly distributed among these 3 levels. Adjustments greater than 4 levels were rarely used. Compared with the bribery guidelines, the gratuity adjustments tend to be less frequently used, and when used, result in smaller increases.

The specific offense characteristic at §2C1.2(b)(2)(B), for a high-level official (which is applied only in the alternative to the adjustment for the value of the gratuity), was applied in approximately 7 (13.8%) of the 51 cases -- comparable to the rate at which the adjustment was applied under the bribery guideline.

2. Total Offense Levels

Median total offense levels varied by guideline from level 14 for bribery cases under §2C1.1, to level 7 for gratuity cases under §2C1.2, to level 4 for most other public corruption offenses. Table 14 shows the median offense level and shows where most of the offense levels were concentrated.

Table 14

Public Corruption Cases and Median and Distribution of Total Offense Levels

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Guideline (N)	Median Total Offense Level	Concentration of Total Offense Levels
§2C1.1 (448)	level 14	75.2% received level 20 or less
§2C1.2 (52)	level 7	82.7% received level 10 or less
§2C1.3 (17)	level 4	82.4% received level 4 or less
§2C1.4 (5)	level 4	100.0% received level 4 or less
§2C1.5 (1)	level 4	100.0% received level 4 or less
§2C1.6 (3)	level 7	100.0% received level 7 or less
§2C1.7 (7)	level 12	85.7% received level 13 or less

3. Sentence Medians and Distributions

Sentences for public corruption defendants ranged from probation to 207 months. The median sentence for all public corruption defendants was 6 months. The mean sentence was 14.2 months over the three-year period studied. Mean sentences for individual years within this period declined from 17.2 months (fiscal year 1991) to 13.0 months (fiscal year 1992) to 11.2 months (fiscal year 1993 to date). The primary reason for the declining mean sentences appears to be the increased use of §5K1.1 departures.

One-third of all public corruption defendants received probation and two-thirds received probation or less than a year in prison. Of those receiving probation, only six defendants (2.5% of those receiving terms of probation) received a term of intermittent confinement (these terms varied from 1-6 months) and thirty defendants (12.4%) received a term of community confinement (these terms varied from 1-9 months). Table 15 shows the distribution of terms of probation imposed on public corruption defendants.

Table 15

Distribution of Probation Sentences for Public Corruption Defendants

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Months of Probation	Number of Defendants	Percentage
0	1	0.4%
3	1	0.4%
5	1	0.4%
6	2	0.8%
12	17	7.0%
18	2	0.8%
24	47	19.3%
36	123	50.6%
42	1	0.4%
48	10	4.1%
60	38	15.6%
Total	243	100.0%

The Working Group also profiled the points inside and outside the relevant guideline range where the defendants were sentenced. Table 16 shows these figures.

Table 16

Position of Sentence Relative to Guideline Range for Public Corruption Cases

(Source: Public Corruption File (1993))

Position of Sentence	Frequency	Percentage
Below Range	163	33.0
1st Quarter	203	41.1
2nd Quarter	52	10.5
3rd Quarter	21	4.3
4th Quarter	46	9.3
Above Range	9	1.8
Total	494	100.0

The Working Group compared these figures with the "position within sentence figures in the Annual Report, but could derive no conclusions from the comparison, as the numbers vary widely among guideline offenses. See U.S. Sentencing Commission, Annual Report 132 (1992). Nevertheless, the figures for the public corruption offenses were not unusually high or low in any respect.

Departures

Public corruption defendants appear to receive downward and upward departures at rates comparable to rates for all guideline defendants in fiscal year 1992, but receive substantial assistance departures much more frequently. Of the 552 cases in the public corruption file where departure status was known, 7 (1.3%) were upward departures, 31 (5.6%) were downward departures for reasons other than substantial assistance, and 140

(25.4%) were substantial assistance departures. Departure rates for public corruption defendants by fiscal year are noted in Table 17.

Table 17

Departures in Public Corruption Cases by Fiscal Year

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Type of Departure	Total		Year					
			FY 1991		FY 1992		FY 1993 (to date)	
	N	%	N	%	N	%	N	%
None	374	67.8	152	76.0	158	60.8	64	69.6
Upward	7	1.3	2	1.0	5	1.9	0	0.00
Downward	31	5.6	6	3.0	21	8.1	4	4.3
Substantial Assistance	140	25.4	40	20.0	76	29.2	24	26.1
Total	552	100.00	200	100.0	260	100.00	92	100.00

Fiscal year 1992 data for all guideline offenses show 1.5 percent of all defendants received upward departures, 6.0 percent received downward departures, and 15.1 percent received substantial assistance departures. U.S. Sentencing Commission, Annual Report 121 (1992).

Of 100 defendants who received a substantial assistance departure, 61 (61.0%) received no term of imprisonment. Downward departures generally were distributed evenly among all adjusted offense levels, but substantial assistance departures came mainly from the middle ranges of the sentencing table. Only 7 percent of cases with final offense levels between 4 and 12 received a §5K1.1 departure, while 36 percent of cases with final offense levels between 13 and 20 received a §5K1.1 departure. Thirteen percent of cases with final offense levels between levels 21 and 42 received a §5K1.1 departure. The Working Group will conduct a further review of the extent of these departures.

5. Departures by District

Some districts had rates of departure downward that were significantly higher than the typical rate for public corruption cases. Table 18 shows the departure rates of the five districts having the highest rates of downward departure. (Rates for districts with fewer than 10 cases were not considered for this table.

Table 18

Five Districts Having the Highest Downward Departure Rates in Public Corruption Cases

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

District (rank)[13]	Total Downward Departure Rate	§5K1.1 Departure Rate (N)	Downward Departure Rate (N)	Within Guideline Rate (N)	Share of all Public Corruption Cases
E.D. Pennsylvania (1)	73.0%	71.4% (45)	1.6% (1)	27.0% (17)	10.8%
South Carolina (10)	55.6%	50.0% (9)	5.6% (1)	38.9% (7)	3.1%
New Jersey (5)	54.3%	45.7% (16)	8.6% (3)	42.9% (15)	6.0%
E.D. New York (6)	50.0%	44.1% (15)	5.9% (2)	35.3% (12)	5.8%
S.D. New York (2)	49.0%	34.7% (17)	14.3% (7)	42.9% (21)	8.4%
Total	**58.3%**	51.3% (102)	7.0% (14)	36.2% (72)	34.2%
All Public Corruption Cases	31.0%	25.4%	5.6%	1.3%	--

[13] Refers to rank among top 10 districts for number of public corruption cases.

These higher rates of departure resulted in skewed substantial assistance departure rates for the remaining public corruption cases. When the Working Group eliminated some or all of the five districts with the highest downward departure rates, the substantial assistance departure rate for the remaining cases was closer to, or less than, the substantial assistance departure rate for all guideline cases.

For example, when the Working Group adjusted the substantial assistance departure rate by eliminating these five districts from the data pool, the substantial assistance departure rate for the remaining public corruption cases dropped from 25.4 percent (140 of 552 cases in which the reason for departure was known) to 10.4 percent (38 of 364 cases). This is similar to the substantial assistance departure rate for all guidelines of 11.9 percent (fiscal year 1991) and 15.1 percent (fiscal year 1992). See U.S. Sentencing Commission, Annual Report 133 (1991); U.S. Sentencing Commission, Annual Report 121 (1992).

When only the Eastern District of Pennsylvania (the district with the highest number of public corruption cases and the highest rate of substantial assistance departures) was eliminated from the data pool, the substantial assistance rate for the remaining public corruption cases dropped from 25.4 percent (140 of 552 cases in which the reason for departure was known) to 19.4 percent (95 of 489 cases).

6. Reasons for Non-Substantial-Assistance Departures

The court's reasons for departures (other than substantial assistance) were available in six of the upward departure cases and twenty-four of the downward departure cases. The principal reason given for upward departures was disruption of governmental function pursuant to §5K2.7. Such disruptions related, for example, to a pervasive extortion scheme engineered by the city's mayor and directed to municipal vendors, and to an ongoing extortion scheme connected with a Board of Commissioners. Other upward departures focused on the intended harm, which in one case involved an escape plan and a plot to kill a federal judge and prosecutor. In addition, there was a departure to reflect adequacy of loss and damage.

The most frequent reason given for non-substantial-assistance downward departures was overrepresentation of the defendant's criminal history (see §4A1.3). Courts also considered the pressures felt by the defendant, which accounted for departures on the bases of coercion and duress (2 cases), victim's conduct (1 case), lesser harms (1 case), and diminished capacity (1 case). Finally, departures were given based on plea agreements, family ties and responsibilities, and cooperation in the absence of a §5K1.1 motion.

7. Substantial Assistance Departure Rates Within Specific Conspiracies

The Working Group is preparing an analysis of the rates of substantial assistance departures within a number of conspiracies. The Working Group has identified docket numbers for a number of public corruption conspiracies and is comparing the rates of substantial assistance departures in these conspiracies among a sample of districts.

8. Comparison of Offense Levels and Sentences Imposed Under Past Practice and Under the Guidelines

The Working Group has begun a comparison in three areas of pre-guidelines and guidelines sentences for public corruption offenses: offense levels, sentences imposed, and the number of sentences imposed. The first comparison has been made and is presented below. The Working Group is working with Policy Analysis staff to attain the necessary data to make the second and third comparisons.

a. Comparison of Offense Levels

The Working Group sought to compare hypothetical offense levels applied under past practice with offense levels intended to be applied under the 1992 guidelines shows that the intended 1992 offense levels are higher than those that would hypothetically have applied under past practice. Note that this comparison is theoretical only: the comparison demonstrates the offense level that should be applied for certain public corruption offenses given certain factors, but does not demonstrate the offense level that is actually applied for those offenses. The key factor that affects whether the intended offense levels are actually applied is whether the sentencing court departs from the adjusted offense level. (The comparison assumes a 3-level adjustment for acceptance of responsibility.) Relevant tables appear in Appendix VIII.

To make this first comparison, the Working Group reviewed data that compare eight public corruption offenses, including six bribery offenses sentenced most frequently under §2C1.1 (Payment for Performance of Official Act; Receipt of Payment for Performance of Official Act; Payment for Other Purpose; Receipt of Payment for Other Purpose; Conspiracy, Solicitation, Attempt; and Other Bribery Offenses), one §2C1.2 (Gratuity) offense, and one §2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper) offense.

The comparisons show increased offense levels were intended for virtually all eight of these offenses, particularly where the offense conduct involved more serious factors (e.g., higher value payments or benefits). Intended increases in offense levels ranged from 1 to 16 levels, depending on the offense and the factors involved. For example, as the value of the payment or benefit involved increased, the guidelines imposed significantly higher offense levels relative to those imposed under past practice

(e.g., an increase of 6 levels over past practice for Payment of Bribe for Performance of Official Act valued at more than $200,000 and an increase of 16 levels over past practice for payments valued at more than $80,000,000).

However, decreased offense levels are apparent where the offense conduct involved less serious factors, most notably smaller payments or benefits. Consequently, some public corruption offense levels, including the following, are actually lower than those under past practice --

- Bribery, Payment for Other Purpose (1-level decrease for offenses involving $5,000 or less);
- Bribery, Receipt for Other Purposes (1- to 3-level decrease for offenses involving $120,000 or less);
- Other Bribery (1-level decrease for offenses involving $10,000 or less);
- Conspiracy to Bribe (1-level decrease for offenses involving $5,000 or less);
- Gratuity (1- to 2-level decrease for offenses involving $5,000 or less);
- Loan to Bank Examiner (1- to 2-level decrease for offenses involving $10,000 or less);

The impact of these reductions on median sentence imposed may be significant. While higher offense levels (and concomitantly higher sentences) may have been intended for most public corruption offenses, median sentences may actually decline because most of the public corruption offenses involve the less serious offense conduct (e.g., most involve smaller payments, generally under $5,000) that have lower offense levels than would have been imposed under past practice.

The Working Group will prepare for the Commission's report an analysis of FPSSIS data on public corruption sentences imposed prior to the sentencing guidelines. These pre-guidelines sentences will be compared with sentences under the guidelines to determine whether average sentences have increased or decreased. The Working Group will also compare the number of cases sentenced under past practice with the number of guidelines cases.

9. Fines and Restitution

Public corruption defendants are ordered to pay a fine or restitution at higher rates than all MONFY92 guideline defendants. Of the 579 cases in the public corruption file where fine or restitution status was known, a fine was ordered in 42.1 percent of the

cases and restitution in 22.7 percent of the cases. No fine was ordered in 335 (57.9%) cases and no restitution was ordered in 502 (87.3%) cases.

MONFY92 data for all guideline defendants show that no fine or restitution was ordered for 66.3 percent of all defendants. A fine was ordered in 18.7 percent of the cases and restitution ordered in 17.1 percent of the MONFY92 cases. U.S. Sentencing Commission, Annual Report 66 (1992).

VII. CASE FILE REVIEW

The Working Group conducted a review of public corruption case files in order to examine more closely a number of the issues that had been raised in the Working Group review of expert and public comment, hotline calls, and case law. The following section provides a brief summary of data frequencies associated with this case file review. (While the cases reviewed represent almost 50 percent of all public corruption cases for the period studied, they are not necessarily representative of the entire population.) Following the section on frequencies are discussions of the questions involving application of the public corruption guidelines.

A. Frequency Data

The Working Group reviewed the case files for the following information: defendant's public status (i.e., federal, state, local, private citizen, other); the defendant's official status (i.e., legislative, executive, judicial, other); whether defendant was elected; the public official's public status (in cases where defendant was not a public official or was not the only public official); the public official's official status (i.e., legislative, executive, judicial, other); and whether the public official was elected. Tables 19, 20, and 21 summarize this information. In addition, summaries for each of the case files reviewed appear in Appendix IX.

Table 19

Public Status of Defendant and Public Official

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Public Status	Defendant		Public Official	
	N	%	N	%
Federal	50	19.0%	128	48.7%
State	15	5.7%	19	7.2%
Local	37	14.1%	49	18.6%
Private Citizen / N/A[14]	159	60.5%	64	24.3%
Other	2	0.8%	3	1.1%
Total	263	100.0%	263	100.0%

Table 20

Official Status of Defendant and Public Official

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Official Status	Defendant		Public Official	
	N	%	N	%
Legislative	16	15.4%	14	7.1%
Executive	78	75.0%	162	81.8%
Judicial	4	3.8%	7	3.5%
Other	6	5.8%	15	7.6%
Total	104	100.0%	198	100.0%

[14] "N/A" refers to cases where no second public official was involved in the offense.

Table 21

Election Status of Defendant and Public Official

(Source: U.S. Sentencing Commission, Public Corruption File (1993))

Election Status	Defendant		Public Official	
	N	%	N	%
Elected	240	91.3%	220	83.7%
Not Elected	22	8.4%	39	14.8%
Missing	1	0.4%	4	1.5%
Total	263	100.0%	263	100.0%

The Working Group also identified the value of the payment (whether a bribe or a gratuity) and the value of the benefit or loss associated with the offense. Median payment value was $5500 (n=262) (payments ranged in value from zero to $710,000); median benefit value (in the 116 cases where benefit was known or quantifiable) was $58,000 (benefit ranged in value from zero to $90,000,000); and median loss to the government (in the 46 cases where this was known) was $56,000 (loss ranged in value from zero to $70,000,000).

B. Multiple Bribes, Extortions, or Gratuities

The Working Group sought to determine whether public corruption defendants in cases involving multiple bribes, extortions, or gratuities actually receive the 2-level adjustments at §2C1.1(b)(1) or §2C1.2(b)(1), and whether those involved with a single bribe, extortion, or gratuity actually receive no adjustment.

To achieve this objective the Working Group examined a sample of cases involving and not involving adjustment for multiple bribes. Review of the data was complicated by the fact that the adjustment was added to the guidelines in 1988. (While the Working Group reviewed only cases sentenced in fiscal years 1991 - 1993, some of those cases may have applied the 1988 version of the guidelines.) Thus, some cases that clearly involved multiple bribes, extortions, or gratuities did not receive the adjustment because it was not available in that guideline year. As a result, while it appears that adjustments were inappropriately given or withheld, the Working Group cannot specify the number of cases in which such misapplications occurred.

C. Determination of Value

The Working Group sought to determine whether the value of payment determination is adequately defined so that application of the adjustment is consistent.

In order to achieve this objective, the Working Group examined a sample of cases in which the value of payment table was applied (80 cases or 20% of 382 cases receiving 1-7 level adjustment); and all 117 cases receiving at least an 8-level adjustment.

After a review of the files, the Working Group determined that some adjustments appear to have been inappropriately given or withheld. For example, in a substantial number of cases, no attempt was made to determine the benefit involved in the offense, even where that benefit was readily determinable (e.g., a taxpayer seeks to reduce his tax liability). In a considerable number of cases, the court miscalculated the value of the benefit involved in the offense, taking gross value instead of net value. In other cases, the court took the lower payment value instead of the higher value of benefit. For example, the court in case #65107 calculated value at $8500 (the value of the bribe paid) instead of $21,357 (the reduction in defendant's taxes).

The Working Group has not attempted to determine the exact number of cases in which such misapplications occurred because of the risks of second-guessing these fairly complex determinations, and because of the frequency with which some information in case files was absent or ambiguous.

D. Application of 8-Level High-Level Official Adjustment

The Working Group sought to determine the circumstances under which the 8-level adjustment for an official holding a "high-level decision-making or sensitive position" is applied and when it is not applied.

The Working Group examined all 46 cases in which an 8-level adjustment was applied and all 35 cases in which a greater than 8-level adjustment was applied. The Working Group also took a 20-percent sample (80 cases) of the 382 public corruption cases that did not receive an 8-level or greater adjustment. All of these cases were coded to identify elected officials and to identify the job titles and functions of officials involved in the offense.

Of the 61 cases involving officials who were known to be elected, all received an 8-level adjustment or greater. A single case (case #99577) involving an elected official raised some question about whether the official should be considered a high-level official: the case of an elected treasurer for a local school district.

Only two of the 80 cases in the 20-percent sample in which no high-level official adjustment was applied involved a person who might unambiguously be described as a "high-level official." These cases involved the captain of a major metropolitan fire department (case #62804) and the officer in charge of public works and director of construction for the Naval Academy (case #77537).

In five (10.9%) of the 46 cases receiving an 8-level adjustment for "high-level official," the adjustment was almost certainly not warranted, and apparently was not justified as an adjustment under §2C1.1(b)(2)(A) based on value of payment or benefit. Three of these cases involved line INS agents (case ##64343, 77252, 102712) (two of these cases were from the same district), and two involved private officials (case ##85081, 102956). Two additional cases involved a U.S. Customs Resident Agent-in-Charge (case #58202) (who may have been considered a supervisory law enforcement officer), and a local supervisory housing inspector (case #141196).

E. Conduct in Cases Under Sections 2C1.3, 2C1.4, 2C1.5, 2C1.6, 2C1.7

The Working Group sought to determine the nature of the conduct in the 38 cases in which §§2C1.3-2C1.7 were applied. (For a breakdown of the cases by guideline section see Table 2.) To achieve this objective, the Working Group reviewed the offense conduct for each of these cases. The case summaries, along with other cases reviewed, appear in Appendix IX.

Nine (9) of the 19 §2C1.3 (Conflict of Interest) cases involving conflicts of interest (47.4%) arose from a single tax investigation: taxpayers were targeted for a bribery sting operation because of their Asian surnames. In subsequent dispositions, the taxpayers pleaded to conflict of interest offenses rather than bribery. Of the remaining cases, 6 appeared to involve conflict of interest conduct, while at least 2 cases could apparently have been charged as a bribery or gratuity case (case #91201 -- federal supervisory official received loans and payments from security company whose guards slept on the job; he alerted company to impending investigation; case #95237 -- IRS bribery). Another case (case #108784) defied immediate categorization.

The cases under §2C1.4 (Payment or Receipt of Unauthorized Compensation) involved 3 cases (2 involved same offense conduct involving INS officer) that may have satisfied the elements of a bribery, 2 that may have involved bribery or extortion under color of official right, and 1 that involved defendant receiving additional payment for job duties. Two cases might also have been considered conflict of interest cases (case #128712 -- high-level federal procurement official improperly reimbursed by third party for expenses; case #137464 -- inspector receiving pay for conducting flight tests).

The sole §2C1.5 (Payments to Obtain Public Office) case involved solicitation of a campaign contribution by a member of the campaign staff of a candidate for the United

States Senate. The contribution was to be made through a shell corporation using phony invoices.

Two of the three cases under §2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper) in fact involved loans or gratuities to bank examiners, while one involved an IRS bribery.

The seven cases under §2C1.7 (Intangible Right) covered a range of actions: case #131850 involved provision of credit data for a fee; case #135506 involved an INS card scheme; case #124373 involved a messenger in a Department of Motor Vehicles bribery scheme; case #137562 involved a tax collector taking kickbacks; case #137713 involved a tax collector cashing checks for work not done; case #142867 involved a Department of Motor Vehicles bribery scheme; and case #143746 involved a fraudulent INS card scheme.

The Working Group will continue to work with the Legal and TAS staffs to determine whether any of these guidelines may be consolidated with each other or with §§2C1.1 (Bribery) or 2C1.2 (Gratuity). For example, §2C1.3 (Conflict of Interest) and §2C1.4 (Unauthorized Compensation) often involved similar conduct; consolidation, after reviewing common legal elements and practical concerns, may merit consideration. It may be useful to note that at least three of these cases involved officials who would almost certainly qualify as high-level officials, but who avoided the 8-level adjustment by virtue of their pleas to statutory offenses covered by guidelines that did not impose the adjustment.

Section 2C1.6 (Loans or Gratuities to Bank Examiner) might also be considered for consolidation with §2C1.1 (Bribery) or §2C1.2 (Gratuity) as the conduct in those offenses is similar if not identical. Indeed, some consideration might be given to consolidation of these primary public corruption guidelines (§§2C1.1 and 2C1.2) given the similarity of the elements of these offenses, particularly in section 666 bribery and section 201 gratuity.

F. Use of Other Guidelines in Connection with Public Corruption Offenses

The Working Group sought to determine (1) the frequency of application of the cross references at §2C1.1 and §2C1.7; (2) the circumstances under which the cross references were applied; (3) the circumstances under which the cross references were not applied; and (4) the frequency with which the cross references were applied even though

the defendant had no reason to believe the public corruption offense was committed for the purpose of facilitating the commission of another offense.[15]

To achieve this objective, the Working Group reviewed the 38 cases in the Public Corruption File (1993) that applied a non-public corruption guideline as the guideline high and the 25 cases ("guideline pass" cases) identified by Monitoring has having applied a public corruption guideline cross reference. (The Working Group also examined Monitoring data to determine whether non-public corruption guidelines are consistently applied to public corruption statutes without having first applied a public corruption cross reference. The Working Group determined that no such cases existed.)

1. "Non-Public Corruption Guideline High" Cases

Three (3) of the 38 non-public corruption guideline high cases involved application of the cross reference at §2C1.1. These cases involved robbery (case #92013), drug distribution (case #103439), and prison contraband (case #118202). In each of these cases, the public corruption guideline was the low guideline, the non-public corruption guideline was the high guideline, and the cross reference was used to ensure that the public corruption count received at least a half a unit under the grouping rules, possibly increasing the offense level to be imposed (depending on the number of counts and their relative offense levels). For example, the adjusted offense level under the public corruption guideline (without the cross reference) may have been level 18, and the adjusted offense level under the drug guideline level 30 -- a situation in which the grouping rules would add no units. However, with the cross reference applied, the adjusted offense level under the public corruption guideline was level 24 (level 30 minus 6 levels under §2X1.1) and the grouping rules would add 1/2 unit. The cross reference at §2C1.7 was applied in none of these cases.

Twenty-four of the 38 cases involved application of a non-public corruption guideline as the guideline high in a multiple-count case, but the cross references at §2C1.1 and §2C1.7 were not applied. In the 11 remaining cases, it could not be determined whether the cross reference was used.

2. "Guideline Pass" Cases

The Working Group has also reviewed the twenty-five cases in which a cross reference at §2C1.1 or §2C1.7 was known to have been applied. The Working Group identified these cases using a new variable developed by Monitoring around April 1992. Because Monitoring only began identifying these cases as involving a cross reference early last year these twenty-five cases represent only a year's worth of cases -- a subset of

[15] This last circumstance is a concern raised in some of the expert comment received by the Working Group.

all cases sentenced during fiscal years 1991-1993. (The Working Group is pursuing alternative methods of identifying these additional, earlier cases.)

A review of the cases reveals some preliminary information.[16] Most of the cases involved corrections officials distributing controlled substances to prisoners or distribution of controlled substances. Fourteen (56%) of the 25 cases known to involve a cross reference referenced §2P1.2 (Providing or Possessing Contraband in Prison) and 6 cases (24%) referenced §2D1.1 (Offenses Involving Controlled Substances). In addition, cross references applied §2X3.1 (2 cases), §2F1.1 (1 case), §2H1.5 (1 case), and §2K2.1 (1 case). Almost all cross references (24 of the 25 known cases) involved §2C1.1(c); one case involved §2C1.7(c).

The median sentence after applying the cross reference was 18 months (mean 42 months; range of probation to 248 months), compared with a median sentence of 6 months for public corruption cases not applying the cross reference.

The Working Group will determine whether additional cases should have applied the cross reference but did not.

The Working Group determined that the cross references at §2C1.1 and §2C1.7 appear to have been applied only in cases in which the defendant had reason to believe the public corruption offense was committed for the purpose of facilitating the commission of another offense.

G. Application of Section 3B1.3 (Abuse of Position of Trust)

The application notes to each of the public corruption guidelines specify that the adjustment under §3B1.3 (Abuse of Position of Trust) shall not be applied. It is presumed that the public corruption guideline subsumes this characteristic in its Chapter Two offense level without the additional Chapter Three adjustment. The Working Group sought to determine whether the instruction in the application notes was followed. Monitoring data show substantial compliance with the instruction: the adjustment was applied in only 9 (1.7%) of 544 public corruption cases. The Working Group will review the case files to determine the circumstances of application.

[16] Additional case file review and Monitoring data analysis will be done for the spring report to provide additional sentencing information on these cases.

H. Additional Case File Data Runs

The Working Group will prepare for its Spring report additional frequencies and cross tabulations on the following factors:

- the defendant's public status (private citizen or federal, state, or local official) and whether the high-level official adjustment was given;
- the public official's public status (federal, state, or local) and whether the high-level official adjustment was given;
- the sentence imposed according to the defendant's public status, the public official's public status, the defendant's election status, and the public official's election status; and
- the departure imposed by each of public official's public status, defendant's public status, defendant's election status, public official's election status.

APPENDIX I

APPENDIX I

PUBLIC CORRUPTION STATUTES

Offense	Summary	Guide-line	Statutory Maximum
7 U.S.C. § 610(g)	Prohibits officials in the Agricultural Adjustment Administration from speculating in any agricultural commodity. (1933)	2C1.3	2 years; fine of $10,000.
*18 U.S.C. § 201(b)	Prohibits the corrupt giving, offering, solicitation, or receipt of any thing of value to or by any federal or District of Columbia public official for the purpose of influencing an official act. (1962)	2C1.1	15 years; fine of three times the monetary value of the thing of value.
*18 U.S.C. § 201(c)	Prohibits the giving or receipt of any thing of value to or by any public official because of an official act performed or to be performed. (1962)	2C1.2	2 years; fine.
18 U.S.C. § 203	Prohibits giving or receipt of compensation for "representational services" to or by Members of Congress, or officials or employees of any branch of federal or District of Columbia government, in relation to any proceeding in which the United States or the District of Columbia is a party or has a substantial interest. (1962)	2C1.3	1 year; fine (for engaging in conduct). 5 years; fine (for willfully engaging in conduct).
18 U.S.C. § 204	Prohibits Members of Congress from practicing in the United States Claims Court or Court of Appeals for the Federal Circuit. (1962)	2C1.3	1 year; fine (for engaging in conduct). 5 years; fine (for willfully engaging in conduct).
18 U.S.C. § 205	Prohibits government officials and employees from representing anyone for the purpose of prosecuting a claim against the United States or against a federal agency. (1962)	2C1.3	1 year; fine (for engaging in conduct). 5 years; fine (for willfully engaging in conduct).
18 U.S.C. § 207	Restricts ability of former officers, employees and elected officials from certain forms of representation. (1962)	2C1.3	1 year; fine (for engaging in conduct). 5 years; fine (for willfully engaging in conduct).

PUBLIC CORRUPTION STATUTES

Offense	Summary	Guide-line	Statutory Maximum
18 U.S.C. § 208	Prohibits officers and employees of the executive branch or of any independent agency, Federal Reserve bank, or of the District of Columbia, from participating as a government employee in decisions or proceedings in matters in which the employee, his family members, general partners, or any organization with which the individual is negotiating or has an arrangement for employment, have a financial interest. (1962)	2C1.3	1 year; fine (for engaging in conduct). 5 years; fine (for willfully engaging in conduct).
18 U.S.C. § 209	Prohibits any officer or employee of the federal executive branch or District of Columbia from receiving or any person from paying compensation for services as a government employee from any source other than the United States government. (1962)	2C1.4	1 year; fine (for engaging in conduct). 5 years; fine (for willfully engaging in conduct).
18 U.S.C. § 210	Prohibits payment to procure an appointive public office. (1948)	2C1.5	1 year; fine of $1000.
18 U.S.C. § 211	Prohibits acceptance of a payment to procure an appointive public office. (1948)	2C1.5	1 year; fine of $1000.
18 U.S.C. § 212	Prohibits the offer of a loan or gratuity to a bank examiner under the Federal Reserve system or the FDIC. (1948)	2C1.6	1 year; fine of $5000 plus an amount to equal the amount of the loan or gratuity.
18 U.S.C. § 213	Prohibits acceptance of a loan or gratuity by a bank examiner. (1948)	2C1.6	1 year; fine of $5000 plus an amount to equal the amount of the loan or gratuity; disqualification from holding position as bank examiner.
18 U.S.C. § 214	Prohibits offer or receipt of payment to procure a loan from a Federal Reserve Bank. (1948)	2C1.6	1 year; fine of $5000.
18 U.S.C. § 217	Prohibits acceptance of payment for adjustment of farm debt. (1948)	2C1.6	1 year; fine of $1000.
18 U.S.C. § 219	Prohibits public officials from acting as agents of a foreign principal. (1966)	2C1.3	2 years; fine.

PUBLIC CORRUPTION STATUTES

Offense	Summary	Guide-line	Statutory Maximum
18 U.S.C. § 281	Restrictions on retired military officers regarding certain matters affecting the government. (1987)	2C1.3	2 years; fine.
18 U.S.C. § 371	Prohibits general conspiracy to defraud the United States or an agency; does not specifically mention public officials. (1948)	2C1.7	5 years; fine of $10,000.
18 U.S.C. § 440	Prohibits postal service employees from having an interest in any mail contract. (1948)	2C1.3	1 year; fine of $5000.
18 U.S.C. § 442	Prohibits printing office employees from having an interest in a printing office contract. (1948)	2C1.3	1 year; fine of $1000.
18 U.S.C. § 665(b)	Prohibits inducing -- by threat, dismissal from employment, refusal to employ, or renewal of contract in connection with Comprehensive Employment Training Act or Job Training Partnership Act -- any person to give up money or any thing of value to any person or agency. (1973)	2C1.1	1 year; fine of $1000.
*18 U.S.C. § 666(a)(1)(B)	Prohibits any agent of an organization, or state, local, or tribal government which receives more than $10,000 annually under a federal program from soliciting or accepting anything of value with intent to be influenced in any business or transaction involving a value of $5000 or more. (1984)	2C1.1, 2C1.2	10 years; fine.
*18 U.S.C. § 666(a)(2)	Prohibits corrupt giving of anything of value to any person with intent to influence or reward an agent described above, in connection with any business or transaction involving a value of $5000 or more. (1984)	2C1.1, 2C1.2	10 years; fine.
*18 U.S.C. § 872	Prohibits the commission or attempt of extortion by any officer or employee of the United States government, or by any person representing him- or herself as an officer or employee of the United States government. (1948)	2C1.1	3 years; fine of $5000 (if amount extorted is less than $100, the maximum sentence is 1 year and $500).

