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UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, DC 20004
(202) 662-8800
FAX (202) 662-7631



October 14, 1992

MEMORANDUM

TO: Phyllis J. Newton
Staff Director

FROM: Money Laundering Working Group
Win Swenson, Chair
Rusty Burress, Marguerite Cephas, Nolan Clark, Deborah Dealy-Browning,
Mary McDowell, Pam Rigby, Jackie Rubin

SUBJECT: Report on Information Gathering and Initial Findings

Executive Summary

The Money Laundering Working Group has studied the guidelines found in Part S, Chapter Two of the Guidelines Manual. Finding that the issues raised tend naturally to divide into two groups -- those pertaining to §§2S1.1 and 2S1.2, and those pertaining to §§2S1.3 and 2S1.4 -- the working group divided its report into two parts that correspond to these related groups of guidelines.

Sections 2S1.1 and 2S1.2

Public comment has questioned whether in many instances the money laundering guidelines -- particularly §2S1.1 -- appropriately reflect offense seriousness. Because the statutory offense of conviction (18 U.S.C. § 1956) governed by §2S1.1 covers a wide range of conduct, it has been contended that offenses that technically qualify as "money laundering" are frequently simply incidental to, or component parts of, an underlying crime, such as paying a supplier for drugs or depositing the proceeds of a white collar offense in the bank. Despite the fact that this "money laundering" conduct may reflect little additional harm to society beyond that reflected in the underlying offense, practitioners assert that, due to the operation of the guidelines, when a money laundering count is charged the sentence can be significantly higher than it would have been if the underlying offense were charged alone.

The working group found evidence to indicate that offense levels for money laundering counts vary significantly with those for underlying counts and that the variance may not be explainable by differences in the seriousness of these two kinds of conduct. Specifically, the working group found that in a high percentage of cases defendants convicted of money laundering offenses also participated in the underlying conduct -- suggesting that the money laundering conduct was at least somewhat "incidental" to the defendant's conduct regarding the underlying offense -- but that offense levels for the money laundering conduct were often much higher than for the underlying conduct, even when sophisticated or complex money laundering conduct was clearly not involved. Overall, the working group found that the offense level for the money laundering conduct exceeded that for the underlying conduct 52.5 percent of the time in drug cases, and 96 percent of the time in non-drug cases.

The working group also found evidence that courts have questioned the appropriateness of the offense levels for money laundering offenses. Finally, the working group noted that, although occurring less frequently, underlying drug counts are sometimes dropped, apparently to give the defendant the benefit of a lower money laundering offense level.

These findings suggest that §§2S1.1 and 2S1.2 might be made more effective by bringing money laundering base offense levels more in line with underlying conduct, and by establishing specific offense characteristics with greater sensitivity to such factors as sophistication of the money laundering conduct. Additionally, there is reason to believe that §§2S1.1 and 2S1.2 might be simplified through consolidation.

Section 2S1.3 and 2S1.4

Little public comment on §§2S1.3 and 2S1.4 existed at the outset of the working group's study, but discussions with enforcement personnel and practitioners found consensus for reworking these guidelines. The primary concern raised was that these guidelines treat differently what may be highly similar kinds of reporting violations. Accordingly, the working group found support for making these guidelines more consistent.

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Introduction

The statutory offenses covered by the 2S guidelines fall into two groups. Guideline sections 2S1.1 and 2S1.2 cover offenses that involve financial or monetary transactions with funds known or represented to be criminally derived. Sections 2S1.3 and 2S1.4 cover offenses involving reporting requirements: failure to file reports; filing false reports; and structuring transactions to avoid reporting requirements.

Because the issues relevant to the two groups of offenses covered by the 2S guidelines are relatively distinct, this report will examine these issues separately. Part I of the report discusses our information gathering and initial findings regarding the Money Laundering/Engaging in Transactions in Property from Specified Unlawful Activity guidelines set forth at §§2S1.1 and 2S1.2. Part II of the report provides information and analysis with respect to the Reporting and Structured Transaction guidelines set forth at §§2S1.3 and 2S1.4.

I. Money Laundering/Engaging in Transactions in Property from Specified Unlawful Activity (§§2S1.1 and 2S1.2)

A. Overview of Part I

Part I of this report, pertaining to U.S.S.G. §§2S1.1 and 2S1.2, is organized as follows. Subpart B provides a brief and general description of the two guidelines in question. Subpart C summarizes both the working group's efforts to obtain the views of outside parties and what we learned from those efforts. Subparts D and E identify the legal elements of 18 U.S.C. §§ 1956 and 1957 offenses -- the offenses covered by U.S.S.G. §§2S1.1 and 2S1.2 -- and discuss how the courts have interpreted the elements of these offenses. Subpart F provides a statistical profile and analysis of sentencing under §§2S1.1 and 2S1.2. Finally, subpart G sets forth an initial analysis of the implications for §§2S1.1 and 2S1.2 of our research to date.

B. The Guidelines in General

Guideline section 2S1.1 applies to violations of 18 U.S.C. § 1956. Guideline section 2S1.2 applies to violations of 18 U.S.C. § 1957. The common features of the two offenses covered by these guidelines are: (1) they both involve transactions with, or transportation of, funds, property, or monetary instruments; and (2) the funds, property or monetary instruments must either be the proceeds of unlawful activity or the defendant must have believed they were. Each offense has additional and unique requirements that are outlined in subpart D. As subpart E further demonstrates, the range of potential conduct that may constitute a crime under 18 U.S.C. §§ 1956 or 1957 is very broad.

C. Outside Views and Contacts

In our September 11, 1992, Purpose Statement (attached as Appendix A), we noted that a significant amount of public comment has been generated by the money laundering/financial transactions guidelines set forth at §§2S1.1 and 2S1.2. The principally expressed concern has been that in many instances a money laundering offense is purely incidental to a more serious underlying offense, but that if the money laundering count is charged, the 2S guideline will require a significantly higher sentence than if the underlying offense is charged alone. For example, commentators citing a Second Circuit decision¹ have noted that a money laundering count can be charged merely because a defendant in a drug conspiracy paid his supplier for the drugs. They argue that in smaller drug conspiracies the money laundering count, if charged, will significantly and unjustifiably drive up the sentence.² This kind of outcome, they assert, conflicts with just punishment principles and gives undue weight to charging decisions.

In preparation for this report, the Money Laundering Group met with a variety of experts, including representatives of the Commission's Practitioners' Advisory Group, the Money Laundering Subcommittee of the ABA Section on Criminal Justice, the Money Laundering and Asset Forfeiture Units at the Department of Justice (DOJ), and the Office of Financial Enforcement at the Treasury Department. We also continued to canvass relevant literature.

Although other issues were raised, this process confirmed that the principal concern of those who have raised questions about U.S.S.G. §§2S1.1 and 2S1.2 is as we described it in our Purpose Statement -- that money laundering offenses can be incidental to an underlying offense that is the real gravamen of the criminal conduct, but that when charged can significantly and unjustifiably increase the sentence. (A second concern raised by defense practitioners is that because asset forfeiture is a widely used and potentially harsh sanction that can attend money laundering offenses, the guidelines ought to "coordinate" fines with forfeiture penalties. It is the view of the Money Laundering Group that while this issue may deserve study, resource limitations would seem to require that it be considered over a longer time-frame than the one-year cycle to which the Group is presently committed.)

Regarding the first and principal concern -- "incidental" money laundering conduct generating unjustifiably high sentences when charged -- enforcement officials at DOJ agreed that sentencing patterns along the lines of those complained of are theoretically possible. However, they contended that such outcomes are unlikely to occur because

¹United States v. Skinner, 946 F.2d 176 (2d Cir. 1991)

²The Purpose Statement provides additional and fuller illustrations of how this perceived problem is said to occur. See Appendix A, p.2.

DOJ charging policies do not encourage these results. DOJ confirmed, however, that charging policies for money laundering offenses are not yet formalized and that DOJ has been working to establish formal charging rules for these offenses.

Presumably, DOJ's efforts to develop charging rules for money laundering offenses reflect a recognition that without such rules to guide charging discretion, undesirable outcomes can occur. Commissioner Maloney has apprised us that the charging guidelines for money laundering offenses are likely to be finalized in the relatively near future. In any case, defense practitioners with whom we spoke contended that even if the total number of cases in which the sentence is increased for "incidental" money laundering conduct is found to be low, prosecutors nevertheless use the threat of charging a money laundering count in such cases to gain undue leverage in plea negotiations.

To the extent that the Money Laundering Group seeks to develop refinements to §§2S1.1 and 2S1.2 to address the principal concern that has been raised, all representatives with whom we met pledged to provide their continued input on relevant issues. In particular, the representatives all agreed to forward their thoughts on 1) how "incidental" money laundering offenses could be described under the guidelines, and 2) what specific offense characteristics would best delineate offense seriousness with respect to money laundering offenses that are not merely "incidental" to an underlying offense.

D. An Overview of the Statutory Elements

To understand why both "incidental" and serious money laundering conduct can constitute an offense under the relevant statutes, it is necessary to understand how these offenses are defined. This section of the report outlines the statutory elements of the offenses covered by U.S.S.G. §§2S1.1 and 2S1.2; the following section of the report, subpart E, discusses the potentially broad reach of key terms used by the statutes.

Sections 1956 and 1957 of title 18 establish four different types of violations. The elements of these violations are as follows.³

Subsection (a)(1) of 18 U.S.C. § 1956 makes it illegal to:

- **conduct[] or attempt[] to conduct a financial transaction**
- **with proceeds of specified unlawful activity**
- **knowing that the property . . . represents the proceeds of some form of unlawful activity**

³Terms in bold print indicate actual statutory language.

- with
 - (1) intent . . . to promote the carrying on of specified unlawful activity;
 - (2) intent to evade taxes; or
 - (3) knowledge that the transaction is designed in whole or in part
 - (a) to conceal or disguise the nature of . . . the proceeds; or
 - (b) to avoid a [state or federal] transaction reporting requirement.

Subsection (a)(2) of 18 U.S.C. § 1956 makes it illegal to:

- transport[] or attempt[] to transport monetary instruments or funds
- to or from the United States
- with
 - (1) intent to promote the carrying on of specified unlawful activity; or
 - (2) knowledge that the monetary instruments or funds represent the proceeds of unlawful activity and that such transportation [was] designed
 - (a) to conceal or disguise the nature of . . . the proceeds; or
 - (b) to avoid a [state or federal] transaction reporting requirement.

Subsection (a)(3) of 18 U.S.C. § 1956 makes it illegal to:

- conduct[] or attempt[] to conduct a financial transaction involving property represented by a law enforcement officer to be
 - (1) the proceeds of specified unlawful activity; or
 - (2) property used to conduct or facilitate specified unlawful activity
- with the intent
 - (1) to promote the carrying on of specified unlawful activity;

- (2) to conceal or disguise the nature . . . of property believed to be the proceeds of specified unlawful activity; or
- (3) to avoid a [state or federal] transaction reporting requirement.

Section 1957 of Title 18, United States Code makes it illegal to:

- knowingly engage[] or attempt[] to engage in a monetary transaction in criminally derived property . . . of a value greater than \$10,000

where the property is derived from specified unlawful activity.

E. Meaning of Key Terms: Statutory Definitions and Court Interpretations

The application and scope of the offenses defined in 18 U.S.C. §§ 1956 and 1957 depend in large part on the meanings given to key terms used in defining the elements of these offenses. As discussed below, many of these defining terms have, on their face, very broad meanings. Although several court decisions have placed limits on the reach of these terms, generally the courts have supported very broad readings.

