

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Crim. Nos. 3:07CR89 (JBA)
	:	3:07CR90(JBA)
v.	:	
	:	
WILLIAM WHITE	:	
	:	
	:	APRIL 20, 2008
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GOVERNMENT’S SENTENCING MEMORANDUM

**I. Introduction**

The United States submits this Sentencing Memorandum in aid of the sentencing for William White which is scheduled for Monday, April 28, 2008 at 3:00 p.m. This memorandum outlines the government’s version of offense conduct, explains why the calculation of the defendant’s sentencing range, as set forth in both the plea agreement and PreSentence Report (PSR), is correct, addresses certain arguments and claims raised in defendant’s submission to the Probation Office, and explains why various factors do not warrant either a departure from the range specified by the advisory guidelines or a variance from that range when deciding upon the appropriate sentence in light of the factors outlined in 18 U.S.C. § 3553(a).

William White states that he thought that he did the right thing all the time until now. This statement underscores the defendant’s lack of any true appreciation for his criminal conduct. What happened “now” is that William White got caught. What the evidence shows, however, is that over many years, he abused his position as a police officer - abused the position of trust that he held within the City of New Haven. The suggestion that he should be given favorable recognition for his work as a police officer ignores the magnitude of the abuse and minimizes the

importance to a community of being able to trust that a police officer will enforce the laws and respect the rights of all citizens. White's attempt to explain his corrupt behavior as the effects of post traumatic stress disorder (PTSD) is designed to convince the Court that he deserves leniency and to escape any meaningful punishment. Given the magnitude and nature of the crimes he committed, coupled with the lack of any evidence to establish a causal connection between the PTSD and the crimes, the Court should impose the term of incarceration within the sentencing guideline range of 37-46 months.

## **II. Government's Version of the Offense Conduct**

Set forth below is a summary of the evidence for the Court's consideration in determining an appropriate sentence. The summary does not represent all of the evidence but rather those facts which will give the Court an understanding of the scope of the corrupt activity, particularly that this was not a short lived scheme driven by White's belief that the undercover law enforcement officer ("UCE") needed money. The evidence reflects that White was a corrupt police officer who accepted bribes in return for the exercise of his police power and during the course of the investigation showed little respect for the rights of individuals or the court system.

### **A. The Bribery Scheme**

At all times relevant to this investigation, Robert Jacobs was the father of Paul and Philip Jacobs. Robert Jacobs and Philip Jacobs worked together at Jacobs Bail Bonds, located at 350 Orange Street, New Haven. Paul Jacobs ran a related business, Paul Jacobs Bail Bonds, located at 59 Elm Street, New Haven. On approximately July 18, 2006, Robert Jacobs telephoned the UCE. Jacobs told the UCE that White had told him (Jacobs) to call the UCE in order to receive assistance in locating a bail absconder, hereinafter referred to as "LM." Jacobs further explained

that White had told him (Jacobs) that the UCE might have arrested LM. Jacobs also explained that he had posted a \$275,000 bond on LM, and was in danger of losing the bond because LM had failed to appear in court. The UCE told Jacobs that he did not believe his unit had arrested the fugitive. After completing the Jacobs call, the UCE checked his voicemail and retrieved a message from White asking for a return call. The UCE returned the call. White asked the UCE if he had spoken with Jacobs. In this call, which was not recorded, the UCE said that he had spoken with Jacobs, and that he told Jacobs that his unit had not arrested LM. White told the UCE that, if the UCE had any informants who could help Jacobs, Jacobs would provide the UCE with a quantity of money, such as \$5000. When explaining this relationship White told the UCE words to the effect that “everybody gets to eat,” and White started laughing. White also alluded to having a relationship with Jacobs in which he (White) had received cash in exchange for assisting in locating bail absconders. White told the UCE words to the effect: “Especially around the holidays, everybody eats.”

Soon after the call from White, the UCE contacted the FBI and provided the information set forth above. The UCE subsequently agreed to work in an undercover capacity, and record his conversations with White, Jacobs and others.

On July 19, the UCE received a call from White, which he recorded. During the conversation, White discussed Robert Jacobs’ search for LM. The UCE asked about the process, and White said that, if the UCE located the absconder, the UCE should call Robert Jacobs and ask when he could see him for money to pay the necessary “informants.” White also said that, with respect to Jacobs, “at Christmas time, we scored big . . . oh my God.” White explained to the UCE that it was all “greenbacks,” and that Robert Jacobs had “no problem doing nothing.”

The UCE understood White to be bragging about his past illegal relationship with Jacobs, in which White was receiving cash in exchange for locating fugitives.