PUBLIC CORRUPTION STATUTES

Offense	Summary	Guide-line	Statutory Maximum
18 U.S.C. § 1012	Prohibits actions intended to defraud the Department of Housing and Urban Development (does not specify public officers). (1948)	2C1.3	1 year; fine of $1000.
*18 U.S.C. § 1341	Mail fraud -- prohibits schemes to defraud by use of counterfeit money or securities transported by mail. (1948)	2C1.7	5 years; fine of $1000 (if fraud involves a financial institution, the maximum penalty is 30 years and fine of $1,000,000).
18 U.S.C. § 1342	Providing a fictitious name or address in connection with an offense under 18 U.S.C. § 1341. (1948)	2C1.7	5 years; fine of $1000.
18 U.S.C. § 1343	Wire fraud -- prohibits perpetrating a fraudulent scheme by use of wire, radio, or television. (1952)	2C1.7	5 years; fine of $1000 (if fraud involves a financial institution, the maximum penalty is 30 years and fine of $1,000,000).
18 U.S.C. § 1346	McNally "Fix" -- defines "scheme or artifice to defraud" to include that to deprive another of the intangible right of honest services. (1988)	2C1.7	5 years; fine of $1000 (if fraud involves a financial institution, the maximum penalty is 30 years and $1,000,000).
18 U.S.C. § 1422	Prohibits the solicitation or acceptance of any fees additional to those required by law in naturalization, citizenship, or alien registry proceedings. (1948)	2C1.2	5 years; fine of $5000.
18 U.S.C. § 1901	Prohibits revenue officers from carrying on any trade or business using funds of the United States. (1948)	2C1.3	1 year; fine of $3000; removal from office and bar from holding office.
18 U.S.C. § 1903	Prohibits officials of the Federal Crop Insurance Corporation from speculating in agricultural commodities. (1948)	2C1.3	2 years; fine of $10,000.
18 U.S.C. § 1909	Prohibits bank examiners from performing any other compensated service for a bank. (1948)	2C1.3, 2C1.4	1 year; fine of $5000.

PUBLIC CORRUPTION STATUTES

Offense	Summary	Guide-line	Statutory Maximum
*18 U.S.C. § 1951	Hobbs Act -- prohibits the obstruction or delay of interstate commerce by any act of robbery, extortion, or extortion under color of official right. (1946)	2C1.1	20 years; fine of $10,000.
18 U.S.C. § 1952	Prohibits travel in interstate commerce or the use of any facility in interstate commerce (including the mail) with the intent to distribute the proceeds of illegal activity or to promote or carry on unlawful activity, including extortion or bribery (racketeering). (1961)	2E1.2	5 years; fine of $10,000.
21 U.S.C. § 622	Prohibits giving of bribes or gifts to inspectors under the Food and Drug Act. (1907)	2C1.1	3 years; fine of $10,000.
26 U.S.C. § 7214	Applies to any officer or employee of the United States acting in connection with the revenue laws who commits illegal acts, including extortion under color of law, demand of greater sums than owed, failure to perform duties, concealment of fraud, or who accepts any thing of value in return for adjustment or settlement of any complaint or charge. (1954)	2C1.1, 2C1.2	5 years; fine of $10,000; removal from office and bar from holding office.

Key:

"*"	denotes a statute of conviction frequently used in public corruption offenses; legislative history of these statutes is located elsewhere in the appendices
"(1933)"	denotes the date of enactment of the statute
"Fine"	indicates a fine available under title 18, unless otherwise indicated
"+"	denotes a statute in the statutory index that does not reference the public corruption guidelines but might be considered a public corruption offense

APPENDIX II

APPENDIX II

MEMORANDUM

TO: Public Corruption Working Group

FROM: Kirsten Swisher

RE: Legislative History

DATE: August 1993

Following is a summary of the legislative history of the basic public corruption statutes.

18 U.S.C. § 201. Section 201 covers the payment and receipt of bribes and gratuities by public officials. It was passed as part of a complete revision of the criminal code in 1948. The 1948 revision was passed with no substantive discussion of individual provisions, and little discussion of punishment. The only relevant statement, in House Report 304, was that one of the goals of the revision was to correct punishments to ensure that they were neither too lenient nor too harsh. Section 201 was amended by Pub. L. No. 91-405 in 1970 (applying the provision to the District of Columbia), and by Pub. L. No. 99-646 in 1986 (making several technical amendments).

18 U.S.C. § 666. Section 666, passed in 1986 as part of an appropriations bill, proscribes embezzlement, bribery, and gratuities by agents of organizations or governments receiving more than $10,000 annually under a federal program. The legislative history notes that 18 U.S.C. § 666 was added to the code because there was some question as to whether 18 U.S.C. § 201 applied to those acting on behalf of the U.S. Government (i.e., in programs receiving federal funds), as well as to government employees. See H.R. Conf. Rep. No. 1159, 98th Cong., 2d Sess. 369-70 (1984), reprinted in 1984 U.S.C.C.A.N. (98 Stat.) 3510-11.

18 U.S.C. § 872. Section 872 prohibits extortion by any officer or employee of the United States government, or by anyone representing him- or herself to be such an officer or employee. Like 18 U.S.C. § 201, 18 U.S.C. § 872 was enacted as part of the 1948 revision of title 18. There is no specific legislative history on this provision. The statute was amended in 1951 by Pub. L. No. 82-248 making the statute applicable to actual officers of the U.S. government, as well as those posing as officers of the U.S. government.

18 U.S.C. § 1951. Section 1951 (the Hobbs Act), enacted in 1946 after heated debate, prohibits interference with interstate commerce by means of robbery or extortion. The bill was considered by many to be "anti-labor" because the impetus for its passage was the activities of certain union members who committed acts of highway robbery and extortion against non-unionized farmers and truckers. Section 1951 was intended to override a Supreme Court ruling that union members were exempt from a previous anti-racketeering statute. The issue of sentencing was reached by one or two Representatives who were concerned that punishments of up to twenty years were grossly disproportionate to certain union activities that were technically illegal under the statute. The response to this argument was that the statutory punishment provision was merely a maximum.

18 U.S.C. § 1952. Section 1952 (criminal RICO) prohibits travel in interstate commerce or the use of facilities in interstate commerce (such as the mail) to carry out illegal activity or to distribute its proceeds. The statute was passed at the urging of then-Attorney General Robert Kennedy and was intended to "bolster local law enforcement" by allowing the Federal government to prosecute racketeering activities occurring across state lines. There was very little discussion of the bill, none of which related to sentencing.

APPENDIX III

APPENDIX III

102D CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 102-405

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1991

NOVEMBER 27, (legislative day, NOVEMBER 26), 1991.—Ordered to be printed

Mr. BROOKS, from the committee on conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3371]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3371), to control and prevent crime, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Houses recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Violent Crime Control and Law Enforcement Act of 1991".

SEC. 2. TABLE OF TITLES.

The following is the table of titles for this Act:

49-607

"(f) The term 'boundaries' has the same meaning given that term in section 2 of the Submerged Lands Act (43 U.S.C. 1301).".

Subtitle F—White Collar Crime Amendments

SEC. 3651. RECEIVING THE PROCEEDS OF EXTORTION OR KIDNAPPING.

(a) PROCEEDS OF EXTORTION.—Chapter 41 of title 18, United States Code, is amended—

(1) by adding at the end the following new section:

"§ 880. Receiving the proceeds of extortion

"Whoever receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than one year, knowing the same to have been unlawfully obtained, shall be imprisoned not more than three years, fined under this title, or both."; and

(2) in the table of sections, by adding at the end the following new item:

"880. Receiving the proceeds of extortion.".

(b) RANSOM MONEY.—Section 1202 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection "(a)"; and

(2) by adding the following new subsections:

"(b) Whoever transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than one year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State or United States boundary, knowing the proceeds to have been unlawfully obtained, shall be imprisoned not more than ten years, fined under this title, or both.

"(c) For purposes of this section, the term 'State' has the meaning set forth in section 245(d) of this title.".

SEC. 3652. RECEIVING THE PROCEEDS OF A POSTAL ROBBERY.

Section 2114 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection (a); and

(2) by adding at the end the following new subsection:

"(b) Whoever receives, possesses, conceals, or disposes of any money or other property which has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be imprisoned not more than ten years, fined under this title, or both.".

SEC. 3653. CONFORMING ADDITION TO OBSTRUCTION OF CIVIL INVESTIGATIVE DEMAND STATUTE.

Section 1505 of title 18, United States Code, is amended by inserting "section 1968 of this title, section 3733 of title 31, United States Code or" before "the Antitrust Civil Process Act".

SEC. 3654. CONFORMING ADDITION OF PREDICATE OFFENSES TO FINANCIAL INSTITUTIONS REWARDS STATUTE.

Section 3059A of title 18, United States Code, is amended—

(1) by inserting "225," after "215";

(2) by striking "or" before "1344"; and

III-2

APPENDIX IV

APPENDIX IV

U.S. Department of Justice

United States Attorney
Northern District of Georgia

Suite 1800 Richard Russell Building
75 Spring Street, S.W.
Atlanta, Georgia 30335

(404) 331-6954

September 28, 1990

Ms. Phyllis J. Newton
Staff Director, United States
Sentencing Commission
1331 Pennsylvania Ave., N.W.
Suite 1400
Washington, D. C. 20004

Re: Request for Comment

Dear Ms. Newton:

Pursuant to your memorandum dated August 9, 1990, regarding the above captioned matter, I would like to urge the Sentencing Commission to consider the following:

1. The base offense level for bribery and extortion under color of official right is simply too low. Under §2C1.1, the base offense level is 10. I am sure that the Commission is well aware that bribery and corruption of public officials strikes at the heart of American experience, challenges public confidence in good government, and breeds disrespect for the law. Yet, in my judgment, this attitude is not reflected in the current guidelines as they relate to official corruption. I suggest the base offense level for §2C1.1 be raised to 18.

2. The Commission's implementation of a corporate fine structure causes me concern. This is in part the result of recent publicity reflecting the American Bar Association's recommendation to the Commission regarding corporate fines and perhaps a diffused attitude reflected by other government agencies. I suggest in implementing a corporate fine schedule the Commission adopt guidelines wherein corporate fines are tied to the greater of the economic loss to the victim or the economic gain to the corporate defendant. In addition, restitution to the victim should not be subtracted from the fine imposed.

3. The base offense level for trafficking and transporting explosives should be increased. Under §2K1.3, the base offense level of 6 does not address the inherent danger to the public in dealing with explosives.

4. The specific offense characteristics for unlawfully entering or remaining in the United States should be re-evaluated. Pursuant to §2L1.2(b)(1), a 4 level increase is warranted where the defendant is deported following any felony conviction, other than one involving immigration laws. This specific offense characteristic does not address the nature of the prior conviction. I submit that those defendants having convictions for drug violations or for violent felonies should receive a higher specific offense characteristic. Some deterrent could be created and perhaps the "revolving door" that so often occurs once we deport aliens could be closed. I suggest a 15 level increase.

5. Section 5H1.3 provides that mental and emotional conditions are not ordinarily relevant in determining whether a sentence should be outside the guidelines, except as provided in the general provisions in Chapter 5. The word "ordinarily" in this section has caused confusion in a case in which the District Court made a downward departure for an armed bank robber who was suffering from a "dependent personality disorder." I would suggest that the word "ordinarily" be removed from this provision. The general provision in Chapter 5, specifically §5K2.0, could still provide a basis for a departure in an extreme case, i.e., one in which "there exists an aggravating or mitigating circumstance of a kind, or to a degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines." The word "ordinarily" in §5H1.3 may provide a loophole for judges to grant a downward departure in cases of relatively minor mental disorders such as the "dependent personality disorder" that existed here. If the word "ordinarily" is not removed from the Section, it would be helpful if the Commission would formulate a more detailed policy statement which would make clear to sentencing courts that mental and emotional conditions are relevant in determining whether a sentence should be outside of the guidelines only in cases of severe conditions.

In reference to informational material, I believe the format of the Guidelines Manual is very good. It wold be better if it contained a chart or guide to amendments, thereby eliminating a

need to search through old Manuals.

Thank you for giving me this opportunity to express my views.

Sincerely,

JOE D. WHITLEY
UNITED STATES ATTORNEY

RAR/dp

APPENDIX V

APPENDIX V

JUSTIN A. THORNTON
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TELEPHONE
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August 25, 1993

VIA FACSIMILE TO (202) 273-4529

Mr. Vince Ventimiglia
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Draft Report of the USSC Public Corruption Working Group

Dear Vince:

This will confirm our telephone conversation of today concerning your group's draft report with regard to the guidelines for public corruption offenses. As the liaison to your group for the Practitioners' Advisory Group, I have solicited the views of other practitioners who are experienced (since I admittedly am not) in the area of public corruption offenses. In particular, I have spoken with Reid H. Weingarten of Steptoe & Johnson, and James M. Cole of Squire, Sanders & Dempsey, here in Washington. Both Reid and Jim are alumni of the DOJ Public Integrity Section. Additionally, Reid currently chairs the ABA White Collar Crime Committee. Further, I have discussed this matter with Fred Warren Bennett who chairs our Practitioners' Advisory Group.

As you and I discussed, the principal concerns of practitioners with regard to the guidelines for public corruption offenses lie primarily with the substantial (8 level) increase for payments for influencing an elected official or "any official holding a high level decision-making or sensitive position," as provided in §2C1.1(b)(2)(B). Further concern is apparent with regard to the definition of "official holding a high level decision-making position", as well as with the method for determining "value" or "loss" as contained in §2C1.1(b)(2)(A). Additionally, concern has been expressed with regard to the overly broad cross reference provisions in §2C1.1(c).

Reid Weingarten has a copy of your draft report and has agreed to contact you later this week with his specific observations with regard to the above general concerns. I am certain that Reid's comments will reflect the pertinent concerns of the Practitioners' Advisory Group, and Fred Bennett and I request that you treat Reid's remarks as such. By copy of this letter to Reid, I also request that he (and you and I discussed) share with you any policy recommendations he may have, as well as any anecdotal case summaries which are reflective of weaknesses or problems with the guidelines. Fred and I would appreciate copies of any written comments which may be generated as a result of your and Reid's conversation.

We look forward to working with you further on this matter.

Very truly yours,

Justin A. Thornton

cc: Fred Warren Bennett
James M. Cole
Reid H. Weingarten

V-2

APPENDIX VI

PC PT 110/91

NACDL

STATEMENT OF

ALAN J. CHASET

ON BEHALF OF THE

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

BEFORE THE

UNITED STATES SENTENCING COMMISSION

PUBLIC HEARING ON PROPOSED AMENDMENTS

TO THE UNITED STATES SENTENCING GUIDELINES

WASHINGTON, D.C.

MARCH 5, 1991

6. Amendment No. 9 with changes to §§2C1.1 and 2C1.2

While reserving comment as to 9(A), NACDL opposes the proposed changes under 9(B). The Commission provides no reason nor any basis for its determination that the present sanctioning rubric is less appropriate than what is being proposed. Given the fact that the Commission otherwise sanctions the abuse of a public position of trust with a two level increase, the eight level increase already within this guidelines seems more than adequate without an additional rationale being provided to go any higher.

7. Proposed Amendment 11

The consensus of defense practitioners indicates that drug quantity frequently overstates an offender's actual or relative culpability. As a threshold issue, the impact of mandatory minimum sentences renders this anomaly largely unavoidable. However, to the extent permitted by the offense of conviction, NACDL believes that the Commission should seriously consider the development of guidelines and implementing policy statements or commentary to broaden the discretion of sentencing judges in rating the relative severity of drug offenses according to offense and offender characteristics without being dominated by issues of quantity.

STATEMENT OF

PAUL D. BORMAN, CHAIRPERSON
U.S. SENTENCING GUIDELINES COMMITTEE
CRIMINAL JUSTICE SECTION

ON BEHALF OF THE
AMERICAN BAR ASSOCIATION

BEFORE THE
U.S. SENTENCING COMMISSION

CONCERNING
PROPOSED 1991 AMENDMENTS TO THE SENTENCING GUIDELINES

WASHINGTON, D.C.
MARCH 5, 1991

logical for the Commission to ascertain the underlying cause of the prosecutorial disparity. One possibility is that some prosecutors find the operation of section 924 to be too harsh in individual cases. If this is so, a guideline amendment that would make the operation of the guideline uniformly harsh is plainly unwise.

The primary "Reason for" advanced is that U.S. Attorneys are not following the "Thornburgh Memorandum". The Commission should bring this matter to the attention of the Justice Department rather than act to supervise the Justice Department. The Supreme Court in Mistretta placed the Commission in the Judicial Branch, not in the Executive Branch. Further, the standard that the U.S. Attorneys must utilize in charging an offense, what is readily provable; one wonders how the Commission can arbitrarly second guess them on their decision-making.

Item 8. The explanation accompanying this amendment would make the extortion guideline equivalent to the armed robbery guideline, but does not say why this is just. Extortion typically involves the threat of future harm while robbery involves the threat of immediate harm. The explanation is also deficient in that it fails to justify the proposed offense level "floor" of 24, nor does it explain why a specific offense characteristic is needed for the few cases of product tampering.)

Item 8C proposes several specific offense characteristics that are either vague (what does the phrase "organized crime" mean?) or, as far as can be discerned form the absence of supporting data, unnecessary. Here again, the proposed amendments raise more questions than they answer. Of particular concern is the uncertain relationship between these specific offense characteristics and the "relevant conduct" and "role in the offense" guidelines.

Item 9B. This amendment proposes to double the punishment that a defendant will receive for a particular crime, but the only explanation offered for such a dramatic change is that it will "provide a more appropriate sanction" for the crime. By what criteria, did the Commission determine what constitutes an "appropriate sanction".

Item 11. The ABA appreciates the Commission's willingness to publish this request for comment, because it involves an aspect of the guidelines that we find most troubling: the unduly harsh punishment imposed on very low-level drug dealers under the structure of the current drug guidelines.

Pursuant to the Commission's request for a specific proposal, we suggest that a guideline be structured to provide an offense ceiling for the minor and minimal participants convicted of drug offenses. For example, a minimal participant

TESTIMONY OF PAUL D. KAMENAR, EXECUTIVE LEGAL DIRECTOR OF THE WASHINGTON LEGAL FOUNDATION BEFORE THE UNITED STATES SENTENCING COMMISSION MARCH 5, 1991

WASHINGTON LEGAL FOUNDATION
1705 N STREET, N.W.
WASHINGTON, DC 20036
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I. General Observations on Guideline Formulation

The Commission has stated that the basic approach it used in devising the guidelines was "the empirical approach that used as a starting point data estimating pre-guidelines sentencing practice." Section 1A3. Indeed, this approach is consistent with the wishes of Congress. 28 U.S.C. 994(m)(requiring Commission to ascertain average sentences of pre-Guideline cases). In some cases, the current guidelines and the ones proposed for this cycle, do not reflect or reveal the empirical research or study conducted by Commission. This general concern was expressed at length by Samuel J. Buffone who testified before the Commission last year on behalf of the American Bar Association, and we believe those concerns remain legitimate ones. This problem is particularly acute with respect to the development of the environmental guidelines, but others could make the same argument with respect to the proposed revisions relating to bribery (Amendment 9(A): Sec. 2C1.1,.2), extortion (Amend. 8; Sec. 2B3.2) and other areas.

If the Commission has conducted a work study in particular areas, the Commission should explain its reasons as to why a departure from past sentencing practice is warranted. This is not only sound practice, but is suggested if not mandated by the Commission's own policy. Principles Governing the Redrafting of the Preliminary Guidelines, para. 6 (Dec. 16, 1986)("when departures. . . are substantial, the reasons for departure will be specified").

We also wish to make two recommendations related to this empirical issue that should be relatively easy for the Commission to adopt and would be of considerable help in utilizing the guidelines. One is to list the statutory sentencing range in the applicable statute or statutes which follows each guideline in the Commentary [e.g., for Sec.2D1.8 Renting or Managing a Drug Establishment, the Commentary would read "Statutory

FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF WASHINGTON

March 18, 1991

The Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue. N.W., Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

This letter accompanies a supplemental statement submitted on behalf of Federal Public and Community Defenders concerning the 1991 proposed amendments to the Sentencing Guidelines. Barry Portman testified before your Commission on March 5, 1991. At that time, our initial statement was submitted. The enclosed supplemental statement addresses amendments not discussed in that initial statement. Thank you for your consideration.

Very truly yours,

Thomas W. Hillier, II
Chair, Legislative Subcommittee
Federal Public Defender,
Western District of Washington

TWH:ifh/wilkltr

VI-7

1111 THIRD AVENUE, ROOM 380, SEATTLE, WASHINGTON 98101 — TELEPHONE (206) 442-1100

Statement of

Thomas W. Hillier, II
Federal Public Defender
Western District of Washington

on behalf of

Federal Public and Community Defenders

submitted to the

United States Sentencing Commission
Washington, D.C.

March 18, 1991

Amendment 9(B)
§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right)
§ 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity)

The Commission proposes to amend subsection (b)(2) to make the enhancements set forth in paragraphs (A) and (B) additive rather than alternative. Under the present guideline, subsection (b)(2)(A) enhances the offense level based on the value of the bribe or gratuity, using the loss table of § 2F1.1 (fraud and deceit). Subsection (b)(2)(B) enhances the offense level by 8 levels if the bribe or gratuity involved an elected official or an official holding a high level decision-making or sensitive position. An 8-level enhancement under subsection (b)(2)(A) would require a bribe of $200,000. The purpose for the amendment is to "provide a more appropriate sanction in a case in which both characteristics are present."

The Commission has presented no data at all about sentencing practices under § 2C1.1 or § 2C1.2. We do not know how frequently cases arise in which a public official receives a bribe in excess of $200,000 and how the courts have dealt with such cases. Absent such data, it would seem to be difficult to conclude that present levels are not adequate. We believe that the Commission should collect and analyze such data before proceeding.

Amendment 14
§ 2D1.7 (Unlawful Sale or Transportation of Drug Paraphernalia)

The Commission proposes to change present § 2D1.7 by adding a cross reference directing use of § 2D1.1 or § 2D1.2 "if the offense

APPENDIX VII

APPENDIX VII

MEMORANDUM

TO: Public Corruption Working Group

FROM: Jon Sands
Vince Ventimiglia

RE: Case Law Concerning Public Corruption Guidelines

DATE: July 30, 1993

We have completed a review of the 52 guideline cases (through July 26, 1993) that contained at least one reference to the public corruption guidelines at Part 2C of the guideline manual.

Three primary issues appeared in the cases we reviewed:

- The determination of the value of the benefit received or the amount of the payment. The Fourth Circuit noted that the net benefit was the appropriate figure to use (in contrast to the amount of the payment). Courts also have grappled with the interaction of relevant conduct principles with the public corruption guidelines. In one case the Fourth Circuit held the defendant accountable for the conduct of other conspirators; and in another case the Seventh Circuit did not.

- The application of the high-level official adjustment. The Second Circuit found that an officer of the Commerce Department responsible for approving export of high technology to foreign countries was not a high-level official given that numerous other federal officials handled equally as sensitive documents. The Fourth Circuit did not consider a naval officer responsible for the awarding of public works contracts at the Naval Academy a high-level official. Finally, the Sixth Circuit held that an appointed chief of police of a small town was not a high-level official under the guidelines.

- Application of the Appropriate Guideline. This issue concerns what guideline to apply, i.e., whether §2C1.1 (Bribery), §2C1.2 (Gratuity), or §2B3.2 (Extortion) applied to specified conduct. The First and Second Circuits focused on the defendant's "corrupt purpose" and upheld sentencing under §2C1.1 (Bribery) of defendants who asserted the payment was merely a reward or a gratuity. The Fifth Circuit looked at the issue of the appropriate guideline for a local official convicted of commercial bribery.

The following is a summary of cases addressing these, and other, issues.

Value of Benefit Received (§2C1.1(b)(2)(A))

United States v. Kant, 946 F.2d 267 (4th Cir. 1991) holds that adjustment should have been calculated on basis of benefit to be received rather than the lower figure representing amount of bribe. In this case defendant bribed a Maritime Administration official with a $400,000 payment in order to purchase a ship for $3-5 million less than its market value. The court distinguishes United States v. Chand, 930 F.2d 913 (4th Cir. 1991) (unpublished) by noting the Chand court had insufficient evidence of benefit, whereas in this case the government offered uncontroverted evidence of the market value of the ship and stipulated to relevant facts in the plea agreement.

United States v. Ellis, 951 F.2d 580 (4th Cir. 1991)(Powell, J.), cert. denied, 112 S. Ct. 3030 (1992), holds that promises to pay (even if later reneged on) may be considered benefits; as well as a portion of the increased revenue generated by the legislation that was the object of the bribery. The court also upheld the lower court's determination of benefit, focusing on personal benefit to the defendant and not, apparently, the relevant conduct or Pinkerton conduct of the defendant. Accordingly, the court prevented use of benefit (increased revenue) to two race tracks generated by the legislation pushed by defendant.

United States v. Muldoon, 931 F.2d 282 (4th Cir. 1991), concerns the problem of value in the context of a defense procurement bribes where value was received. The defendant was a "consultant" who received monies from a contractor to assist in getting its bid accepted. The consultant used some of the money to pay off a Marine officer responsible for awarding the contracts. The defendant argued that the value of benefit received should be $5000 he supposedly offered the officer. The government argued that the value was $188,000 the defendant received from the contractor. The district court rejected both of these arguments, fixing the value at $65,000, which the evidence indicated was the amount actually given to the officer. There might have been other measurements, reasoned the court, but no evidence was presented of exactly what portion of the $188,000 was legitimate and how much was a benefit for the bribe. As a result, the sentencing hat was hung on the evidentiary hook of $65,000. Though the Fourth Circuit affirmed this approach, the decision was criticized by a different panel and found not controlling because it was dictum. Ellis, 951 F.2d at 585.

United States v. Narvaez, -- F.2d --, 1993 WL 193624 (7th Cir. June 9, 1993)(Nos. 92-2104, 92-2134), holds that defendant ticket agent who personally stole $9,000 in fares while generally acting alone may be held accountable for all sums of money ($42,000) stolen by a group of ticket agents because evidence ("limited as it may be") indicates he was a member of a conspiracy. The court noted that the defendant spoke with the organizer of the conspiracy to determine how much the organizer should take in bribes, and that the defendant spoke with another defendant regarding how the size of the bribe to be paid to the organizer.

High-Level Official Adjustment (§2C1.1(b)(2)(B))

United States v. Stephenson, 895 F.2d 867 (2d Cir. 1990) considers what is a high-level decision-maker or sensitive position under §2C1.1(b)(2)(B). Here, the defendant was an export licensing officer for the Department of Commerce. He reviewed applications for highly technical exports to Russia, China and other foreign governments. He used his position to extort bribes from applicants. Upon his conviction for bribery, Hobbs Acts, and false statements, the government sought an 8-level enhancement due to his responsibilities. The government argued that he was in a sensitive position that affected national security and that he exercised supervisory duties in reviewing the applications. The Second Circuit disagreed. It found no difference between the defendant's responsibilities and numerous, even countless, other federal employees who supervised and handled important documents. As such, the adjustment would be improper. The case was remanded to articulate reasons for departure. United States v. Stephenson, 921 F.2d 438 (2d Cir. 1990)(remanding again for improper grouping).

United States v. Weston, 962 F.2d 8 (4th Cir. 1992)(unpublished) reversed an application of the 8-level enhancement to a naval officer who was in charge of public works at the United States Naval Academy. As the public works officer, he had authority and discretion to award contracts for improvements up to $1 million. The Fourth Circuit found that this authority was not sufficient for the "steep" increase for an "official holding a high-level decision-making or sensitive position." The court reasoned that any object of a bribe or gratuity had to have some decision-making authority, and in this instance, the extent of the authority was not on the par with prosecutors, judges, supervisory law enforcement or agency administrators.

United States v. McIntosh, 983 F.2d 1070 (6th Cir. 1992) (unpublished) refused to permit application of the 8-level enhancement to an appointed chief of police, noting that defendant was not elected, the town had a population of only 1,000, the police force included only three officers, all of whom worked shifts, and the local government retained "all important decisionmaking" to themselves.

Appropriate/Analogous Guideline

United States v. Butt, 955 F.2d 77 (1st Cir. 1992), involved a RICO prosecution for a prostitution shake-down scheme run by various police officers. The defendants were assessed a 2-level increase for abuse of position of trust and they argued that the adjustment was in error since the predicate acts giving rise to the RICO charge were controlled by §2C1.1 (bribery). The First Circuit affirmed the adjustment, finding that RICO is a separate and distinct prosecution from bribery, extortion and the like and because of the gravity of the offense, was pegged as a distinct offense, with its own guideline for offense conduct (§2E1.1), separate from the offense conduct, and guideline, for extortion.

United States v. Brunson, 882 F.2d 151 (5th Cir. 1989), involved the issue of what guideline to use in a conviction of commercial bribery by a public official. Brunson was a man who wore three hats: bank director, counsel for the bank, and assistant district attorney. A female bank customer supposedly kited a check, and Brunson then engaged in a series of

extortions, where he alternately threatened repercussions or offered leniency on the check kite in exchange for sexual favors. Brunson was charged and convicted under commercial bribery (18 U.S.C. §215), but the court applied the guideline for offense conduct relating to bribing public officials (§2C1.1). The Fifth Circuit reversed, holding that Brunson had been charged and convicted under the commercial bribery statute, and that it did not contain an element of whether he was acting as a public official. Hence, to use the guideline that included that element would be wrong.

United States v. Williams, 952 F.2d 1504 (6th Cir. 1991) upholds under a due deference standard the lower court's application of §2B3.2 (Extortion) instead of §2C1.1 in a case involving a conviction under 18 U.S.C. § 1951 (Hobbs Act extortion through use of fear of economic loss) and 18 U.S.C. § 371 (conspiracy to violate Hobbs Act). Defendant was not a public official, but relayed information from a public official (sheriff) who sought $250,000 to indicate his support for a rezoning request. Key local officials indicated they would not support the rezoning without the sheriff's support. In rejecting the defendant's request to be sentenced under §2C1.1, the court noted the background commentary suggesting that §2C1.1 applies to those who bribe a public official or to a public official who solicits or accepts such a bribe. The court noted that the defendant was not a public official, and noted the public official receiving the bribe in this case "was to be bribed in a matter not involving his official actions."

United States v. Mariano, 983 F.2d 1150 (1st Cir. 1993) identifies a "lacuna" in the guidelines with respect to an appropriate statutory reference (there is none) for 18 U.S.C. § 666(a)(2) (illicit payment to municipal official). The court suggests that the bribery guideline at §2C1.1 (Bribery) and not §2C1.2 (Gratuity) is the appropriate guideline given the elements of the section 666(a)(2) offense ("corruptly giv[ing] ... anything of value to any person, with intent to influence" a decision of state or local government).

United States v. Santopietro, -- F.2d --, 1993 WL 196055 (2d Cir. June 9, 1993)(Nos. 1333 et al), examines the defendant's claim that conviction under 18 U.S.C. § 666(a)(1)(B) (criminalizing the corrupt acceptance of thing of value with intent to be influenced or rewarded in connection with official act) should have resulted in application of §2C1.1 (Bribery) or §2C1.2 (Gratuity). Section 2C1.1 generally provides a higher offense level than §2C1.2. Defendant argued that his payment was a reward and thus should be treated as a gratuity. The court analyzed the argument from two perspectives: (1) timing, and (2) the corrupt purpose of the payment. The court noted that "for all practical purposes, the difference between influencing and rewarding official action is one of timing. To influence, the payment is made before the official action; to reward, the payment is made afterwards." Here, the defendant received his payments while still an alderman, suggesting the payments were to influence, not just to reward. Moreover, the court notes in this case the "crucial factor" is that the defendant was convicted of a statute with a corrupt purpose as an element of the offense. Accordingly, §2C1.2, which has background commentary suggesting that a corrupt purpose is not an element of the offense, can not apply.

In addition to the above issues, appellate courts have considered other adjustments and various bases for departures. The following is a summary of these cases.

Other Adjustments (§3A1.1 (Vulnerable Victim))

United States v. Davis, 967 F.2d 516 (11th Cir. 1992), addressed the issue of whether an extortion victim, here a union steward, can be considered "vulnerable" for a §3 adjustment. Davis was an Alabama state legislator who extorted payments from a steward of a miners union for support of legislation affecting coal mining. The Eleventh Circuit found that the union steward, although inexperienced and by all accounts naive, was not "unusually vulnerable" to such an extortion any more than other victims.

Bases for Departure (§5K)

United States v. Sarault, 975 F.2d 17 (1st Cir. 1992) involved a RICO and Hobbs Act prosecution arising from a pattern of extortion operated by the mayor of Pawtucket, Rhode Island. While not a §2C1 offense because of RICO, there is a related analogous issue of the appropriateness of an upward departure for disruption of government function (§5K2.7). The First Circuit held that the extensive "shake-down" of municipal vendors, the length of the extortion (over two years), and the high-level of the defendant, who was the mayor, justified an upward departure of nine months under §5K2.7. This basis comports with application note 5 to §2C1.1, that recognizes such a pervasive or systematic scheme which disrupts government or causes a loss of faith may be appropriate for an upward departure.