"Specified unlawful activity." With one exception,⁴ all money laundering offenses established by §§1956 and 1957 involve a nexus to "specified unlawful activity." This term is defined by statute⁵ and covers a wide variety of federal and state felonies. All RICO predicates are covered, including gambling, arson, robbery, bribery, extortion, dealing in obscene matter, and dealing in narcotics or other dangerous drugs. Virtually all types of fraud violations are covered, including bankruptcy fraud, securities fraud, bank fraud, and wire fraud. Other covered offenses include copyright infringement, smuggling goods into the United States, counterfeiting, theft of government property, bank theft or embezzlement, violations of the Arms Export Control Act, and violations of certain environmental statutes.

Court decisions have upheld convictions involving financial transactions from activity made illegal under a wide variety of statutes. See, e.g., United States v. Atterson, 926 F.2d 649 (7th Cir.), cert. denied, 111 S.Ct. 2909 (1991)(drug trafficking); United States v. Montoya, 945 F.2d 1068 (9th Cir. 1991)(violation of state bribery statute); United States v. Lee, 937 F.2d 1388 (9th Cir. 1991), cert. denied, 112 S.Ct. 977 (1992)(smuggling salmon into the United States); United States v. Lovett, 964 F.2d 1029

⁴See 18 U.S.C. § 1956(a)(2)(B)(ii) (making unlawful the international transportation of funds that are the proceeds of unlawful activity with the intent to conceal the proceeds or avoid a reporting requirement).

⁵18 U.S.C. § 1956(c)(7).

(10th Cir.), cert. denied, 91-8719 (Oct. 5, 1992)(fraudulently obtaining funds from defendant's grandmother); United States v. Helmsley, 941 F.2d 71, 94 (2d Cir. 1991), cert. denied, 112 S.Ct. 1162 (1992)(mailing of false tax returns); United States v. Porter, 909 F.2d 789 (4th Cir. 1990)(gambling)..

"Conducts." As used in Section 1956, this term is statutorily defined to include "initiating, concluding, or participating in initiating, or concluding a transaction."

"Transaction." This term, as used in Section 1956, is statutorily defined to cover virtually all methods of dealing with funds or monetary instruments, including "a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition." With respect to financial institutions, the term includes "a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution."

"Financial Transaction." As used in Section 1956, this term is statutorily defined to mean "(A) a transaction (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree."

Virtually any interstate nexus appears sufficient to satisfy the definition of "financial transaction." See, e.g., United States v. Kelley, 929 F.2d 582 (10th Cir.), cert. denied, 112 S. Ct. 341 (1991)(purchase in Oklahoma of a car manufactured in Detroit); United States v. Gallo, 927 F.2d 815 (5th Cir. 1991)(transportation of currency on interstate highway); United States v. Lovett, 964 F.2d 1029 (10th Cir.), cert. denied, 91-8719 (Oct. 5, 1992)(purchase of house through out-of-state relocation company); United States v. Lucas, 932 F.2d 1210 (8th Cir.), cert. denied, 112 S.Ct. 609 (1991)(construction of a shopping mall that would affect interstate commerce); United States v. Koller, 956 F.2d 1408 (7th Cir. 1992)(purchase of a cashier's check given to girlfriend as a gift to pay a restitution obligation). Although expansively interpreted, "financial transaction" does have some outer limits. See, e.g., United States v. Bell, 936 F.2d 337 (7th Cir. 1991)(merely placing funds in a safe deposit box did not constitute a financial transaction).

"Monetary transaction." As used in Section 1957, this term is statutorily defined as "the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument ... by, through, or to a financial institution," as defined in 31 U.S.C. § 5312.

"Promote." The term "promote," as used throughout Section 1956 in the phrase "with the intent to promote specified unlawful activity," is not statutorily defined.

Accordingly, the judicial interpretation of this term becomes important to the operation of 18 U.S.C. § 1956. Opinions reported to date indicate a somewhat inconsistent, but generally broad, interpretation of the term. In perhaps the broadest reading to date, the court in United States v. Montoya, 945 F.2d 1068, 1076 (9th Cir. 1991), held that the defendant's deposit of a check representing the proceeds of a bribe constituted "promoting" criminal activity because the defendant "could not have made use of the funds without depositing the check." In United States v. Johnson, No. 91-5030 (10th Cir. July 28, 1992), the court held that defendant's use of proceeds from a fraud offense to pay off a house loan "promoted" criminal activity because an office in the house was used in furtherance of the scheme and "[p]aying off the loan gave him the right to continue using the office and his home." In United States v. Skinner, 946 F.2d 176, 179 (2d Cir. 1991), the court upheld a money-laundering conviction based on a financial transaction in which the proceeds of drug sales were used to purchase a money order to pay for the drugs, even though "such 'promotion' was *de minimis*, because the transactions in reality represented only the completion of the sale"

"*Conceal*." This term is not statutorily defined. To uphold money laundering convictions premised upon concealment, courts have been somewhat more demanding than with other bases for Section 1956 convictions. In companion cases, United States v. Saunders, 928 F.2d 940 (10th Cir.), *cert. denied*, 112 S.Ct. 143 (1991), and United States v. Saunders, 929 F.2d 1466 (10th Cir.), *cert. denied*, 112 S.Ct. 143 (1991) the court reversed the conviction in a case in which the co-defendants (husband and wife) purchased two automobiles, one in the name of the wife and the other in the name of their daughter. The court rejected the "government's basic position ... that the money laundering statute should be broadly interpreted to include all purchases made by persons with knowledge that the money used for the transaction represents the proceeds of illegal activity." Concealment had not been proven, even with regard to the automobile titled in the name of the daughter, because of "the daughter's presence in person at the car lot during or somewhat subsequent to the transaction, the fact that the daughter shared the family last name, and [the co-defendants'] conspicuous use of the car after the purchase" 929 F.2d at 1472.

By contrast, concealment was found in United States v. Lovett, 964 F.2d 1029 (10th Cir.), *cert. denied*, 91-8719 (Oct. 5, 1992). In that case, the defendant's brother had begun to suspect that the defendant was stealing their grandmother's savings and was threatening to blow the whistle. To appease him, the defendant used some of the funds to purchase a truck for the brother.

In United States v. Gonzalez-Rodriguez, 966 F.2d 918, 925-26 (5th Cir. 1992), the court reversed a conviction based upon concealment. The conviction was based on the defendant's possession of \$8,000 cash in the Houston airport. The court found that there had been no concealment because, when questioned by law enforcement officers, the defendant "readily disclosed that she was in possession of \$8,000 and, indeed, turned it over to the agents so that they could count it"

In United States v. Jackson, 935 F.2d 832, 842 (7th Cir. 1991), the court held that commingling of narcotics proceeds and legitimate church funds supported a jury's finding of concealment.

F. Statistical Profile of Money Laundering Defendants and Their Sentences

To gain an understanding of how sentencing under U.S.S.G. §§2S1.1 and 2S1.2 has been operating, the Money Laundering Group examined data from two sources. The first source, existing monitoring data, was used to develop a general profile of money laundering defendants and their sentences. This profile is described immediately below in section (1).

The second data source was constructed by the working group from court documents in the Commission's files to provide a more detailed picture of sentencing under §§2S1.1 and 2S1.2. One aim of this more detailed focus was to determine whether the principal concern raised by public comment -- "incidental" money laundering conduct having a disproportionate impact on the sentence -- was actually occurring or merely theoretical. Relatedly, we wanted to see if there was a discernible pattern in charging practices with respect to these kinds of cases. Our findings are discussed in section (2).

1. *General Profile from Monitoring Data*⁶

In FY 1991, 181 defendants were sentenced under §2S1.1⁷ and 19 defendants were sentenced under §2S1.2.⁸ In the §§2S1.1 and 2S1.2 cases sentenced in FY 1991, the mean final offense level was 24.3 (median: 24.0 months) and the mean sentence was 56.6 months (imprisonment or other forms of confinement)(median: 48.0 months). Of these defendants, 36 percent received a sentence below the guideline range and 33.5 percent received a sentence within the first quarter of the range.

The probability of imprisonment for offenses sentenced under §§2S1.1 and 2S1.2 was greater than for the general population as a whole: 92.5 percent (§§2S1.1 and 2S1.2) and 76.0 percent (general population). While the probability of imprisonment under §§2S1.1 and 2S1.2 is consistent with that of drug cases (92.8 percent), the average

⁶Tables from monitoring data are contained in Appendix B. Data is for fiscal year 1991.

⁷These were cases where the §2S1.1 count was the primary count (i.e., the count corresponding to the guideline generating the highest offense level). In addition, there were 104 cases with counts under §2S1.1 where the primary count was a drug count.

⁸These were cases where the §2S1.2 count was the primary count. In addition, there were seven cases with counts under §2S1.2 where the primary count was a drug count.

term of imprisonment imposed is significantly lower under §§2S1.1 and 2S1.2 than in drug cases, 61.1 months and 85.1 months, respectively.

In the §2S1.1 cases sentenced in FY 1991, 40.3 percent received the higher alternative base offense level of 23,⁹ while 58.6 percent received the lower alternative base offense level of 20.¹⁰ In 64.1 percent of the cases, the defendant received a 3-level increase because the defendant knew or believed that the funds were the proceeds of narcotics trafficking.¹¹ In 47.5 percent of the cases, no increase was made for the value of the funds, indicating that in those cases the value of the funds involved was \$100,000 or less.¹²

Downward departures figured significantly in the sentencing for violations under §§2S1.1 and 2S1.2.¹³ In 21.5 percent of the cases downward departures were made for substantial assistance, and in 11.5 percent of the cases downward departures were made for other reasons, resulting in total downward departures in 33 percent of the cases. This overall downward departure rate exceeded those in both the general population (18.5 percent) and in drug cases (27.3 percent).

2. *Analysis of Sentencing Practices from Case Review*

To better understand the operation of §§2S1.1 and 2S1.2, the working group examined the presentence reports of 79 offenders and coded the information on the coding sheet attached at Appendix C. The cases examined were drawn from the monitoring FY 1991 database. We selected the cases from those in which §2S1.1 or §2S1.2 was the primary guideline, i.e., the guideline with the highest offense level. From these 200 cases, we examined all of the multiple count cases (n=45) (i.e., all of the cases that had at least one count under Part S of Chapter Two of the Guidelines Manual and also at least one count under a Part of Chapter Two other than Part S), and a 25 percent random sample of the 155 single-count cases.¹⁴

⁹See U.S.S.G. §2S1.1(a)(1).

¹⁰See U.S.S.G. §2S1.1(a)(2).

¹¹See U.S.S.G. §2S1.1(b)(1).

¹²See U.S.S.G. §2S1.1(b)(2).

¹³See Table B-5, Appendix B.

¹⁴Tables displaying the data derived from the case review study are contained in Appendix D.

(a) Magnitude of Funds Involved

The magnitude of funds involved in the cases we examined varied widely, ranging from a low of \$1,000 to a high of over \$44 million. The median amount was \$140,000. The high and low amounts for the various deciles were as follows:

<u>Decile</u>	<u>Low</u>	<u>High</u>
1st	\$1,000	\$9,500
2nd	\$15,995	\$24,500
3rd	\$30,000	\$52,860
4th	\$53,300	\$100,000
5th	\$107,412	\$140,000
6th	\$150,000	\$245,620
7th	\$250,000	\$442,688
8th	\$468,742	\$1,000,000
9th	\$1,157,655	\$3,500,000
10th	\$3,700,000	\$44,089,449

Thus, for example, 20 percent of the cases involved less than \$24,500, 40 percent of the cases involved \$100,000 or less, and 20 percent of the cases involved more than \$1,000,000.