On July 20, the UCE met with White. During this meeting, the UCE (at the FBI's direction) told White that he was interested in assisting Jacobs in exchange for money. White assured the UCE that there would be no receipts, and that Jacobs did not want to know any cooperating informants. The UCE told White that he would be his own informant. White acknowledged this and once again said that Jacobs "don't say nothing to no one." White told the UCE that Jacobs would pay "5, 10 whatever you need." White then bragged to the UCE about his and his colleagues' history of dealing with Robert Jacobs, stating: "We make. Talk about Christmas time. Pays for our Christmas Gifts." White spoke of a fugitive whom he located for Jacobs, and said that he had told Jacobs that "we need \$10,000." White said that he then told the fugitive's girlfriend that "we'll" give you \$1500 to tell the absconder's location. White then said: "Boom . . . Christmas time . . . whoah everybody eats." The UCE understood White to be explaining to him that he had received \$10,000 from Jacobs for capturing a fugitive, that he paid the fugitive's girlfriend only \$1500 for her information, and that White and whomever he had worked with kept the remaining \$8500.

In fact, after White and the Jacobs were arrested on March 13, 2007, the government learned that in 2005, Robert and Philip Jacobs had paid White \$10,000 for the apprehension of a fugitive. A portion was used to pay an informant, and White shared the remaining \$8500 with Justin Kasperzyk, a former detective of the New Haven Police Department, who assisted White

in locating the fugitive.<sup>1</sup>

Also during the July 20 meeting, White again assured the UCE that Jacobs would not say anything regarding their relationship. White explained: “I don’t put nobody in a jackpot. No, no, he’s good like that.” The UCE asked White if he would get money if, during the course of his (the UCE’s) group’s normal enforcement acts (such as the execution of search warrants), he came across any of Jacobs’ fugitives. White said that the UCE could call Jacobs and get a list to see who they were looking for. White also added that they won’t all be worth \$10,000, but some would be worth \$1000 or \$1500.

Later in the same conversation, White spoke about how he was assigned to the Detention Center prior to his promotion to Sergeant. White said that “when nobody got PTA’d” (*i.e.*, when someone was not released on a “promise to appear”), he (White) would call Jacobs up after “two or three hours and say Bob [Jacobs] I got about 15 down here \$500-\$25,000. He said alright we’ll be right down. I said Christmas time. Merry Christmas.” At the time White was saying “Merry Christmas” to the UCE, he picked up an envelope from his desk and made motions as if he was receiving it. White then bragged about how the NHPD administration had tried to punish him by sending him to the Detention Center, but that he had showed them by making money with Jacobs while he was there.

On July 22, the UCE made a consensually recorded call to White. During this call the UCE asked White if he knew whether Jacobs had bonded a fugitive (hereinafter “AW”), who

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<sup>1</sup> Justin Kasperzyk was arrested on March 13, 2007 for theft of government property. He subsequently plead guilty to a misdemeanor charge theft of government property and a felony civil rights conspiracy. *See United States v. Kasperzyk*, 3:07CR222(AHN). Kasperzyk’s sentencing is scheduled for May 27, 2008.

was wanted for failure to appear and drug charges. White told the UCE that “he’ll [*i.e.*, Jacobs] do something with that.” White also told the UCE that “he’ll pay and I’ll get the money for you.” White said that his group was going to try to arrest AW, and, if they succeeded, White said “I’ll give you . . . I’ll hook you up with something. Don’t worry about it.” The UCE understood White to be offering to share the money he received from Jacobs with the UCE, no matter which one of them caught the fugitive.

On July 24, 2006, Robert Jacobs called the UCE. During this call, the UCE asked Jacobs for biographical information about LM. On July 26, the UCE met with Robert Jacobs and recorded the meeting. Jacobs told the UCE that he and White were looking for AW. Jacobs said they were on “borrowed time,” apparently meaning that, if they did not find AW soon, they would have to pay the bond. Jacobs also shared information that he had for LM, and Jacobs told the UCE that he would give White a photograph of LM. Jacobs informed the UCE that his son and a bounty hunter were looking for other people, and he (Robert Jacobs) would give a list of the people to the UCE.

On July 29, the UCE, met with White and recorded the conversation. White brought up AW’s name as someone who needed to be located, and he continued by saying: “That’s vacation money.” White also told the UCE not to give Jacobs a copy of LM’s photograph. White said that Jacobs would give the photograph to the bounty hunter. The UCE understood that, if the bounty hunter found the fugitive before White or the UCE, then White and the UCE would not be able to collect money from Jacobs. Indeed, the UCE’s understanding was accurate because after AW’s arrest, White specifically told the UCE that the arrangement was “first come, first serve.” Thus, White’s concern was getting the money; not getting a fugitive off the street.

On August 1, the UCE placed a consensually recorded telephone call to Jacobs. In the conversation that followed, Robert Jacobs told the UCE that, in regard to AW, they were “running out of time.” Jacobs then offered “a \$10,000 reward on him.” After the UCE spoke with Jacobs, the UCE placed a consensually recorded telephone call to White. The UCE told White of the \$10,000 offer, and the UCE said that he was going to pay two informants \$250.00 each to locate AW. White laughed and told the UCE that he could promise \$1000 to the two informants. The UCE further asked White if Jacobs would pay for “referrals,” meaning pay the UCE for identifying persons who had been arrested and were in need of a bond. White said that it did not really work that way, but the UCE could “make it on the other end.” The UCE understood White to be saying that the UCE could make money, not by making referrals, but by finding fugitives once they fled.