United States v. Reeves, 892 F.2d 1223 (5th Cir. 1990), concerned a Board of Commissioners for Lake Charles, Louisiana., Harbor and Terminal District who extorted money from contractors. The extortion scheme was to have been ongoing (involving shares of profit) and to have involved much more money if the victim had not seen fit to contact law enforcement. For these foregoing reasons, the district court departed upward. The Fifth Circuit affirmed this basis, holding that the seriousness of the offense may not have been recognized in the monetary amounts, and so a departure was justified. The court cited application note 4 to §2C1.1 as support.

United States v. Takai, 941 F.2d 738 (9th Cir. 1991), allowed a downward departure for aberrant behavior. In this case, the defendants tried to bribe an INS agent for special consideration of immigrant family and friends. Given the circumstances of the defendants, and their history of being upright members of the community, the Ninth Circuit affirmed the departure.

In United States v. Alter, 985 F.2d 105 (2d Cir. 1993) the Second Circuit reversed and remanded for resentencing the lower court's upward departure for the co-owner of a private facility that contracted with the Bureau of Prisons to provide half-way house services. The defendant extorted sex from at least three male residents of the facility by threatening a return to custody of the Bureau, or exchanged overnight passes, job and training opportunities, or drugs in exchange for sex. The lower court held in United States v. Alter, 788 F. Supp. 756 (S.D.N.Y. 1992) that the §2C1.1 bribery guideline failed to account for the "abuse of the warder/inmate relationship" and the "widely disruptive impact" upon the

facility and the federal corrections system. The circuit court approved the grounds for departure, but reversed because the lower court failed to consider the guidelines grouping rules. (The court had increased the offense level by 11 levels for the abused relationship, analogizing to the offense level 11 provided for the offense of sex with a person under one's official custody instead of grouping these two "counts"; and had increased the offense level by 3 levels for the disruptive impact.) On remand, the lower court applied the grouping rules and retained the 3-level departure. United States v. Alter, -- F. Supp. --, 1993 WL 189019 (S.D.N.Y. May 26, 1993)(No. 92-397).

United States v. Aguilar, 1993 WL 151376 (9th Cir. 1993) is also of interest. In Aguilar, a federal judge was convicted on a charge of wiretap disclosure. At sentencing, the court departed downward on the basis of the collateral additional punishment the defendant would suffer: impeachment, the bar against holding any other government office, forfeiture of pension and humiliation. While the departure was upheld, the case was remanded for the district court to give a reasoned explanation for the extent. While not strictly a public corruption case, the grounds for departure (subsequent punishment and various collateral consequences) are also present for many defendants convicted of bribery, extortion or similar public corruption offenses. The departure basis was criticized in a vigorous dissent as involving socio-economic factors barred for consideration by the guidelines.

APPENDIX VIII

APPENDIX VIII

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

February 11, 1993

MEMORANDUM

TO: Chairman Wilkins
Commissioners
Senior Staff

FROM: Phyllis J. Newton
Staff Director

SUBJECT: Update of Level Changes from Past Practice

A year ago Commissioner Nagel asked that tables reflecting the change in level for all offense types from past practice to current year be produced. Recently she asked that those tables be updated to reflect the current year, especially in light of the 3-level reduction for acceptance of responsibility. Attached for your information is the updated table. The table provides: 1) past practice levels in the first column; 2) percent receiving imprisonment sentences for past practice; 3) offense levels for the 1987 guidelines; 4) offense levels for the 1992 guidelines; and 5) level change between past practice and 1992 guidelines.

Attachment

Offense	OL	Sent to Prison	Guideline 1987	OL	Guideline 199x	OL	GDLN	Level Change from Past Practice to Guideline with Acceptance Reduction
			$5,001-$10,000	8	More than $10,000	9		-2
			$10,001-$20,000	9	More than $20,000	10		-2
$11,001-$66,000	10	49	$10,001-$20,000	9	More than $40,000	11		-1
			$20,001-$50,000	10				
			$50,001-$100,000	11				
PP - If More than $66,000 treat as Sophisticated								
Embezzlement, Sophisticated			Larceny, Embezzlement, Oth. Theft w/More than Minimal Planning		Larceny, Embezzlement, Oth. Theft w/More than Minimal Planning		§2B1.1	
PP - If Less than $10,000 treat as Unsophisticated								
$10,000-$15,000	11	57	$10,001-$20,000	11	More than $10,000	11		-2
$15,001-$30,000	12	64	$10,001-$20,000	11	More than $20,000	12		-2
			$20,001-$50,000	12	More than $40,000	13		-2
$30,001-$50,000	13	73	$20,001-$50,000	12	More than $70,000	14		-2
$50,001-$100,000	14	80	$50,001-$100,000	13	More than $120,000	15		-2
$100,001-$200,000	15	87	$100,001-$200,000	14	More than $200,000	16		-3
$200,001-$400,000	16	91	$200,001-$500,000	15	More than $350,000	17		-2
$400,001-$600,000	17	95	$200,001-$500,000	15	More than $500,000	18		-2
			$500,001-$1,000,000	16	More than $800,000	19		-2
$600,001-$1,000,000	18	97	$500,001-$1,000,000	16	More than $1,500,000	20		-2
Over $1,000,000	19	99	$1,000,001-$2,000,000	17	More than $2,500,000	21		-1
			$2,000,001-$5,000,000	18	More than $5,000,000	22		+0
			Over $5,000,000	19	More than $10,000,000	23		+1
					More than $20,000,000	24		+2
					More than $40,000,000	25		+3
					More than $80,000,000	26		+4
Bribery, Payment for Performance of official act			Bribery		Bribery		§2C1.1	
$100 or less	7	16	$2,000 or less	10	$2,000 or less	10		+1
$101-$10,000	8	30	$2,000 or less	10	More than $2,000	11		+1
			$2,001-$5,000	11	More than $5,000	12		+2
			$5,001-$10,000	12	More than $10,000	13		+2
Over $10,000	9	71	$10,001-$20,000	13	More than $20,000	14		+3
			$20,001-$50,000	14	More than $40,000	15		+4
			$50,001-$100,000	15	More than $70,000	16		+4
			$100,001-$200,000	16	More than $120,000	17		+5
			$200,001-$500,000	17	More than $200,000	18		+6
			$500,001-$1,000,000	18	More than $350,000	19		+7
			$1,000,001-$2,000,000	19	More than $500,000	20		+8
			$2,000,001-$5,000,000	20	More than $800,000	21		+9
			Over $5,000,000	21	More than $1,500,000	22		+10
					More than $2,500,000	23		+11
					More than $5,000,000	24		+12
					More than $10,000,000	25		+13
					More than $20,000,000	26		+14
					More than $40,000,000	27		+15
					More than $80,000,000	28		+16

APPENDIX X

Offense	OL	Est % Sent to Prison	Guideline 1987	OL	Guideline 1992	OL	GDLN	Level Change from Past Practice to Guideline with Acceptance Reduction
Bribery, Payment Other			Bribery		Bribery		§2C1.1	
$1,000 or less	9	53	$2,000 or less	10	$2,000 or less	10		-1
$1,001-$10,000	10	65	$2,000 or less	10	More than $2,000	11		-1
			$2,001-$5,000	11	More than $5,000	12		+0
			$5,001-$10,000	12	More than $10,000	13		+0
$10,001-$30,000	11	73	$10,001-$20,000	13	More than $20,000	14		+1
			$20,001-$50,000	14	More than $40,000	15		+1
Over $30,000	12	90	$20,001-$50,000	14	More than $70,000	16		+1
			$50,001-$100,000	15	More than $120,000	17		+2
			$100,001-$200,000	16	More than $200,000	18		+3
			$200,001-$500,000	17	More than $350,000	19		+4
			$500,001-$1,000,000	18	More than $500,000	20		+5
			$1,000,001-$2,000,001	19	More than $800,000	21		+6
			$2,000,001-$5,000,000	20	More than $1,500,000	22		+7
			Over $5,000,000	21	More than $2,500,000	23		+8
					More than $5,000,000	24		+9
					More than $10,000,000	25		+10
					More than $20,000,000	26		+11
					More than $40,000,000	27		+12
					More than $80,000,000	28		+13
Bribery, Receipt for Performance of official act			Bribery		Bribery		§2C1.1	
$100 or less	7	19	$2,000 or less	10	$2,000 or less	10		+1
$101-$3,000	8	34	$2,000 or less	10	More than $2,000	11		+1
			$2,001-$5,000	11	More than $5,000	12		+1
$3,001-$1,000,000	9	52	$2,001-$5,000	11	More than $10,000	13		+2
			$5,001-$10,000	12	More than $20,000	14		+3
			$10,001-$20,000	13	More than $40,000	15		+4
			$20,001-$50,000	14	More than $70,000	16		+4
			$50,001-$100,000	15	More than $120,000	17		+4
			$100,001-$200,000	16	More than $200,000	18		+5
			$200,001-$500,000	17	More than $350,000	19		+6
			$500,001-$1,000,000	18	More than $500,000	20		+7
Over $1,000,000	10	80	$1,000,000-$2,000,000	19	More than $800,000	21		+8
			$2,000,001-$5,000,000	20	More than $1,500,000	22		+9
			Over $5,000,000	21	More than $2,500,000	23		+10
					More than $5,000,000	24		+11
					More than $10,000,000	25		+12
					More than $20,000,000	26		+13
					More than $40,000,000	27		+14
					More than $80,000,000	28		+15
Bribery, Receipt Other			Bribery		Bribery		§2C1.1	
$100 or less	11	50	$2,000 or less	10	$2,000 or less	10		-3
$101-$3,000	12	78	$2,000 or less	10	More than $2,000	11		-3
			$2,001-$5,000	11	More than $5,000	12		-3
$3,001-$30,000	13	86	$2,001-$5,000	11	More than $10,000	13		-2
			$5,001-$10,000	12	More than $20,000	14		-1

2 - III A

Past Practice Offense	OL	Est % Sent to Prison	Guideline 1987	OL	Guideline 1992	OL	GDLN	Level Change from Past Practice to Guideline with Acceptance Reduction
			$10,001-$20,000	13	More than $40,000	15		-1
			$20,001-$50,000	14	More than $70,000	16		-1
$30,001-$2,000,000	14	91	$20,001-$50,000	14	More than $120,000	17		+0
			$50,001-$100,000	15	More than $200,000	18		+1
			$100,001-$200,000	16	More than $350,000	19		+2
			$200,001-$500,000	17	More than $500,000	20		+3
			$500,001-$1,000,000	18	More than $800,000	21		+4
			$1,000,001-$2,000,000	19	More than $1,500,000	22		+5
Over $2,000,000	15	96	$2,000,001-$5,000,000	20	More than $2,500,000	23		+5
			Over $5,000,000	21	More than $5,000,000	24		+6
					More than $10,000,000	25		+7
					More than $20,000,000	26		+8
					More than $40,000,000	27		+9
					More than $80,000,000	28		+10
Conspiracy/Solicitation/ Attempted Bribery			Bribery		Bribery		§2C1.1	
$1,000 or less	9	31	$2,000 or less	10	$2,000 or less	10		-1
$1,001-$10,000	10	66	$2,000 or less	10	More than $2,000	11		-1
			$2,001-$5,000	11	More than $5,000	12		+0
			$5,001-$10,000	12	More than $10,000	13		+0
$10,001-$30,000	11	73	$10,001-$20,000	13	More than $20,000	14		+1
			$20,001-$50,000	14	More than $40,000	15		+1
Over $30,000	12	88	$20,001-$50,000	14	More than $70,000	16		+1
			$50,001-$100,000	15	More than $120,000	17		+2
			$100,001-$200,000	16	More than $200,000	18		+3
			$200,001-$500,000	17	More than $350,000	19		+4
			$500,001-$1,000,000	18	More than $500,000	20		+5
			$1,000,001-$2,000,000	19	More than $800,000	21		+6
			$2,000,001-$5,000,000	20	More than $1,500,000	22		+7
			Over $5,000,000	21	More than $2,500,000	23		+8
					More than $5,000,000	24		+9
					More than $10,000,000	25		+10
					More than $20,000,000	26		+11
					More than $40,000,000	27		+12
					More than $80,000,000	28		+13
Payment/Receipt of Unauthorized Compensation			Offering, Giving, Soliciting, or Receiving a Gratuity		Offering, Giving, Soliciting, Receiving a Gratuity		§2C1.2	
$20,000 or less	7	12	$2,000 or less	7	$2,000 or less	7		-2
			$2,001-$5,000	8	More than $2,000	8		-1
			$5,001-$10,000	9	More than $5,000	9		+0
			$10,001-$20,000	10	More than $10,000	10		+1
Over $20,000	8	62	$20,001-$50,000	11	More than $20,000	11		+1
			$50,001-$100,000	12	More than $40,000	12		+2
			$100,001-$200,000	13	More than $70,000	13		+3
			$200,001-$500,000	14	More than $120,000	14		+4
			$500,001-$1,000,000	15	More than $200,000	15		+5
			$1,000,001-$2,000,000	16	More than $350,000	16		+5

Offense	OL	Sent to Prison	Guideline 1987	OL	Guideline 1992	OL	GDLN	Level Change from Past Practice to Guideline with Acceptance Reduction
			$2,000,001-$5,000,000	17	More than $500,000	17		+6
			Over $5,000,000	18	More than $800,000	18		+7
					More than $1,500,000	19		+8
					More than $2,500,000	20		+9
					More than $5,000,000	21		+10
					More than $10,000,000	22		+11
					More than $20,000,000	23		+12
					More than $40,000,000	24		+13
					More than $80,000,000	25		+14
Loan to Bank Examiner/Etc			Loan or Gratuity to Bank Examiner		Loan or Gratuity to Bank Examiner		$2C1.6	
$500 or less	7	11	$2,000 or less	7	$2,000 or less	7		-2
$501-$70,000	8	30	$2,000 or less	7	More than $2,000	8		-2
			$2,001-$5,000	8	More than $5,000	9		-1
			$5,001-$10,000	9	More than $10,000	10		+0
			$10,001-$20,000	10	More than $20,000	11		+1
			$20,001-$50,000	11	More than $40,000	12		+2
			$50,001-$100,000	12	More than $70,000	13		+2
Over $70,000	9	69	$50,001-$100,000	12	More than $120,000	14		+3
			$100,001-$200,000	13	More than $200,000	15		+4
			$200,001-$500,000	14	More than $350,000	16		+4
			$500,001-$1,000,000	15	More than $500,000	17		+5
			$1,000,001-$2,000,000	16	More than $800,000	18		+6
			$2,000,001-$5,000,000	17	More than $1,500,000	19		+7
			Over $5,000,000	18	More than $2,500,000	20		+8
					More than $5,000,000	21		+9
					More than $10,000,000	22		+10
					More than $20,000,000	23		+11
					More than $40,000,000	24		+12
					More than $80,000,000	25		+13
Bribery for False Testimony			Bribery of Witness	12	Bribery of Witness	12	$2J1.8	
$500 or less	10	32						+0
$501-$5,000	11	68						-1
$5,001-$75,000	12	78						-2
Over $75,000	13	92						-3
Other Bribery Offenses			Bribery		Bribery		$2C1.1	
$100 or less	9	25	$2,000 or less	10	$2,000 or less	10		-1
$101-$3,000	10	57	$2,000 or less	10	More than $2,000	11		-1
			$2,001-$5,000	11	More than $5,000	12		-1
$3,001-$25,000	11	68	$2,001-$5,000	11	More than $10,000	13		+0
			$5,001-$10,000	12	More than $20,000	14		+1
			$10,001-$20,000	13	More than $40,000	15		+1
			$20,001-$50,000	14	More than $70,000	16		+1
Over $25,000	12	86	$20,001-$50,000	14	More than $120,000	17		+2
			$50,001-$100,000	15	More than $200,000	18		+3
			$100,001-$200,000	16	More than $350,000	19		+4
			$200,001-$500,000	17	More than $500,000	20		+5

5-MA

Offense	OL	Sent to Prison	Guideline 1987	OL	Guideline 199_	OL	GDLN	Level Change from Past Practice to Guideline with Acceptance Reduction
			$500,001-$1,000,000	18	More than $800,000	21		+6
			$1,000,001-$2,000,000	19	More than $1,500,000	22		+7
			$2,000,001-$5,000,000	20	More than $2,500,000	23		+8
			Over $5,000,000	21	More than $5,000,000	24		+9
					More than $10,000,000	25		+10
					More than $20,000,000	26		+11
					More than $40,000,000	27		+12
					More than $80,000,000	28		+13
Heroin Offenses (Pure wgt.)			Drug Table - Heroin		Drug Table - Heroin (drug wt = X)		§2D1.1	
1 gm or less	16	35	Less than 5 gm	12	X < 5 gm	12		-6/-7/-8
1-2 gm	17	74	Less than 5 gm	12	5 gm <= X < 10 gm	14		-7
2-5 gm	18	80	Less than 5 gm	12	10 gm <= X < 20 gm	16		-6
6-20 gm	19	85	5-9 gm	14	20 gm <= X < 40 gm	18		-5
			10-19 gm	16	40 gm <= X < 60 gm	20		-3
21-50 gm	20	89	20-39 gm	18	60 gm <= X < 80 gm	22		-2
			40-59 gm	20	80 gm <= X < 100 gm	24		+0
51-200 gm	21	92	40-59 gm	20	100 gm <= X < 400 gm	26		+2/+1
			60-79 gm	22	400 gm <= X < 700 gm	28		+3
			80-99 gm	24	700 gm <= X < 1 kg	30		+4
			100-399 gm	26*	1 kg <= X < 3 kg	32		+5
201-700 gm	22	95	100-399 gm	26*	3 kg <= X < 10 kg	34		+7
			400-699 gm	28	10 kg <= X < 30 kg	36		+8
701-1,000 gm	23	96	700-999 gm	30	30 kg <= X < 100 kg	38		+10
1.1-10 kg	24	97	1-2.9 kg	32*	100 kg <= X < 300 kg	40		+11
			3-9.9 kg	34	X >= 300 kg	42		+13
10.1-50 kg	25	98	10 kg or more	36				
50.1 kg or more	26	99	10 kg or more	36				
Cocaine Offenses (Pure wgt.)			Drug Table - Cocaine		Drug Table - Cocaine (drug wt = X)		§2D1.1	
1 gm or less	15	33	Less than 25 gm	12	X < 25 gm	12		-5/-6/-7/-8
1-1.9 gm	16	68	Less than 15 gm	12	25 gm <= X < 50 gm	14		-7
2-5 gm	17	75	Less than 25 gm	12	50 gm <= X < 100 gm	16		-7
6-20 gm	18	82	Less than 25 gm	12	100 gm <= X < 200 gm	18		-5
21-50 gm	19	87	Less than 25 gm	12	200 gm <= X < 300 gm	20		-4
			25-49 gm	14	300 gm <= X < 400 gm	22		-2
51-150 gm	20	90	50-99 gm	16	400 gm <= X < 500 gm	24		+0
			100-199 gm	18	500 gm <= X < 2 kg	26		+1
151-500 gm	21	93	100-199 gm	18	2 kg <= X < 3.5 kg	28		+2
			200-299 gm	20	3.5 kg <= X < 5 kg	30		+4
			300-399 gm	22	5 kg <= X < 15 kg	32		+6/+5
			400-499 gm	24	15 kg <= X < 50 kg	34		+7
501-1,500 gm	22	95	0.5-1.9 kg	26*	50 kg <= X < 150 kg	36		+8
1.6-6 kg	23	97	0.5-1.9 kg	26*	150 kg <= X < 500 kg	38		+10
			2-3.4 kg	28	500 kg <= X < 1500 kg	40		+12
			3.5-4.9 kg	30	X >= 1500 kg	42		+14
			5-14.9 kg	32*				
6.1-25 kg	24	98	5-14.9 kg	32*				

APPENDIX IX

APPENDIX IX

CASE SUMMARIES

FOR PUBLIC CORRUPTION CASE FILE REVIEW

INTRODUCTION

The following document contains case summaries for the 262 case files reviewed by the Public Corruption Working Group. These case summaries were initially prepared by the member of the Working Group who coded the case and the member who quality controlled the case.

The document has been organized initially by nature of the offense (e.g., Bribery, Gratuity, Conflict of Interest). Within these large sections, case summaries are broken into subsections based on the nature of the official involved (e.g., judicial, law enforcement, INS official, IRS official) or object of the offense (e.g., contract procurement). Further subdivisions have been made where appropriate.

Each case summary contains some or all of the following information:

- a brief summary of the offense;
- comments or notes of the coders regarding unusual aspects of the case or possible misapplications;
- a notation in brackets at the end of the case summary (made where possible) that the case involved a single payment or multiple payment; and
- Monitoring data for that case.

An asterisk (*) has been placed prior to the identification number where the coder identified the case as involving a possible misapplication.

"Gdlinehi" refers to the "guideline high" or the guideline that resulted in the highest adjusted offense level for that defendant in that case. For example, a defendant in a drug smuggling case might have §2C1.1 applied (adjusted offense level 8) and §2D1.1 applied (adjusted offense level 26). The guideline high in that case is §2D1.1.

A departure identified as "5K" is a substantial assistance departure under §5K1.1.

TABLE OF CONTENTS

BRIBERY

JUDICIAL

100376

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	18
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant (an attorney) is charged with corruptly giving money to a Circuit Court Judge to influence the judge to appoint the defendant as a special assistant public defender, and to approve compensation for the defendant for providing legal representation to indigent persons facing criminal charges in the circuit. (Defendant's step-mother worked for the judge). The attorney paid the judge approximately one-third ($1200) of the $4700 earned from his first 11 court appointments to the defendant. Ultimately, he took in $12,000 in fees for the appointments. Although the $1200 payment was a single payment, it was counted as multiple payments because it covered 11 appointments. [Multiple payments].

NOTE: From the PSR, the defendant recalled that in August he gave about $1200 in a lump sum to the judge, representing one-third of approximately $4700 earned. Defendant only recalls giving one lump sum of about $1200; no other information on balance of earnings.

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105535

GDLINEHI: 2D1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	151
	Base (PSR):	32	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	34	2:	0	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant was part of a racketeering conspiracy involving a number of state circuit court judges. Using a confidential informant (CI) who posed as a criminal defense attorney, the FBI created false criminal cases. The defendant accepted, on his own behalf and on behalf of other judges, payments from the CI in return for favorable treatment. The defendant was found to have participated in a conspiracy to traffic in cocaine when he accessed confidential records relating to a participant in a drug transaction. The defendant assured the CI that the participant was not working undercover. When he gave the CI this information, the defendant knew that the transaction would involve 12 kilograms of cocaine. The defendant was also found to have participated in a conspiracy to commit murder when he provided the CI with the name of a confidential informant. The CI had informed the defendant that the informant would be killed.

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*117669

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	65
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	25	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was elected a judge for the county and paid $3000 illegally to the campaign of a person running for sheriff. He also secured another state employee to pay $10,000 to this candidate in return for a promise that the employee would be hired for the sheriff. When the candidate was investigated, the defendant suborned the perjury of the candidate and perjured himself. Defendant also secured a $10,000 payment for another candidate. [Multiple payments].

Comment: PO went to some lengths to justify a high
focusing on the potential election of the sheriff, inst
of the elected judge himself. No multiple payment adj

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138593

GDLINEHI: 2C1.1	OFF. LEV.		SOC's	
	Base (PSR):	10	1:	0
	Final (SOR):	17	2:	12
			3:	N/A

This case involved a conspiracy to bribe a federal
concerns the amount of payment: the defendant first off
to him of that amount). However, the payment was la
payment of $30,000. Defendant argued that $2 mi
unrealistic, and that the actual payment would have be
came down with $2 million and used that as the benchma

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138658

GDLINEHI: 2C1.1	OFF. LEV.		SOC's	
	Base (PSR):	10	1:	0
	Final (SOR):	19	2:	12
			3:	N/A

This case involved bribery of a federal judge. Defenc
a civil case; judge turned undercover. Interesting :
first offer was $3 million (with $3 million benefit)
million, with $30,000 down payment. Defendant argued
$200,000.

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STATE LEGISLATURES

*59478

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	78
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	26	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

See other cases involving pari-mutuel betting on horse and dog racing. Defendant accepted $2800 payment to vote for procurement contract sent through his committee, and $2500 to vote for parimutuel bill. He helped round for 2 other legislators for $300 and sought others for $1000 total. After the bill lost he received $500 to support it next session. Upon investigation by FBI, defendant tipped off other members (receiving +2 for obstruction). Defendant insists the money was for campaign contributions. [Multiple payments].

Defendant received +4 for aggravated role, +2 for multiple payments -- probation officer cited 1B1.3 to draw in previous contract payment and instant legislation payment -- he didn't treat instant payment as multiple.

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82321

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	20
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

See other cases involving pari-mutuel betting on horse and dog racing. Defendant was a legislator caught accepting $1300. Question becomes what's the value, since the bait was a pair betting gambling. There was a +8 enhancement.

. . . . . .

86588

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	20
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

See other cases involving pari-mutuel betting on horse and dog racing. Defendant sold his vote on this bill, became member of core group working to pass the bill. Defendant received $4000 for two votes. Might have been considered two payments, but was not.

. . . . . .

86610

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	37
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	20	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

See other cases involving pari-mutuel betting on horse and dog racing. Defendant received $1000 to vote bill out of committee and $300 later as in thanks. Defendant denies any bribery or gratuity being involved.

88045

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	12
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

See other cases involving pari-mutuel betting on horse and dog racing. Defendant sold his vote on this bill, and may have become member of core group working to pass the bill. Defendant received $1000 for his vote. Defendant later received a legitimate $100 contribution from the key lobbyist involved, but that check bounced.

*110520

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	27
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

See other cases involving pari-mutuel betting on horse and dog racing. Defendant sold his vote on this bill, may have become member of core group working to pass the bill. Defendant agreed to approach another legislator about the vote, but did not. Defendant concealed evidence of the payment by failing to file required forms, then by filing inaccurate forms after he was alerted to the investigation.

Comment: PO counted road paving payment as part of course of conduct for this defendant, and thus counted multiple payments adjustment (over government and defense objections). Defense further argued that the $200 roads payment was merely a campaign contribution. Court did not apply obstruction or multiple payment adjustments.

125503

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

See other cases involving pari-mutuel betting on horse and dog racing. The scheme under investigation involved a state representative who was offered a payment if he would support for and vote for a pari-mutuel bill which would have made betting on horses & dog races in legal. The CI acted as lobbyist for this bill would made it known that he was willing to pay those legislators who would not vote against the bill. The defendant told the CI which legislators were approachable. In addition, the defendant asked the CI to pay him "Six" or "Seven" so that he could purchase a Mercedes. Defendant accepted a $2000 cash payment and a $1000 cash payment, $1000 of which was returned after he was told the CI was under investigation.

64623

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	90
		Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	29	2:	11	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant was a 20% partner in a dog track enterprise, and a lobbyist for legislation to increase the enterprise's take from wagers placed at the track. He and lobbyists hired by the dog track industry contacted legislators and made the following payments or offers to secure passage of the legislation: $16,000 worth of computer equipment and cash to the Senate President, $10,000 to a state Senator, a $1000 trip for a state Rep., and $100,000 to the governor (made the day before the governor signed the bill).

The defendant believed he stood to gain $500,000 for lobbying for the race track corporation, and he did receive $20,000 in compensation from lobbying group for lobbying efforts. In addition, the defendant had a 20% interest worth $600,000 ($279,000 of it secured) in the race track as a limited partner. He also received $110,000 in consulting fees. [Single payment].

The court determined the value of the benefit received or to be received in return for the payments in this case consists of the following: the defendant's 20 percent interest in the race track, which would have been lost had the increased revenue to the track not been realized through passage of the dog track legislation, is $602,109. The defendant's consulting fees and salary from the race track that would have been lessened, if not eliminated, had the legislation not passed consisted of $18,000 in consulting fees and $91,527.87 in salary, for a total of $109,527.87. The third item is the fee of $20,000 paid by the lobbying firm to the defendant. The fourth item is lobbying compensation which the defendant hoped to obtain from the race track ($500,000). The total is $1,231,636.87 (increase of +11) from $2F1.1.

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<u>California</u>

102029

GDLINEHI:	2S1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	51
		Base (PSR):	23	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	23	2:	0	Cat:	1	YRSENT:	92
				3:	N/A				

The defendant was convicted on charges resulting from an FBI investigation into legislative corruption and extortion in the ("BRISPEC," Bribery-Special Interest). It was designed to determine whether payment of money to legislators was required in order to enact legislation.

At the time of the investigation, the defendant was a legislative assistant to an Assemblywoman. He conspired with a lobbyist to accept money and other things of value in exchange for his influence in gaining passage of a Bill #4203, which was virtually the same as AB 3773 requested by the undercover agent. This was a special interest legislation which would permit expansion of the business of importing fresh shrimp into northern and allow the company to benefit from an investment in a local savings and loan.

Money described in Count Two alleges 17 overt acts including telephone conversations and payments of money. The money described in Count Two includes $11,000 in four checks paid by the undercover agent to the lobbyist and defendant for the campaign committee of the 49th District; $5100 in five payments from undercover agent to the defendant, and another for $2600 to the "Friends of [the defendant]."

From January through June 1988, the defendant received a total of $6500 in exchange for his assistance in moving AB 4203 through the Assembly. [Multiple payments].

Comment: This case straddles the old case law. Offense Level computation for §2C1.1 is 20: BOL=10, plus increase of 2 for more than one payment, plus 8 for being an elected official holding a high level or sensitive position. Adjusted Offense level is 23 (§2S1.1). Final Offense level=23.

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Other States

*113609

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
		Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	18	2:	8	Cat:	1	YRSENT:	92
				3:	N/A				

Defendant accepted 2 cash payments totalling $7500 in exchange for introducing legislation and providing other official assistance in the passage of a certain bill through the state legislature. The individual offering the payment was working undercover for the FBI. [Multiple payments].

Comment: PO treated the payments as related payments constituting a single payment and did not, therefore, give a 2-level enhancement for multiple payments (this appears to be proper application given the offense conduct.) There was no SOR, however, the defendant's sentence did fall within the guideline range calculated in the PSR.

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67995

GDLINEHI:	2D1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
		Base (PSR):	12	1:	0	Pts.:	0	DEPARTURE:	5K
		Final (SOR):	12	2:	0	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant was a garage attendant in a congressional parking lot. An undercover agent contacted the defendant about obtaining some cocaine for her. A purchase was arranged, and took place a few days later. Several days after the purchase, the defendant met with the undercover officer and a second, undercover officer, who offered the defendant a payment of $100 per month in return for allowing her to park in the congressional lot. After several more drug deals, the defendant was arrested and charged with relevant drug offenses and with accepting a bribe as a public official.

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MAYORS

82205

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	30
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	17	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

Extortion scheme by mayor of [redacted] with the garbage contracts. He received a +8 enhancement.

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*96490

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	14
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	16	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was a real estate developer who began making payments to the Mayor to get approval for a housing development. Appears to be an extortion enterprise by the mayor because approvals for the $4.5 million development were given pro forma prior to the mayor's election. The mayor sought $75,000 initially from the defendant, who sold his interest in a restaurant and depleted his savings to make the payment. An additional $130,000 payment was extorted when the mayor got the defendant to charge other developers for use of a water tower he constructed. A total of $210,000 was paid. No multiple payment enhancement applied, although it might be justified. [Multiple payments].

Comment: Benefit to the defendant not clear, although he did receive $200,000 net from other developers through the construction of the tower. +8 enhancement because of the Mayor's status. This case was appealed, [redacted] The [redacted] Circuit held the provision for fines for imprisonment to be unconstitutional. ($5E1.2(i)).

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100048

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	46
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	21	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant was Acting Public Works Director. Acting in concert with the mayor, his co-defendant, the defendant extorted a total of $10,500 in "campaign contributions" on three separate occasions from two construction contractors doing business with the city. The money was extorted after the contracts had been awarded. The contractors were fearful that they would not be paid or that payment for their work would be deliberately delayed if they did not "contribute" to the mayor's campaign committee. Because the contractors did not offer payments to get the contracts but were the victims of extortion, there was no "benefit received;" the profit cleared by the contractors is unknown anyway. [Multiple payments].