(b) Nature of Underlying Criminal Conduct

In most of the cases in the sample (88.6%; n=70),¹⁵ the funds were criminally derived. Of the other nine cases, eight (about 10% of the total) involved "sting" operations -- i.e., the defendant believed the funds were criminally derived. In one case, the defendant was sentenced for money laundering, but the information in the presentence report was not sufficient to establish that there had been a money laundering violation.

Table D-I in Appendix D shows the nature of the underlying conduct for the 70 cases in the sample that involved criminally derived funds. Drug offenses comprised the largest group of underlying offenses (60.9%; n=42). The second largest group of underlying offenses is a composite of offenses that can be characterized as "white collar," i.e., fraud, embezzlement, import and export violations, and copyright infringement. This

¹⁵Cases with missing information were excluded in calculating this percentage. Similarly, unless otherwise indicated by the context, other percentages reported in this section of the report (II(F)(2)) exclude cases with missing information and cases that are not relevant to the particular analysis. Tables set forth in Appendix D identify the number of cases with missing information.

group of cases as a whole represents about one-fourth of the cases in the sample that had actual underlying criminal conduct (24.3%; n = 17).

Although drug money was involved in 60 percent of the non-sting cases in the sample, our examination of the variations between subsamples indicates that drug money is probably involved in about 70 percent of all cases involving money laundering counts. As noted, our sample consisted of two sets of cases: all multiple counts cases (i.e., cases involving both a money laundering count and a non-money laundering count) and a 25 percent sample of single count cases (i.e., cases involving only a money laundering count). Of the cases in our combined sample, the single count cases were more likely to involve drug money (78.6%; n=28) than were the multiple count cases (47.6%; n=42). Since the multiple count cases involved a higher ratio of non-drug cases, our over-all sample was biased towards cases involving other than drug offenses.

(c) Defendants' Involvement in and Conviction of Underlying Conduct

We next examined our sample to determine whether the defendant actually participated in the underlying conduct -- for example, by selling drugs where the underlying offense was drug trafficking -- or whether the defendant's money laundering offense occurred without the defendant's direct participation in the underlying offense. This examination was made to help determine if the money laundering conduct was "incidental" to the defendant's conduct with respect to an underlying offense.

In over 90 percent of the cases in the sample that involved underlying criminal conduct, the defendant participated in that underlying criminal conduct (93.6%; n=59). Although the money laundering defendants in non-sting cases almost always participated in the underlying criminal conduct, the defendants were not always convicted of the underlying conduct. The split was about 40/60, with the defendant being convicted of the underlying criminal conduct in about 60 percent of the cases (61%; n=36).

In many cases, money laundering defendants were initially charged with participating in the underlying criminal conduct but the counts charging the underlying criminal conduct were apparently dropped in connection with a plea bargain. The presentence reports suggest that in some cases counts were dropped because of difficulties of proof with respect to the underlying offense. More frequently, however, the presentence reports give the clear impression that the defendant was guilty of and would have been convicted of the underlying criminal conduct if the case had gone to trial. While, as discussed immediately below, money laundering counts in non-drug cases typically generated higher offense levels than those corresponding to the underlying conduct, in some drug cases it appears that counts involving underlying criminal conduct may have been dropped in order to give the defendant the benefit of a lower guideline range that corresponded to the money laundering count.

(d) Differences Between Offense Levels for Money Laundering and for the Underlying Criminal Conduct

In the cases in our sample sentenced under §2S1.1, the offense level for the money laundering offense was generally higher than the offense level for the underlying criminal conduct. This difference varied markedly, however, between drug and non-drug cases. The money laundering offense level was higher than the offense level for the underlying conduct in 52.5 percent (n=21) of the drug cases and in 96.0 percent (n=24) of the non-drug cases. Thus, the money laundering count increased the offense level over that pertaining to the underlying conduct in just over half of the drug cases and in almost all of the non-drug cases.

In many cases, the gap between the offense level for the underlying conduct and the offense level for the money laundering conduct was significant. In one case, the money laundering count increased the offense level by 21 levels; in two cases, by 16 levels; in one case, by 15 levels; in one case, by 14 levels; in four cases, by 11 levels; in five cases, by 9 levels; in one case, by 8 levels; in two cases, by 6 levels; and in five cases, by 5 levels.¹⁶

Conversely, in some cases dropping or failing to charge the underlying drug substantially reduced the resulting offense level. In two cases, the money laundering counts were 9 levels lower; in one case, 8 levels lower; in one case, four levels lower; and in one case, three levels lower.¹⁷

(e) Nature of the "Money Laundering" Conduct

Because of the breadth of money laundering conduct, we coded for types of money laundering conduct. The following table indicates the incidence of the various types of conduct and shows that money laundering conduct does indeed vary.

¹⁶A sample of case summaries involving these kinds of cases is attached at Tab 1 of Appendix E.

¹⁷Case summaries of these cases are attached at Tab 2 of Appendix E.

Type of Conduct	Frequency	Percent
Deposit Funds in Financial Institution.	19	25.3
Purchase of Vehicle	13	17.3
Purchase of Monetary Instruments	10	13.3
Purchase Miscellaneous Goods & Services	10	13.3
Wire Transfer of Funds	10	13.3
Transmittal of Monetary Instruments	6	8.0
International Transport of Funds/Monetary Instruments	6	8.0
Purchase of Real Estate	5	6.7
Other Transfer of Funds	5	6.7
Other Transaction with Financial Institution	4	5.3
Withdrawal of Funds from Financial Institution	3	4.0
Account Transfers in Financial Institution	2	2.7
Currency Exchange	2	2.7
Gift of Funds	1	1.3
Loan or Pledge of Funds	1	1.3
Other Disposition of Funds	1	1.3
Other Disposition of Monetary Instruments	1	1.3

We attempted to test the argument raised by some commentators that money laundering counts are charged in white collar cases merely to provide additional leverage for prosecutors. First, we coded the cases on the basis of the purpose of the "money laundering" conduct: whether to conceal or disguise proceeds of criminal activity, for purposes of tax evasion, or to promote further criminal activity.¹⁸ Second, we coded for various types of money laundering that may be harder to detect or trace: cases involving shell corporation(s), dummy account(s), foreign bank account(s), and international transaction(s).¹⁹

¹⁸See Table D-II, Appendix D.

¹⁹See Table D-III, Appendix D.

In our sample, we found the following incidence of different purposes for "money laundering" conduct: about 60 percent (60.8%; n=45), to conceal or disguise the proceeds of criminal conduct; about 6 percent (6.3%; n=5), for purposes of tax evasion; and about 24 percent (23.8%; n=16) to promote further criminal activity. Fifteen cases (20.2%) were coded as not involving any of the three purposes listed above. In these cases,²⁰ the defendants were convicted of engaging in financial transactions "to promote the carrying on of the specified unlawful activity" but it did not appear that the conduct was designed to promote further criminal activity.

Thus, while a majority of the cases in the sample involved what might be described as traditional money laundering (i.e., transactions to conceal or disguise the source of criminal funds), the majority was fairly small. In almost 40 percent of the cases the information within the presentence reports indicated that the defendant had not engaged in the money laundering offense by taking steps to conceal or disguise the proceeds of criminal conduct.

Of the cases in the sample that involved traditional money laundering, one-third (33.3%; n=15) appeared to involve forms of money laundering that would appear to be relatively more difficult to trace or detect.²¹ The incidence of the type of more complex money laundering varied, however, by the type of case. Complex money laundering in drug cases typically involved international transportation of funds or monetary instruments. By contrast, complex money laundering in fraud and embezzlement cases typically involved dummy accounts. However, in the fraud and embezzlement cases involving dummy accounts, it appears that the dummy accounts were typically set up to effectuate the fraud or the embezzlement.

G. Implications of Working Group Findings for Current Guidelines

(a) Guideline §2S1.1.

When it drafted guidelines to cover money laundering and other related offenses, the Commission did not have the benefit of settled judicial interpretations of key terms because the applicable statutes had only recently been enacted. As subparts D and E show, these statutes are very broad, and it appears they may be being applied somewhat differently than the Commission anticipated.

The Commission expected that U.S.S.G. §2S1.1 would be applied in cases in which financial transactions "encouraged or facilitated the commission of further crimes," and to offenses that were "intended to . . . conceal the nature of the proceeds or avoid a

²⁰A sample of case summaries involving this kind of case is attached at Tab 3 of Appendix E.

²¹A sample of case summaries involving this kind of case is attached at Tab 4 of Appendix E.

transaction reporting requirement."²² Accordingly, the Commission established alternative base offense levels: level 23, intended to apply to financial transactions that facilitate the commission of further crimes; and level 20, intended to apply to financial transactions that conceal the nature of the proceeds or avoid a transaction reporting requirement.²³

The case law discussed in subpart E demonstrates, however, that the statutory phrase "to promote the carrying on of specified unlawful activity" has not been limited to offenses in which the defendant "encouraged" or "facilitated" the commission of further crimes, as the Commission indicated in commentary that it expected. Indeed, under United States v. Montoya, 945 F.2d 1068 (9th Cir. 1991), when the defendant has committed the underlying offense, no further intent is required to establish that he or she sought to "promote . . . specified unlawful activity" other than a showing that the defendant desired to "make use of the funds." In Montoya the offense met this test because the defendant deposited the illegal proceeds in the bank. Thus, Montoya and similar cases call into question whether §2S1.1's higher alternative base offense level of 23 should apply to all offenses in which the statutory element of "promot[ing] . . . specified unlawful" activity is met.

The Commission's selection of relatively high alternative base offense levels (20 and 23) was presumably based on the general conclusion that 18 U.S.C. § 1956 would apply only to relatively serious offenses. As the Commission stated in background commentary: "In keeping with the clear intent of the legislation, the guideline provides for substantial punishment."²⁴ Thus, it appears that the base offense levels in §2S1.1 may reflect a view that 18 U.S.C. § 1956 would generally be applied primarily to "traditional," and perhaps large-scale,²⁵ professional money launderers.

During Fiscal Year 1991, §2S1.1 was occasionally used to sentence persons who were large-scale professional money launderers. Our sample included two cases of money laundering operations directed from Colombia, for example, that laundered approximately \$25 million and \$45 million respectively. But the majority of the defendants sentenced under §2S1.1 have operated on a much smaller scale. One-half of the cases involved less than \$150,000.

²²U.S.S.G. §2S1.1, comment. (back'd).

²³See U.S.S.G. §2S1.1(a)(1) and (2).

²⁴U.S.S.G. §2A1.1, comment. (back'd).

²⁵The table used as a specific offense characteristic to increase offense levels for the quantity of dollars "laundered" does not provide for any increase if the value of funds involved did not equal at least \$100,000. See U.S.S.G. §2S1.1(b)(2).

Further, about 83 percent of the defendants in our sample who were convicted of money laundering also participated in the underlying criminal activity from which the funds were derived. This suggests that the money laundering conduct is at least somewhat "incidental" to an underlying offense in many cases where money laundering is charged. Moreover, only a relatively small percentage of the cases in the sample involved conduct that could fairly be described as complex or sophisticated money laundering. While about 60 percent of cases could be said to meet the test of "traditional" money laundering activity in that the defendants in those cases made efforts to conceal or disguise the proceeds of criminal activity, two-thirds of these cases did not involve any meaningful degree of complexity or sophistication. Instead, they involved such conduct as, for example, purchasing money orders with cash from drug sales.