The PO did give the 2-level enhancement for multiple extortions. Offense Level Computation: BOL=10, plus increase of 2 for more than one payment, plus 8 for being an elected official holding a high level or sensitive position; plus 3 for managerial role, minus two for A of R. Offense Level=21

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*108122

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	27
	Base (PSR):	10	1:	8	Pts.:	0	DEPARTURE:	No
	Final (SOR):	16	2:	N/A	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant was the owner of a construction company, who had a standing contract with the city of for the disposal of street sweepings. The defendant provided the director of public works with approximately 15% of the payments he received from the city in exchange for receiving all of the street sweepings, which the defendant was able to process and sell at a profit. None of the amounts involved in this scam are detailed in the PSR. In the offense of conviction, the defendant was contacted by the acting director of Public Works to deal with a sewer line cave-in. The defendant was given the work, at the mayor's insistence, because of his support to the mayor's political campaigns and the defendant's known tendency to "play ball." The defendant paid a total of $50,000 in kickbacks to the acting director (who shared those payments with the mayor), and charged the city $700,000 for the job. In other conduct, the defendant was assigned to another cave-in, for which he charged the city $150,000 and paid a kickback of $20,000. Finally, the defendant was awarded the contract to clean up a vacant lot, for which a $25,000 kickback payment was negotiated. The defendant paid $3000 of this sum. [Multiple payments].
Comment: The offense conduct section clearly outlines 3 separate kickbacks of $50,000, $20,000 and $3000, yet the guidelines computation section only discusses the single payment of $50,000. In addition, the defendant objected in the addendum to the $50,000 figure, contending that he only paid a $20,000 kickback. In the worksheets the PO added 2 levels for multiple payments yet did not do this in the PSR . . . it seems as if the PO/court used a single payment amount of $50,000.

The involvement of the mayor was not mentioned in the offense level calculation of the PSR. The eight level enhancement was given based on the PO's determination that the acting director of public works was a high level official.

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*111451

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	225
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	16	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was the low bidder on a contract to build a local sports complex. The mayor, unhappy that an unknown contractor had bid low, split the contract into two parts and relet the contract. Defendant was again the low bidder. The mayor dispatched aides to secure a kickback on the contract, to which the defendant agreed. Two kickbacks were arranged: one of $12,000 on a $400,000 contract, and one of $100,000 on a $760,000 contract (price increased to $825,000 to cover some of the kickback). These kickbacks were distributed among aides and the mayor.

Comment: No adjustment for multiple payments -- possibly should have been.

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Cases 109919 through 122266

109919
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	0	SENTENCE:	18
Final (SOR):	14	2:	8	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	92

Defendant was the longtime chairman of the campaign committee for a mayor. The victim was a highly qualified contractor who bid lowest on a contract. The contract was relet and another contractor came in just under the victim. The contractor met with the mayor who referred the contractor to defendant and a co-defendant who requested a $20,000 contribution to the mayor's campaign in exchange for the $450,000 contract. Defendant put a portion of the cash in a safe for the mayor, with thousands of other dollars in cash obtained in a similar manner. The defendant would release these funds for use by the mayor for personal expenses and the defendant would not report the cash contributions. Defendant voluntarily turned over $8000 of the $10,000 actually contributed as part of the $20,000 extortion money.

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115819
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	2	Pts.:	0	SENTENCE:	114
Final (SOR):	28	2:	10	Cat:	1	DEPARTURE:	Up
		3:	N/A			YRSENT:	92

Defendant was a close personal friend of a newly elected mayor, and approached a co-defendant, a local bank officer and a member of a developers group, with a scheme to pay city officials, including the mayor and alderman, cash and in-kind items in exchange for favorable zoning and other treatment of the developers' projects. Payments included $10,000 apiece to 5 officials, a fraudulent loan of $85,000 to a mayor and another official, an option scheme totaling $75,000, and a $9000 payment to the mayor. Defendant was on the verge of being fired from his job in the private sector, so the developers arranged a real estate option scheme by which he was compensated $40,000 (approximately his private sector salary), and then a second $40,000 payment. Additional, extensive payments using various options, loan, and nominee devices totaling $710,000 were made to defendant, and other payments were made to defendant's relatives, the mayor, and others.

Defendant attempted to induce certain aldermen to leave the commission after they voted against some of the development projects. Other alderman and zoning board members were outright banished by defendant to no-influence panels, and loyalists set up in return. Defendant asked his sister to testify falsely at his trial.

Reason for Departure: "Section 2C1.1, App. Note 5, allows for a departure if a governmental function is disrupted by corruption of defendant. Court finds this is applicable in this case and departs upward three (3) levels."

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115980
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	2	Pts.:	0	SENTENCE:	108
Final (SOR):	27	2:	8	Cat:	1	DEPARTURE:	Up
		3:	N/A			YRSENT:	92

Defendant was Mayor of who got kickbacks from developers and builders. He was an elected official, got close to $300,000 and received an upward departure for disruption of government functions (§5K2.7).

116093

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	51
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	22	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was an official who received payoffs as a result of his influence with a corrupt mayor. One method involved a straw purchase of a condominium where defendant, one of five participating officials, paid $15,000 for the condominium, and then received $25,000 back 90 days later. Defendant also received a $6500 cut from a $270,000 corrupt payout distributed among numerous public officials. Defendant was a partner in a development for which financing was fraudulently secured. Defendant then voted on a zoning matter involving the property without disclosing the partnership -- a conflict of interest.

116218

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	18
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	Down
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was the campaign chairman for the corrupt mayor of a town, and received various payoffs as a result of his influence with the mayor. One method involved a straw purchase of a condominium where defendant, one of five participating officials, paid $15,000 for the condominium, and then received $25,000 back 90 days later. Defendant also received a $6500 cut from a $270,000 corrupt payout distributed among numerous public officials. Defendant was a partner in a development for which financing was fraudulently secured.

116468

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	41
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	20	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was an official who received payoffs as a result of his influence with a corrupt mayor. One method involved a straw purchase of a condominium where defendant, one of five participating officials, paid $15,000 for the condominium, and then received $25,000 back 90 days later. Defendant also received a $6500 cut from a $270,000 corrupt payout distributed among numerous public officials. Defendant was a partner in a development for which financing was fraudulently secured. Defendant then voted on a zoning matter involving the property without disclosing the partnership -- a conflict of interest.

120505

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	20	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was an alderman and the head of a housing assistance program. He was involved in an attempt by a development company to secure local permission to develop property, with a portion of the proceeds to go to the mayor. He also agreed, with four

others, to each pay $15,000 for a condominium and then receive $25,000 in return. Only the defendant reported this income on his tax return. Defendant also received, along with other local officials, $14,000 from transfer of another property. [Multiple payments].

2-level enhancement given for multiple payments.

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122266

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	60
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	Up
	Final (SOR):	22	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was a bank officer, chief (unofficial) fundraiser for the mayor, and a member of a developers group that paid city officials, including the mayor and alderman, cash and in-kind items in exchange for favorable zoning and other treatment of the developers' projects. Payments included $10,000 apiece to 5 officials, a fraudulent loan of $85,000 to a mayor and another official, an option scheme totaling $75,000, and a $9000 payment to the mayor.

Reason for departure: the court departed upward pursuant to Application Note 5 of §2C1.2 (systematic/pervasive corruption of a governmental function . . .) but then departed downward due to a government motion for substantial assistance.

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LAW ENFORCEMENT

Sheriff

65387

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	4
		Base (PSR):	10	1:	2	Pts.:	3	DEPARTURE:	5K
		Final (SOR):	12	2:	8	Cat:	2	YRSENT:	91
				3:	N/A				

The defendant denied before a grand jury that the offense of extortion was being committed by the county sheriff, who was being paid off by persons promoting or profiteering from acts of prostitution. The defendant testified that there were no silent partners or any one else that obtained money or profits from a house of prostitution that the defendant owned. He further testified that women he hired were not engaged in anything illegal. From September, 1986 to August 1989, defendant's business made monthly payments of $2,000 to the county sheriff (about $72,000 total). On one occasion the defendant personally delivered $500 in currency to a third party which was to be used as a payoff to the sheriff of another county. Defendant's business took in $10,000 gross a week (about $1.5 million over the three-year period).

Comment: PO did not examine net benefit -- looked only to value of payment.

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88781

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	41
		Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	22	2:	8	Cat:	1	YRSENT:	91
				3:	N/A				

Defendant approached an elected county sheriff and asked the sheriff to steer all safe bonds for imprisoned persons to the defendant. In exchange, defendant would give the sheriff half of the take. The defendant made two payments ($3000 and $1740) to the sheriff who was wearing a wire for the FBI. Benefit not quantifiable, given the service provided and not clear how much above what he would have received was secured by the payments. [Multiple payments].

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Cases 99211 through 106210 Single Investigation

99211

GDLINEHI:	2D1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	235
		Base (PSR):	36	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	38	2:	0	Cat:	1	YRSENT:	92
				3:	N/A				

The defendant was Sheriff of . He agreed to become involved in payoffs for offering police protection and information about drug investigations and other police activities within the county. The defendant and sheriffs from surrounding counties were paid payments by undercover agents posing as drug dealers in exchange for police protection from prosecution in their jurisdictions and information regarding drug investigations by the State Police. The "drug dealers" were supposedly transporting drugs from r further distribution in neighboring states. The agents told tne defendant that they were going to rent a farmhouse in his county in order to make air drops of cocaine, and that they would pay the defendant $2000 a month for protection and information, plus "extra" for any other activities such as escorting a load of cocaine out of his county. The undercover agents made a number of cocaine airdrops in the defendant's county and surrounding counties,

involving a total of 12 real kilos of cocaine and 100 "sham" kilos. There was a total of $76,000 in "bribes" paid to the law enforcement officers; although the defendant himself only received $12,000, it appears he would be held accountable under relevant conduct for the entire amount. The "benefit received" in return for the payments would presumably have been any profits the drug dealers cleared from the drugs run through this area . . . needless to say, no such profits existed, nor is there information in the file that would allow an approximation had the drug operation been bona fide.

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99212

GDLINEHI:	2D1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	151
		Base (PSR):	36	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	34	2:	0	Cat:	1	YRSENT:	92
				3:	N/A				

The defendant was Chief of Police in _____, and was one of several law enforcement officers targeted by the FBI in an undercover sting operation. The defendant and sheriffs from surrounding counties were paid payments by undercover agents posing as drug dealers in exchange for police protection in their jurisdictions and information regarding drug investigations by the _____ State Police. The defendant, in fact, attempted to recruit a state trooper into the drug operation. The "drug dealers" were supposedly transporting drugs from _____ to _____ for further distribution in neighboring states. The undercover agents made a number of cocaine airdrops in the area involving a total of 12 real kilos of cocaine and 100 "sham" kilos. There was a total of $76,000 in "payments" paid to the law enforcement officers; although the defendant himself only received $5000, it appears he would be held accountable under relevant conduct for the entire amount. The "benefit received" in return for the payments would presumably have been any profits the drug dealers cleared from the drugs run through this area . . . needless to say, no such profits existed, nor is there information in the file that would allow an approximation had the drug operation been bona fide.

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*103439

GDLINEHI:	2D1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	235
		Base (PSR):	36	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	37	2:	0	Cat:	1	YRSENT:	92
				3:	N/A				

FBI received information that there a was a sheriff and others involved in illegal activities. Undercover agents offered 3 county sheriffs and a police chief payments if they would provide them with protection and access to several farm houses to used for "drops" of cocaine. Defendant organized the drop sites & involved his deputy. Defendant took $21,000 and escorted one of the shipments with the UCA to the next county for a total of $76,000 paid to 4 sheriffs to drop 112 kilograms (110 sham and 12 real) of cocaine.

Comment: $76,000 may have overstated the real value of payment given the defendant's relevant conduct. PO also did not consider benefit associated with payment - namely net benefit on 112 kilos of cocaine deal - approximately $2.2 million retail ($20,000/kilo). Perhaps undercover nature of deal and no costs info this approach was not considered. Defendants carried guns on their escort missions. Court reduced by 4 levels to reflect §1B1.3 problems--quantity of drugs--dropped it four levels to 12 kilograms.

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106210

GDLINEHI: 2D1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	121
	Base (PSR):	36	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	32	2:	0	Cat:	1	YRSENT:	92
			3:	N/A				

A number of County Sheriffs in the state of accepted payments from undercover FBI agents and a cooperating witness (CW) in return for their protection and assistance in a cocaine trafficking operation. The CW approached the ringleader with an offer of payments in return for his assistance in securing a place to air-drop cocaine, and protection from state and federal law enforcement officials during the drops. This sheriff agreed to do so, and recruited a number of other county sheriffs to do the same in their jurisdictions. The defendant was a Deputy County Sheriff, who was recruited by the County Sheriff of his county. The defendant allowed his farm to be used for one of the cocaine drops. A payment was given to the County Sheriff to share with the defendant, but there was no evidence that the defendant ever received a payment for his assistance.

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133194

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	24
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	Down
	Final (SOR):	20	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was the elected sheriff who was involved in a shootout with a homeowner when both parties mistook the other for a burglar at the homeowner's house. The homeowner was charged with aggravated battery of a police officer, and the defendant sought $10,000 from the homeowner in order to have the charges reduced, probation imposed. Defendant threatened a long term of imprisonment and abuse at the state pen if the money was not paid. The homeowner called the FBI and paid defendant $5000. The FBI also uncovered a $100 extorted payment in connection with a fixed traffic ticket, and $186 for five fixed tickets.

Reason for Departure: "The victim helped precipitate the offense [when he shot the sheriff thinking the sheriff was burglar] ($5K2.10). Elected Mayor Napoleonsville 1987. Elected Chief of Police 1991. Government agreed to a 24 month sentence."

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135342

GDLINEHI: 2B3.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	20	1:	0	Pts.:	0	DEPARTURE:	Miss
	Final (SOR):	Miss	2:	3	Cat:	Miss	YRSENT:	93
			3:	0				

Defendant set up an extensive gambling operation that bet on sports events and involved at least 13 co-conspirators. The defendant also paid to several county sheriffs and a county commissioner (all probably elected) payments of $500-2000 in the guise of campaign contributions in order to receive protection for the gambling enterprise. Defendant also arranged the robbery of a person who had inherited a large sum of money. When the person interrupted the armed robbery, the person was abducted for several hours, but released eventually. Total amount of payments not known.

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Police Officers

55117

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	15
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	12	2:	2	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant agreed to pay a State police sergeant $3750 to release from police custody 25 slot machines to be used for illegal gambling purchases. On other separate occasions the defendant paid a $500 payment to obtain 5 "Poker 21" video machines which were valued at $1600 each. The defendant also paid a payment to an FBI agent of $100 if he would "protect" his illegal gambling business. Finally, the defendant paid the police sergeant $300 if he would conduct a raid of another illegal gambling establishment who was a competitor of the defendant.

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62804

GDLINEHI: 2C1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	7	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	8	2:	1	Cat:	1	YRSENT:	91
			3:	N/A				

Defendant was a Sergeant with the Federal Protective Services at an arsenal. Space was rented to Warner Bros., and the Teamsters were involved in transporting cars for props. received some "benefit" by storing unauthorized cars and getting to use them. No special enhancement for law enforcement.

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75397

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	15
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	14	2:	0	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant was a local police officer assigned to serve as the Administrative Assistant to the Director of Public Safety. His duties included issuing security licenses to armed security personnel; these licenses authorized their holders to carry holstered or concealed weapons. An investigation by the FBI, IRS, and local police discovered that the defendant was issuing security licenses to known drug dealers and felons in exchange for money, bypassing the normal procedure.

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92650

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	12
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant and two co-defendants (another police officer and the county's District Attorney) extorted money from criminal defendants in exchange for release and dropping of charges. In the offense to which the defendant pled guilty, an individual was arrested and subsequently told by defendant that if he donated $15,000 to a "local drug program," he would be released. Upon notifying the FBI, the individual made several payments to the defendant, totalling $8700. The PSR detailed similar conduct over the preceding two years, involving payments of at least $10,500.
The defendant was assigned a base offense level of 10 under §2C1.1, enhanced by 2 for multiple payments, and by 8 for the presence of a high level official, for an adjusted

offense level of 20. This level was reduced by two for defendant's acceptance of responsibility. The government made a motion under §5K1.1 for a 6 level downward departure based on defendant's substantial assistance. The court granted the motion and sentenced defendant to 12 months. [Multiple payments].

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92651 (Same case as 92650)

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 12
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE: 5K
	Final (SOR):	18	2:	8	Cat:	1	YRSENT: 92
			3:	N/A			

Defendant and two co-defendants (another police officer and the county's District Attorney) extorted money from criminal defendants in exchange for release and dropping of charges. In the offense to which the defendant pled guilty, an individual was arrested and subsequently told by defendant that if he donated $15,000 to a "local drug program," he would be released. Upon notifying the FBI, the individual made several payments to the defendant, totalling $8700. The PSR detailed similar conduct over the preceding two years, involving payments of at least $10,500.
The defendant was assigned a base offense level of 10 under §2C1.1, enhanced by 2 for multiple payments, and by 8 for the presence of a high level official, for an adjusted offense level of 20. This level was reduced by two for defendant's acceptance of responsibility. The government made a motion under §5K1.1 for a 6 level downward departure based on defendant's substantial assistance. The court granted the motion and sentenced defendant to 12 months. [Multiple payments].

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103959

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 16
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE: No
	Final (SOR):	12	2:	11	Cat:	1	YRSENT: 92
			3:	N/A			

Defendant was a senior sergeant in charge of a local police department vice squad. In exchange for jewelry, cash, and sex, he protected two operations from investigation by the police. He would also protect particular prostitutes in exchange for sex and other items. He also forced certain prostitutes to have sex with him by threatening investigation. A raid of the home of one of the business owners turned up defendant's car, dog tags, and other items. Defendant also paid prostitutes for their services. Defendant attempted to have another person remove his car from the garage of the owner in order to obstruct justice. [Multiple payments].

Court rejected PO recommendation that multiple payments enhancement apply. PO looked at "overall illegal gain" from the illegal activity pursuant to note 4 of §2C1.1 and based enhancement on $800,000 (+11).

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115958

GDLINEHI: 2F1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 8
	Base (PSR):	6	1:	3	Pts.:	0	DEPARTURE: No
	Final (SOR):	11	2:	2	Cat:	1	YRSENT: 92
			3:	0			

Defendant was co-captain of a transportation crew made up of Teamsters. The crew procured automobiles for the "Spencer for Hire" TV series to blow up. Ford had donated new, luxury cars for destruction by the TV show because the cars had been flooded. The crew replaced these otherwise new cars with stolen vehicles and gave the cars to relatives and friends. The federal police officer who guarded the federal warehouse

where the cars were housed, took a payment/gratuity of two of the "flood" cars and he did not reveal any of the illegal activities of the crew.

Valuation of the two cars was disputed (defense and PO claimed only limited value since the cars had to be returned after several months; government claimed full value since once "offered" the eventual return was immaterial).

Meanwhile, the defendant also took a car that had been totaled by a co-defendant. The co-defendant informed the insurance company the car was stolen, then gave the car to the defendant for storage at the warehouse, and then eventual "chopping" and resale by the defendant.

Valuation of the totaled car was disputed ($16,000 new, $10,000 damaged, $3000-16,000 in parts).

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125380
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	2	Pts.:	0	SENTENCE:	48
Final (SOR):	23	2:	13	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	92

A major car theft ring in involved stealing cars and selling them to buyers. Detectives working undercover were offered a total of $100,000 in payments and estimated that the value of the 175 stolen cars in possession of the theft ring valued at $4.4 million.

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137192 (Same case as 125380)
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	5	SENTENCE:	27
Final (SOR):	14	2:	8	Cat:	3	DEPARTURE:	No
		3:	N/A			YRSENT:	93

Defendant was a member of a 20-person car theft ring that stole up to 192 cars (at least 9 in armed robberies) and sold the cars to customers in The ring was discovered when thieves were stopped and offered payments of $700-1000 per car to police officers if the officers would fail to follow up on the thefts and would aid in exporting the cars. The conspirators also offered to give firearms or narcotics in exchange for the assistance of officers. $100,000 was paid in payments to undercover officers. Defendant was one of many conspirators who stole and delivered stolen cars and exchanged payments. Value of cars exceeded $4.4 million, but plea agreement limits relevant conduct to only those cars with which defendant was personally involved (over $200,000 worth of cars).

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*142676
GDLINEHI: 2D1.2

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	18	1:	0	Pts.:	6	SENTENCE:	45
Final (SOR):	20	2:	0	Cat:	3	DEPARTURE:	No
		3:	N/A			YRSENT:	93

The defendant was involved in a plan to pay local police officers (who were working undercover) to release an inmate of the County Jail. The inmate and his father, who were involved in cocaine trafficking, promised the undercover officers money and a kilogram of cocaine in return for the inmate's release. The inmate's father paid $50,000 in cash to the officers, but stalled on the delivery of the cocaine. Eventually, the defendant contacted one of the officers to inform him that

the cocaine was ready for delivery. The other officer went to accept the cocaine, which was delivered by the defendant's brother. A total of 108.38 grams of cocaine were delivered, which the PSR determined to have a value of $10,838 ($100 per gram). The offense conduct section clearly states that this was scheme involved a two-part deal of money and drugs and that $50,000 was, in fact, delivered by the defendant's father.

Comment: The defendant was not held accountable by the PO or the court for this amount under the bribery guideline. The government had no objections.

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Police Laboratory

77610

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
		Base (PSR):	10	1:	2	Pts.:	1	DEPARTURE:	No
		Final (SOR):	Miss	2:	0	Cat:	Miss	YRSENT:	91
				3:	N/A				

Defendant altered laboratory result cards and destroyed corresponding lab results for co-defendants who had tested positive for drug use. In exchange, she received small amounts of cocaine and cash. [Multiple payments].

Comment : She was charged with mail fraud, but the PO used §2C1.1 as the more appropriate guideline, citing App. Note B referring to a count of conviction which "establishes an offense more aptly covered by another guideline." Defense counsel objected but there is no SOR in the file. PO did give the 2-level enhancement for more than one payment.

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DOJ Official

104421

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	18
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
		Final (SOR):	19	2:	8	Cat:	1	YRSENT:	92
				3:	N/A				

Defendant had real estate dealings with a company that was under investigation. Defendant attempted to work with a DOJ official who was undercover to influence the criminal investigation of this company. Defendant paid $5000 seed money, $3000 for reports of 12 interviews, and offered $65,000 for the investigation to be terminated. Defendant sought $5500 of this money as a fee.

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Prosecutors

*63865

GDLINEHI:	2C[redacted]	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	18	2:	8	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant was being investigated for illegal prescriptions by the U.S. Attorney. [Single payment].

Comment: He received a "+8" enhancement for bribing a high-level official. No cross-reference to §2C1.1(c)(2) (use guideline of offense the defendant is trying to conceal).

*116795

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	20	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant was a district attorney who solicited and extorted payments for favorable treatment of criminal defendants. In that sense, he proved the adage that crime really doesn't pay. He got caught. Of six counts, five ended in a mistrial (hung jury). He was convicted on count 4. Total payments, etc., from all counts were $13,900. [Multiple payments].

Comment: Probation only looked to the count of conviction ($3000). This error is moot, however, because the defendant received a +8 level enhancement due to his position as an assistant district attorney.

CORRECTIONS OFFICERS/PRISONS

A. Cases Involving Contraband to Prisoners

56511

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	198
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	8	2:	0	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant was a correctional officer who solicited a payment of $250 to smuggle contraband (marijuana) into a correctional institution. She was caught and sentenced to 2 months imprisonment plus probation. [Single payment].

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58147

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	5
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	8	2:	0	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant, a corrections officer at a federal prison, pled guilty to receiving a $200 payment in return for bringing steroids to a prisoner (who was working undercover). The prisoner told the defendant to meet a "relative" of the prisoner outside the prison for the steroids and the $200 payment. The "relative" was an undercover FBI agent. Upon being confronted with the facts, the defendant immediately agreed to cooperate with the FBI.

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118202

GDLINEHI:	2P1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	202
		Base (PSR):	13	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	10	2:	N/A	Cat:	1	YRSENT:	92
				3:	N/A				

Defendant was a Correctional Officer at and agreed to deliver 1 gram of cocaine to an inmate in exchange for $300. Defendant was addicted to cocaine and apparently used the cocaine instead of delivering it. (I could not determine how or whether this cross reference was applied.)

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143677

GDLINEHI:	2D1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	14
		Base (PSR):	13	1:	N/A	Pts.:	0	DEPARTURE:	No
		Final (SOR):	11	2:	N/A	Cat:	1	YRSENT:	93
				3:	N/A				

An apparent sting operation involved an undercover FBI agent offering a payment of $100 to a prison employee if they would deliver cocaine to an inmate. Two $100 payments were given.

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B. Cases Involving Privileges/Favors to Prisoners

74771

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	19	2:	Miss	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant's brother, who was incarcerated in a federal prison for a drug offense, offered a guard $300,000 in return for helping him escape. The guard refused the payment and reported the attempt to authorities; he thereafter operated undercover. The defendant's brother later offered $500,000 for the escape. A meeting was held between the guard, the defendant, and some other individuals, at which the defendant promised payment in return for his brother.

The PSR recommended that the defendant be sentenced under §2C1.1(c)(1), for obstructing justice in another criminal offense (i.e., the brother's drug trafficking, for which he was in prison). A cross reference to §2X3.1 resulted in a base offense level of 30. The court rejected this recommendation, and sentenced the defendant under §2C1.1(a). The base offense level was 10, with a 9 level enhancement for the amount of the payment. [Single payment].

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75829

GDLINEHI: 2F1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	300
	Base (PSR):	6	1:	11	Pts.:	14	DEPARTURE:	Up
	Final (SOR):	26	2:	2	Cat:	6	YRSENT:	91
			3:	0				

This was a complicated bank fraud/bribery scheme that boils to the defendant, who was in custody on another fraud charge, paid a correctional guard to help him escape and paid a federal reserve clerk to give him codes so he could wire $400 million to Colombia. Defendant also involved other co-defendants and, if that wasn't enough, plotted to kill a federal judge and federal prosecutor. The latter two were grounds to depart.

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76748

GDLINEHI: 2F1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	57
	Base (PSR):	6	1:	11	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	2	Cat:	Miss	YRSENT:	91
			3:	0				

Conspiracy scheme involving a bank fraud, escape from custody and bribery. Defendant was the correctional officer involved.

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76749

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	36
	Base (PSR):	10	1:	7	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	0	Cat:	Miss	YRSENT:	91
			3:	N/A				

Complicated bank fraud/bribery scheme involving co-defendant in custody, a co-defendant at a Federal Reserve Bank, a co-defendant who was a jail guard and defendant (married to co-defendant who was a jail guard). Her role was minor.

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*79752

GDLINEHI: 2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 12
	Base (PSR): 10	1: 0	Pts.: Miss	DEPARTURE: No
	Final (SOR): Miss	2: 0	Cat: Miss	YRSENT: 91
		3: N/A		

Defendant was a parolee who paid an employee $30 - $50 on several occasions to alter his urine sample records to hide his drug use. The exact amount of cash was not discussed in the PSR and, in any event, was well under $2000. [Multiple payments].

Comment: The PO did not enhance for multiple payments, and it appears he should have. No SOR.

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124757

GDLINEHI: 2D1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 41
	Base (PSR): 18	1: 0	Pts.: 6	DEPARTURE: No
	Final (SOR): 18	2: 0	Cat: 3	YRSENT: 92
		3: N/A		

The defendant wanted a BOP administrator to facilitate the transfer of an inmate to a federal prison camp that would be more advantageous to the inmate. The administrator had received an amount in excess of $20,000 for other similar transfer (total unspecified). The payment for the instant offense was never consummated. The defendant was convicted of Distribution of cocaine and Interstate Travel in Aid of Racketeering.

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138218

GDLINEHI: 2E1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 30
	Base (PSR): 19	1: N/A	Pts.: 0	DEPARTURE: No
	Final (SOR): 19	2: N/A	Cat: 1	YRSENT: 93
		3: N/A		

Defendant was a probation officer. He told several of his probationers to pay him so the court would "go easy." Defendant also pocketed payments. He received a +8 enhancement because of his criminal justice role.

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*60859 (Both contraband and privilege case)

GDLINEHI: 2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 18
	Base (PSR): 10	1: 2	Pts.: 1	DEPARTURE: No
	Final (SOR): 14	2: 0	Cat: 1	YRSENT: 91
		3: N/A		

Defendant received $1600 from inmate and defendant permitted numerous prison benefits he was not otherwise due (e.g. calling privileges). (Defendant motivated by being behind in mortgage payments.) Defendant then offered to bring in drugs for pay. He takes $150 to bring in $50 of marijuana (1.17g).

Comment: Defendant challenges calculation using §2C1.1(b)(1) (multiple payments). Obstruction applied because defendant lied about recording of transaction and his filing for bankruptcy.

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IRS: Taxpayers Offering Money to Agents

54226
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	1	SENTENCE:	2
Final (SOR):	Miss	2:	0	Cat:	Miss	DEPARTURE:	No
		3:	N/A			YRSENT:	91

Defendant paid the IRS clerk to provide him with a copy of the income tax returns of a person with whom the defendant's client was in a legal battle. There was one payment of $450; the benefit and government loss are unknown. [Single payment].

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54698
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	5	SENTENCE:	10
Final (SOR):	12	2:	4	Cat:	3	DEPARTURE:	5K
		3:	N/A			YRSENT:	91

Defendant made 2 payments - $5,000 and $20,000 - to a revenue agent to prepare false audit reports. The false reports showed that he owed only $1714 in back taxes from 1985, 1986, and 1987. The true amount was not specified.

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55941
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	0	SENTENCE:	15
Final (SOR):	14	2:	6	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	91

Defendant paid IRS agent auditing defendant's return. Defendant is immigrant whose translator conveyed $10,000 payment offer to reduce taxes owed from $105,000 to $12,000. Defendant agreed to $2000 payment by others to him to claim he owned 2 boats so the real owners could avoid taxes on them. Interpreter (co-defendant) later demands $1500 back from agent, but defendant not aware of this. Tax liability spanned 3 years.

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*55949
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	0	SENTENCE:	12
Final (SOR):	Miss	2:	3	Cat:	Miss	DEPARTURE:	No
		3:	N/A			YRSENT:	91

Defendant referred 3 citizens to undercover agent IRS agent to get help with tax problems. Taxpayers sought payment plans and undercover agent offered reduction in fine for payment. Defendant is tax preparer. Taxpayers would pay 10% of the tax owed to get debt zeroed out.

Comment: Total payments (15,000 + 1700 + 200) = 16,900. Benefits miscalculated here.

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56529

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE:	0
	Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE:	5K
	Final (SOR):	Miss	2:	3	Cat: Miss	YRSENT:	91
			3:	N/A			

Defendant owed approximately $15,000 in back taxes. She sought to pay an IRS agent to "zero it out." The payment was 10% of the total. After arrest, she cooperated and received a §5K1.1 departure. [Single payment].

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60045

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE:	3
	Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE:	Miss
	Final (SOR):	Miss	2:	0	Cat: Miss	YRSENT:	91
			3:	N/A			

Defendant asked IRS agent to cancel $1000 of $3500 debt, then sought cancellation of all debts (3 years = $8300). Defendant offered agent $500 trip to but couldn't find money to pay for it. Defendant later paid $350 to agent. $150 also was paid later. [Single payment].

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60153

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE:	0
	Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE:	Down
	Final (SOR):	10	2:	2	Cat: 1	YRSENT:	91
			3:	N/A			

Defendant asked IRS agent working with cousin defendant to drop tax liability from $10,000 to $2000 in exchange for $600. Defendant involved in large second case with a different relative -- but that case was dropped for a plea. [Single payment].

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60154 (Same conspiracy as 60153)

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE:	6
	Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE:	No
	Final (SOR):	10	2:	2	Cat: 1	YRSENT:	91
			3:	N/A			

Defendant had co-defendant interpreting for him ask IRS agent to reduce defendant's $10,000 tax debt to $2000 in exchange for $600. Departure apparently based on dissatisfaction with sentence. [Single payment].

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*63070

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE:	6
	Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE:	No
	Final (SOR):	10	2:	0	Cat: 1	YRSENT:	91
			3:	N/A			

The defendant, a Supervisor of work-release inmates for Department of Corrections, owed approximately $2200 in back taxes. He sought to bribe the auditor with $150 to erase the $2200. He was caught (doesn't know taxes and death are both inevitable!) and got 3 months imprisonment plus 3 months CTC. [Single payment].

Comment: The SOC2 appears wrong. Only payment was made: it was offered and then delivered.

64476

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	12
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	11	2:	6	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant was a fisherman who failed to pay his taxes. He said the halibut had suffered a "net" loss (I couldn't resist). The defendant tried to pay an IRS agent. He offered $18,000 for $72,000 in back taxes (really only $69,625). [Single payment].

*65107

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	0	Cat:	Miss	YRSENT:	91
			3:	N/A				

This defendant is one of 3 co-defendants who paid an IRS Revenue Officer in order to induce the officer to illegally reduce the tax liability.

The defendant told the IRS officer that a co-defendant owed the government $21,357 in taxes, but that the co-defendant would clear up the whole matter for $10,000. Although the defendant himself personally did not make the payment, he was a relentless negotiator on behalf of his co-defendant. On multiple occasions he attempted to persuade the undercover IRS agent to participate in an extortion/bribery scheme. The defendant was an accountant, and knew the tax system better than the other co-defendants. The amount of the payments that were negotiated for the co-defendant was $6000 (May 16, 1990) (half of which went to the agent and half to the defendant and his co-defendant, for finder's fees) and $2500 (July 25, 1990). Defendant also pursued on a number of occasions the possibility of the agent extorting a $200,000 payment from a company the defendant knew to have been delinquent in paying its taxes. Defendant would get half of this extortion payment. The agent refused to pursue the matter.

Comment: PO used amount of payment, not amount of benefit to calculate fraud table figure.

65925

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	24
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	17	2:	3	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant, an IRS officer, was assigned to a taxpayer's delinquent account for which he accepted two payments totaling $250 in return for putting the account on a payment plan instead of collecting the amount owed in one lump sum. Defendant indicated only the $50 payment was for the favor, but neither payment was applied to the delinquent account. The taxpayer became suspicious and reported the incident to the FBI and IRS. The government sent the victim in with $500 which the defendant demanded as an additional payment. In a second incident, an undercover agent, acting as a taxpayer with a $10,600 tax delinquency, gave the defendant a $600 payment to remove the tax debt. Finally, the defendant embezzled a $3000 payment from a taxpayer. [Multiple payments].

Comment: PO calculated amount of payment originally as $4350 (the amount paid) but changed it upon objection of the government to $10,600 (benefit involved). Defendant was also subject to the statutory prohibition on holding office of honor, trust, or profit.

67427

GDLINEHI: 2C1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	2
	Base (PSR):	7	1:	0	Pts.:	1	DEPARTURE:	No
	Final (SOR):	8	2:	3	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant originally offered a payment to an IRS officer in the form of a cashier's check; the IRS officer returned the check and requested $17,000 in $100 bills, which the defendant paid. The PSR provides no other information as to the offense conduct. [Single payment].

67922

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	3
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	8	2:	3	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant, a truck driver, owed over $180,000 to the IRS because he did not file tax returns for the years 1975-1987. Because of the defendant's tax liability, the truck he drove was seized by the IRS, even though it was owned by the defendant's employer. The defendant complained about his problems to a friend, who put the defendant in contact with an individual who had previously paid the IRS to reduce tax liability, and who was at that time acting as a go-between with the IRS for people with tax problems. This individual met with the defendant, and they agreed that the defendant would pay $20,000 in exchange for release from his tax liability and the return of his truck. [Single payment].

*68268

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	8
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	3	Cat:	Miss	YRSENT:	91
			3:	N/A				

The defendant was brought to the attention of an undercover IRS agent by an accountant who was attempting to persuade the agent to engage in an extortion scheme. The defendant owed approximately $22,000 in back taxes, and wished to reduce his tax liability by making a payment. Approximately two years after the initial mention of the defendant by the accountant, the IRS agent met with the defendant to negotiate a payment of $6000 in return for the elimination of the defendant's tax liability. $3000 would go to the agent, and the remainder would be divided between the accountant and another co-conspirator.

After that meeting, the defendant contacted the agent about a friend who owed more than $100,000 in taxes, who wanted to reduce that liability in return for a payment.

Comment: The [redacted] incorrectly calculated the benefit received from the payment by deducting the amount of the payment from the amount of the tax liability. The Probation Officer figured that, in the "light least favorable to the defendant," the benefit received was less than $20,000 (22,000 tax liability less the $2500 the defendant actually paid the IRS agent); thus, a three level enhancement for the amount was proper. The information in the PSR indicates that, had the probation officer correctly calculated the benefit according to §2C1.1 comment. (n.2) (i.e., as $22,000), the defendant would have been subject to a four-level enhancement.

69234

GDLINEHI: 2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 10
	Base (PSR): 10	1: 0	Pts.: 0	DEPARTURE: No
	Final (SOR): Miss	2: 4	Cat: Miss	YRSENT: 91
		3: N/A		

The owner of a liquor store agreed to pay an undercover IRS agent $4000 - $5000 in exchange for a reduction in his unpaid Employer's Tax liability. The PSR states that the tax liability for the eight-year period in question was $108,000 and the defendant wanted it reduced to $20,000. However, the government Trial Memorandum indicated that the defendant owed just $60,000 in back taxes, and the plea stipulated that the loss in this case was therefore $40,000 (the government being in agreement that the defendant wanted the tax owed reduced to $20,000). The PO did use the $40,000 stipulated to in his calculations; there was no SOR in the file. [Single payment].

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69741

GDLINEHI: 2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 6
	Base (PSR): 10	1: 0	Pts.: 0	DEPARTURE: No
	Final (SOR): 10	2: 2	Cat: 1	YRSENT: 91
		3: N/A		

The defendant made a $7500 payment to an undercover IRS agent in exchange for a "no charge" letter on the audit of the defendant's 1985 personal taxes, and also to ensure that no audit would be done for 1986 or '87. The IRS preliminary audit findings showed that the defendant owed approximately $27,000 in additional taxes for 1985. Two PSRs were prepared on the same date, one using the payment amount because the $27,000 "was only an estimate, and was not a firm enough figure on which to base the guidelines," and the other using the $27,000, with the evidence language taken out. The SOR indicates that the court used the final offense level corresponding to the $7500 payment amount.

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71832

GDLINEHI: 2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 0
	Base (PSR): 10	1: 2	Pts.: 0	DEPARTURE: 5K
	Final (SOR): 13	2: 5	Cat: 1	YRSENT: 91
		3: N/A		

Defendant operates the massage parlor that claimed independent contractors but no employees. Substantial tax liability implicated by what the IRS saw as a fraudulent arrangement. Defendant offered IRS agent a massage and asked for a break on taxes ($56,243 over 2 years). Over several months defendant negotiated elimination of liability for $12,800, and fraudulently "closed" business to avoid tax liability -- then reopened as new business. [Multiple payments].

Comment: No apparent basis for 5K. Probation officer considered this two payments (+2) because defendant agreed to pay $10,000 to reduce debt to $10,000, then agreed to pay additional $2000 to reduce to $0, and have IRSRO wink at fraudulent closing/reopening of business. Not clear this 2-level adjustment was warranted. Defendant is Korean-born, U.S. citizen through marriage. $1000 of the last $2000 was to go as a Commission to co-conspirator consultant friend who advised defendant on handling the payment. IRSRO only got $500 on this last payment.

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*71930

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 4
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: Down
		Final (SOR):	Miss	2:	6	Cat: 1	YRSENT: 91
				3:	N/A		

Defendant is employee who failed to pay $123,900 in social security and other taxes. Defendant paid seven installments ($10,000) but then was told he owed the balance within 10 days or would lose his business. He agreed to pay $2500 payment in two installments to get additional time to pay. Three months later, defendant offers $10,000 to write off remaining liability (now at $113,900). He pays $5500 over a several-month period. Defendant opened new store when old one closed and continued to fail to pay taxes.

Comment: Court ordered probation officer to change PSR so that amount of payment, not value of benefit was used. Thus, +6 enhancement reduced to +2.

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73767

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 10
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	12	2:	4	Cat: 1	YRSENT: 91
				3:	N/A		

Defendant was subject of audit during a several-month period and he and his wife paid IRS agent 2 x $30 gifts, and 1 x $250. Later, defendant offered $5000 if IRS would make $27,000 liability disappear.

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74341

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 4
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	Miss	2:	1	Cat: 1	YRSENT: 91
				3:	N/A		

The defendant, the owner of a jewelry store, was questioned by the IRS (in a routine compliance check) regarding payment of 1987 employment taxes. Upon his inability to provide those records, the defendant and his accountant were informed that the defendant would be subject to a complete audit. The accountant sought a meeting with another IRS agent who had accepted payments from other clients of the accountant. Ultimately, the defendant paid a $3500 in exchange for release from any potential tax liability. [Single payment].

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74953

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 2
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	8	2:	0	Cat: 1	YRSENT: 91
				3:	N/A		

The defendant was an accountant and co-owner of a co-defendant's laundry business. An IRS officer investigated the business because neither defendant had listed employees on their tax returns, even though the business was clearly operating. At a meeting with an IRS agent who had previously taken payments from another of the defendant's clients, the defendant gave the agent $1000 to induce the agent to "forget everything." [Single payment].

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75818
GDLINEHI: 2C1.2

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	7	1:	0	Pts.:	0	SENTENCE:	0
Final (SOR):	5	2:	0	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	91

The defendant's accountant contacted an IRS officer, to whom the accountant had previously given payments on behalf of other clients, about the defendant's tax liability of $4000 (the IRS agent was working undercover throughout). The defendant, through his accountant, paid the agent $600.

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75819
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	3	SENTENCE:	12
Final (SOR):	Miss	2:	4	Cat:	Miss	DEPARTURE:	No
		3:	N/A			YRSENT:	91

A typical I-owe-taxes-so-I-will-bribe-the-IRS agent case. The defendant owed more than $20,000 and so offered the agent $1900 to erase it. He was turned in.

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*77655
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	0	SENTENCE:	6
Final (SOR):	Miss	2:	1	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	91

Defendant paid an undercover IRS agent $3000 to terminate an ongoing examination of the defendant's 1985 tax return. Also, the defendant later paid the agent $100 for information regarding how to avoid future audits. At the time of the report, the audit had not been completed, therefore the benefit received and the loss to the government was indeterminable. [Multiple payments].

Comment: No 2-level increase given for multiple payments.

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77813
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	2	Pts.:	0	SENTENCE:	6
Final (SOR):	14	2:	4	Cat:	1	DEPARTURE:	5K
		3:	N/A			YRSENT:	91

This case involves two separate indictments that were consolidated for sentencing. In one case, the defendant gave a $1000 "gift" to an undercover IRS agent to stop his investigation of the defendant's 1987 payroll taxes. On another occasion, the defendant contacted the same agent to set up a meeting involving a friend of the defendant's who had been scheduled for an audit. The defendant was at the meeting when his friend gave the agent $3000 to stop the audit. The defendant later followed up with the agent to make sure that the audit had stopped.

In the other case, the defendant on two separate occasions, gave $10,000 to an INS agent to obtain resident alien cards for an illegal alien who had been employed by the defendant, as well as for the alien's wife and child.

Comment: The total amount of payments paid by the defendant was $24,000. There is no indication of what the benefit received or loss to the government would have been had the tax payments been successful.

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78196

GDLINEHI: 2S1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	48
	Base (PSR):	20	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	22	2:	0	Cat:	1	YRSENT:	91
			3:	N/A				

Defendant was convicted of four counts, all relating to his "leaking" information regarding an ongoing IRS/CID/federal and state law enforcement investigation to one of his clients (one of the individuals under investigation). Specifically, the defendant was convicted of a count of money-laundering, a count of computer fraud, a count of disclosure of confidential information, and a count of 26 U.S.C. § 7214 - conspiracy to defraud the U.S. in connection with revenue laws.

Comment: The PO chose to use §2C1.1 for this particular count, although he could have chosen §2F1.1. The PSR provides no justification for this, merely stating that with regard to that count, "the defendant . . . acting in connection with the revenue laws of the U.S., knowingly and willfully conspired with _____ to defraud the U.S. and knowingly made opportunities for said person to defraud the U.S. . ." from September 1987 through May, 1990. This fraud count may relate to a fictitious promissory note he helped his client prepare, but it doesn't seem likely that this would have taken two or more years. The §2C1.1 count (BOL 10, no other adjustments) received no units given the BOL of the money-laundering count.

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81854

GDLINEHI: 2C1.4	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	6	1:	N/A	Pts.:	0	DEPARTURE:	No
	Final (SOR):	4	2:	N/A	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant owed taxes. His uncle tried to pay an IRS agent and told the defendant that he should do it too. Can do, said the defendant, and so did too, though he stepped in do-do when IRS agent, in a sting operation, said "no can do," but you must pay what is due.

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95237

GDLINEHI: 2C1.3	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	6	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	N/A	Cat:	Miss	YRSENT:	91
			3:	N/A				

The defendant tried to pay an IRS agent regarding back taxes. He was turned in. He pled to conflict of interest, a misdemeanor, with no adjustments for amounts.

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108535

GDLINEHI: 2C1.[redacted]	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	16	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant is a taxpayer whose tax preparer worked with numerous taxpayers individually to pay an undercover IRS agent in order to eliminate tax liability. Defendant was employed (the exact nature of the relationship could not be determined by the prosecution or PO) by a corporation that owed about $100,000 in back taxes (unfiled returns, employee withholding) over a period of 3 years. Defendant agreed to pay $30,000. Defendant also sought elimination of his state tax debt (about $180,000),

which the undercover agent was not able to do. Defendant made several installment payments. $10,000 of the payment was to go to the tax preparer.

Comment: PO attributed only the federal tax debt ($100,000 -- +6) but the court went with the federal and state tax debt ($280,000 -- +8). PO argued that defendant only initiated the request once, that the agent had no ability to cancel that debt, and the speculative nature of the amount of the debt/penalties/interest owed. The prosecution focused on defendant's allocution to the attempted state fixing, the multiple, recorded conversations of the issue.

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115354

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	6
		Base (PSR):	10	1: 8	Pts.: 0	DEPARTURE:	Miss
		Final (SOR):	Miss	2: N/A	Cat: Miss	YRSENT:	92
				3: N/A			

Defendant and co-conspirators paid an undercover IRS agent on 4 separate occasions (total $3800) in exchange for eliminating $27,663 worth of federal taxes. In addition, they also negotiated with the agent to have $60,000 in state taxes eliminated. There is very little information in the PSR as to the extent of the discussions regarding the state taxes; no specific payments are described with regard to those taxes. [Multiple payments].

Comment: The PO nonetheless included the $60,000 (along with the $27,663) as relevant conduct. PO did give 2-level enhancement for multiple payments. There is no SOR. The court departed down to probation for reasons unknown.

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115966

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	78
		Base (PSR):	10	1: 2	Pts.: 0	DEPARTURE:	No
		Final (SOR):	28	2: 10	Cat: 1	YRSENT:	92
				3: N/A			

Defendant tried to pay an IRS officer, and then introduced others to the officer for "tax solutions," receiving kickbacks. He got 78 months. Loss was for all the taxes the government would have lost.

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117007

GDLINEHI:	2C1.3	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	6	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	4	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

This was an undercover operation re: tax payments. The defendant offered a $1000 payment to the IRS agent in exchange for the agent's assistance in resolving his tax problems. He pled guilty to a misdemeanor.

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Cases 117009 through 133067 are part of the same investigation

117009

GDLINEHI:	2C1.3	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	6	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	4	2:	N/A	Cat: 1	YRSENT: 92
				3:	N/A		

Sting operation. Asians attempting to pay IRS agents. The operation specifically targeted Asians. Defendant offered agent $500.

Comment: Pled to conflict of interest (misdemeanor) sentenced to probation under §2C1.6. Benefit was payment; no indication of taxes owed.

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117040

GDLINEHI:	2C1.3	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	6	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	4	2:	N/A	Cat: 1	YRSENT: 92
				3:	N/A		

Defendant was one of a number of targets of an IRS investigation of individuals who had failed to pay their taxes. Defendant offered a payment of $300 to have his tax problems go away.

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117110

GDLINEHI:	2C1.3	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	6	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	4	2:	N/A	Cat: 1	YRSENT: 92
				3:	N/A		

Defendant was one of a number of targets of an IRS investigation of individuals who had failed to pay their taxes. Defendant offered a payment of $10,000 to secure "advice" from the agent.

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129794

GDLINEHI:	2C1.3	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	6	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	4	2:	N/A	Cat: 1	YRSENT: 92
				3:	N/A		

Defendant was one of a number of targets of an IRS investigation of individuals who had failed to pay their taxes. Defendant offered a payment of $5000 to obtain tax assistance (defendant indicates it was for expediting the paperwork).

Comment: Interesting that this was prosecuted as a misdemeanor instead of a straightforward bribery.

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129796
GDLINEHI: 2C1.3

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	6	1:	0	Pts.:	0	SENTENCE:	0
Final (SOR):	4	2:	N/A	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	92

Defendant was one of a number of targets of an IRS investigation of individuals who had failed to pay their taxes. Defendant offered a payment of $30,000 to obtain tax assistance.

Comment: Interesting that this was prosecuted as a misdemeanor instead of a straightforward bribery.

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131567
GDLINEHI: 2C1.3

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	6	1:	0	Pts.:	0	SENTENCE:	0
Final (SOR):	4	2:	N/A	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	92

Defendant was one of a number of targets of an IRS investigation of individuals who had failed to pay their taxes. Defendant offered a payment of $500 to obtain tax assistance.

Comment: Interesting that this was prosecuted as a misdemeanor instead of a straightforward bribery.

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131570
GDLINEHI: 2C1.3

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	6	1:	0	Pts.:	0	SENTENCE:	0
Final (SOR):	4	2:	N/A	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	92

Defendant was one of a number of targets of an IRS investigation of individuals who had failed to pay their taxes. Defendant offered a payment of $2000 to obtain tax assistance.

Comment: Interesting that this was prosecuted as a misdemeanor instead of a straightforward bribery.

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133067
GDLINEHI: 2C1.3

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	6	1:	0	Pts.:	0	SENTENCE:	0
Final (SOR):	4	2:	N/A	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	92

Defendant was the translator for his nephew, one of a number of targets of an IRS investigation of individuals who had failed to pay their taxes. Defendant offered a gift of $3000 for tax assistance rendered.

Comment: Not clear that any tax laws were broken, unlike other cases of related defendants: PSR notes that the nephew agreed to pay all taxes and penalties. Interesting that this was prosecuted as a misdemeanor instead of a straightforward bribery.

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130874

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	78
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	28	2:	15	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant is the largest farmer in the area. Defendant paid an IRS agent hundreds of thousands of dollars and a truck and other items over 9 years in exchange for the IRS agent ignoring certain problems with the defendant's business and personal taxes, helping establish sham corporations to hide income, establishing false deductions, and the like. Total tax liability avoided was in the $21 million range, with $8 million attributable to the IRS agent, and the rest attributable to other accounting manipulations involving accountants and others.

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*137713

GDLINEHI: 2C1.7	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	10	1:	8	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	11	2:	N/A	Cat:	1	YRSENT:	93
			3:	N/A				

Defendant was a cabinetmaker (which makes this an open-and-shut case). Tax collector approached defendant and asked him to cash checks for work not done as a way to get funds. He agreed. Over several years, a total of +$70,000 was cashed, for which Defendant received about $4400.

Comment: The guidelines here were 2C1.7(a) (deprivation of intangible right). This seems like a fraud case . . . wrong guideline. It seems to be that straight fraud (2F1.1) would be more applicable.

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144177

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	18
	Base (PSR):	10	1:	0	Pts.:	13	DEPARTURE:	Down
	Final (SOR):	13	2:	5	Cat:	6	YRSENT:	93
			3:	N/A				

Defendant approached an IRS agent at a car dealership and offered him a payment to alter his tax liability. The defendant owed $40,722.47 in back taxes. The defendant offered the agent $1100 which he paid in out in three payments.

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<u>Impersonating an IRS Agent/SSA Employee</u>

*79911

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	30
	Base (PSR):	10	1:	0	Pts.:	15	DEPARTURE:	No
	Final (SOR):	12	2:	0	Cat:	6	YRSENT:	91
			3:	N/A				

The defendant perpetrated a scam in which she secured money from documented Mexican workers, by impersonating either an IRS agent or SSA employee. She informed the victims that they owed back taxes and that she was there to collect the cash. She also told them if they paid the same day, they would be eligible for government refunds which she would deliver, and gave the victims U.S. Mail insurance receipts. Payments extorted were as follows: (1) $525 from Mexican national threatened with arrest over alleged $800 tax debt; (2) $150 for a "legal social security card"; (3) $150 from another person for a "legal social security card" (the victim gave the defendant $20,

promising to give her $130 when she received the card; (4) still impersonating a SSA officer, the defendant told a victim that he was due a $900 tax refund, but that he needed to pay her $314 in back taxes -- the victim gave the defendant $200 in cash. Between 09-16-90 and 10-13-90 nine other victims were defrauded by the defendant for a total of $2292. In total, 13 victims were defrauded for a total of $3177. [Multiple payments].

Comment: Vulnerable victim provision applied, since most were low-paying, unsophisticated, documented laborers. No adjustment given for amount of payments or multiple payments.

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Department of Finance and Revenue -

80369
GDLINEHI: 2B3.2

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	18	1:	0	Pts.:	0	SENTENCE:	87
Final (SOR):	27	2:	0	Cat:	1	DEPARTURE:	No
		3:	0			YRSENT:	91

The defendant, an employee in the Audit Division of the Department of Finance and Revenue in devised a scheme to represent to a taxpayer that a deficiency had been assessed by the Department of Finance and Revenue, when no audit had been completed and no deficiency had been authorized. The defendant extorted funds from several business owners in the , alleging that the person owed back taxes, which could be rescinded upon payment of a fee to the defendant. Payments solicited included $500, $3000, and $2700 for a total dollar amount of $6200. Defendant often sought fines many times larger than the parties agreed to pay. The asserted taxes foregone amounted to approximately $500,000. Apparently numerous other extortion payments were secured, not counted in the relevant conduct for this case. [Multiple payments].

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INS

A. Defendants/INS Agents: Schemes Involving Individual Illegal Aliens

55189

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	5
		Base (PSR):	10	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	8	2: 0	Cat: 1	YRSENT:	91
				3: N/A			

Defendant and girlfriend (co-defendant) offered an INS inspector $1500 to get the boyfriend an authorization card to travel in the U.S. and work there. [Single payment].

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67363

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	3
		Base (PSR):	10	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	8	2: 0	Cat: 1	YRSENT:	91
				3: N/A			

The defendant was detained at the United States border in , by a Border Patrol agent. The agent informed the defendant that she would be charged with entering the United States without inspection and with making false statements to an INS officer. The defendant offered a payment of $1500 to a Border Patrol agent if he would not file charges against her. The agent later visited the defendant in her cell, when she again offered the payment. [Single payment].

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68868

GDLINEHI:	2C1.4	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	6	1: N/A	Pts.: 0	DEPARTURE:	No
		Final (SOR):	Miss	2: N/A	Cat: Miss	YRSENT:	91
				3: N/A			

The defendant was the manager of a restaurant believed to be employing undocumented aliens. INS agents contacted a prior manager of the restaurant and explained the requirements of the Immigration Reform and Control Act (IRCA), and provided him with several I-9 forms. Upon returning for reinspection, the INS officers were told that the defendant was the new manager. The I-9 forms provided to the restaurant had not been completely filled out, and one contained an alien registration number that later proved to be false. The INS officer informed the defendant that failure to comply with IRCA would result in reinspection by the INS. At that point, a co-defendant asked the agent if an "understanding" could be reached. At a subsequent meeting, the defendant gave the agent $300 in cash in return for a letter from the INS stating that the restaurant was in compliance with IRCA. [Single payment].

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69119 (Same Case as 68868)

GDLINEHI:	2C1.4	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	6	1: N/A	Pts.: 0	DEPARTURE:	No
		Final (SOR):	Miss	2: N/A	Cat: Miss	YRSENT:	91
				3: N/A			

The manager of a restaurant who employed undocumented aliens without work permits offered an INS agent a $300 payment in exchange for a letter from the INS stating that the restaurant was in compliance with the Immigration Reform and Control Act of 1986. [Single payment].

79802
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	2
Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
Final (SOR):	12	2:	2	Cat:	1	YRSENT:	91
		3:	N/A				

The defendant was one of more than 30 people involved in payment of payments to an INS examiner in order to obtain Employment Authorization Cards (EAC). These people are apparently not connected with each other. On August 10, 1990, the defendant paid of $2400 to obtain EACs for her client. On August 17, 1990, and January 30, 1991, the defendant paid the INS examiner $2400 and $2700 respectively, for a total of $7500.

*79879
GDLINEHI: 2C1.2

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	5
Base (PSR):	7	1:	0	Pts.:	2	DEPARTURE:	No
Final (SOR):	6	2:	1	Cat:	2	YRSENT:	91
		3:	N/A				

The defendant managed a massage parlor. The defendant offered the INS agent money and goods ($1476 in cash, as well as two rings and a dress, the latter two appraised for at least $1950, for a total of $3426) in exchange for the INS agent helping defendant's business by closing her competition due to INS violations. Defendant claimed the gifts were to the INS agent as a friend, particularly after she spurned his offers of romance. [Multiple payments].

Comment: PO did not adjust for multiple gratuities.

85588
GDLINEHI: 2D1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	82
Base (PSR):	30	1:	0	Pts.:	0	DEPARTURE:	No
Final (SOR):	30	2:	0	Cat:	1	YRSENT:	91
		3:	N/A				

Defendant is an immigrant from the who joined an extensive heroin/cocaine distribution conspiracy as a distributor. Defendant may have been involved in distribution and conspiracy conduct of as much as 888 grams of heroin. This guideline calculation drove the defendant's sentence. Meanwhile, defendant was involved in a smaller offense in which he paid an undercover INS agent to secure 2 entry visas for his daughter and a nephew. Defendant paid $2500 over 2 days for these visas. Later, he sought at least 12 additional passports/resident alien cards. He paid the undercover agent a total of $10,000 for 4 of those aliens, and was arrested at the INS office where he appeared with the 6 aliens supposedly for fingerprinting for their false documents. [Multiple payments].

136549 (Drug case)
GDLINEHI: 2D1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	27
Base (PSR):	18	1:	0	Pts.:	0	DEPARTURE:	No
Final (SOR):	17	2:	0	Cat:	1	YRSENT:	93
		3:	N/A				

Defendant and co-defendant arranged with INS inspector to smuggle 31 kilos of marijuana into the U.S. in exchange for $10,000 payment. Defendant actually brought in 39 kilos, and the undercover INS agent then demanded $15,000 to cover the increased weight.

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B. Defendants/INS Agents: Schemes as Brokers For Illegal Aliens

62152

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 15
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: No
		Final (SOR):	Miss	2:	2	Cat: Miss	YRSENT: 91
				3:	N/A		

Defendant was an INS inspector who sold "green cards" with the aid of others. She received $6000 for payment. Upon conviction, she was sentenced to 15 months.

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*64343

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 27
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: No
		Final (SOR):	18	2:	8	Cat: 1	YRSENT: 91
				3:	N/A		

The defendant and other co-conspirators were involved in smuggling illegal aliens. Payments were made to an INS agent. No adjustment given to "role in the offense" (!) as the defendant was a mere messenger. [Multiple payments].

Comment: Also, "+8" was added as payment was directed to INS agent. <u>This appears to be incorrect</u>.

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66157

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	7	1:	3	Pts.: 0	DEPARTURE: No
		Final (SOR):	Miss	2:	0	Cat: Miss	YRSENT: 91
				3:	N/A		

INS, FBI and Police Department Asian Organized Crime Task Force (AOCTF) were involved in an investigation of the United Bamboo Gang. This defendant was part of the Gang's scheme to induce an INS agent to sell Alien Registration cards. The defendant was one of 10 aliens who purchased a green card for at least $20,000 apiece -- $12,000 of which went to the undercover INS agents and the rest to the alien broker of the deal.

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67377

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	7	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	Miss	2:	3	Cat: Miss	YRSENT: 91
				3:	N/A		

The defendant was an illegal chinese alien seeking to purchase a fraudulent green card. Various federal agencies, including the INS, conducted an ongoing investigation of an Asian gang. One of the members of the gang told an INS special agent who was posing as a corrupt INS officer that he could recruit aliens who wished to buy fraudulent green cards. After several failed attempts which the gang member claimed were the result of his own lack of a green card, the gang member recruited 10 individuals, the defendant among them, who would pay $40,000 each for green cards. The gang member, INS agent, and 10 aliens were video and audio taped while filling out applications. When the aliens returned some days later to receive their green cards, they were all arrested.

68986

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 196
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE: 5K
	Final (SOR):	18	2:	8	Cat:	1	YRSENT: 91
			3:	N/A			

The defendant was a member of a conspiracy to produce fraudulent green cards. and served as a "broker" in that conspiracy. The defendant mediated between nationals wishing to purchase green cards and other defendants, an INS employee and the defendant's daughter, who accepted the payments and processed the applications.

70930

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 0
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE: 5K
	Final (SOR):	16	2:	8	Cat:	1	YRSENT: 91
			3:	N/A			

Defendant helped co-defendants (3) sell green cards. Price ran from $3000/card early on to $30,000 later on. Total of 127 cards sold over 3 years for $800,000. Money was laundered. Co-defendants are INS agents. Defendant is sister of a friend. Defendant handed over money in one instance -- other conduct unknown. Defendant had $260,000 with two others. Cards mainly went to , dealing drugs in the United States. Defendant's sister is a fugitive. [Multiple payments].

Plea to 18 U.S.C. § 371 Conspiracy -- sentenced to time served--facing deportation--got minor role.

76429

GDLINEHI: 2C1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 5
	Base (PSR):	7	1:	0	Pts.:	0	DEPARTURE: No
	Final (SOR):	5	2:	0	Cat:	1	YRSENT: 91
			3:	N/A			

The defendant was a clerk for the INS. She began charging aliens for extensions of their work permits.

PSR treats it as a separate count (she pled guilty to one count of $15).

*76607

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 6
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE: No
	Final (SOR):	10	2:	0	Cat:	1	YRSENT: 91
			3:	N/A			

Defendant participated in a conspiracy to provide INS documents. One INS agent was involved. [Multiple payments].

Comment: The PSR did not add adjustment for amount, or more than one payment.

*77252

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	12
		Base (PSR):	10	1: 2	Pts.: 1	DEPARTURE:	5K
		Final (SOR):	20	2: 8	Cat: 1	YRSENT:	91
				3: N/A			

The defendant was the organizer of an alien smuggling ring. He tried to pay an INS agent and was caught.

Comment: On the guideline calculations, he received a +8 enhancement because the agent was considered "supervisory police." This appears in error. The defendant did cooperate, testify at trial and debriefing. He got a §5K1.1 motion. His sentence was 12 months (down from a range of 33 to 41 months).

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84278

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	3
		Base (PSR):	10	1: 2	Pts.: 0	DEPARTURE:	Miss
		Final (SOR):	Miss	2: 8	Cat: Miss	YRSENT:	91
				3: N/A			

Defendant and co-defendant paid undercover INS assistant district director at $2000 per person to secure amnesty employment authorization cards for each of 9 persons. Up to $3000 additional per person was collected by the 2 defendants. Total of $18,000 was received, with $24,000 additional promised, but defendants got wind of the undercover operation and canceled the last transaction. At least five separate payments involving 50 immigrants for total $92,000 were involved.

PO gave multiple payments enhancement, but defendant and government objected to it. PO gave high level official adjustment because defendant had authority to grant work permits on his own. PO also cites note 1 (referring to agency administrators). Defendant objected because she did not intend to influence a high-level official. Government did not seek this enhancement, pursuant to a plea agreement. [Multiple payments].

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86784 (Same case as 84278)

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	12
		Base (PSR):	10	1: 2	Pts.: 0	DEPARTURE:	Miss
		Final (SOR):	Miss	2: 8	Cat: Miss	YRSENT:	91
				3: N/A			

Defendant and co-defendant paid undercover INS assistant district director at $2000 per person to secure amnesty employment authorization cards for each of 9 persons. Up to $3000 additional per person was collected by the 2 defendants. Total of $18,000 was received, with $24,000 additional promised, but defendants got wind of the undercover operation and canceled the last transaction.
At least five separate payments involving 50 immigrants for total $92,000 were involved. PO gave multiple payments enhancement, but defendant and government objected to it. Defendant indicates he netted $35-40,000 after the payments were paid. [Multiple payments].

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95109
GDLINEHI: 2L2.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	Miss	1:	0	Pts.:	0	SENTENCE:	0
Final (SOR):	Miss	2:	N/A	Cat:	1	DEPARTURE:	5K
		3:	N/A			YRSENT:	91

The defendant was involved in a conspiracy involving illegal aliens and false SAW documents. One of the elements of conspiracy was bribery of an INS official. Substantial assistance was g??
one co-defendant.

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*102712
GDLINEHI: 2C1.2

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	7	1:	0	Pts.:	0	SENTENCE:	12
Final (SOR):	13	2:	8	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	92

Defendant was an employee of the INS, and had accepted about $35,000 in payment for ensuring that amnesty applicants would receive favorable and preferential treatment at the INS office. (six payments of $5000; 1 of $2000, and one of $3000). The defendant also split some of these monies (a few thousand dollars) with a fellow employee who helped the defendant process the applications (She resigned from the position). [Multiple payments].

Comment: BOL of 7 plus 8 for being an elected official holding a high level or sensitive position. Adjusted Offense level is 15, minus 2 for A of R). Final Offense Level=13.