In addition, in a significant number of cases, the "money laundering" conduct was essentially the same as the underlying criminal conduct. In these cases, representing about 20 percent of the cases in our sample, the financial transactions did not appear intended either to conceal the proceeds of criminal conduct, to facilitate tax evasion, or to promote further criminal conduct.

Since §2S1.1 is typically applied to defendants who participated in the underlying criminal conduct, and since relatively few cases involve complex money laundering conduct, it would seem that the sentences imposed for money laundering should, in most cases, bear a fairly close relation to the sentences for the underlying criminal activity. However, as discussed, our research found a substantial disparity in many cases between the applicable offense levels for the underlying offense and the money laundering offense. Of the 65 cases within our sample in which we were able to determine the guideline offense level for both the underlying criminal conduct and the money laundering conduct, the difference exceeded four levels in 63 (97 percent) of the cases. Of these 63 cases, 49 (78 percent) did not involve sophisticated money laundering.

Other information suggests that the courts may view the sentence called for by §2S1.1 as higher than appropriate. In 36 percent of the monetary transaction cases sentenced in FY 1991, the sentencing court imposed a sentence that was below the guideline range. In addition to downward departures for substantial assistance occurring in a higher than average 21.5 percent of the cases where money laundering was charged, courts departed downward in 11.5 percent of the cases for other reasons.²⁶ (The reasons given by the courts for these departures, however, fit no particular pattern.)²⁷

²⁶The percent of cases with sentences below the guideline range exceeded the percent of cases with noted departures. In a few cases, courts sentenced below the guideline range without officially departing.

²⁷See Table B-5, Appendix B.

In United States v. Skinner, supra, the Second Circuit held that §2S1.1 was not written for a case in which the violation of 18 U.S.C. § 1956 did not involve traditional money laundering and in which the money laundering conduct amounted to little more than the completion of the underlying criminal conduct. In Skinner, "money laundering" was found because the defendant had purchased a money order and sent it to her drug supplier to pay for drugs that had previously been advanced. The Second Circuit noted that "although the appellants' conduct falls within the words of the Money Laundering Act, the terms of the relevant commentary shows that this conduct lies well beyond the 'heartland' or the 'norm.'" Skinner at 179. Deciding to remand the case for consideration of a downward departure, the court stated:

Here, the appellants did not enter into the financial transactions to conceal a serious crime, and the Government never sought to prove that they did. Further, although the district court found that "these financial transactions were entered into with the intent to promote the narcotics trafficking conspiracy alleged in the indictment," such "promotion" was de minimis, because the transactions in reality represented only the completion of the sale of Blodgett to Skinner.

As noted, our review of cases indicates that while the Skinner court found the facts of that case to be outside the "heartland," the facts of that case are actually relatively common.

In sum, a number of factors suggest that §2S1.1 may not accurately reflect the seriousness of the offense in many cases:

- case law interpreting key statutory terms more broadly than the Commission may have expected;
- evidence that money laundering offenses often do not involve "traditional" money laundering conduct and even less frequently involve sophisticated money laundering conduct;
- the common usage of money laundering counts for defendants who participated in the underlying criminal conduct;
- the substantial disparity, in many cases, between the applicable offense level for the underlying criminal conduct and the money laundering conduct;
- the high downward departure rate in money laundering cases; and
- the apparent practice, in some cases, of charging money laundering rather than drug offenses in order to reach a lower guideline sentence.

The evidence reviewed by the working group suggests a need to bring base offense levels for money laundering more in line with the offense levels for underlying criminal conduct, perhaps augmenting them with specific offense characteristics that more clearly serve as proxies for offense seriousness (e.g., evidence of sophistication) than the guideline currently contains. Various approaches might be possible. For example, the Commission could use a base offense level equal to the offense level for the underlying offense from which the funds were derived, in instances where the defendant committed the underlying offense and the offense level for that offense can be determined with reasonable certainty.

This approach would not be satisfactory for "sting" cases, cases in which the underlying offense level cannot be determined with reasonable certainty, and cases in which the defendant was not involved in the underlying criminal conduct. For such cases, the Commission could explore the workability of using a base offense level keyed to the fraud table for most non-drug offenses²⁸ and to a fixed increment above the fraud table for drug offenses.²⁹

Sole reliance on a base offense level tied to the offense level of the underlying offense or on a derivative of the fraud table may suffice in the money laundering cases in which the money laundering conduct does not go substantially beyond the activity that constituted the underlying criminal conduct, but in cases involving traditional money laundering a greater sentence is presumably warranted to reflect the added seriousness of this conduct.

In evaluating the offense level increase to be used in cases that involve traditional money laundering, the Commission may want to consider an approach used in U.S.S.G. § 2B1.2 (Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property). For offenses that involve receiving stolen goods, the Commission has tied the offense level to that used for theft. The underlying theory seems to be that conduct that allows an underlying crime to succeed and be profitable is as serious as the underlying criminal conduct itself. To the extent to which the Commission considers traditional money laundering, i.e., taking steps to conceal or disguise the proceeds of criminal conduct, as equal in seriousness to the underlying criminal conduct, the operation of the multiple count rule suggests an approach for cases in which the defendant commits the underlying criminal conduct and also engages in the traditional money laundering.

²⁸The fraud or embezzlement tables, which are equivalent at most loss amounts, would be used to determine the offense level for the underlying criminal conduct in most non-drug cases.

²⁹ The rationale for the increased offense level in drug cases is that the Commission has concluded that drug offenses are more serious than fraud offenses involving equivalent amounts of money.

Under the multiple count rule, two points are added when there are two groups of counts of equal seriousness. Thus, the Commission might consider a specific offense characteristic that provides for a two-level increase when the offense involves traditional money laundering in typical, non-sophisticated cases.

Using the multiple count rule approach, an increase of more than two points might be appropriate in money laundering cases in which the money laundering conduct was substantially more serious than the underlying conduct. For example, increases might be considered if the money laundering was particularly sophisticated and difficult to detect or if the amount of the money involved in the underlying offense substantially understated the amount of money laundering in which the defendant had engaged (e.g., a case in which the defendant was a professional money launderer).

(b) Guideline §2S1.2

Although public comment has focused on U.S.S.G. §2S1.2 (covering violations of 18 U.S.C. § 1957), the working group's study of this guideline raised one issue for possible Commission consideration. The current money laundering guidelines treat violations of 18 U.S.C. § 1957 as slightly less serious than violations of 18 U.S.C. § 1956. As presently drafted, the offense levels for §2S1.2 are, in the typical case, one level less than the offense levels for §2S1.1 (for comparable loss amounts).

Although 18 U.S.C. § 1957 has been applied infrequently, our study indicates that the offenses sentenced under §2S1.2 are not significantly different from those sentenced under §2S1.1.³⁰ Accordingly, the Commission decision to treat violations of 18 U.S.C. §§ 1956 and 1957 as virtually equivalent appears reasonable. Indeed, the Commission may want to consider consolidating §§2S1.1 and 2S1.2, using specific offense characteristics to differentiate between offenses committed under the two statutes. In effect, the Commission may want to treat a violation of 18 U.S.C. § 1957 as generally equivalent to the underlying criminal conduct.³¹

³⁰Case summaries of U.S.S.G. §2S1.2 cases are attached at Tab 5 of Appendix E.

³¹ A specific offense characteristic applying to traditional money laundering would not typically apply in cases that involved 18 U.S.C. § 1957 since that statute requires no intent (for example, to "promote" or "conceal" crime) beyond the knowledge that the funds are proceeds from criminal activity.

II. Reporting and Structured Transaction Violations

A. Introduction and Overview, of Part II

Guideline sections 2S1.3 and 2S1.4 cover offenses involving reporting requirements: failure to file required reports; filing false reports; and structuring transactions to avoid reporting requirements. Part II describes the working group's efforts to study these reporting-related guidelines.

Subpart II.B of this report provides an overview of the reporting requirements that give rise to violations covered by §§2S1.3 and 2S1.4. Subpart II.C describes the elements of the reporting and structuring violations that are covered by these guidelines. Subpart II.D discusses public comment on §§2S1.3 and 2S1.4. Finally, subpart II.E provides our initial analysis of the information we have gathered and describes additional avenues for further inquiry.

B. Reporting Requirements

Under statutes enacted by Congress and regulations promulgated by the Department of Treasury, four currency and monetary reports are potentially applicable to financial transactions: Currency Transaction Report (CTR), required under 31 U.S.C. § 5313; Report of International Transportation of Currency or Monetary Instruments (CMIR), required under 31 U.S.C. § 5316; Report of Foreign Bank and Financial Accounts (FBAR), required under 31 U.S.C. § 5314; and Report of Cash Payments Over \$10,000 Received in a Trade or Business (Form 8300), required under 26 U.S.C. § 6050I.

The essential elements of the reporting requirements are as follows:

CTR's: Under 31 U.S.C. § 5313, a "domestic financial institution" involved in a currency transaction in excess of \$10,000 must report the transaction within 15 days;

CMIR's: Under 31 U.S.C. § 5316, a person who transports (or is about to transport) more than \$10,000 in currency or monetary instruments into or out of the United States must report at the time of the transportation;

FBAR's: Under 31 U.S.C. § 5314, a person who makes a transaction or maintains a relationship with a foreign financial agency exceeding \$10,000 during previous calendar year must report the foreign financial account by June 30; and

Form 8300's: Under 26 U.S.C. § 6050I, a person engaged in a trade or business must report transaction(s) involving cash receipts of more than \$10,000 (in one or more related transactions) within 15 days.

C. Reporting and Structuring Offenses

Guideline sections 2S1.3 and 2S1.4 apply to the following reporting and structuring offenses.

Failure to File Reports. Under 31 U.S.C. § 5322, a willful failure to file a CTR, a CMIR, or a FBAR is a crime punishable by up to five years imprisonment. If the willful failure to report was committed while violating another federal law, or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, the maximum sentence is 10 years imprisonment.

Under 26 U.S.C. § 7203, a willful failure to file a Form 8300 is a crime punishable by imprisonment up to five years.

Filing False Reports. Filing a false CMIR, CTR, or FBAR is a crime punishable under the general false statements statute, 18 U.S.C. § 1001, by imprisonment up to five years. Filing a false form 8300 is prohibited by 26 U.S.C. § 6050I and separately punishable by imprisonment up to five years under 26 U.S.C. § 7203.

Structuring Monetary Transactions. Structuring transactions to evade filing a form 8300 cash reporting requirement is prohibited by 26 U.S.C. § 6050I and is punishable by imprisonment up to five years under 26 U.S.C. § 7203.

Structuring transactions, whereby currency or monetary instruments are transported into or out of the United States in such a way as to evade the \$10,000 CMIR reporting requirement, is a crime punishable under 31 U.S.C. § 5322 by up to five years imprisonment (or ten years if committed while violating another federal law or as part of a pattern of illegal activity involving \$100,000 in a 12-month period).

Structuring transactions to evade the filing of a CTR is prohibited by 31 U.S.C. § 5324 and punishable under 31 U.S.C. § 5322 in the same manner as structuring to evade a CMIR reporting requirement.

D. Outside Views and Contacts

The working group surveyed past public comment regarding the operation of §§2S1.3 and 2S1.4 and found one item of comment. The working group also solicited and received comments from the DOJ, the Department of Treasury, and private practitioners.