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105070
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	2	Pts.:	2	SENTENCE:	12
Final (SOR):	17	2:	5	Cat:	2	DEPARTURE:	Down
		3:	N/A			YRSENT:	92

A co-defendant, who worked for the defendant as a translator, offered a payment to an INS officer (working undercover) in return for employment authorization cards. Subsequently a payment of $4000 was given in exchange for employment authorization cards for three persons. The defendant later agreed to pay the INS officer $250-500 per applicant, depending on the type of authorization issued. Altogether, $92,050 in payments were made.
The PSR recommended that the enhancement for the amount of the payment be decreased on the grounds that it was uncertain whether the defendant knew of, or could have reasonably foreseen, the payment made before his contact with the INS officer.

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117952
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	2	Pts.:	0	SENTENCE:	18
Final (SOR):	14	2:	Miss	Cat:	1	DEPARTURE:	5K
		3:	N/A			YRSENT:	92

Defendant worked with another person to secure employment authorization cards illegally from the chief legislation officer for the INS for $2000 apiece. Defendant charged $5000 apiece for the cards and processed approximately 90 aliens in this way.

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135506

GDLINEHI:	2C1.7	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	10	1:	4	Pts.: 0	DEPARTURE: 5K
		Final (SOR):	12	2:	N/A	Cat: 1	YRSENT: 93
				3:	N/A		

Defendant was former diplomat from who left the service and opened his own shop, losing his legal alien status. He sought a green card from a friend, who procured it, using a corrupt INS official, for $6000. Defendant then sought to get green cards for a number of "clients" from another acquaintance. After paying $6000 to this person, the person fled. Defendant then paid $24,000 to another person to procure cards for 7 persons. Price for these was $7000 / card, with defendant receiving $2000-3000 per card. [Multiple payments].

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*139515

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 4
		Base (PSR):	7	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	Miss	2:	8	Cat: 1	YRSENT: 93
				3:	N/A		

Comment: Your typical INS fraud case that has atypical calculations. The guideline used was not bribery (§2C1.1) but gratuity (§2C1.2) with a level of 7. The defendant received a +8 enhancement because the INS agent was in charge of the INS office in also considered "supervisory." This is questionable. There was more than one payment, but the PSR considered it the course of one conduct, and so no enhancement. The defendant received a minimal adjustment (-4) because of role. The initial payment was for $60,000 for 80 illegal visas.

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139516

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 6
		Base (PSR):	7	1:	0	Pts.: 0	DEPARTURE: 5K
		Final (SOR):	13	2:	8	Cat: 1	YRSENT: 93
				3:	N/A		

Defendant was involved in a bribery scheme of an INS agent. He offered $60,000 for 80 illegal visas; the amount he ended up paying was $14,500. He received a +8 enhancement because the INS agent was the agent in charge of the office. He received a downward departure for assisting in the investigation.

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142482

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 33
		Base (PSR):	10	1:	2	Pts.: 2	DEPARTURE: Down
		Final (SOR):	21	2:	7	Cat: 2	YRSENT: 93
				3:	N/A		

The defendant was an illegal immigrant, who offered a Special Agent (SA) of the INS $18,400 in return for a "green card." In subsequent transactions, the defendant and a co-defendant, on behalf of other illegal immigrants, offered payments to the SA in order to obtain green cards. The payment for each card ranged from $15,000 to $30,000.

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142655

GDLINEHI: 2K2.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
	Base (PSR):	18	1:	3	Pts.:	0	DEPARTURE:	No
	Final (SOR):	19	2:	0	Cat:	1	YRSENT:	93
			3:	0				

The defendant was an INS officer at a border station in A co-defendant coordinated activities in which aliens were smuggled across the border for $400 each. Payment would be made to the co-defendant, who would make arrangements with the defendant. The defendant would then allow the aliens to pass through his inspection point without showing any papers. The investigation revealed two payments of this type, for a total of $800. The defendant received $600 of the payment. After the defendant's arrest, a search of the defendant's home turned up a 107 weapons, 11 of which were illegal. The defendant was sentenced under §2K2.1 for the possession of these weapons.

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IMMIGRATION - Cases Not Including INS Agents

*58202

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	41
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	20	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant was convicted of briberv and other crimes related to smuggling 15 or more illegal aliens from into the for a payment of $3000 each. The defendant falsified immigration documents and then escorted the aliens to a customs officer who allowed them to pass customs. [Multiple payments].

Comment: The defendant was given an 8 level enhancement for being a high level official.

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77483

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	10	2:	0	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant tried to pay a community relations service officer to fraudulently process refugees. She was turned in.

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103912

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	21
	Base (PSR):	10	1:	2	Pts.:	3	DEPARTURE:	Down
	Final (SOR):	16	2:	6	Cat:	2	YRSENT:	92
			3:	N/A				

The defendant pled guilty to a violation of 18 U.S.C. § 371 as alleged in Count 1 of a ten count indictment. The plea resulted in a dismissal of the remaining nine counts which were charges of "Bribery of a Public Official."

The defendant sought to obtain employment authorization cards illegally for his clients from the Stockton Legalization Office. Immediately after the defendant approached an officer at the legalization office, an undercover operation was initiated. The defendant in the past had acted as an interpreter for other clients applying for authorization cards. A total of $92,050 payments had been over a period of about three

weeks in exchange for employment authorization cards for 146 applicants. [Multiple payments].

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Cases 109571 through 109580 Single Conspiracy

109571

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	10
		Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
		Final (SOR):	20	2:	8	Cat:	1	YRSENT:	92
				3:	N/A				

Defendant worked in the U.S. Embassy in He left that position and came to the U.S. and received referrals by defendant's successors of persons seeking immigration assistance. Defendant would then extort money from these persons ($2000-5700) and take most of the money for himself, giving some to the referring officer ($25,000 over two years). Thirteen persons remained unprocessed at the time of his arrest, and 8 were known to have been processed, including an undercover agent for $8000 and 7 for a total of at least $19,700. High-level official adjustment given because embassy official with final authority to approve visas was influenced. PO believes defendant might also be considered a high-level official because he is influential in his native country by virtue of his embassy position. Vulnerable victim adjustment given. [Multiple payments].

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*109579

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
		Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
		Final (SOR):	20	2:	8	Cat:	1	YRSENT:	92
				3:	N/A				

See previous case #109571. Defendant was the last successor to the original employee who was now extorting visa applicants. Defendant had provided the co-defendant 13 files of persons seeking visas, but no payments to defendant had yet been made or visas granted at time of arrest. [Multiple payments].

Comment: +2 adjustment for multiple payments given (under attempt theory). High-level official adjustment given for reasons stated in 109571. Defendant objected to this adjustment because the position is not listed in the Vulnerable victim adjustment given. Court adjusted total offense level by 6 levels -- not apparent why. 5K granted -- may be questionable.

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109580

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	10
		Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
		Final (SOR):	20	2:	8	Cat:	1	YRSENT:	92
				3:	N/A				

See 109571 and 109579. Defendant was the successor to the defendant in that case. Defendant received $25,000 for the referrals.

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112889
GDLINEHI: 2J1.6

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	208
Base (PSR):	6	1:	0	Pts.:	0	DEPARTURE:	No
Final (SOR):	13	2:	Miss	Cat:	1	YRSENT:	92
		3:	N/A				

Defendant left the U.S. and attempted to bring his brother-in-law back into the states from . Defendant knew that his brother-in-law had no documents to enter the U.S. but had advised him to seek political asylum. Defendant did not attempt to hide his brother-in-law; they just drove right up to the port of entry where the defendant presented his "form I-94," showing he himself had applied for political asylum, and his "form I-181," showing no action as yet taken on his application for permanent status. After being detained at the prosecution unit for "attempting to smuggle an alien into the U.S.," and as his car was being seized, defendant offered the immigration inspector $1000, in exchange for "forgetting" what had happened and not cancelling the defendant's application for permanent resident status.
The other guideline used in this case was a result of a conviction for failure to appear (2J1.6) in court in connection with the bribery charges. In accordance with the guidelines, those 2 counts were grouped together.

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118506
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	Down
Final (SOR):	10	2:	0	Cat:	1	YRSENT:	92
		3:	N/A				

Defendant was a receptionist for the Social Security Administration (SSA). She paid two development clerks (they process SSA applications) $50 for processing a false social security card. The cards were then given to immigrants who used the cards to secure employment. Defendant paid each of the two clerks $850 for the cards.

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141943
GDLINEHI: 2L2.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	4
Base (PSR):	Miss	1:	0	Pts.:	1	DEPARTURE:	No
Final (SOR):	Miss	2:	2	Cat:	1	YRSENT:	93
		3:	N/A				

The defendant offered an employee of the Social Security Administration Office $2000, in exchange for which the employee was to process social security card applications which the employee had already determined were suspect. Pursuant to a plea agreement, the defendant was sentenced under §2L2.1 (trafficking in documents relating to naturalization, citizenship, or legal status).

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143746
GDLINEHI: 2C1.7

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	36
Base (PSR):	10	1:	8	Pts.:	0	DEPARTURE:	No
Final (SOR):	19	2:	N/A	Cat:	1	YRSENT:	93
		3:	N/A				

The defendant, the president of a travel agency, used his business to fraudulently procure INS alien registration cards and social security cards. He charged each individual $6000 & $7000 for green cards and $600 & $700 for Social Security cards. No mention of the number of cards actually issued.

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CUSTOMS OFFICIALS

*78935

GDLINEHI:	2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR): 10	1: 0	Pts.: 0	DEPARTURE:	Miss
		Final (SOR): Miss	2: 8	Cat: Miss	YRSENT:	91
			3: N/A			

The defendant and co-defendants twice paid $10,000 to an undercover Customs agent in exchange for the agent allowing two containers of counterfeit goods into the country. The containers were filled with counterfeit Louis Vuitton luggage whose value was assessed by the Customs Service at $500,102.

Comment: The defendant was convicted of two bribery counts for each of the $10,000 payments, yet the PO did not group the counts under rule (d) as he should have. He calculated one count using the $10,000 payment amount and the other using the $500,102. The defendant, therefore, received a one unit/one offense level increase that he shouldn't have. It appears the court departed since the completed J&C only puts the defendant on probation & imposes a fine. No SOR. No discussion of multiple payments.

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79585

GDLINEHI:	2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR): 10	1: 0	Pts.: 0	DEPARTURE:	Miss
		Final (SOR): Miss	2: 5	Cat: Miss	YRSENT:	91
			3: N/A			

The defendant paid an employee of the U.S. Customs Service, offering her $2500 in exchange for preparing fraudulent release documents that would allow the defendant to obtain unauthorized release of Vietnamese antique furniture--this furniture had been purchased by the defendant and subsequently seized by the USCS who suspected that it involved a commercial fraud importation (the furniture was purportedly antique Thai furniture, yet out of 46 pieces, 44 originated in Vietnam).

Comment: The PO used the appraised domestic value of the furniture as the benefit the defendant would have received. The PSR states that the government was going to stipulate that the benefit received would be the $11,400 in penalties and "re-export expenses" that would have been saved by the payment. The appraised domestic value seems appropriate because the case agent stated that since the place of origin was Vietnam, the furniture would never have been legitimately authorized for release into the U.S. However, it also seems that the defendant would have benefitted in avoiding the $11,400 payment to the government for penalties and re-export expenses if he obtained a fraudulent release. Total benefit received would then be $77,400. The defendant was placed on probation, no SOR.

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80308

GDLINEHI:	2D1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE:	63
		Base (PSR): 28	1: 0	Pts.: 0	DEPARTURE:	Down
		Final (SOR): Miss	2: 0	Cat: Miss	YRSENT:	91
			3: N/A			

The defendant was stopped by customs agents after giving inconsistent stories regarding his travels. He was x-rayed as an internal courier and held, and ultimately passed 63 balloons carrying 450 grams of heroin. While waiting to pass the balloons, he offered the agent $5000 in exchange for being released. The agent refused. Defendant attempted to make a controlled delivery to his contact, but the delay in time likely alerted the contact to problems.

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80677

GDLINEHI: 2D1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	121
	Base (PSR):	34	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	32	2:	0	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant was told that the brother-in-law of a confidential informant (CI) was a U.S. Customs Inspector at the Airport and would help the defendant import cocaine to (A special agent of the U.S. Customs was posing in this capacity). The scheme was that the U.S. Customs agent would divert the luggage containing contraband before it reached the customs area. The defendant agreed to pay the Customs Inspector $2000 per each kilogram of cocaine diverted in this manner. There were 15 separately wrapped kilogram packages of cocaine seized in this case (weighing a total of 17.5 kilograms). Defendant was observed giving $5000 to the CI. The defendant was to pay the inspector $2000 per package to total of $30,000.

PO did not use cross reference to drug guideline because "the defendant is a principal in the offense."

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118463

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	27
	Base (PSR):	10	1:	0	Pts.:	7	DEPARTURE:	Up
	Final (SOR):	12	2:	4	Cat:	3	YRSENT:	92
			3:	N/A				

Defendant agreed to pay an undercover customs agent $2000 to allow a courier to smuggle marijuana into the country. Defendant was arrested after delivery of the second $1000 payment; later that day the courier was arrested at the airport carrying 13.9 pounds of marihuana. The PSR states that the value of the benefit to be received was "about $33,000"; it is not clear whether this represents the potential net profit to the defendant or the street value of 13.9 lbs. of marihuana. Defendant was a career offender who was permitted to plead to the bribery count instead of an importation count, which would have triggered the career offender provision.

Reason for Departure: underrepresentative criminal history

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127539

GDLINEHI: 2K2.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	18	1:	0	Pts.:	0	DEPARTURE:	Down
	Final (SOR):	16	2:	0	Cat:	1	YRSENT:	92
			3:	0				

Defendant offered an U.S. Customs Service Inspector $300 for a AK-47 he had in his possession. [Single payment].

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CONTRACTS

58068

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	12
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	11	2:	1	Cat:	1	YRSENT:	91
				3:	N/A				

Defendant was manager of operations for a contractor that was bidding on a contract that would be worth up to $150 million over 5 years for providing services to a military base overseas. Defendant offered a civilian employee of the agency (the employee was about to be terminated) a job paying $250 per day for two weeks (total $3500), and paid him $800 for travel, $1000 for travel expenses, a $30 phone credit, and $200 for expenses in exchange for the employee providing confidential documents relevant to the bid and the prior contractor's performance. [Single payment].

Comment: PO calculates value of payment to be between $5000 and $10,000. However, some of the sums included include expenses that would not inure to the benefit of the employee, but were merely expenses in carrying out the illegal venture ($800 (travel) + $1000 (travel expenses) + $30 (phone credit) + $200 (document acquisition expenses) = $2030) although the payment in cash for these items permitted use for the defendant's sole benefit. Without this condition only the $3500 consulting job was the payment.

Benefit to defendant would have been $2000 - 5000 bonus to him (as with all employees) if the contract were awarded. Net benefit to the company on the $150 million contract, which did not authorize his actions, and warned him after ordering him to cease, is not known, and in fact the company dropped out of the bidding process.

The court adopted the $2000-5000 figure, which seems appropriate. The prosecution and the defense had agreed to a figure of less than $2000, arguing that the consultant fee was for services provided (no net benefit), and the bonus figure speculative.

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65795 (Same case as 58068)

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	8
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	Miss	2:	2	Cat:	Miss	YRSENT:	91
				3:	N/A				

Defendant was a specialist in logistics, food service, and community relations for a contractor. Co-defendant was a civilian employee of an agency that was soliciting a contract that would be worth up to $150 million over 5 years for providing services to a military base overseas. Another co-defendant was the manager of operations for a contractor that was bidding on the contract. Defendant offered the employee (who was about to be terminated) a job paying $250 per day for two weeks (total $3500), and paid him $800 for travel, $1000 for travel expenses, a $30 phone credit, and $200 for expenses in exchange for the employee providing confidential documents relevant to the bid and the prior contractor's performance.

Comment: PO calculates value of payment to be between $5000 and $10,000 based on the above. However, some of the sums included include expenses that would not inure to the benefit of the employee, but were merely expenses in carrying out the illegal venture ($800 (travel) + $1000 (travel expenses) + $30 (phone credit) + $200 (document acquisition expenses) = $2030) although the payment in cash for these items permitted use for the employee's sole benefit. Without this condition only the $3500 consulting job was the payment.

Benefit to defendant would have been $2000 - 5000 bonus to him (as with all employees) if the contract were awarded. Net benefit to the company on the $150 million contract, which did not authorize defendant's actions, and warned him after ordering him to

cease, is not known, and in fact the company dropped out of the bidding process. The court adopted the $2000-5000 figure, which seems appropriate under either calculation. The prosecution and the defense had agreed to a figure of less than $2000, arguing that the consultant fee was for services provided (no net benefit), and the bonus figure speculative.

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61316

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	4
		Base (PSR):	10	1:	0	Pts.:	2	DEPARTURE:	No
		Final (SOR):	5	2:	0	Cat:	2	YRSENT:	91
				3:	N/A				

Defendant is asked by friend to contact public official (to whom defendant previously sold cocaine and marijuana) who is demanding kickbacks on contracts. Defendant may have thought the contract was legally secured -- it wasn't. Defendant brings $1400 to official after negotiating the kickback fee 15% on the $28,000 deal). [Single payment].

Defendant gets -3 for minor role. Defendant's motivation was "to help a friend" who might later steer business his way. Defendant cooperated in investigation that nailed 2 higher ups.

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70031

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	10
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	8	2:	0	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant oversaw the administration of government grants awarded to non-profit community-based groups to fund community health centers. He was paid by executives of a private corporation to favorably influence the decision to award an approximately $2,000,000 grant to their dummy non-profit company. The defendant attended meetings in which the whole scam was planned and offered suggestions and advice as to the best tactics in getting the grant awarded to the dummy non-profit, going so far as to leak internal government documents concerning the poor administration of programs by current grant-holders. The amount of payments to him were to be based on the amount of the grant awarded; the defendant was arrested before the grant review process was complete.

The PO did not give the enhancement for high-level official because it did not appear that the defendant had the power to actually award the grant. Also, they did not enhance for value of the payment because no specific amount of money was offered, accepted, or discussed. Further, the benefit to be received is unknown since there is no indication of how much profit the private company would have made from the grant . . . would they have actually used the grant "legitimately" or pocketed it somehow? Government loss is also unknown for basically the same reasons. No SOR in file.

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70040 (Same case as 70031)

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	10
		Base (PSR):	10	1:	0	Pts.:	1	DEPARTURE:	No
		Final (SOR):	10	2:	0	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant was the middleman for the corporate executives and the public official that they were bribing in exchange for being awarded a government grant. He was a co-defendant in case #70031, described above. [Single payment].

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70538

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	16	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant conspired with two federal officials to grant the defendant a $120,000 contract which would be inflated to $150,000. Of the extra $30,000, $24,000 would then go to the director of the government office who had the power of final approval of the contract, and $6000 was to go to a subdivision chief who also reviewed the contract as well the projected budget submitted by the defendant for the $150,000 contract. [Single payment].

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71339

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	12	2:	4	Cat:	1	YRSENT:	91
			3:	N/A				

Defendant responsible for selecting 3 vendors from GAS freight-rate quotations: select the lowest bid to freight certain goods. Defendant permitted another forwarder to select vendors for total of $35,000 given overtime in amount of $500-1000. Co-defendant then set freight business to foreign, not American, freighters.

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79824

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	10	2:	2	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant and 4 co-defendants were charged with conspiracy to obtain property from electrical contractors and others by wrongful use of actual or threatened fear of economic harm. The defendants were commercial service representatives (CSR) in ConEd, an agency charged with providing temporary or permanent electrical service to newly constructed, remodeled, or renovated residential, commercial, and industrial buildings in As CSR's defendants were responsible for conducting on-site inspections of contractor work. One co-defendant was the district manager for the branch. The defendants used their positions in ConEd to extort money from electrical contractors, building contractors and others. In some cases, the defendants obtained money by threatening to delay electrical services until their extortionate demands were met; in other cases they obtained money by promising to expedite provision of electrical service. In a couple of cases, the defendant and co-defendants received $6000 in cash, then demanded an additional $2000 payoff, a third of $1000, and a fourth of $50 (total of $9050 in payoffs). This figure almost certainly underrepresents the amount extorted. The defendant shared the payoffs with the district manager who was directing much of the extortion (basis for minor role). Defendant told other inspectors which contractors were likely to pay, and which ones should not be dealt with. [Multiple payments].

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79857

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	8	2:	2	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant and 4 co-defendants were charged with conspiracy to obtain property from electrical contractors and others by wrongful use of actual or threatened fear of economic harm. The defendants were commercial service representatives (CSR) in ConEd, an agency charged with providing temporary or permanent electrical service to newly constructed, remodeled, or renovated residential, commercial, and industrial buildings in As CSRs, defendants were responsible for conducting on-site inspections of contractor work. One co-defendant was the district manager for the branch. The defendants used their positions in ConEd to extort money from electrical contractors, building contractors and others. In some cases, the defendants obtained money by threatening to delay electrical services until their extortionate demands were met; in other cases they obtained money by promising to expedite provision of electrical service. The defendant shared at least one $6000 payoff with the district manager who was directing much of the extortion. The defendant said he initially refused to comply, but was threatened with the loss of his job, and other veiled threats by the "Mafia."

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*85081

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	30
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	8	Cat:	Miss	YRSENT:	91
			3:	N/A				

Defendant and co-defendant were executive directors of a non-profit corporation that received federal grants. The directors required substantial kickbacks from contractors to whom they sent their business (10-80% off top), and procured payment from a benefits company by retroactively signing an agreement for one of the defendants to receive $150,000 compensation on retiring from the organization. Defendant ended up with $33,000 in kickbacks, co-defendant with $243,200.

Comment: Not clear if rigorous §1B1.3 analysis was done on the latter figure, although the $150,000 was clearly attributable to the defendant as his own conduct. Defendant paid another person to ensure the scheme would not be revealed. High-level official enhancement even though the defendant was only a high-level official in a private organization (may be a problem with this).

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93588

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	Down
	Final (SOR):	8	2:	0	Cat:	1	YRSENT:	92
			3:	N/A				

The larger criminal scheme involved a series of falsified equipment orders, rigged bids, and cash kickbacks which were coordinated by an employee of a school board who worked in the maintenance department. The defendant requested to be involved in the scheme with respect to a contract to be awarded to replace doors in some of the schools operated by the district. The school board employee related the amount of competing bids to the defendant, who then submitted the lowest bid. The employee devised a scheme whereby the school board would pay for the necessary equipment (the price of which had been included in the bid), provided the defendant kicked back part of his profits.

The district court departed downward from the guidelines under its discretion, and gave no further detailed explanation.

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99577

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	27
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant was an elected public official (Treasurer of the Unit School District Board of Education). He had position of public trust; he also had ability to influence the awarding of contractual construction work to be performed for the school district. The defendant accepted a payment of $16,700.78 from a construction company owner. The award of this contract to the construction company owner was arranged by the defendant with the understanding that the owner would split the profits with the defendant. The defendant received 4 other payments from the owner and from one other individual (under the same type of arrangement) for a total of $60,939.54. Further, the defendant formed his own construction business and arranged for certain contractual construction work to be awarded to this company; as a result, he received 8 contract payments from the school district totaling $28,464 to which he was not entitled. The defendant had concealed from the rest of the school board members his ties to this company. The "benefit received" is unknown as the profit cleared from these various contracts is unknown. As for "loss to the government," it is also unknown whether the defendant's company actually performed any of the work for which they were paid, and if not, whether the government recovered they payments made to the defendant.

Offense Level Computation: BOL=10, plus increase of 2 for more than one payment, plus 8 for being an elected official holding a high level or sensitive position; minus two for A of R. Offense Level=18

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102956

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	24
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	18	2:	8	Cat:	1	YRSENT:	92
			3:	N/A				

On April 8, 1991, the defendant was charged with multiple crimes stemming from his official conduct as Executive Director of the Redevelopment Agency (funded by HUD, at almost $1,000,000 each year in 1986-1989.) The defendant accepted payments from four contractors, but the government is unable to determine with certainty the total amount of payments received by the defendant. The defendant received $3300-3500 in return for a contract worth $133,780 in the demolition program, and in kickbacks through other schemes, by awarding contracts under favorable conditions (through the Rehabilitation and Homestead Programs) to individuals who would ensure that such payments were made. [Multiple payments].

BOL=10 plus 2 for more than one payment (one payment was made but 11 appointments were received), plus 8 for being an elected official holding a high level or sensitive position, minus 2 for A of R. Offense level: 18

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104509 (Same case as 102956)
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	9
Base (PSR):	10	1:	2	Pts.:	Miss	DEPARTURE:	5K
Final (SOR):	18	2:	8	Cat:	4	YRSENT:	92
		3:	N/A				

The defendant paid the manager of the City of Redevelopment Authority (CRA) in return for the award of contracts for demolition work. The CRA, along with the Department of Public Safety (DPS), developed an annual list of buildings to be demolished an awarded the contract to the lowest bidder. In addition, the Director of DPS authorized the manager of the CRA have some buildings demolished on an emergency basis. Defendant's company was not bonded, and thus was not authorized to bid on the annual contract, although he could do the emergency work. In return for the defendant's payments, the manager of the CRA, without authorization, designated demolition projects as "emergencies" and awarded the contracts to the defendant. Few of the buildings so designated were actual emergencies. [Multiple payments].

There is no information in the PSR as to the total amount of the payments (although one payment was in the amount of $3300), nor is there any information as to the defendant's net gain from the award of the work.

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111153
GDLINEHI: 2C1.2

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
Base (PSR):	7	1:	6	Pts.:	0	DEPARTURE:	Down
Final (SOR):	13	2:	0	Cat:	1	YRSENT:	92
		3:	N/A				

Defendant was a contractor who provided janitorial services through a 100-employee company. Defendant sought renewal of his contract ($772,000 annually) and it was granted by the contract administrator. Defendant also received a $415,000 disputed contract through the aid of the administrator. Finally, the administrator delayed a number of deductions from the original contract that were to be taken because of failure to comply with certain terms of the contract. The administrator then sought a $100,000 investment in a sports complex the administrator hoped to build, $7000 for a trip to and $5300 for sports equipment. When rumors started regarding the $100,000 investment, defendant was repaid that money and signed a receipt for it. Defendant was acquitted on all charges but a $1500 down payment on the sports equipment.

Reason for Departure: "The $122,000 amount used in the guideline calculations overstates the seriousness of the defendant's offense conduct and a departure is appropriate." PO had recommended the departure in light of the acquittals.

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124014
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	Down
Final (SOR):	10	2:	0	Cat:	1	YRSENT:	92
		3:	N/A				

The defendant was the owner of a painting and packing business which did contracting work for the Department of Defense. A Quality Assurance Representative (QAR) for the DOD solicited payments from defendant in return for ensuring that the defendant's products passed inspection, regardless of whether they conformed to specifications. The QAR was displeased with the amount of the payments, insisting on 20% of the gross value of the contracts awarded to the defendant. The defendant's failure to pay this amount resulted in the QAR threatening to "make it rough" for the defendant. The defendant and the QAR both made statements that the defendant had made three payments to the QAR, although the amounts differed. The defendant stated the payments totaled

$1050, the QAR said the total was $1400. Neither of these amounts were large enough to trigger an enhancement. This offense was part of a larger set of offenses involving the same QAR and several defense contractors, who would knowingly submit nonconforming products for inspection, and would pay the QAR in cash and gifts for approving the products. [Multiple payments].

The court departed pursuant to §5K2.12 (Coercion or Duress) because the defendant believed his business would be shut down if he failed to pay the QAR. A 2-level enhancement for multiple payments was given.

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79814

GDLINEHI:	2C1.3	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
		Base (PSR):	6	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	6	2:	N/A	Cat:	1	YRSENT:	91
				3:	N/A				

Defendant was a consultant to various contractors seeking to do business, or doing business with DOD. Co-defendant was a Quality Assurance Representative (QAR) for DOD who ensured the quality of materials provided to DOD by certain contractors. The co-defendants met two women who were in the process of setting up a fabric manufacturing business with the hope of obtaining government contracts. The defendant was introduced to the two women because he had expertise in setting up new businesses. The purpose of the discussions was to set up a sham business with no overhead and receive government contracts that would then be farmed out to others who actually provided the materials through the sham business. Defendant and the QAR official produced the Quality Assurance Manual for the two women. In return the QAR official was to receive $1500 in cash. This is the same type of manual he is supposed to inspect as a QAR representative. In order to cover up the scheme, the defendant agreed to place his name on the manual as the author. The co-defendants also helped set up a fake warehouse for government inspectors, and dissemble it when they left.

The QAR representative attended meetings (even though he knew his presence would be a conflict of interest), and provided future assistance (e.g., drafting quality manuals) to the women in hopes he would make some money for himself. The QAR representative intended to solicit money from the two women in the event that they did receive government contracts. The defendant knew the QAR's participation was a conflict of interest, yet he encouraged the two women to hire the QAR at a future date. The QAR later advised the two women that he would perform part-time administrative work on a secret basis for a reasonable fee.

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124423

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
		Final (SOR):	19	2:	Miss	Cat:	1	YRSENT:	92
				3:	N/A				

The defendant was an employee of a blueprint company that did work for the army corps of engineers. The company had worked out a scheme in which it paid corps employees to submit falsified invoices showing that the company had done blueprint reproductions which it did not in fact do. In another scheme, the company's owners lied on application forms to obtain contracting work from School Construction, a public authority of the State of In a third scheme, the blueprint secretly owned another printing company that was falsely represented as a minority owned business, allowing it to obtain benefits and contracts because of this status.

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125288 (Same case as 124423)

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: 5K
		Final (SOR):	19	2:	Miss	Cat: 1	YRSENT: 92
				3:	N/A		

Clerks working with a major provider of blueprint reproduction and photocopying services to the U.S. Army Corps of Engineers, which oversees building and construction projects for the military, along with the company president became involved in a scheme to forge work orders and supporting documents that would result in overbilling for the Corps of engineers. Based on an audit, the "corps" had been overbilled by $780,000 for services never performed. The defendant in this case received payments for falsification of the documents between $10,000 and $15,000. The number of payments is unknown.

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130217

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 46
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: No
		Final (SOR):	23	2:	11	Cat: 1	YRSENT: 92
				3:	N/A		

Defendant was the president of a blueprint reproduction/photocopying contractor. He paid clerks in a government agency $60,000 to defraud the agency by submitting false bills on behalf of the contractor. The bills totaled $1.6 million for services not rendered. Defendant also submitted false statements in applications for state government work that no one in his company had been convicted of criminal offenses, when in fact defendant's brother/co-conspirator had been. $120,000 was awarded based on the representations in the false statements. Defendant, a non-minority person, also caused 3 minority persons to indicate they owned a company. As a result, this company received contracts it would not otherwise have received.

2-level enhancement given for multiple payments.

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FEDERAL CONTRACTS

Small Business Administration

58011

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 24
		Base (PSR):	7	1:	2	Pts.: 0	DEPARTURE: Miss
		Final (SOR):	Miss	2:	0	Cat: Miss	YRSENT: 91
				3:	N/A		

Defendant was loss verifier for SBA. In course of duties he solicited various payments from loan applicants to facilitate applications. Total of $1240 from 6 individuals. Defendant had drug problem.

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74196

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 24
		Base (PSR):	7	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	17	2:	8	Cat: 1	YRSENT: 91
				3:	N/A		

The defendant worked for the Small Business Administration (SBA) as the for the Minority Small Business and Capitol Ownership Development Program (the 8(a) program). As such, the defendant supervised and directed program activities, which involved the award of contracts to minority-owned businesses. The defendant solicited payments from various 8(a) businesses, either requesting that a check be made out to her or that a payment be made on her mortgage. The defendant pled guilty to two counts of a pattern of related conduct, involving total payments of $40,000. [NOTE: as the PSR is missing a page, the facts are incomplete.]

From the worksheet:
The defendant was assigned a BOL of 7 (§ 2C1.2(a)), to which an 8 level enhancement was added for being in a sensitive position. She also received a two level enhancement for her role in the offense and a two level enhancement for obstruction of justice, for a total offense level of 19. The defendant received a two level reduction for acceptance of responsibility, for a final offense level of 17.

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140018

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 6
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: No
		Final (SOR):	10	2:	Miss	Cat: 1	YRSENT: 93
				3:	N/A		

A contract specialist working with the Small Business Administration provided cost estimates to the co-defendant to help win a bid on a contract. The co-defendant appears to have made the first move by giving the defendant $500 in a card for his 25th anniversary which occurred during contract negotiations. Later when the contract specialist awarded a contract to the defendant, he was given $10,000 for his efforts. Later after another award, the contract specialist requested $13,500 and received $13,000.

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Army Corps of Engineers

63826

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 5
		Base (PSR):	7	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	6	2:	10	Cat: 1	YRSENT: 91
				3:	N/A		

Defendant supplied goods to the Army Corps of Engineers. He gave kick-backs of 10 percent for each legitimate invoice and 50 percent for each illegitimate invoice to the Army Corp Chief of Supplies who initiated the offense. Investigative agents estimated loss to government of $50,000 in light of seizure of more than $10,000 from one defendant and acknowledgement of equivalent sum of other defendant. [Multiple payments].

Presentence report gave "+8" for influencing high public officials but court did not apply it, probably because the defendant had authority to approve invoices only up to $1000 at a time, up to $25,000 per year. The Presentence report also gave an "abuse of position" enhancement. This appears to have been added. Not clear why this is a gratuity case and not a bribery case in light of its genesis as a contract award situation where the conditioned receipt of business on receiving a $10,000 kickback.

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63827

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 5
		Base (PSR):	7	1:	2	Pts.: 0	DEPARTURE: No
		Final (SOR):	6	2:	8	Cat: 1	YRSENT: 91
				3:	N/A		

Defendant was a supply officer with the Army Corps of Engineers. He received kick-backs of 10 percent for each legitimate invoice and 50 percent for each illegitimate invoice provided by the contractor co-defendant. Defendant had initiated the offense as a condition of the contractor receiving agency business. [Multiple payments].

PO suggested defendant receive a "+8" enhancement as a high government official but it was not given, probably because the defendant had authority to approve invoices only up to $1000 at a time, up to $25,000 per year. "+2" level for abuse of position was given. Not clear why this is a gratuity case and not a bribery case in light of its genesis as a contract award situation where the Chief conditioned receipt of business on receiving a $10,000 kickback.

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Maritime Administration

*63849

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 18
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	Miss	2:	Miss	Cat: Miss	YRSENT: 91
				3:	N/A		

The defendant and co-conspirators sought to pay a Maritime Administration (MA) official to purchase a ship for scrap. Ship sold for $3 million; ship worth $5 million; payment was $400,000 with half going to defendant and half to the official. Defendant appeared to be a facilitator of the offense who established contact with the official, delivered part of the payment, was sent to the bank for additional funds, and then was cut out of the loop by the primary conspirator in the offense. [Single payment].

Comment: The payment of $400,000 was used to peg the loss, although the $2 million value of benefit might have been more appropriate.

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*82092

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 30
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	Miss	2:	13	Cat: Miss	YRSENT: 91
				3:	N/A		

Comment: This was a case involving the Maritime Administration. Issue becomes the value of the benefit. The court assessed it at $700,000 rather than $3-5 million.

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Veterans Administration

*88859

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 6
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: Down
		Final (SOR):	23	2:	5	Cat: 1	YRSENT: 91
				3:	N/A		

Defendant and co-defendant were payroll clerks for Hospital. They would inflate paychecks of clerk/typists in their agency (without these employees requesting this be done) and then demand a 50% kickback from the employee. The defendants also inflated their own paychecks. The employees would initially request that the overpayments stop, but later continued to receive the checks without reporting the overpayments. (As a result, charges were brought against most of them for theft of government property.) The defendants also destroyed pay adjustment forms to hide the conduct, and instructed employees not to cooperate with federal authorities. Total of $87,145 overpaid, with defendants taking $45,485 in kickbacks, and $2000 in overpayments to themselves. (Government estimates $154,483 in pre-tax overpayments.) 100 overpayments involved over a period of 1 year.

Reason for departure: "Sentence under guidelines would inquire [sic] undul [sic] hardship on 6 month old child 5 year old child 2 six year old children [sic] since defendant [sic] is single parent and grandparent solely responsible for their upbringing."

Comment: PO miscalculated payments by using payment amount (+5) and not benefit (+6 or +7 depending on how government estimate is treated).

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88860

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 27
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: Down
		Final (SOR):	18	2:	5	Cat: 1	YRSENT: 91
				3:	N/A		

See defendant [redacted] above -- she's co-defendant named in that summary.

Reason for Departure: "The guideline range is too severe a penalty for the crime of this defendant who had no prior record and where crime is more akin to theft of government moneys than bribery."

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Social Security Administration

131850

GDLINEHI:	2C1.7	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	3
		Base (PSR):	10	1: 4	Pts.: 0	DEPARTURE:	5K
		Final (SOR):	12	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

Defendant worked at SSA as a data review technician/service rep and had access to various confidential social security information which she provided to someone working for a credit collection bureau. She first provided information on 4 or 5 persons for free. Over a one year period she was paid $10 for each printout provided that resulted in a find for the bureau. Of 4,000 printouts provided by defendant, 320 resulted in collections of $43,000, and $15,000 profit to the bureau.

PO assessed $43,000 as benefit, over objections of defense which sought use of $15,000 net figure.

AID

131289

GDLINEHI:	2C1.4	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	6	1: N/A	Pts.: 0	DEPARTURE:	No
		Final (SOR):	4	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

Defendant and co-defendant owned a computer software company in that received a special waiver from an AID deputy director in order to secure an AID contract. As the company developed cash flow problems the deputy flew to . to meet with the owners and stated to them that he controlled payments to them and if they wanted their cash, they should pay him $72,000. The deputy with a co-conspirator set up a phony corporation to handle the payments and took the first $32,000 payment. He later pressured them for the remaining $40,000, and set up a complex money laundering scheme to transfer the payments, using his niece's boyfriend's name on an account in exchange for $2200. The deputy later demanded from defendant $10,000 for an injured nephew, but settled for a $1000 "charitable contribution" to pay an associate for translation services. The deputy also had a $20,000 loan canceled in return for assistance in securing an AID contract.

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131290

GDLINEHI:	2C1.4	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	6	1: N/A	Pts.: 0	DEPARTURE:	No
		Final (SOR):	4	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

Defendant was co-defendant in 131289 (both owned a computer software company).

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HUD

93892

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	54
		Base (PSR):	10	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	24	2: 8	Cat: 1	YRSENT:	91
				3: N/A			

The defendant was the manager of HUD for , and was in charge of financing and development of housing for the elderly and handicapped in that state. The

defendant repeatedly solicited payments from the contractor on a project subsidized by HUD. The payments consisted of purchased farm equipment and vehicles, renovation work done to the defendant's home, and some cash payments concealed as purchases of corn from defendant's farm. During the course of the investigation, the defendant repeatedly encouraged others involved in the offense to lie to the grand jury.

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United States Embassy

*114764

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	27
		Base (PSR):	7	1:	2	Pts.:	0	DEPARTURE:	Down
		Final (SOR):	21	2:	8	Cat:	1	YRSENT:	92
				3:	N/A				

The defendant was convicted at trial of violating 18 U.S.C. § 201(c)(1)(B)--Gratuity to a Public Official (§2C1.2) and 22 U.S.C. § 2778; 22 CFR 123 & 127--Violations of the Arms Export Control Act. The defendant was the security officer in charge at the U.S. Embassy at the . As such, he was the administrator for the Embassy's contract with the organization which supplied guards and equipment for the Embassy Guard Force, The defendant pressured to purchase more guard vehicles and initiated paperwork to have the Embassy arrange for the exoneration of Customs Fees for a total of eight vehicles--that is permit vehicles into the country without the 200% import duty. Exoneration of Embassy vehicles is a legitimate procedure. Not following normal procedure, however, the defendant insisted on buying the vehicles himself, stating to that he had the Ambassador's approval. therefore gave the defendant $50,000 for the purchase of four additional patrol vehicles. The defendant went to the states and purchased four vehicles for $39,000 and pocksted the extra $11,000. The defendant immediately pressured to by additional vehicles, but the organization said it couldn't afford them. The defendant eventually proposed that he get vehicles for the CEO's friends and obtain exoneration on them--again the defendant represented that he had gotten approval from the Ambassador and other officials. the CEO's four friends gave the defendant a total of $55,000 for the purchase of four vehicles which the defendant obtained for $35,000, pocketing the extra $20,000. Further the defendant urged to purchase more and better guns and insisted on obtaining them himself. The defendant obtained money from to purchase weapons and, using the same modus operandi as with the vehicles, pocketed $2000.

Comment: Section 2C1.2 enhances for the value of the gratuity, not value of payment, benefit received, or loss to the government. The PO used the $31,000 the defendant pocketed from cars as the amount of the gratuity but not the $2000 from the guns. Those amounts seem more akin to embezzlement or theft than a gratuity; the statute of conviction describes conduct where a public official directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value for or because of any official act performed by that person. This case does not seem to involve a gratuity in the usual sense.

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FmHA

*136609

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	46
		Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	23	2:	8	Cat:	1	YRSENT:	93
				3:	N/A				

Defendant was a supervisor of a FmHA office and had an arrangement with a loan packager to receive a kickback of $250-500 for each home sold and loan prepared by the packager,

with the defendant expediting the loan package. Defendant received a total of $52,075 of the total $22,720 in kickbacks given to members of his office. To cover up the scheme after the FBI had discovered it, the defendant altered credit reports to make it appear as if the borrowers qualified for the purchases.

Comment: Not clear if PO identified benefit received.

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Resolution Trust Corporation

142775

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	10
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	Down
		Final (SOR):	16	2:	6	Cat:	1	YRSENT:	93
				3:	N/A				

The defendant offered a payment of $80,500 ($500 cash, $80,000 in the form of a promissory note) to an employee of the Resolution Trust Corporation. In return for the payment, the employee was to guarantee that the defendant's bid on a property being sold by the RTC would be accepted.

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MILITARY CONTRACTS

*74191

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	18
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	5K
		Final (SOR):	Miss	2:	11	Cat:	Miss	YRSENT:	91
				3:	N/A				

Defendant, CEO of a company, and a co-defendant consultant, conspired to pay a public official (within an Air Force Assistant Secretary's Office) to assist defendant's company to secure 3 government contracts. The Ill-Winds investigation led to the discovery of defendant. Defendant hired co-defendant at $4000 per month to gain access over a period of at least four years to a key public official, with whom the co-defendant was very friendly. For four years the co-defendant developed a positive image of the defendant's company, until defendant submitted a bid on a project that was subject to approval by a general who had negative images of the company. At this point, the co-defendant sought an increase over his $4000 per month arrangement in order to ensure the contract was awarded to the company. The co-defendant also agreed to provide confidential information on competitors. Defendant claims to have operated on his own within the company, never to have met the public official, and claims the co-defendant initiated the arrangement, putting pressure on the defendant. Apparently 3 conspiracies involved 3 different contracts. [Multiple payments].

Contract 1 involved a $9.8 million contract awarded sole source to the company after the public official compelled a change in the original plans to bid the contract competitively.

Contract 2 involved a $51 million contract that was to be awarded sole source to the company after the public official compelled a change in the original plans to bid the contract competitively. The contract was later cancelled.

Contract 3 involved a several hundred million dollar contract which was not awarded to the company, but for which the company was a low bidder and kept in the running for a considerable time by the efforts of the public official.

Defense challenged increases of 11 levels and 13 levels for $45.8 million (profit on ATARS bribery conspiracy) and $46.8 million (profit on government property conversion conspiracy), respectively.

Comment: No multiple payments adjustment given.

97281 (Same investigation as 74191)

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 33
	Base (PSR):	10	1:	10	Pts.:	0	DEPARTURE: No
	Final (SOR):	20	2:	N/A	Cat:	1	YRSENT: 92
			3:	N/A			

In this Ill Winds case, defendant was a for Tactical Warfare Systems in the Air Force's Office for Acquisitions. He helped to develop the AF's acquisition strategy for proposed major tactical warfare systems and participated in the evaluation process in those instances in which a competition was initiated. As a result, he had the ability to influence award decisions on AF contracts, and apparently did use that influence. Defendant was also charged with assessing funding for proposed tactical systems and was a liaison to the Hill and other military services.

Defendant helped push one contractor as a sole source contractor in the face of opposition within his agency -- opposition that preferred to see the bid competed. Defendant received payments from a consultant to the contractor, and turned down a $150,000 annual salary in the private market, having been promised to be set up as president and majority stockholder of another defense company. Defendant supplied documents on the contractor's primary competitor.

With another contractor, defendant agreed to push their product while $270,000 was funnelled through the consultant over a three-year period. Defendant received free meals and lodging from the contractor, sold his car for $14,000 over market value to the contractor, and received money deposited in foreign bank accounts. All told, almost $1.5 million was spent on this project, with the contractor getting a $500 million contract, and a promise to be permitted to write the RFP for the next $9 million contract.

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*75047

GDLINEHI: 2C1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 8
	Base (PSR):	7	1:	2	Pts.:	0	DEPARTURE: No
	Final (SOR):	10	2:	2	Cat:	1	YRSENT: 91
			3:	N/A			

The defendant, a housing referral specialist for the navy, requested a $100 "referral fee" for each lease executed by Navy personnel at an apartment complex. The defendant asked for payments in cash. Estimated payments totalled $7900. Upon learning of a co-defendant's subpoena, the defendant suggested that the co-defendant lie to the grand jury. [Multiple payments].

comment: The PSR estimated a total payment of $7900. The PSR recommended a total offense level of 13 (base of 7, plus 2 for multiple gratuities, plus two for the amount, plus 2 for obstruction of justice). The court substituted a finding that only $200-5000 was involved and used a base offense level of 10, without explanation.

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79258

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE: 8
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE: No
	Final (SOR):	11	2:	2	Cat:	1	YRSENT: 91
			3:	N/A			

The defendant had access to estimates prepared by the Navy on the cost of property and services it wished to procure. The defendant met with a potential government contractor and agreed to provide this information in exchange for a 5% kickback on any jobs awarded to the contractor by the Navy. The defendant also provided information to the contractor on other bids that had been submitted for the services/property the

Navy was seeking to procure. The defendant received a total of $5200 in kickbacks from unidentified undercover "government agents" as payment for two contracts totalling $99,000 ($5200 included a "loan" that was to be deducted from his next payment). [Multiple payments].

Comment : Since there is no information regarding the profit that the contractor would have made from these contracts, and no way of knowing what loss the government suffered, we're left with the payment received, which is what the PO used. He also gave the two level enhancement for multiple payments.

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*86363

GDLINEHI:	2C1.2	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	40
		Base (PSR):	7	1: 2	Pts.: 0	DEPARTURE:	No
		Final (SOR):	21	2: 8	Cat: 1	YRSENT:	91
				3: N/A			

Defendant is in Navy at and is Public Works Officer, the highest-level decision-making position in his Public Works Department, Officer in Charge, the highest-level decision-making position in the office responsible for procurement of locally-funded construction, and Contracting Officer. He headed office of 450 people. A contractor paid $1087 for a washer and dryer for the captain at the time the captain put the contractor on a preferred bidder list, from which the contractor's name was pulled ($2.5 million contract). At the defendant's request, the contractor later paid $1529 for 3 air conditioners and $2087 for two mowers. At the same time, the contractor was the sole bidder on a contract -- the $1 million bid was 55% more than the government estimate, but the defendant ordered a subordinate to justify and let the bid after the contractor indicated he would forgive the sums owed for the personal expenses noted above. Contractor then purchased an air conditioner, trash compactor, and dishwasher for defendant, and later spent $6800 on Amway products bought from defendant but never received. Soon after a $1.69 million contract was awarded to contractor. Contractor also bought an additional $10,000 in Amway products. Defendant entered similar arrangements with at least two other contractors.
Comment: Question whether this is gratuity, bribery, or extortion. Old version of guideline used, so no multiple payment adjustment imposed. Defense challenged 8-level adjustment and PO relied on agency administrator language.

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91010

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	48
		Base (PSR):	10	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	Miss	2: 11	Cat: Miss	YRSENT:	92
				3: N/A			

Defendant was the of the Navy for Research, Engineering and Systems and was the chief for the procurement of research and development of military systems. Defendant was paid large sums of money and a percentage of contracts he steered toward certain companies. Defendant also provided confidential documents to unauthorized persons in a number of contract bid situations, and in return in one case had his condominium purchased at a price other than could be received on the market. Funds were provided through Swiss and other foreign bank accounts. [Multiple payments].

Defendant raised concerns with respect to calculation of value of benefits. Defense questioned use of anticipated profits figure (at least $23 million) where no actual benefit was derived, claiming it was not a true measure of the value of action received in exchange for the payment. Defense sought use of the value of the condominium. Defense also challenged use of contract options in determining value received.

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*116297

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	22	2:	12	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant was an Army clerk who assisted his father (a co-defendant) and friend in fraudulent scheme.

Comment: In some ways, this resembles more a fraud scheme than bribery or extortion. Perhaps a §2F1.1 guideline more appropriate.

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137668

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	24
	Base (PSR):	10	1:	8	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	N/A	Cat:	Miss	YRSENT:	93
			3:	N/A				

Defendant was shop planner and materials controller for the Navy, and was involved with two other persons in writing purchase orders for non-existent material, and receiving kickbacks in exchange. The total loss to the government was $777,739. Kickbacks involved cash, transformers, VCRs, cameras, and similar home items. Defendant received 50% of face amount of false invoices.

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139096

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	24
	Base (PSR):	10	1:	8	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	N/A	Cat:	Miss	YRSENT:	93
			3:	N/A				

Extensive fraud/bribery scheme with contractors and the U.S. Navy clerk. The amount of payment
resulted in a +8 enhancement. The payments were for falsifying invoices and orders.

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143600

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	30
	Base (PSR):	10	1:	2	Pts.:	3	DEPARTURE:	No
	Final (SOR):	18	2:	8	Cat:	2	YRSENT:	93
			3:	N/A				

Defendant owned a carpet installation company that did business with the military. He made payments on numerous occasions to the USMC staff sergeant responsible for supervision and administration of carpeting contracts. In exchange for the payments, the staff sergeant ignored numerous invoices submitted by the defendant which over-billed and fraudulently billed the government for work performed. The staff sergeant also received kickbacks based on the amount of carpet installed. Estimates were that the defendant made $48,000 in payments and caused a loss to the government of $210,000. [Multiple payments].

The PO used the loss amount and gave a 2-level increase for multiple payments. The loss amount corresponded to an 8-level increase, not involvement of a high-level official. No SOR on file.

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POSTAL SERVICE

64767
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	0	SENTENCE:	207
Final (SOR):	10	2:	0	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	91

The defendant and 2 co-defendants were charged with bribery of a US official, fraudulent possession of credit cards, and conspiracy to bribe an employee of the U.S. postal service to induce said employee to embezzle mail. The defendant and co-defendant approached a postal employee and told him that for every credit card that he could steal he would get $100. They sought 15 cards, which were brought by the undercover employee. Defendant, however, only brought a couple of hundred dollars and indicated he would get the additional money by using the cards.

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65323
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	0	SENTENCE:	0
Final (SOR):	8	2:	0	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	91

The defendant and 2 co-defendants were charged with bribery of a US official, fraudulent possession of credit cards, and conspiracy to bribe an employee of the U.S. postal service to induce said employee to embezzle mail. The defendant and co-defendant approached a postal employee and told him that for every credit card that he could steal he would get $100. They sought 15 cards, which were brought by the undercover employee. Co-defendant, however, only brought a couple of hundred dollars and indicated he would get the additional money by using the cards. Defendant was only seen in car at this point, paying for the credit cards. He indicates he had only a minimal role in the offense.

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68562
GDLINEHI: 2C1.2

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	7	1:	0	Pts.:	0	SENTENCE:	0
Final (SOR):	5	2:	0	Cat:	1	DEPARTURE:	No
		3:	N/A			YRSENT:	91

The defendant operated a maintenance supply business, and was interest in doing business with the Postal Service. The defendant offered a Postal Inspector, posing as a purchasing agent, a 10% kickback for any order place by the purchasing agent. The "agent" placed an $11,000 order with the defendant, for which the defendant returned $1100 in cash. [Single payment].

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*69655
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.			
Base (PSR):	10	1:	0	Pts.:	0	SENTENCE:	15
Final (SOR):	Miss	2:	6	Cat:	Miss	DEPARTURE:	No
		3:	N/A			YRSENT:	91

The defendant was involved with a group of people who stole approximately 55 credit cards from the U.S. mail -- one of the group members was a postal carrier who stole and distributed the cards to others in the group and who also stole and distributed to the others "arrow keys" used to open mail box panels in apartment complexes throughout the area. There was a total loss of $126,837 resulting from the credit card scam.

Comment: The defendant and her co-defendants were all convicted of 18 U.S.C. § 201 (b)(1)(A) - Bribery of a Public Official, but there is absolutely no mention of this conduct in the file; the Offense Level Computation section describes it only to the extent that "the benefit received as a result of the bribery was $126,000." Perhaps the postal carrier was paid...? No SOR in the file.

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70622

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
		Base (PSR):	7	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	10	2:	3	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant made payments to postal employees to accept falsified forms which underreported the postage due on a number of bulk mailings. The employees received a total of $8500 in payments; the total amount of underpayment (benefit received/loss to the government) was $17,355. [Multiple payments].

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70955

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
		Base (PSR):	7	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	10	2:	3	Cat:	1	YRSENT:	91
				3:	N/A				

Defendant owned bulk mailing business. Defendant paid a postal employee at the bulk mail facility $3000 to process mail for which $8760 was due for postage. A month later defendant paid to co-defendant $4000 where $8277 was due. Postage due ($17,000) paid as restitution.

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71330

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
		Base (PSR):	10	1:	0	Pts.:	8	DEPARTURE:	Miss
		Final (SOR):	Miss	2:	6	Cat:	Miss	YRSENT:	91
				3:	N/A				

Co-defendant is post office carrier who steals credit cards from boxes to which he has keys and gives cards to 5 or 6 co-defendants, including defendant. Co-defendants buy goods with the cards, including goods to pay off the mailman. Defendants had advance card authorization equipment, computer tied into credit report service and defendant's warehouse to store the goods. 55 cards and $126,800 lost. Defendant helped steal, using the mail box key. Defendant was leader (one of two). Drugs also bought.

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74194

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	2
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	8	2:	0	Cat:	1	YRSENT:	91
				3:	N/A				

The defendant, a supervisor for the U.S. Postal System, recommended to his supervisor that a particular company perform regularly scheduled maintenance of post office vehicles. The defendant's recommendation was accepted. The defendant then requested that the company provide free service to his personal vehicles, in exchange for his actions in steering business toward the company. The defendant's requests included a suggestion that the company falsely charge the service to the Postal Service. The defendant also proposed a false billing scheme, which would allow the company to

recover the amount of any cash payments to the defendant from the Postal Service. The defendant accepted one $200 cash payment, in a transaction which was monitored by U.S. Postal Inspectors.

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75029

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	33
	Base (PSR):	10	1:	0	Pts.:	5	DEPARTURE:	No
	Final (SOR):	16	2:	6	Cat:	3	YRSENT:	91
			3:	N/A				

The defendant was involved in a scheme to steal credit cards from the mail. A co-defendant who was a mail carrier would steal the cards and provide them to the defendant and others. The mail carrier was paid in merchandise for his activities. The defendant used the stolen credit cards to provide narcotics other members of the group, and provided fraudulent temporary licenses (in the names of the legitimate cardholders) to members of the group.

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*88519

GDLINEHI: 2F1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	30
	Base (PSR):	6	1:	14	Pts.:	0	DEPARTURE:	5K
	Final (SOR):	22	2:	2	Cat:	1	YRSENT:	91
			3:	0				

Defendant and co-defendants worked as post office bulk mail clerks and permitted over $7.8 million in fees not to be paid by 5 different mailers. In exchange, the defendants split $100-500 a week in payments, totaling $120,000-$200,000 for each defendant over the 7-year period of the conspiracy. The bulk of the unpaid fees were to the benefit of a single mailer ($7.5 million). Other mailers benefited by underpaying $17,000 - $200,000.

Comment: PO miscalculated adjustment for benefit received (used amount of payments) resulting in 7-level benefit for defendant. This would have made the PC guideline the guideline high (level 26) compared with level 22 for fraud guideline, or level 19 for miscalculated PC guideline. 9-level enhancement was on fraud guideline, not the PC guideline.

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126966

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	105
	Base (PSR):	10	1:	2	Pts.:	8	DEPARTURE:	No
	Final (SOR):	25	2:	13	Cat:	4	YRSENT:	93
			3:	N/A				

The defendant who was in the business of stealing credit cards & checks from the mail, offered a U.S. Postal Inspector money to help him steal credit cards and checks from the mail. There were two payments, $100 and $50. The actual loss to the financial institution was $39,694.64 with a potential loss of approx. $3,056,694.60.

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DEPARTMENT OF BUILDINGS/OSHA

60390

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE:	0
	Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE:	5K
	Final (SOR):	8	2:	0	Cat: 1	YRSENT:	91
			3:	N/A			

Defendant supervised 6 inspectors -- 1 of whom Defendant ordered to extort $300 from owners of one house in exchange for no report on code violations. Two other extortions netted $600 and $500. [Multiple payments].

Plea only to $500 count -- no R.C. used for payment or benefit or multiple payments. Stipulation to $500 payment, no minimal planning, no chapter 3/4 adjustments (probation officer gave payment of $15,000 (+3) §3B1.1 (+2)).

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105728

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE:	0
	Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE:	Down
	Final (SOR):	Miss	2:	1	Cat: Miss	YRSENT:	92
			3:	N/A			

The defendant was an inspector for the City Department of Buildings (DOB), construction division. Inspectors are responsible for inspecting completed construction or alteration work and issuing certificates of occupancy (COs). The PSR noted that there are significant financial pressures on builders and building owners to ensure that a CO is issued after the first inspection. This was ensured by a pattern of payoffs which, in the words of the PSR, had "evolved into an accepted practice and course of doing business." Supervisory inspectors would assign inspectors to sites, and would expect kickbacks from any payment received by an inspector. A coded system was used to determine the amount of a payment without explicitly referring to it in conversation. Failure to pay a payment resulted in the delay or loss of paperwork, and citations for "hyper-technical" violations of the building code. The defendant was involved in this scheme. [Multiple payments].

The PSR determined that the was aware of $4380 in payments, and personally received $2490. The government contested the amount of payment, arguing that it was at least $5880. There is no resolution of this matter in the record.

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141196

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE:	30
	Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE:	No
	Final (SOR):	Miss	2:	8	Cat: Miss	YRSENT:	93
			3:	N/A			

The corruption in this case involved extortion by Building Inspectors from building owners, contractors, engineers and architects. The extorted money was shared with other DOB personnel who controlled building inspection assignments. Since 1988 over 100 payments had taken place totalling $350,000 ranging from $50 - $24,000. To keep the operation a secret, the defendant also conspired to kill a government witness who was willing to testify. [Multiple payments].

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142043

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 6
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: Miss
		Final (SOR):	Miss	2:	8	Cat: Miss	YRSENT: 93
				3:	N/A		

The defendant was a Chief Inspector for the City Department of Buildings (DOB), construction division. Inspectors are responsible for inspecting completed construction or alteration work and issuing certificates of occupancy (COs). The PSR noted that there are significant financial pressures on builders and building owners to ensure that a CO is issued after the first inspection. This was ensured by a pattern of payoffs which, in the words of the PSR, had "evolved into an accepted practice and course of doing business." Supervisory inspectors would assign inspectors to sites, and would expect kickbacks from any payment received by an inspector. A coded system was used to determine the amount of a payment without explicitly referring to it in conversation. Failure to pay a payment resulted in the delay or loss of paperwork, and citations for "hyper-technical" violations of the building code. The defendant was involved in this scheme. The PSR did not make a determination as to the amount of money received by the defendant, but the figures provided by the PSR amount to at least $8100.

The government filed a motion for departure under §5K1.1.

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142961

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: 5K
		Final (SOR):	Miss	2:	8	Cat: Miss	YRSENT: 93
				3:	N/A		

Defendant was one of many corrupt building inspectors for the City of . Joint investigation by FBI/ Department of Investigation uncovered a long-standing systematic pattern of corruption within the Department of Buildings' Construction Division. Inspectors routinely exhorted money from building owners, contractors, engineers, and architects in exchange for expedited issuance of a Certificate of Occupancy, without which the building could not be inhabited or used. The Construction Division has the sole authority to issue or deny a C/O. The defendant joined into this systematic extortion almost from the beginning of his employment as an inspector in 1964 and continued through his promotions to supervising inspector and then assistant chief inspector. [Multiple payments].

Although this figure underestimates defendant's relevant conduct, the amount the government could prove by a preponderance was $224,300; this is the amount the PO used. PO gave a 2-level increase for multiple payments. Defendant received downward departure "upon motion of the government" to 3 years probation. No SOR. 8 level enhancement corresponds to amount of payments in table, not high-level official.

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58457

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 2
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	8	2:	0	Cat: 1	YRSENT: 91
				3:	N/A		

The defendant offered a $1000 payment to an OSHA Compliance Officer (CO), who declined the payment and informed his supervisor. In a sting operation, an FBI special agent posed as a CO and negotiated a $500 payment in return for finding no violations of OSHA at the defendant's job site.

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58458

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	2
		Base (PSR):	10	1: 0	Pts.: 0	DEPARTURE:	Down
		Final (SOR):	Miss	2: 1	Cat: 1	YRSENT:	91
				3: N/A			

Defendant's brother offered OSHA inspector $1000 to stay away from job site. OSHA returns with undercover agent. Defendant and co-defendant tried to avoid $4000 fine by giving undercover agent $500. Safety violations included lack of safety railing and ladder for scaffolding on apartment complex chimney construction.

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*63889

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	3
		Base (PSR):	10	1: 0	Pts.: 0	DEPARTURE:	5K
		Final (SOR):	10	2: 0	Cat: 1	YRSENT:	91
				3: N/A			

The defendant was a Construction Inspector for the Farmer's Home Administration. He solicited payments from contractor, saying he'd help him.

Comment: Two payments -- with same victim. This was counted as 2 separate groups. Should have been joined under §3D1.1(b) (and an adjustment added under §2C1.1(b)(1)).

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STATE AGENCY - Department of Motor Vehicles

70851

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	10	2:	2	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant was involved in a scheme to sell fraudulent drivers licenses to illegal aliens through a Dept. of Motor Vehicles office. The illegal aliens would pay individuals to transport them to . from out-of-state, enroll them in a driving school, and get them a . license which they could then "trade in" for their home state's license doesn't require proof of legal residence in the U.S.). Driving school instructors, such as the defendant, would provide the students with false addresses and in some cases would pay DMV employees to issue licenses to students who had failed all or part of the licensing exam. This defendant paid $300 to two DMV agents in exchange for the transfer of a copy of the written portion of the licensing exam. The PO used the value of the payment in his calculations but the government contended, and the court found, that the value of such a transfer was "in excess of $5000," due to the fact that the DMV received over $10,000 in federal funding each year.

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70852

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	10	2:	2	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant was involved in a scheme to sell fraudulent drivers licenses to illegal aliens through a Dept. of Motor Vehicles office. The illegal aliens would pay individuals to transport them to from out-of-state, enroll them in a driving school, and get them a Virginia license which they could then "trade in" for their home state's license (doesn't require proof of legal residence in the U.S.). Driving school instructors, such as the defendant, would provide the students with false addresses and in some cases would pay DMV employees to issue licenses to students who had failed all or part of the licensing exam. This defendant paid $300 to a DMV employee in exchange for a copy of the written portion of the licensing exam. [Multiple payments].

The PO used the value of the payment in his calculations but the government contended, and the court found, that the value of such a transfer was "in excess of $5000," due to the fact that the DMV received over $10,000 in federal funding each year.

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72677

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	6
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	10	2:	2	Cat:	1	YRSENT:	91
			3:	N/A				

Defendant is tester at DMV of . office. Co-defendant would find immigrant applicants who would pay to get a license from defendant without having to take any of three required tests (vision, road. written). Defendant and co-defendant split profits. Defendant had worked for DMV for 2 months when she started taking payments from VCAs. Three VCAs on separate occasions paid $400, $450, $450 for licenses. This DMV branch was commonly told by immigrants around the country to get licenses through driver's ed instructors for $300-800 apiece. Licenses easily gotten because residency but not citizenship has to be shown. [Multiple payments].

75555

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	13
	Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
	Final (SOR):	12	2:	2	Cat:	1	YRSENT:	91
			3:	N/A				

The defendant accepted payments in return for obtaining fraudulent driver's licenses and "green cards" for illegal aliens. For a driver's license, the defendant charged $400, which he apparently shared with DMV employees who issued the false licenses. The defendant charged $3500 for a false green card; some of the money went to a farmer who supplied false seasonal worker documentation, and some went to an attorney.

101383

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	12
	Base (PSR):	10	1:	0	Pts.:	1	DEPARTURE:	Up
	Final (SOR):	8	2:	N/A	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant paid an employee of the Bureau of Motor Vehicles of the "no more than $2000" in cash and/or jewelry for issuing fake permit identification permits. The defendant realized that he could earn money from the scheme; he charged individuals on the street $100-$200 and would give the DMV employee $25 per permit, who admits she may have issued over 100 fraudulent permits. The defendant states that he told the DMV employee that the individuals were using this identification for illegal activities.