In a letter to the Commission written in 1990, defense counsel complained about the guideline sentence in a case that involved structuring of lawfully derived funds. According to the defense attorney, the case involved a businessman in retail sales who banked legitimate business income that he received on a daily basis. A cashier at the

bank was alleged to have informed him that if less than \$10,000 per day were deposited there would be far less paperwork involved for all concerned. Thereafter, the businessman kept each deposit to less than \$10,000. Since the businessman was aware of the reporting requirement and had structured his transactions to avoid the filing of reports, he had violated 31 U.S.C. § 5324. Because the violations had continued for many months, over \$1,000,000 had been structured. Under the guidelines, the applicable offense level was 18. The prosecutor purportedly agreed that the sentence called for by the guidelines was not reasonable but, given the structure of the guideline, did not feel there was an appropriate basis for downward departure.

When asked about the reported case involving structuring of lawfully derived funds, representatives of the DOJ disavowed any knowledge. They reported that, as far as they knew, prosecutors did not bring cases involving structuring of lawfully derived funds.

When asked about what the working group perceived as certain inconsistencies between §§2S1.3 and 2S1.4, representatives of DOJ indicated that they agreed that those two sections needed reworking. In their view, the two guidelines should be combined and numerical values given to various types of offenses should be made more consistent. Rather than make any particular suggestions at that time, however, DOJ representatives indicated that they would submit proposed changes to the working group in the next few weeks.

Representatives of the Department of Treasury concurred that §§2S1.3 and 2S1.4 should be combined and reworked. In their view, similar reporting violations under various statutes should be treated similarly. For example, they stated that the same offense level should apply for filing a false CTR or for filing a false CMIR. From Treasury's perspective, structuring violations are viewed as more serious than either false reporting or failing to file a report because structuring involves more aggressive steps to prevent the reporting of large monetary transactions.

When asked about the comparative seriousness of offenses that involve "clean money" -- i.e., not criminally derived -- and offenses that involve "dirty money," Treasury Department officials took the position that both are equally serious if they prevent the Treasury from having an accurate data base regarding the flow of large amounts of money.

Private practitioners also called into question the current structure of §§2S1.3 and 2S1.4. They pointed out a number of discrepancies. Structuring a transaction to evade the filing of a CMIR has a base offense level of 9 while structuring a transaction to evade the filing of a CTR or a Form 8300 has a base offense level of 13. Structuring of a transaction to evade the filing of a CMIR, knowing that the funds were criminally derived, has an offense level of 13, while structuring a transaction to evade the filing of a CTR or a Form 8300, knowing that the funds were criminally derived, has an offense

level of 17. Willful failure to file a CTR or a Form 8300 has a base offense level of 13, while willful failure to file a CMIR has a base offense level of 9. Making a false statement regarding currency being taken out of the country results in an offense level of 5,³² while making a false statement on a CTR has a base offense level of 13.³³

Private practitioners also questioned the perceived multiple and overlapping specific offense characteristics in §2S1.4. They argued that if the defendant knew or believed that the funds were criminally derived property, the defendant probably also knew or believed that the funds were intended to promote criminal activity.

E. Statistical Analysis of Sentencing Under §2S1.3

Because §2S1.4 only went into effect in November 1991, no cases have yet been sentenced under this guideline for which we have court documents. In Fiscal Year 1991, 195 defendants were sentenced under §2S1.3, about the same number as were sentenced under §2S1.1.

In the §2S1.3 cases sentenced in FY 1991, the average final offense level was 12.2 and the average sentence was 12.5 months (imprisonment or other forms of confinement). By comparison, the average final offense level in §§2S1.1 and 2S1.2 cases was 24.3 and the average sentence was 56.6 months.

Of the 195 defendants sentenced for monetary reporting violations in FY 1991, 129 were sentenced to prison and supervised release, 18 were given the new split sentence, 17 were sentenced to probation and confinement, and 40 were sentenced to probation only.

From the monitoring data alone, the working group was not able to determine whether prosecutors are using 31 U.S.C. § 5324 for structuring of lawfully derived funds, as described in the letter from the defense lawyer about his client (see subpart D.). However, we have ascertained that there have been a large number of cases in which the defendant had either structured transactions to evade reporting requirements or knowingly filed, or caused another to file, a report containing materially false statements, although the defendant neither knew nor believed the funds were criminally derived. Of the 195 defendants sentenced in FY 1991 under §2S1.3, 132 (68%) fit this fact pattern.

Based on monitoring data, it is apparent that departures have played a significant role in sentencing for monetary reporting violations. In FY 1991, downward departures occurred in 24.1 percent of the cases, with 32 downward departures for substantial

³²United States v. Carrillo-Hernandez, 1992 WL 95791 (9th Cir. May 12, 1992).

³³U.S.S.G., §2F1.1, comment (n.13).

assistance and 15 downward departures for other reasons. The rate of downward departures under §2S1.3 exceeded the rate for cases as a whole. Overall in FY 1991, downward departures were made in 18.5 percent of the cases.

The incidence of downward departures was particularly high in cases that had a base offense level of 13 and where the defendant neither knew nor believed that the funds were criminally derived property. Thirteen of the 32 downward departures for substantial assistance and 13 of the 15 downward departures for other reasons occurred in such cases.

F. Implications for Current Guidelines

Comments from DOJ, Treasury, and private practitioners indicate a consensus that the guidelines dealing with monetary reporting violations could benefit from revision. Monitoring data also suggest that a restructuring of the guidelines may be appropriate.

A central question in reconsidering §§2S1.3 and 2S1.4 is whether similar violations under different statutes should be treated similarly or differently. For example, should structuring violations involving CMIR's have a different base offense level than structuring violations involving CTR's or Form 8300's? Or, should willful failure to file a CTR or a Form 8300 be punished differently than the willful failure to file a CMIR?

A second question that will require analysis is how the defendant's state of mind regarding the legality or illegality of the source of the funds involved should affect the appropriate sentence. At present, the guidelines distinguish cases in which the defendant knew or believed that the funds were criminally derived. Since knowledge or lack of knowledge represent the two extremes, the Commission might want to consider an intermediate position, *e.g.*, increasing the offense level if the defendant acted with a reckless disregard as to whether the funds were criminally derived.

A third question involved in reconsidering §§2S1.3 and 2S1.4 is how to treat cases that involve structuring of clean money. In the view of the Department of Treasury, these are extremely serious violations -- just as serious as crimes involving criminal proceeds -- because they deprive the Department of accurate information regarding flows of money. By contrast, departure rates suggest that courts do not entirely agree.

A fourth question that must be studied relates to the relative seriousness of monetary transaction cases and monetary reporting cases. At present, the most serious violations sentenced under §§2S1.3 and 2S1.4 are treated as equivalent to violations sentenced under §2S1.2. In both cases, the offense level is 17 with any appropriate increase based on the amount of money.

Finally, a fifth question for additional study relates to the relative seriousness of structuring transactions, filing false reports, failing to file reports, and making false statements.

The working group will continue analyzing these issues.

APPENDIX A - PURPOSE STATEMENT

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, DC 20004
(202) 662-8800
FAX (202) 662-7631



September 11, 1992

MEMORANDUM

TO: Phyllis J. Newton
Staff Director

FROM: Money Laundering Working Group
Win Swenson, Chair
Rusty Burress
Nolan Clark
Deborah Dealy-Browning
Pam Rigby
Jackie Rubin

SUBJECT: Purpose Statement

I. Introduction

Recent public comment has raised questions for Commission consideration regarding the operation of the money laundering and structured transaction guidelines (U.S.S.G. §§2S1.1-1.4). Although other issues may need to be addressed by the money laundering working group -- including some that have been tentatively identified¹ and others that may become apparent during the course of the project -- commentators have stressed a particular concern that the working group believes should serve, at least initially, as the group's primary focus.

A. The Issue of Primary Focus

The principal issue raised by public comment relates to the use or potential use of the money laundering and structured transaction statutes as a vehicle for prosecution in cases where the financial transaction appears to be

¹See Section B.

incidental to a more serious underlying offense. In these cases, commentators have expressed concern that the guideline sentence for the money laundering or structured transaction offense can be significantly higher than the guideline sentence for the underlying offense. This potential, it is posited, conflicts with just punishment principles and gives undue weight to charging decisions.

The following illustrations of these perceived problems have been called to the attention of the Commission through letters from private practitioners and the literature and case law cited therein:²

1. *Embezzlement and Fraud Cases:* A bank teller embezzles \$15,000 and deposits the funds into his own account. If prosecuted as bank embezzlement/bank fraud, the applicable total offense level (applying §2B1.1) would typically be 9. If prosecuted as money laundering (applying §2S1.2), the applicable total offense level would generally be 17.
2. *Tax Cases.* After winning \$113,000 in cash playing blackjack, an individual tries to avoid paying taxes on the gain. He deposits the proceeds through separate deposits spread out over 12 days, with each deposit in an amount of less than \$10,000. If prosecuted for attempted tax evasion, his offense level (applying §2T1.1) would be 10 (assuming a tax loss of \$32,000). If prosecuted instead for unlawful structuring, his offense level (applying §2S1.3) would be 14.³
3. *Drug Cases.* Defendant A is a small-time cocaine dealer who purchases drugs from Defendant B in another state, paying for them by sending B money orders through the mail. If prosecuted for trafficking the 120 grams of cocaine involved in the offense, Defendant A's offense level would be 16. If prosecuted for "laundering" the \$3,320 involved in the offense (i.e., engaging in a financial transaction involving proceeds from unlawful activity -- here, paying for the drugs), the offense level under §2S1.1 would be 24.⁴

²All hypotheticals in the following three illustrations assume a two-point reduction for acceptance of responsibility. The embezzlement offense level in the first illustration assumes that the offense involved more than minimal planning. See U.S.S.G. §2B1.1(b)(2)(5).

³Cf. United States v. Dashney, 937 F.2d 532 (10th Cir. 1991).

⁴See United States v. Skinner, 946 F.2d 176 (2nd Cir. 1991).

B. Other Issues:

In addition to the question of whether the money laundering/structured transaction guidelines appropriately reflect offense seriousness when the financial transaction involved is, arguably, incidental to a more serious underlying crime, other sentence severity questions have been raised. The first illustration below came to the Commission's attention through public comment and is purportedly based⁵ on an actual case; the second illustration describes an area for possible further study that staff identified in a prior amendment cycle; the third issue has been noted by the Training and Legal staffs and highlighted by recent case law.

1. *"Innocent" Structuring of Lawfully Derived Funds.* A businessman in retail sales banks his day's cash receipts. The cashier at the bank tells him that if less than \$10,000 per day is deposited, there would be far less paperwork for all concerned. Thereafter, he keeps each deposit to under \$10,000, using employee/relatives to deposit the smaller amounts. Although this constitutes unlawful structuring, there was no illegal purpose to these actions beyond avoiding the reporting paperwork and the funds involved were lawfully obtained. The defendant's base offense level was 13. However, because the offense involved deposits over many months, and thus the quantity of structured funds involved grew to over \$1 million, the applicable offense level was 18. See §2S1.3(b)(2).
2. *"True" Money Laundering in Larger Drug Cases.* An earlier staff review of money laundering cases suggested that a defendant whose role in a large-scale drug offense is what is commonly thought of as "true" money laundering (e.g., arranging to channel illegal drug money through legitimate sources so that the drug enterprise may realize the profits without the unlawful source of the profits being apparent) may receive offense levels that are disproportionately low relative to other participants in the offense.
3. *Grouping Money Laundering and an Underlying Offense.* The Training staff has received questions regarding whether a money laundering count should be grouped with a drug distribution count under §3D1.2 when the offense behavior consists of a financial transaction involving

⁵The characterization of the case is from public comment. The working group has not yet had an opportunity to review the underlying court documents.

proceeds from the drug scheme. Most Frequently Asked Questions No. 119 (Vol. V., March 2, 1992) takes the position that the two counts generally should be grouped under -- depending on the facts -- subsections (a), (b), or in some instances (c). A Fourth Circuit decision has upheld a district court's failure to group money laundering and underlying gambling convictions, implicitly appearing to disagree with MFAQ No. 119.⁶

II. Research and Information Gathering

In order to provide the Commission with the information necessary to 1) evaluate the issues described above, and 2) determine if other issues warrant Commission consideration, the working group proposes the following general approach to research and information gathering.