BOL=10, minus 2 for A of R. Upward departure: §2C1.1, application notes 4 & 5, and §5K2.7; in view of the nature and scope of this offense; harm/loss was caused, and the disruption of a government effect on the operation of the Bureau of Motor (vehicles). Involves a continuing investigation: Permits were used for identification; law enforcement agencies have had to exonerate the victims in this case of traffic violations and arrests that they did not incur. Additionally, the extent to which the public sector has been harmed (creditors, banks, etc.) is unknown. Offense level=8

124373

GDLINEHI: 2C1.7	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	2
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	8	2:	N/A	Cat:	1	YRSENT:	92
			3:	N/A				

The defendant was a part of a wide-ranging scheme to provide false driver's licenses and vehicle registrations in return for payments. Although the sentencing report is not entirely clear, it appears that the defendant served as a "runner," bringing money and applications papers to Department of Motor Vehicles employees, who would in turn process the applications without requiring proper identification or the standard written, eye, and road tests. The PSR notes that approximately 50 individuals and DMV employees were involved in the scheme. The defendant was sentenced under §2C1.7 (fraud involving the intangible right to the honest services of public officials). The PSR also stated that it was not possible to determine either the amount of the payment involved or the benefit received.

141364

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 6
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: Down
		Final (SOR):	12	2:	2	Cat: 1	YRSENT: 93
				3:	N/A		

The defendant at a DMV office took payments for falsifying documents such as driver's permit applications, eye test forms, etc. The scheme was undertaken to insure that certain people would receive identification that would be valid in all 50 states. These false IDs would also allow people to conceal their true identity as well. Seven hundred false and unauthorized documents were issued and cash payments of $28,000 were made. The defendant received approx. $10,000 in payments.

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142867

GDLINEHI:	2C1.7	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 6
		Base (PSR):	10	1:	2	Pts.: 0	DEPARTURE: No
		Final (SOR):	10	2:	N/A	Cat: 1	YRSENT: 93
				3:	N/A		

The defendant was a middleman in an ongoing scheme involving Dept. of Motor Vehicle employees who processed a variety of fraudulent documents in exchange for cash payments. The defendant's "specialty" was in obtaining vehicle registration cards without the proper identification through his connections at the DMV. The parties both stipulated that the defendant paid between $5000 - $10,000 in payments to DMV employees during the course of the conspiracy.

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INSURANCE

67629

GDLINEHI: 2F1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	41
	Base (PSR):	6	1:	10	Pts.:	1	DEPARTURE:	No
	Final (SOR):	20	2:	2	Cat:	1	YRSENT:	91
			3:	0				

The defendant owned several small, off-shore insurance companies specializing in high-risk insurance. With encouragement from s Insurance Commissioner (IC) defendant applied for a license to do business in . The defendant's U.S. company, Commercial General Insurance Company (CG) was accepted for a license without complying with requirements. Many of the assets listed in support of the defendant's application were "over-valued, illicit, or bogus." The IC took what the PSR described as a "very solicitous attitude" toward CG, discouraging his staff from scrutinizing CG's activities too carefully. The IC's actions included encouraging a United States Senator to write a letter on the defendant's behalf to help him out of some bankruptcy problems he was experiencing. The defendant and the IC negotiated a purchase of land by the defendant from the IC, which was concealed by a convoluted series of transactions. Ultimately, the IC was pressured into conducting an audit of CG which revealed its financial instability. The defendant reported to investigators that the IC had solicited several "loans" from the defendant, who felt that he had no choice but to pay them because he did not wish to risk losing his relationship with the IC.

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*74035

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	15
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	13	2:	8	Cat:	1	YRSENT:	91
			3:	N/A				

Defendant was appointed by the Governor as for . Defendant aggressively sought to lure new insurance companies to the state, and ended up certifying some marginal businesses of persons with histories of fraud and bankruptcy. Three different cases were involved. [Multiple payments].

Case 1: Defendant certified a company that was fairly clearly not certifiable; headed off audits of the company; and weighed in with a U.S. Senator to have letters written on behalf of a co-defendant. In return the defendant received $8250 cash for a property with $10,000 debt on it (total benefit to defendant: $18,250; net return on property $16,250). Defendant hid the receipt of the money and the sale of the property through convoluted series of transactions through family members and CD's. Loss to the public ran at $2.6 million. Co-defendant also claimed defendant strongarmed him into purchasing other property and loaning additional money to family members.
Case 2: Another similarly situated company purchased defendant's home at $36,860 greater than its value.

Case 3: Defendant accepted $1700 in travel expenses from another company apparently as a gratuity.

Comment : No adjustment given for multiple payments. 8-level high level official adjustment made. All cases treated as relevant conduct even though only the first resulted in a conviction. Court declined recommended 3-level departure under 5K1.1 as requested by government. PO suggested three departures -- (1) note 3 mentions 3B1.3 not to be applied, but this case is extreme example of its application; (2) note 4 (low value of payment relative to loss to victims); and (3) loss of government function).

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81743
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	27
Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
Final (SOR):	18	2:	8	Cat:	1	YRSENT:	91
		3:	N/A				

The defendant was in trouble with insurance regulators in a number of states since 1986. Count 1 charges that from March 1987 through May 1990 the defendant involved himself in a conspiracy to violate the Travel Act by bribing an unindicted co-conspirator, the Insurance Commissioner for the State of _____ who accommodated the defendant with licensing and favorable regulation of the risk purchasing group. The conspiracy involved the purchase of the Commissioner's home at an inflated price through a nominal purchaser and shortly thereafter taking possession of the property which was sold at a loss of $37,000. These actions resulted in an attempt to have legislation introduced in _____ so that defendant's firm could be licensed in _____. The goal was to transfer the firm's activity to _____. The defendant submitted false statements to _____ Insurance Department in order to continue his risk purchasing groups in the state. Firm eventually went into receivership.

COUNTY LEGISLATIVE OFFICIALS (Zoning and Contracts)

57757
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	41
Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
Final (SOR):	Miss	2:	8	Cat:	Miss	YRSENT:	91
		3:	N/A				

Defendant solicited payment on behalf of county sheriff, who would support victim developer's rezoning request. Defendant acted as go-between. Rezoning would be done by Planning Commission and City Council. [Single payment].

Defendant received an 8-level increase for involving sheriff and Council.

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77615
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	41
Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
Final (SOR):	20	2:	8	Cat:	1	YRSENT:	91
		3:	N/A				

Defendant and co-defendant solicited a payment from another owner of a real estate development company to be paid to a county commissioner to effectuate a favorable ruling on a rezoning application filed by the individual from whom the defendant solicited the payment. The amount of the proposed payment was $5000. [Single payment].

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77618
GDLINEHI: 2C1.1

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	41
Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
Final (SOR):	20	2:	8	Cat:	1	YRSENT:	91
		3:	N/A				

Defendant and her boss, the owner of the development company, attempted to obtain a $5000 payment from the owner of another development company under order of official right and the use of fear of economic loss. This $5000 payment was to go to a certain

county commissioner "to effectuate a favorable ruling on a rezoning application" filed by the individual who was being solicited.

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85152

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	40
		Base (PSR):	10	1:	2	Pts.:	0	DEPARTURE:	No
		Final (SOR):	21	2:	8	Cat:	1	YRSENT:	91
				3:	N/A				

Defendant was a former city councilman who resigned to run for Congress, but lost. He then formed a consulting business as a private citizen, and set up an arrangement with a city Councilman and his Chief of Staff. As developers sought legislation changing zoning restrictions or the like, the public officials would direct the developer to pay the defendant a consulting fee through his consulting business to ensure passage of the legislation. This occurred in numerous cases, with defendant generally receiving half of the proceeds of the payments. Some cases involved extortion under color of official right. Payments ranged in size from $50 to several thousands of dollars. Eventually, defendant was reelected to city council, and he selected a successor in the consulting business who handled arrangements as defendant had previously done. This woman eventually was turned by law enforcement, and taped a number of discussions with defendant, including one where he pressured her to destroy records, lie about their relationship before the grand jury, and otherwise obstruct justice. Offense occurred over a number of years. Defendant also pled to additional tax, fraud, and RICO convictions.

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104627

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	21
		Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	16	2:	8	Cat:	1	YRSENT:	92
				3:	N/A				

A confidential informant told the FBI that the defendant had told him that he (the defendant) would accept money in return for the exercise of his authority as an elected County Commissioner. The FBI set up a sting in which the defendant was to receive a payment, in return for which he would exercise his influence with a city council. Although the total payment was to be $20,000, the defendant was arrested after payment of a $5000 "advance" and his sentence and restitution were calculated based on that amount. [Single payment].

The defendant received an eight level enhancement for being an official in a high level or sensitive position.

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121548

GDLINEHI:	2S1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	41
		Base (PSR):	20	1:	0	Pts.:	0	DEPARTURE:	No
		Final (SOR):	22	2:	0	Cat:	1	YRSENT:	92
				3:	N/A				

Defendant was one of the alderman in the scheme in 121703 and took a payment to attend the NAACP conference. He referred one potential contractor to the political consultant in 121703 for assistance. $23,000 was extorted in these and zoning cases. [Multiple payments].

2-level enhancement given for multiple extortions.

. . . . . .

121703

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.			
	Base (PSR):	10	1:	2	Pts.:	1	SENTENCE:	70
	Final (SOR):	26	2:	8	Cat:	1	DEPARTURE:	No
			3:	N/A			YRSENT:	92

An undercover investigation was initiated when the president of a construction company complained to the FBI that local city officials were trying to extort money from him in exchange for favorable treatment before the Board of . Defendant is a political consultant with ties to city . Defendant agreed to take payments from an undercover contractor and pass them on to his own charities which would in turn pass them on to local officials in exchange for favorable treatment to the contractor. Defendant also sought payments to send himself and defendant in 121548 to an NAACP convention. Similar arrangements were made for zoning issues. [Multiple payments].

2-level enhancement given for multiple extortions.

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124536

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.			
	Base (PSR):	10	1:	0	Pts.:	0	SENTENCE:	28
	Final (SOR):	18	2:	8	Cat:	1	DEPARTURE:	No
			3:	N/A			YRSENT:	92

The defendant was an elected member of a county board of supervisors. The attorney for the board, working undercover with the FBI and the State Attorney General's office, met with the defendant. At the meeting, the defendant solicited a $1000 payment from the attorney, in return for which the attorney would be able to keep his job.

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*132181

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.			
	Base (PSR):	10	1:	2	Pts.:	0	SENTENCE:	46
	Final (SOR):	22	2:	8	Cat:	1	DEPARTURE:	No
			3:	N/A			YRSENT:	93

Defendant was the county executive and was having personal finance difficulties. Accordingly, he took a gift of $30,000 in exchange for his committed support of a contractor in bidding for a contract to build a civic arena and for modifications to that contract that would increase the contractor's profit. The $4.25 million contract was awarded the contractor. When the arrangement came to light, defendant had fraudulent documents prepared to treat the transaction as a loan. In addition, defendant was involved in manipulating bidding for the contract to purchase the county's cars (notices printed only in two religious newspapers). The contract was awarded to a company that then bought back the county's used cars and gave one of them (value: $5000) to the executive. A second such contract was also fraudulently awarded. In return, defendant sought a $5000 budget item for the car dealer's diving team.

Comment: PO looked only to value of payments, not benefit involved.

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LOCAL AGENCY/GOVERNMENT

106364

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	12
		Base (PSR):	10	1: 2	Pts.: 0	DEPARTURE:	Down
		Final (SOR):	17	2: 5	Cat: 1	YRSENT:	92
				3: N/A			

The defendant was a Transit Authority clerk who used his position to shield other clerks who were pocketing or stealing monies. He solicited payments for his silence and for transferring them to positions where they could steal more. He cooperated in the investigation.

The court found §3B1.3 on its terms (not §2C1.1 n.3) kept it from applying.

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*115817

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	36
		Base (PSR):	10	1: 2	Pts.: 0	DEPARTURE:	Down
		Final (SOR):	24	2: 12	Cat: 1	YRSENT:	92
				3: N/A			

Defendant was part of an ongoing, systematic scheme to obtain welfare benefits by fraudulent means. Defendant is employed by the city of as an Eligibility Specialist for the disbursement of benefits subsidized by city, state, and federal funds. The overall scheme involved approximately 12 recruiters/counterfeit document suppliers, who would seek out "welfare mothers" with the opportunity to open "extra" welfare case and thus receive extra monthly benefits. The recruiters would demand up-front payment or demand a portion of the extra benefits. It is not clear whether the defendant was one of these recruiters or whether she was paid by the recruiters. Nonetheless, she processed approximately 200 fraudulent welfare cases for a total loss to the government of approximately $1.4 million. Defendant received payments amounting to $64,453. [Multiple payments].

Comment: PO mistakenly added the loss to the government and the payment amount instead of taking the greater amount. Somehow, he got the figure up to "in excess of 1,500,000." It is not at all clear how the PO arrived at this amount. There is no detailed SOR. Unknown what court determined. PO did give 2-level enhancement for multiple payments.

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118972

GDLINEHI:	2E1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	23	1: N/A	Pts.: 0	DEPARTURE:	5K
		Final (SOR):	21	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

Defendant was a consultant who secured two contracts valued at $90,000 from a newly elected tribal chairman, in exchange for promising to pay $20,000 to the chairman's son, even though the son did no work to justify the fee. Defendant and the chairman then agreed to become shareholders of a corporation and share in its profits, including an outstanding $500,000 loan request before the tribe. To gain control, the defendant informed the corporation that it would receive a $2.25 million loan if defendant was appointed president and given a controlling interest in the corporation, and if the chairman received 3.15 million shares in the company. The loan was approved. Defendant set up other arrangements whereby companies were provided funds so they could pay the chairman's son without his working so the son could give the money to the chairman.

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GRATUITIES

77537

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 1
		Base (PSR):	7	1:	2	Pts.: 0	DEPARTURE: 5K
		Final (SOR):	Miss	2:	2	Cat: 1	YRSENT: 91
				3:	N/A		

This is a gratuity case. It stems from two related cases. The defendant acted as a go-between between others. As a result, he received illegal gratuities.

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87146

GDLINEHI:	2F1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 87
		Base (PSR):	6	1:	11	Pts.: 7	DEPARTURE: No
		Final (SOR):	24	2:	2	Cat: 4	YRSENT: 91
				3:	0		

Defendant was foreman for a company with a large contract at _____ to maintain housing/rental units there. According to the PSR, defendant was second level of culpability in a scheme to save on costs to the employer at the expense of the government, and to pay inspectors so the fraud was not uncovered. One method of saving costs was by not maintaining the properties as required under the contract. For instance, defendant ordered his employees not to perform twice-yearly maintenance on heating and cooling units. Defendant was also involved in processing gratuities paid by his employer's CEO to government inspectors, by directing employees to provide services, and arranging for products billed to the government to be installed in the inspectors' home. Loss to government was over $5 million due to theft, excessive billings, and cost due to nonperformance. Not clear how much of this is truly defendant's relevant conduct. Defendant was convicted on 186 counts. Defendant had authority to hire and fire most of the workers. Defendant solicited his son to beat up some witnesses in the case.

No specific offense characteristics were given in application of §2C1.2.

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CONFLICT OF INTEREST

59111

GDLINEHI:	2C1.3	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 196
		Base (PSR):	6	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	4	2:	N/A	Cat: 1	YRSENT: 91
				3:	N/A		

Defendant was computer specialist who represented business interests for clients including company in which he and his mother had 100% interest. Defendant roped company in proceeding before his agency while seeking agency grant. Defendant lied about his employment and ownership but insisted that he had legal office okay to seek 6a status for company.

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60666

GDLINEHI:	2C1.2	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 0
		Base (PSR):	7	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	5	2:	0	Cat: 1	YRSENT: 91
				3:	N/A		

Defendant asked discharge nurse at air force base to refer patients to his facility for 35% of first month fee for each patient referred. Nurse referred an FBI agent and received a $200 advance.

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66607

GDLINEHI:	2C1.1	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 197
		Base (PSR):	10	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	8	2:	0	Cat: 1	YRSENT: 91
				3:	N/A		

The defendant was a clerk in the Federal District Court Probation Office who, because of a personal relationship with a woman to whom he was providing support, informed a defendant in a case that he would withhold certain information from the sentencing judge.

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76536

GDLINEHI:	2C1.3	OFF. LEV.		SOC's		CRIM. HIST.	SENTENCE: 1
		Base (PSR):	6	1:	0	Pts.: 0	DEPARTURE: No
		Final (SOR):	6	2:	N/A	Cat: 1	YRSENT: 91
				3:	N/A		

This is a rare conflict of interest charge (§2C1.3). Defendant was a quality assurance representative who oversaw contractors. He than clandestinely wrote a manual for a contractor. He also consulted with them. This was a "no-no."

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90620

GDLINEHI: 2C1.3	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	6	1:	0	Pts.:	1	DEPARTURE:	No
	Final (SOR):	4	2:	N/A	Cat:	1	YRSENT:	92
			3:	N/A				

Defendant was a staff assistant to a Congressman. A constituent sought assistance in getting a federal grant to start a company in the Congressman's district. The defendant agreed to help convince the Congressman to get the grant, but wanted to do so on his "own time" so that he could be paid for consulting. He signed an agreement with the constituent to be paid $300 plus a percentage of the size of the grant. Defendant put some time into getting the contract, and arranged two brief encounters with the Congressman, but nothing substantive occurred before the defendant was terminated due to an arrest for passing bad checks.

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91301

GDLINEHI: 2C1.3	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	6	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	N/A	Cat:	Miss	YRSENT:	92
			3:	N/A				

Defendant was the acting supervisory deputy United States Marshal and was responsible for reviewing and approving billings and requests for payments submitted by a security company that protected USMS seizures. Defendant apparently knew the security company was permitting its guards to live in the building against USMS regulations. The company president later gave defendant an $8900 loan which was not repaid by defendant other than defendant working on company boats. Later, defendant accepted $3650 from the company. Later, defendant alerted the company to a sting set up by local officials to nab company employees selling the seized property. [Multiple payments].

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98441

GDLINEHI: 2S1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	60
	Base (PSR):	23	1:	0	Pts.:	0	DEPARTURE:	No
	Final (SOR):	Miss	2:	0	Cat:	Miss	YRSENT:	92
			3:	N/A				

Defendant was an attorney who raised funds for another attorney who sought and won election as Surrogate in (Surrogate Court oversees administration of wills and appoints guardians for those not competent to represent themselves). As a result of his position in the Surrogate's campaign, the defendant received substantially more appointments as guardian than court rules permitted (he received 110 appointments over 5 years compared with the general rule of 1 per year). Such appointments were lucrative in light of the high fees earned for relatively limited work. In addition, defendant had a gambling problem and failed to pay taxes over this period of time. [Multiple payments].

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103072

GDLINEHI: 2C1.1	OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
	Base (PSR):	10	1:	0	Pts.:	0	DEPARTURE:	Down
	Final (SOR):	Miss	2:	1	Cat:	Miss	YRSENT:	92
			3:	N/A				

Defendant was involved with two companies, one of which he was the president of and with his daughter being the president and owner of the other company. The co-defendant had the authority to award maintenance contracts. The defendant would quote a price for work his company completed The co-defendant would in turn say, "Why don't you add

'X' number of dollars to that bill." The defendant contended that he did the work to make up for what he was overcharging for because of feelings of guilt.

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108784

GDLINEHI:	2C1.3	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	6	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	4	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

Defendant was a purchaser of horses for the Forest Service. Though retiring after more than 30 years with the Service, he agreed to continue to purchase horses once or twice a year. Defendant also purchased horses for himself, which he then transferred to a friend. A few of these horses he then sold back to the Forest Service for $500-600 more than he purchased them for (from $500-2000). Defendant claimed he supplied the horses only in emergencies and no equal quality horses could be purchased elsewhere. He claimed the $500-600 markup accounted for his expenses in transporting and caring for the animals.

PO sought to apply harm to government adjustment (+4) but court declined. Defense had argued he merely recouped his costs and had provided letters from Forest Service personnel indicating the animals were high quality.

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114200

GDLINEHI:	2C1.3	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	6	1: 0	Pts.: 1	DEPARTURE:	No
		Final (SOR):	4	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

Defendant accepted money from an airplane repair shop in exchange for writing its operations manual for certain engines. One of the defendant's job duties was to review and approve or deny the operations manuals of the repair shops applying for FAA certification. This particular repair shop wanted to ensure receipt of FAA certification to overhaul certain types of engines. [Single payment].

§2C1.3, which doesn't contemplate any monetary amounts (defendant was paid $7800 in separate installments).

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117596

GDLINEHI:	2C1.3	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	3
		Base (PSR):	6	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	6	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

Defendant was a trade specialist for the Department of Commerce. When two individuals approached him on separate occasions seeking assistance in selling products oversees, defendant referred the persons to his wife's firm.

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128712
GDLINEHI: 2C1.4

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
Base (PSR):	6	1:	N/A	Pts.:	0	DEPARTURE:	No
Final (SOR):	4	2:	N/A	Cat:	1	YRSENT:	93
		3:	N/A				

Citicorp Diner's Club (CDC) provided government-wide credit cards to qualifying federal employees to be used for work related expenses. The defendant was promoted to Comptroller of GSA which award the contract to Citicorp. As comptroller the defendant was responsible for agency wide budget and accounting functions, financial management programs and had administrative control of agency resources. The comptroller's office wrote policy and guidelines regrading the use of the charge cards by GSA employees.

Two members of CDC government credit card division met for lunch with the defendant. On most of these occasions they paid by credit cards for which they submitted false names to their company for reimbursement. In addition, a trip was also part of this scheme. A total of $582.77 was paid for the defendant as part of the scheme on this trip. The total for all lunches, dinners & trips paid by CDC for the defendant was about $2664.20.

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137464
GDLINEHI: 2C1.4

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
Base (PSR):	6	1:	N/A	Pts.:	0	DEPARTURE:	No
Final (SOR):	Miss	2:	N/A	Cat:	Miss	YRSENT:	93
		3:	N/A				

The defendant was a FAA aviation flight inspector who, on the side, was receiving pay for conducting flight tests. This was a conflict of interest. Pled to a misdemeanor (receipt of unauthorized compensation).

Sentenced under §2C1.4. No enhancement for amount.

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137562
GDLINEHI: 2C1.7

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
Base (PSR):	10	1:	8	Pts.:	0	DEPARTURE:	5K
Final (SOR):	13	2:	N/A	Cat:	1	YRSENT:	93
		3:	N/A				

Defendant ran an auto sales operation in which he entered into a conspiracy with the county tax collector to overcharge vehicles and then kickback. In this way, the county's loss was around $80,000.

Defendant received a +8 enhancement because he was dealing with an elected official.

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141004
GDLINEHI: 2C1.3

OFF. LEV.		SOC's		CRIM. HIST.		SENTENCE:	0
Base (PSR):	6	1:	0	Pts.:	0	DEPARTURE:	No
Final (SOR):	4	2:	N/A	Cat:	1	YRSENT:	93
		3:	N/A				

Section 2C1.3, Conflict of interest. The defendant, the Sergeant of Arms of the U.S. Senate, became involved in the offense when he went on a trip to . to attend a building opening for a new AT&T Headquarters. It is unclear whether he invited himself or was invited by the company VP. This occurred during contract negotiations. AT&T paid for the defendant's first-class plane ticket, but because they refused to pay for his hotel he submitted a voucher to the Senate for reimbursement.

PAYMENTS TO OBTAIN PUBLIC OFFICE

82950

GDLINEHI:	2C1.5	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	8	1: N/A	Pts.: 0	DEPARTURE:	No
		Final (SOR):	4	2: N/A	Cat: 1	YRSENT:	91
				3: N/A			

This is a campaign contribution case, §2C1.5. Defendant sought contributions through shell corporation and phony invoices. He acted for others and was a minor participant.

123518

GDLINEHI:	2C1.1	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	15
		Base (PSR):	10	1: 8	Pts.: 3	DEPARTURE:	5K
		Final (SOR):	18	2: N/A	Cat: 2	YRSENT:	92
				3: N/A			

The defendant was a businessman who had, over a period of some 30 years, served in various positions (some elective) as a public employee. He was not a public employee at the time the instant offense was committed but, in fact, became a public employee as a result of the payment. Due to his public service, the defendant was eligible to participate in the state's retirement fund, but needed two more years' public employment to qualify for a pension. The defendant offered a $10,000 payment to a local judge who was a known political boss. The payment was to assist in the election of a particular person to the position of Sheriff; in return, the defendant was to receive a position in the sheriff's office so that he could obtain eligibility for the retirement fund.

When the investigation of the matter began, the defendant agreed to cooperate with the FBI, but in fact provided them with false information. The defendant also lied to the grand jury and encouraged his co-defendant to do so. However, upon entering his plea agreement, the defendant was completely cooperative. Ultimately the government filed a motion for departure under §5K1.1, which the sentencing court granted.

LOAN OR GRATUITY TO BANK EXAMINER

116936

GDLINEHI:	2C1.6	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	7	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	5	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

A loan was made by an officer of the bank to a loan examiner. The guideline is §2C1.6. The loans were for $10,000 each to two bank examiners (one pre-guideline; one post-guideline). There was a specific offense characteristic that was not followed that enhances for the value of the "gravity" or in this case the two loans. These were misdemeanors.

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117210

GDLINEHI:	2C1.6	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	0
		Base (PSR):	7	1: 0	Pts.: 0	DEPARTURE:	No
		Final (SOR):	5	2: N/A	Cat: 1	YRSENT:	92
				3: N/A			

Defendant was a bank examiner for the state of . She sought a loan from the President of a bank she examined. The President arranged a $7000 loan to be made by a bank customer. The loan was paid in full three months early but the bank eventually became insolvent.

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132357

GDLINEHI:	2C1.6	OFF. LEV.		SOC's	CRIM. HIST.	SENTENCE:	4
		Base (PSR):	7	1: 2	Pts.: 4	DEPARTURE:	No
		Final (SOR):	7	2: N/A	Cat: 3	YRSENT:	93
				3: N/A			

Defendant and his girlfriend took five loans from a GMAC loan officer in order to purchase consumer items (cars, boats). Some of the loans were unsecured; none of them had payments made on them beyond the first couple of months. The loan officer had known the defendant previously through business contacts, and likely fudged the paperwork to get the loans through. He then prepared a consolidation loan to refinance the earlier debt and sought a $5500 check from the defendant for unspecified purposes. The check memorandum indicated for "a friend" and there was some sense that it was a gratuity, although defendant also notes it was to repair one of the boats for resale. Defendant fled with his girlfriend to where they were later arrested.

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MISC.

94310

GDLINEHI: 2C1.4	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 0
	Base (PSR): 6	1: N/A	Pts.: 0	DEPARTURE: No
	Final (SOR): 4	2: N/A	Cat: 1	YRSENT: 91
		3: N/A		

The defendant, an employee of the U.S. Geological Survey, was asked to give a deposition in a civil suit. The Geological Survey specified in a letter that the defendant was testifying in an official capacity and that no compensation (other than travel and subsistence) was required. The defendant nonetheless accepted payment of $4680. The PSR stated that the defendant took advantage of the ambiguity of the Survey's use of the words "not required" regarding personal compensation, and received the money without informing his superiors. [Single payment].

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111910

GDLINEHI: 2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 0
	Base (PSR): 10	1: 2	Pts.: 0	DEPARTURE: 5K
	Final (SOR): 22	2: 12	Cat: 1	YRSENT: 92
		3: N/A		

Defendant was a clerk in a government agency and worked with other defendants to defraud the agency by submitting false bills on behalf of a blueprint reproduction/photocopying contractor. The bills totaled $1.6 million for services not rendered. [Multiple payments].

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140236

GDLINEHI: 2C1.1	OFF. LEV.	SOC's	CRIM. HIST.	SENTENCE: 24
	Base (PSR): 10	1: 8	Pts.: 0	DEPARTURE: No
	Final (SOR): Miss	2: N/A	Cat: Miss	YRSENT: 93
		3: N/A		

The defendant owned and operated several supply companies whose principle business of some of these companies involved supplying industrial merchandise to commercial entities some of which received "benefits." The defendant would, upon receiving order forms for merchandise, provide the company with fraudulent invoices. The company ordering the merchandise would then remit payment by placing U.S. Treasury checks in the mail. The company providing the fraudulent invoices would pay 50% of the face value of the false invoices and retain the remaining 50%.

An 8 level enhancement was given for the amount for which the PO felt the defendant was responsible. This amount was $593,282.05.

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U.S. Department of Justice
Executive Office for United States Attorneys

Statistical Report

United States Attorneys' Offices

Fiscal Year 1992

Official Corruption

Rooting out corruption by officials in whom the public trust is vested, and other government-related corruption continues to be a top priority. During Fiscal Year 1992, federal charges were lodged in 425 cases against 604 defendants related to federal procurement, federal programs, federal law enforcement, other federal official corruption, and state, local or other officials. During the same period of time, 505 defendants either were found guilty of or pleaded guilty to official corruption charges in United States District Court.

Over the years, federal and state legislators, Governors, Judges, and many other federal, state and local public officials have been prosecuted for violating their oaths of office. Some United States Attorneys have found that public corruption task forces are an effective technique for investigating these cases. Training for federal prosecutors handling public corruption cases was presented by the Office of Legal Education during Fiscal Year 1992.

The unique nature of the federal criminal justice system provides maximum support in prosecuting these difficult and often complex cases. For example, a multi-agency investigation of the Los Angeles Sheriff's Office narcotics unit began in 1989. The investigation involved more than 60 Federal Bureau of Investigation, Internal Revenue Service and local law enforcement agents, and eleven federal prosecutors. Twenty-one defendants have been convicted and several other multi-defendant cases are pending as a result of the investigation.

In other notable police corruption cases, the former Chief of Police for the Detroit Police

Department was sentenced to ten years in prison in the Eastern District of Michigan for embezzling $2.6 million from the City of Detroit and filing false income tax returns. He was also ordered to pay $2.3 million in restitution to the city. Also, the Chief of Police in Rochester, New York, was convicted of conspiracy and embezzlement of more than $200,000 from the Department's undercover "drug buy" money. He was sentenced to four years incarceration and a $150,000 fine.

The Federal Bureau of Investigation and the Internal Revenue Service, in conjunction with the United States Attorney's office in the Eastern District of California, are reaping the results of a two year undercover investigation of the California Legislature. During Fiscal Year 1992 a former state senator plead guilty to using his office for state law bribery, federal extortion, obstruction of justice, and subscribing to a false tax return.

Major investigations and prosecutions involving the South Carolina Legislature (Operation Lost Trust) and the Kentucky Legislature (Operation Bop Trot) were conducted during Fiscal Year 1992. Also, the Assistant Majority Leader of the Illinois State Senate, who accepted a bribe to help pass legislation, was convicted after a seven week trial and sentenced to three years in jail.

Each public corruption case is unique. For example, a Federal Bureau of Investigation translator was convicted in the Southern District of Texas of providing classified information to a foreign government and was sentenced to the maximum of ten years.

Other public corruption cases involving bribery that were prosecuted by United States Attorneys offices are listed below:

* An Albany County Executive, who held that position for 15 years, was convicted in the Northern District of New York on charges of bribery, mail fraud, and extortion. The County Executive received payments from a personal friend, who had previously been convicted of the same charges, in exchange for diverting a $70 million architectural contract for the Knickerbocker Arena construction project. He was also convicted of receiving an automobile from an Albany County car dealer who had benefited from a rigged bid to supply automobiles to the county.

* Two former United States Customs Inspectors were convicted in the District of Arizona of a 500 kilogram cocaine conspiracy, possession of an unregistered automatic weapon, and possession of the firearm in relation to drug trafficking activity. One defendant received a Life sentence and the other received a 365 month sentence.

* An Interal Revenue Service agent and a wealthy farmer who bribed the agent to ensure that the farmer's federal tax returns would not be examined by honest Internal Revenue Service employees, plead guilty to charges in the Southern District of California. The farmer was ordered to pay the largest settlement of an individual criminal tax case in history -- more than $21.8 million. In addition, the taxpayer-farmer has agreed to pay the United States $1.25 million in criminal fines and will serve six and a half years in prison. The Internal Revenue Service agent who received $600,000 in bribes was sentenced to twelve years imprisonment for violating the public's trust.

* In another bribery case, the Presiding Judge of the Chancery Division of the Circuit Court of Cook County, Illinois, and an attorney were convicted after a five week trial of accepting and providing a bribe to fix a civil case. The judge was sentenced to 37 months and the attorney to 33 months.