- A. Establishing a Money Laundering/Structured Transaction Database: This task will have two components. The first will be to run frequencies from existing monitoring data. The working group will extract information regarding the numbers of cases sentenced under the relevant guidelines, as well as certain demographic variables such as age, sex, level of education, etc., and other offense-related information, such as secondary counts.

The second component in creating a money-laundering/structured transaction database will be to pull information from presentence investigation reports (PSR's) and Statements of Reasons (SOR's) to determine real offense characteristics, including the gravamen of the underlying offense, to ascertain how the guidelines are currently being applied, and to provide the Commission with a future basis for evaluating the impact of any guideline change it might wish to consider.

The resources required to complete the first component of this task will be one research assistant, using SAS (a statistical software package) and will take approximately two days.

The second phase of database construction will require determining what new data should be extracted from the PSR or other documents to supplement existing monitoring data. This may require a preliminary review of a sample of cases that would take a research staff member about a week to complete.

⁶See United States v. Porter, 909 F.2d 789 (4th Cir. 1990). See also United States v. Johnson, No. 91-5030, slip. op. (10th Cir. July 28, 1992).

Collecting data from PSR's and SOR's will next require reviewing the relevant pool of cases and then adding the relevant information to the database. A simple data entry screen can be designed by a research assistant with dBASE or FoxPro skills. Coders can be used to review cases and input the necessary data directly into the computer. The time required to complete this final phase of database construction will be determined by the number of cases, along with the number of variables to be coded and the number of coders available. The information gleaned from the analysis of the database may serve to either broaden or narrow the working group's focus.

- B. Legal Research: The working group will analyze case law to determine how statutes and guidelines are being interpreted and applied. Departures will also be analyzed. A preliminary review of relevant decisions indicates that it will take a legal staff member about three days to conduct and write up an initial analysis of the relevant case law.
- C. Literature: The working group will conduct a literature search and review to help further identify relevant issues. The working group has already made an initial effort in this area, and based upon the initial work it is expected that only modest library personnel and working group staff time will be needed to complete the task.
- D. Analysis of Technical Assistance (TAS) Reports: The working group will meet with TAS to determine whether TAS is aware of information that may bear on the relevant issues. Additionally, the group will review any relevant TAS reports.
- E. Solicitation of Views from Outside Experts: To draw on the practical experience of those outside the Commission, staff will seek to meet with knowledgeable representatives of the Justice and Treasury Departments, and private practitioners.
- F. Analysis of Legislative Initiatives: The working group will ask legislative staff to identify any legislative initiatives in this area. The group will analyze these bills, if any.
- G. Analysis of Public Comment: Although the working group has already compiled and to some extent analyzed the public comment submitted to date, this effort will continue as new comment comes in.

III. Formulate Alternative Approaches for Commission Consideration

Consistent with the Commission's established protocol for working groups, the money laundering working group will lay the groundwork for developing alternative means to address any problems that the Commission concludes warrant attention. This will require considering the possible development of, for example, guideline amendments, MFAQ's, or a strategy for future research.

IV. Summary

An initial review of public comment appears to provide a useful beginning focus for the working group's efforts. To the extent the group's focus is not substantially broadened, the money laundering working group should be able to analyze and suggest alternative approaches to the reported concerns with a relatively modest expenditure of resources.

APPENDIX B - TABLES/MONITORING

Table B-1
Distribution of Imprisonment Imposed
for Cases Sentenced during Fiscal Year 1991

Type of Offense		Imprisonment											
		Total				Prison & Supervised Release				New Split Sentence			
		Number	Percent	Term of Imprisonment		Number	Percent	Term of Imprisonment		Number	Percent	Prison Equivalency	
				Mean	Median			Mean	Median			Mean	Median
Monetary Transactions	200	185	92.5	61.1	51.0	183	91.5	61.7	51.0	2	1.0	11.0	11.0
Monetary Reporting	195	129	66.2	17.6	12.0	111	56.9	19.7	15.0	18	9.2	9.0	8.0

Drug Cases	11,500	10,671	92.8	85.1	60.0	10,487	91.2	90.8	60.0	165	1.4	35.3	12.0
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All Cases	25,093	19,077	76.0	62.9	33.0	18,401	73.3	67.6	33.0	618	2.5	21.3	10.0
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Table B-2
Distribution of Probation Imposed
for Cases Sentenced during Fiscal Year 1991

		Probation											
		Total		Probation and Confinement						Probation Only			
		Number	Percent	Number	Percent	Term of Probation		Term of Confinement		Number	Percent	Term of Probation	
						Mean	Median	Mean	Median			Mean	Median
Monetary Transactions	200	13	6.5	4	2.0	45.0	48.0	4.8	6.0	9	4.5	40.0	36.0
Money Transaction	195	57	29.2	17	8.7	37.2	36.0	4.1	4.0	40	20.5	34.1	36.0

Drug Cases	11,500	730	6.4	322	2.8	42.9	36.0	5.5	6.0	408	3.6	44.4	36.0
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All Cases	25,093	5,656	22.5	2,200	8.8	40.5	36.0	4.1	4.0	3,456	13.8	31.9	36.0
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Table B-3
Distribution of Position with the Sentencing Range
for Monetary Transactions Cases Sentenced during Fiscal Year 1991

Adjustment for Amount of Structured Transaction		Final Offense Level		Total Prison Equivalency		Position Within Sentencing Range											
						Below Range		Within Range 1st Quarter		Within Range 2nd Quarter		Within Range 3rd Quarter		Within Range 4th Quarter		Above Range	
						Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
0	97	21.5	22.0	46.0	40.0	31	32.0	34	35.1	14	14.4	5	5.2	12	12.4	1	1.0
1	21	22.8	22.0	45.1	41.0	7	33.3	8	38.1	0	0.0	2	9.5	3	14.3	1	4.8
2	12	24.9	25.0	63.3	51.0	3	25.0	5	41.7	0	0.0	1	8.3	3	25.0	0	0.0
3	22	24.1	24.0	52.3	53.0	6	27.3	5	22.7	3	13.6	4	18.2	4	18.2	0	0.0
4	10	28.0	28.5	73.0	63.0	5	50.0	3	30.0	1	10.0	0	0.0	1	10.0	0	0.0
5	6	26.7	26.0	45.3	47.0	3	50.0	1	16.7	1	16.7	0	0.0	1	16.7	0	0.0
6	7	28.0	28.0	68.9	80.0	4	57.1	2	28.6	1	14.3	0	0.0	0	0.0	0	0.0
7	6	31.8	32.0	99.7	96.5	3	50.0	2	33.3	1	16.7	0	0.0	0	0.0	0	0.0
8	3	30.7	29.0	80.0	60.0	0	0.0	3	100.0	0	0.0	0	0.0	0	0.0	0	0.0
9	9	31.1	30.0	94.6	87.0	7	77.8	1	11.1	0	0.0	0	0.0	1	11.1	0	0.0
10	5	36.0	35.0	143.6	36.0	3	60.0	1	20.0	0	0.0	0	0.0	1	20.0	0	0.0
11	0	---	---	---	---	0	---	0	---	0	---	0	---	0	---	0	---
12	0	---	---	---	---	0	---	0	---	0	---	0	---	0	---	0	---
13	2	35.0	35.0	60.0	60.0	0	0.0	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Total	200	24.3	24.0	56.6	48.0	72	36.0	67	33.5	21	10.5	12	6.0	26	13.0	2	1.0

Table B-4
Distribution of Position with the Sentencing Range
for Monetary Reporting Cases Sentenced during Fiscal Year 1991

Adjustment for Amount of Unreported Transactions		Final Offense Level		Total Prison Equivalency		Position Within Sentencing Range											
						Below Range		Within Range 1st Quarter		Within Range 2nd Quarter		Within Range 3rd Quarter		Within Range 4th Quarter		Above Range	
						Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
0	131	11.0	11.0	9.9	8.0	40	30.5	56	42.8	17	13.0	7	5.3	11	8.4	0	0.0
1	27	12.7	12.0	13.1	12.0	7	25.9	10	37.0	8	29.6	1	3.7	1	3.7	0	0.0
2	18	13.4	13.5	10.6	11.0	5	27.8	8	44.4	3	16.7	1	5.6	1	5.6	0	0.0
3	2	16.5	16.5	22.5	22.5	0	0.0	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0
4	3	14.3	15.0	16.7	18.0	0	0.0	3	100.0	0	0.0	0	0.0	0	0.0	0	0.0
5	4	22.8	23.0	46.8	58.5	1	25.0	1	25.0	0	0.0	0	0.0	1	25.0	1	25.0
6	1	9.0	9.0	0.0	0.0	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
7	3	17.0	14.0	22.3	21.0	1	33.3	1	33.3	0	0.0	0	0.0	1	33.3	0	0.0
8	2	19.0	19.0	21.0	21.0	1	50.0	1	50.0	0	0.0	0	0.0	0	0.0	0	0.0
9	0	23.7	23.7	56.3	56.3	0	0.0	1	33.3	0	0.0	2	67.7	0	0.0	0	0.0
10	0	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
11	0	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
12	0	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
13	1	24.0	24.0	20.0	20.0	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Total	195	12.2	12.0	12.5	8.0	57	29.2	83	42.6	28	14.4	11	5.6	15	7.7	1	0.5

Table B-5
Distribution of Departure Status
for Cases Sentenced during Fiscal Year 1991

Type of Offense		Departure Status									
		No Departure		Upward Departure		Downward Departures		Substantial Assistance		Missing Data/ Not Applicable	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Monetary Transactions	200	132	66.0	2	1.0	23	11.5	43	21.5	0	—
Monetary Reporting	195	146	74.9	0	—	15	7.7	32	16.4	2	1.0

Drugs	11,500	8,263	71.9	64	0.6	722	6.3	2,419	21.0	33	0.3
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All Cases	25,093	19,945	79.5	412	1.6	1,482	5.9	3,152	12.6	102	0.4
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**Monetary Transactions,
Reasons for Departure:**

N: Percent:

Physical condition	1	1.4
Family ties and responsibilities	2	2.7
Substantial assistance	43	58.1
Cooperation (motion unknown)	2	2.7
Dollar loss overstates seriousness of offense	3	4.1
Offense did not involve profit nor physical force	3	4.1
Related cases	1	1.4
General adequacy of criminal history	1	1.4
Role in the offense	1	1.4
Pursuant to a plea agreement	6	8.1
Adequate to meet purposes of sentencing	1	1.4
To put in line with co-defendants	1	1.4
Acceptance of responsibility	1	1.4
Rehabilitation	2	2.7
Dollar amount in line with ability to pay	1	1.4
Not representative of "heartland"	1	1.4
Guidelines too high	1	1.4
General aggravating or mitigating circumstances	3	4.1

**Monetary Reporting,
Reasons for Departure**

N: Percent:

Drug dependence	1	2.2
Family ties and responsibilities	2	4.4
Community ties	1	2.2
Substantial assistance	32	71.1
Cooperation (motion unknown)	1	2.2
Lesser harm	2	4.4
Pursuant to a plea agreement	2	4.4
Mule/Role in the offense	1	2.2
Lack of culpability	1	2.2
First felony conviction	1	2.2
Defendant's positive background/good character	1	2.2

Table B-6
Distribution by Base Offense Level and Specific Offense Characteristics Applied
for U.S.S.G. §2S1.1 Cases

§2S1.1 <u>Laundering of Monetary Instruments</u>			Number	Percent
Base Offense Level				
(a)(1)	23		73	40.3
(a)(2)	20		106	58.6
	other		2	1.1
Specific Offense Characteristics				
(b)(1) If the defendant knew or believed that the funds were the proceeds of an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances, increase by three levels.			116	64.1
(b)(2) If the value of the funds exceeded \$100,000, increase by the offense level as follows:				
(A)	100,000 or less	no increase	86	47.5
(B)	More than 100,000	add 1	19	10.5
(C)	More than 200,000	add 2	9	5.0
(D)	More than 350,000	add 3	20	11.1
(E)	More than 600,000	add 4	10	5.5
(F)	More than 1,000,000	add 5	6	3.3
(G)	More than 2,000,000	add 6	6	3.3
(H)	More than 3,500,000	add 7	6	3.3
(I)	More than 6,000,000	add 8	3	1.7
(J)	More than 10,000,000	add 9	9	5.0
(K)	More than 20,000,000	add 10	5	2.8
(L)	More than 35,000,000	add 11	0	0.0
(M)	More than 60,000,000	add 12	0	0.0
(N)	More than 100,000,000	add 13	2	1.1

Table B-7
Distribution by Base Offense Level and Specific Offense Characteristics Applied
for U.S.S.G. §2S1.2 Cases

§2S1.2 <u>Engaging in Monetary Transactions in Property Derived</u> <u>from Specified Unlawful Activity</u>			Number	Percent
Base Offense Level				
(a)(1)	17		19	100.0
Specific Offense Characteristics				
(b)(1) If the defendant knew that the funds were the proceeds of:				
(A) an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances increase by 5 levels.			8	42.1
(B) any other specified unlawful activity (<u>see</u> 18 USC § 1956(c)(7), increase by 2 levels.			7	36.8
(b)(2) If the value of the funds exceeded \$100,000, increase by the offense level as follows:				
(A)	100,000 or less	no increase	11	57.9
(B)	More than 100,000	add 1	2	10.5
(C)	More than 200,000	add 2	3	15.8
(D)	More than 350,000	add 3	2	10.5
(E)	More than 600,000	add 4	1	5.3
(F)	More than 1,000,000	add 5	0	0.0
(G)	More than 2,000,000	add 6	0	0.0
(H)	More than 3,500,000	add 7	0	0.0
(I)	More than 6,000,000	add 8	0	0.0
(J)	More than 10,000,000	add 9	0	0.0
(K)	More than 20,000,000	add 10	0	0.0
(L)	More than 35,000,000	add 11	0	0.0
(M)	More than 60,000,000	add 12	0	0.0
(N)	More than 100,000,000	add 13	0	0.0

Table B-8
Distribution by Base Offense Level and Specific Offense Characteristics Applied
for U.S.S.G. §2S1.3 Cases

§2S1.3	<u>Failure to Report Monetary Transactions: Structuring Transactions to Evade Reporting Requirements</u>		Number	Percent
Base Offense Level				
(a)(1)	13		175	89.7
(a)(2)	5		19	9.7
	other		1	0.5
Specific Offense Characteristics				
(b)(1) If the defendant knew or believed that the funds were criminally derived property, increase by 4 levels. If the resulting offense level is less than 13, increase to level 13			43	22.1
(b)(2) If the value of the funds exceeded \$100,000, increase by the offense level as follows:				
(A)	100,000 or less	no increase	131	67.2
(B)	More than 100,000	add 1	27	13.9
(C)	More than 200,000	add 2	18	9.2
(D)	More than 350,000	add 3	2	1.0
(E)	More than 600,000	add 4	3	1.5
(F)	More than 1,000,000	add 5	4	2.1
(G)	More than 2,000,000	add 6	1	0.5
(H)	More than 3,500,000	add 7	3	1.5
(I)	More than 6,000,000	add 8	2	1.0
(J)	More than 10,000,000	add 9	3	1.5
(K)	More than 20,000,000	add 10	0	0.0
(L)	More than 35,000,000	add 11	0	0.0
(M)	More than 60,000,000	add 12	0	0.0
(N)	More than 100,000,000	add 13	1	0.5

APPENDIX C - CODING SHEET

CODESHEET FOR MONEY LAUNDERING PROJECT

Case: _____ Code: _____ Date: _____ Statute _____ Sect _____ Subject _____

ITEM	QUESTION	ITEM	QUESTION
1.	Magnitude of funds involved? _____	4.	Did defendant commit offense with intent to conceal or disguise proceeds of criminal conduct? 1. Yes 0. No 9. Cannot determine [If Q.4 is '0,9' skip to Q.5]
2.	Were funds criminally derived? 1. Yes 0. No 9. Cannot determine [If Q.2 is '0,9' skip to Q.3]	4a.	If so, did offense involve shell corporation(s) or dummy accounts? 1. Yes 0. No 9. Cannot determine
2a.	If so, what was the nature of the underlying criminal conduct? drugs _____ other _____ if other, specify _____	4b.	Did offense involve foreign bank accounts(s)? 1. Yes 0. No 9. Cannot determine
2b.	If so, did defendant participate in the underlying criminal conduct? 1. Yes 0. No 9. Cannot determine [If Q.2b is '0,9' skip to Q.4]	4c.	Did offense involve international transaction(s)? 1. Yes 0. No 9. Cannot determine
2c.	If so, was defendant convicted of underlying criminal conduct? 1. Yes 0. No 9. Cannot determine	5.	Did defendant launder funds for the purpose of tax evasion? <small>(code 'Z' unless extent of conviction charges such intent)</small> 1. Yes 0. No 9. Cannot determine [If Q.5 is '0,9' skip to Q.6]
2d.	What is the appropriate offense level for the underlying criminal conduct? _____ Enter 99 if cannot determine [If Q.2 is '1' skip to Q.4]	5a.	If so, what was the magnitude of the tax loss? _____
3.	Did defendant believe funds were criminally derived: 1. Yes 0. No 9. Cannot determine	6.	Did defendant launder funds with intent to finance further criminal activity? 1. Yes 0. No 9. Cannot determine
3a.	If so, what was represented to be the nature of the criminal conduct? drugs _____ other _____ if other, specify _____		

APPENDIX D - TABLES/CASE REVIEW

Table D-1

Description of Underlying Offense Conduct
(n = 70)

Underlying Offense	Number	Percent
Drugs	42	60.9
Fraud	10	14.5
Gambling	5	7.2
Loan Sharking	1	1.4
Fraud & Extortion	1	1.4
Export Violation	1	1.4
Embezzlement	4	5.8
Copyright Infringement	1	1.4
Importation	1	1.4
Drug Paraphernalia	1	1.4
Prostitution	2	2.9

Table D-II
Purpose of Money Laundering

Purpose	Number	Percent
Conceal or disguise criminal proceeds	45 (n = 74)	60.8
Tax evasion	5 (n = 79)	6.3
Promote further criminal activity	16 (n = 67)	23.8

Table D-III
Sophisticated Money Laundering

Evidence of Sophistication	Number	Percent
International Transactions	11 (n = 52)	21.5
Use of Shell Corporation/Dummy Accounts	10 (n = 41)	21.4
Foreign Bank Accounts	3 (n = 47)	6.4

APPENDIX E - CASE SUMMARIES

Tab 1

CASE SUMMARIES

CASE : 80679

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1Bi

MAGNITUDE OF FUNDS INVOLVED: \$421,530

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: GAMBLING

Applicable offense level: 12

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 23

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: NO
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: NO
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 37
Max: 46

SENTENCE IMPOSED (in months): 37

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 66040

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: alAi

MAGNITUDE OF FUNDS INVOLVED: \$245,620

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: PROSTITUTION

Applicable offense level: 19

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 31

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: 108
Max: 135

SENTENCE IMPOSED (in months): 108

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 71081

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1Ai

MAGNITUDE OF FUNDS INVOLVED: \$130,005

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: FRAUD

Applicable offense level: 19

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 28

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: MISSING/INDETERMINABLE
Max: MISSING/INDETERMINABLE

SENTENCE IMPOSED (in months): 135

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 77284

Applicable 'Money Laundering' Statute: 18
 Section: 1956
 Subsect: 1957

MAGNITUDE OF FUNDS INVOLVED: \$7,986,845

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
 if other, specify: EMBEZZLEMENT

Applicable offense level: 25

MONEY LAUNDERING CONDUCT

Conduct 1: Withdrawal of funds from a financial institution
 Conduct 2: N/A
 Conduct 3: N/A
 Conduct 4: N/A

Applicable offense level: 34

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
 Tax evasion: NO
 Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: YES
 (one of the following must be true)

as evidenced by use of:
 Shell corporation or 'dummy' accounts: YES
 Foreign bank accounts: NO
 International transactions: NO

GUIDELINE RANGE (in months): Min: 151
 Max: 188

SENTENCE IMPOSED (in months): 120

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
 Reason 2: N/A/Missing/indeterminable
 Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 78681

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1

MAGNITUDE OF FUNDS INVOLVED: \$17,950

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: GAMBLING

Applicable offense level: 16

MONEY LAUNDERING CONDUCT

Conduct 1: Other disposition of monetary instruments
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 23

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: NO
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: NO
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 37
Max: 46

SENTENCE IMPOSED (in months): 15

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: General aggravating or mitigating circum
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 86044

Applicable 'Money Laundering' Statute: 18
Section: 1946
Subsect: a2A

MAGNITUDE OF FUNDS INVOLVED: \$2,000,000

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: IMPORTATION

Applicable offense level: 24

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: Attempted or actual international transportation of funds or
monetary instruments
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 32

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: YES
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: CANNOT DETERMINE
Foreign bank accounts: YES
International transactions: YES

GUIDELINE RANGE (in months): Min: 151
Max: 188

SENTENCE IMPOSED (in months): 0

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Pursuant to a plea agreement
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 91150

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: alAi

MAGNITUDE OF FUNDS INVOLVED: \$2,050

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: 20

MONEY LAUNDERING CONDUCT

Conduct 1: Transfer or delivery of funds by wire
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 26

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: CANNOT DETERMINE

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: 92
Max: 115

SENTENCE IMPOSED (in months): 0

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Substantial assistance at motion
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 61523

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1B

MAGNITUDE OF FUNDS INVOLVED: \$425,000

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: EMBEZZLEMENT

Applicable offense level: 23

MONEY LAUNDERING CONDUCT

Conduct 1: Transfer between accounts of a financial institution
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 29

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: NO
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: NO
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 70
Max: 87

SENTENCE IMPOSED (in months): 78

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 92971

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1Bi

MAGNITUDE OF FUNDS INVOLVED: \$140,000

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: FRAUD

Applicable offense level: 19

MONEY LAUNDERING CONDUCT

Conduct 1: Transfer or delivery of monetary instruments
Conduct 2: Other financial transactions involving a financial institution
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 23

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: NO
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: NO
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 46
Max: 57

SENTENCE IMPOSED (in months): 46

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 89230

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1Bi

MAGNITUDE OF FUNDS INVOLVED: \$318,488

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: 28

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: Purchase or sale of a monetary instrument by a financial institution
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 32

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: YES
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: YES
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: YES
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 151
Max: 188

SENTENCE IMPOSED (in months): 168

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

Tab 2

CASE SUMMARIES

CASE : 84447

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: alAi

MAGNITUDE OF FUNDS INVOLVED: \$151,950

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: 32

MONEY LAUNDERING CONDUCT

Conduct 1: Transfer or delivery of monetary instruments
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 29

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: 87
Max: 108

SENTENCE IMPOSED (in months): 108

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 84688

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: alAi

MAGNITUDE OF FUNDS INVOLVED: \$207,256

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: 32

MONEY LAUNDERING CONDUCT

Conduct 1: Transfer or delivery of funds by wire
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 28

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: YES

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: 78
Max: 97

SENTENCE IMPOSED (in months): 51

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Substantial assistance at motion
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 66705

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1A

MAGNITUDE OF FUNDS INVOLVED: \$167,710

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: 34

MONEY LAUNDERING CONDUCT

Conduct 1: Transfer or delivery of funds by wire
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 26

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: CANNOT DETERMINE

WAS MONEY LAUNDERING SOPHISTICATED: NO
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: NO
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 63
Max: 78

SENTENCE IMPOSED (in months): 77

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 80115

Applicable 'Money Laundering' Statute: 18
 Section: 1956
 Subsect: alBi

MAGNITUDE OF FUNDS INVOLVED: \$64,874

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
 if other, specify: N/A

Applicable offense level: 34

MONEY LAUNDERING CONDUCT

Conduct 1: Purchase or sale of other goods or services
 Conduct 2: N/A
 Conduct 3: N/A
 Conduct 4: N/A

Applicable offense level: 25

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
 Tax evasion: NO
 Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: NO
 (one of the following must be true)

as evidenced by use of:
 Shell corporation or 'dummy' accounts: NO
 Foreign bank accounts: NO
 International transactions: NO

GUIDELINE RANGE (in months): Min: 46
 Max: 57

SENTENCE IMPOSED (in months): 18

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Substantial assistance at motion
 Reason 2: N/A/Missing/indeterminable
 Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 69277

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1A

MAGNITUDE OF FUNDS INVOLVED: \$107,412

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: 36

MONEY LAUNDERING CONDUCT

Conduct 1: Purchase or sale of other goods or services
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 27

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: YES

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: MISSING/INDETERMINABLE
Max: MISSING/INDETERMINABLE

SENTENCE IMPOSED (in months): 72

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Cooperation (motion unknown)
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

Tab 3

CASE SUMMARIES

CASE : 57820

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: alBii

MAGNITUDE OF FUNDS INVOLVED: \$9,500

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: 18

MONEY LAUNDERING CONDUCT

Conduct 1: Purchase or sale of vehicle
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 23

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: 41
Max: 51

SENTENCE IMPOSED (in months): 20

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Substantial assistance at motion
Reason 2: No reason given
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 63774

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1A1

MAGNITUDE OF FUNDS INVOLVED: \$3,320

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: 18

MONEY LAUNDERING CONDUCT

Conduct 1: Purchase or sale of a monetary instrument by a financial institution
Conduct 2: Transfer or delivery of monetary instruments
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 25

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: 51
Max: 63

SENTENCE IMPOSED (in months): 51

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 68166

Applicable 'Money Laundering' Statute: 18
Section: 1957
Subsect: MISSING

MAGNITUDE OF FUNDS INVOLVED: \$52,860

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: CANNOT DETERMINE

MONEY LAUNDERING CONDUCT

Conduct 1: Purchase or sale of vehicle
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 22

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: CANNOT DETERMINE

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: NO
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: NO
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 33
Max: 41

SENTENCE IMPOSED (in months): 33

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 75668

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subject: a2A

MAGNITUDE OF FUNDS INVOLVED: \$442,688

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: EXPORT VIOLATION

Applicable offense level: 22

MONEY LAUNDERING CONDUCT

Conduct 1: Transfer or delivery of funds by wire
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 24

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: 24
Max: 35

SENTENCE IMPOSED (in months): 24

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 85656

Applicable 'Money Laundering' Statute: MISSING
Section: MISSING
Subsect: MISSING

MAGNITUDE OF FUNDS INVOLVED: \$385,000

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: N/A

MONEY LAUNDERING CONDUCT

Conduct 1: Purchase or sale of a monetary instrument by a financial institution
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 19

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: NO

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: N/A

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: 24
Max: 30

SENTENCE IMPOSED (in months): 0

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Substantial assistance at motion
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 71081

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1Ai

MAGNITUDE OF FUNDS INVOLVED: \$130,005

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: FRAUD

Applicable offense level: 19

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 28

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: MISSING/INDETERMINABLE
Max: MISSING/INDETERMINABLE

SENTENCE IMPOSED (in months): 135

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

Tab 4

CASE SUMMARIES

CASE : 56794

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: CANNOT DETERMINE

MAGNITUDE OF FUNDS INVOLVED: \$692,997

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: CANNOT DETERMINE

MONEY LAUNDERING CONDUCT

Conduct 1: Attempted or actual international transportation of funds or
monetary instruments
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 31

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: CANNOT DETERMINE

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: YES
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: NO
Foreign bank accounts: NO
International transactions: YES

GUIDELINE RANGE (in months): Min: 135
Max: 168

SENTENCE IMPOSED (in months): 150

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 68375

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subject: MISSING

MAGNITUDE OF FUNDS INVOLVED: \$3,500,000

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: CANNOT DETERMINE

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: Transfer or delivery of monetary instruments
Conduct 3: Purchase or sale of a monetary instrument by a financial institution
Conduct 4: N/A

Applicable offense level: 33

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: N/A

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: N/A

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: YES

WAS MONEY LAUNDERING SOPHISTICATED: YES
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: CANNOT DETERMINE
Foreign bank accounts: YES
International transactions: YES

GUIDELINE RANGE (in months): Min: 121
Max: 151

SENTENCE IMPOSED (in months): 96

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Substantial assistance at motion
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 68674

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subject: MISSING

MAGNITUDE OF FUNDS INVOLVED: \$3,500,000

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: N/A

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: Purchase or sale of a monetary instrument by a financial institution
Conduct 3: Transfer or delivery of funds by other means
Conduct 4: Transfer or delivery of monetary instruments

Applicable offense level: 33

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: NO

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: N/A

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: YES
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: YES
Foreign bank accounts: NO
International transactions: YES

GUIDELINE RANGE (in months): Min: 135
Max: 168

SENTENCE IMPOSED (in months): 55

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Substantial assistance at motion
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 77696

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: 21Bi

MAGNITUDE OF FUNDS INVOLVED: \$468,742

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: EMBEZZLEMENT

Applicable offense level: 22

MONEY LAUNDERING CONDUCT

Conduct 1: Purchase or sale of real estate
Conduct 2: Purchase or sale of vehicle
Conduct 3: Purchase or sale of other goods or services
Conduct 4: N/A

Applicable offense level: 25

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: YES
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: YES
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 57
Max: 71

SENTENCE IMPOSED (in months): 68

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 78134

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subsect: a1A

MAGNITUDE OF FUNDS INVOLVED: \$569,026

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: FRAUD

Applicable offense level: 32

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: Withdrawal of funds from a financial institution
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 34

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: YES
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: YES
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: MISSING/INDETERMINABLE
Max: MISSING/INDETERMINABLE

SENTENCE IMPOSED (in months): 135

DEPARTURE ? MISSING/INDETERMINATE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 74650

Applicable 'Money Laundering' Statute: 18
Section: 1956
Subject: a1Bi

MAGNITUDE OF FUNDS INVOLVED: \$2,785,195

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: FRAUD

Applicable offense level: 23

MONEY LAUNDERING CONDUCT

Conduct 1: Deposit of funds into a financial institution
Conduct 2: Purchase or sale of a monetary instrument by a financial institution
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 30

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: YES
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: YES
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: YES
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 78
Max: 97

SENTENCE IMPOSED (in months): 80

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

Tab 5

CASE SUMMARIES

CASE : 68166

Applicable 'Money Laundering' Statute: 18
Section: 1957
Subject: MISSING

MAGNITUDE OF FUNDS INVOLVED: \$52,860

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : DRUG OFFENSE
if other, specify: N/A

Applicable offense level: CANNOT DETERMINE

MONEY LAUNDERING CONDUCT

Conduct 1: Purchase or sale of vehicle
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 22

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: CANNOT DETERMINE

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: NO

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: NO
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: NO
Foreign bank accounts: NO
International transactions: NO

GUIDELINE RANGE (in months): Min: 33
Max: 41

SENTENCE IMPOSED (in months): 33

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 66224

Applicable 'Money Laundering' Statute: 18
Section: 1957
Subject: MISSING

MAGNITUDE OF FUNDS INVOLVED: \$1,000,000

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: FRAUD & EXTORTION

Applicable offense level: 24

MONEY LAUNDERING CONDUCT

Conduct 1: N/A
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 28

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: MISSING
Max: MISSING

SENTENCE IMPOSED (in months): MISSING

DEPARTURE ? NO DEPARTURE

If so, Reason 1: N/A/Missing/indeterminable
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

CASE SUMMARIES

CASE : 79340

Applicable 'Money Laundering' Statute: 18
Section: 1957
Subsect: MISSING

MAGNITUDE OF FUNDS INVOLVED: \$24,500

UNDERLYING CRIMINAL CONDUCT

Primary Conduct : OTHER
if other, specify: FRAUD

Applicable offense level: 12

MONEY LAUNDERING CONDUCT

Conduct 1: N/A
Conduct 2: N/A
Conduct 3: N/A
Conduct 4: N/A

Applicable offense level: 19

DID DEFENDANT PARTICIPATE IN THE UNDERLYING OFFENSE CONDUCT: YES

WAS DEFENDANT CONVICTED OF THE UNDERLYING CONDUCT: YES

PURPOSE OF MONEY LAUNDERING

Conceal or disguise criminal proceeds: NO
Tax evasion: NO
Promote further criminal activity: NO

WAS MONEY LAUNDERING SOPHISTICATED: N/A
(one of the following must be true)

as evidenced by use of:
Shell corporation or 'dummy' accounts: N/A
Foreign bank accounts: N/A
International transactions: N/A

GUIDELINE RANGE (in months): Min: MISSING
Max: MISSING

SENTENCE IMPOSED (in months): MISSING

DEPARTURE ? YES, DOWNWARD

If so, Reason 1: Substantial assistance at motion
Reason 2: N/A/Missing/indeterminable
Reason 3: N/A/Missing/indeterminable

UNITED STATES SENTENCING COMMISSION

1331 PENNSYLVANIA AVENUE, NW

SUITE 1400

WASHINGTON, DC 20004

(202) 662-8800

FAX (202) 662-7631

COMMISSION MEETING

10/20/92



AGENDA ITEM

September 17, 1992

MEMORANDUM:

TO: Commissioners
FROM: Billy Wilkins *BW*
SUBJECT: 1992-93 Amendment Cycle

It would be helpful for all involved in the amendment process if the Commission were to announce a date beyond which it would not consider amendment suggestions from outside individuals or organizations during the current amendment cycle. In an effort to move this issue forward, I propose a cut-off date for the 1992-93 amendment cycle of November 30, 1992.

I plan to bring this topic up at our September 21st meeting. Thank you.