On August 3, the UCE, with the assistance of the FBI, arrested AW. Shortly after the arrest, the UCE made an outgoing call to White, in which he told White that he had AW. White told the UCE that he would call Robert Jacobs. Shortly after the UCE spoke with White, the UCE received a voicemail from White, asking the UCE to call him back. The UCE returned the call to White, and White told the UCE that Robert Jacobs had been contacted and “would take care of business in the morning.” White further told the UCE that he “would grab it and give it to the UCE.”

Also on August 3, Robert Jacobs called the UCE (which call was not recorded), and Jacobs thanked the UCE for locating and arresting AW. Robert Jacobs also told the UCE that he had another fugitive (hereinafter “WD”), whom he would like the UCE to locate and arrest. Robert Jacobs instructed the UCE to contact Paul Jacobs for more information. Robert Jacobs

indicated that there was a \$200,000 bond in Waterbury for WD, and that he was willing to pay \$5000 for “informants” but might be willing to go as high as \$10,000. Robert Jacobs and Philip Jacobs have both confirmed that they knew that neither White nor the UCE were paying informants such large sums of money and that the police officers were putting the cash in their pockets.

On August 3, the UCE called Paul Jacobs and recorded the call. The UCE asked about WD, whom Robert Jacobs had mentioned. Paul Jacobs agreed to fax information to the UCE regarding the fugitive. Paul Jacobs told the UCE that he would pay \$10,000 to find WD.

On August 4, the UCE received a telephone call from White. During the call (which was recorded), White told the UCE that he had received a call about the “information about the missing persons.” It became evident during the call that White used the term “information” as a code word for the money that Robert Jacobs would pay them for finding AW. White advised the UCE that he met with Robert Jacobs and “got half of the information.” White further explained that another bail-bond company in New Haven (hereinafter “Bail Bonds Company A”) was supposed to provide the other half of the “information,” because they had split the bond with Jacobs. White told the UCE that he could come and get “the half of the information,” and he assured the UCE that Robert Jacobs would pay the balance. Later that day, the UCE met with White and recorded their conversation. White showed the UCE \$5000 in cash. White explained that the money was from Robert Jacobs, and that other bail bondsmen, Company A, which also had bonds on AW, would provide the remaining half of the money. White told the UCE to take what he needed to “pay the guys.” The UCE responded that he would take \$1000 for paying informants. White also told the UCE that Jacobs would give him (White) the rest of the money

later, and that Jacobs promised to pay even if the other bondsmen stiffed him. The UCE took \$1000 from the stack of money, consistent with his claim that he would pay that amount to his informants. The UCE and White then split the remaining \$4000 evenly, \$2000 to the UCE and \$2000 to White himself. Significant is that White told the UCE that he had made a “ton of money on this guy [meaning Robert Jacobs] over the years, 50, 60 thousand.” White soon reiterated: “I bet you I made \$60,000 off this guy. You know . . . In four or five years . . . easy. easy.” White assured the UCE that nobody would come after him for this, and that it had been done for years. In light of these admission, White’s claim in the plea agreement, as discussed below, that his corrupt agreement with Jacobs began in 2006 rings hollow.

On August 7, 2006, the UCE spoke with White on the phone, and recorded the call. White told the UCE that he was going to let it go another day on the other “information.” The UCE understood White to be using code to refer to the \$5000 that was still owed to them by the bondsmen. The UCE informed White that a bounty hunter had been making a little noise because he did not get to grab AW. White responded by saying: “Fuck him, first come, first serve, asshole.” Later on August 7, White called the UCE and told the UCE that he had some “information” on “that thing.” White said that he had “two addresses,” and that he would get the other “three addresses” the following week. The UCE understood White to be using the code word “addresses” for \$1000 increments of cash, as was confirmed the following day.

On August 8, met with White in New Haven. White had \$2000 in cash, and he split the money with the UCE, each taking \$1000. Indeed, during the investigation, White never offered or gave the UCE more than half the money. White never once suggested that the UCE keep more than his 50% share. During the meeting, the UCE and White discussed WD, and the UCE

showed White a picture of WD. The UCE told White that Paul Jacobs told him (the UCE) that he would pay \$10,000 for the apprehension of WD.

On August 11, the UCE returned White's call and White informed the UCE that he had the other "information" (meaning "money"), and that he would hold on to it until the UCE called him to meet. Later that day, the UCE (who was equipped with a recording device) met with White in New Haven. White showed the UCE two stacks of cash, and said that each stack was "15." The UCE took one of the stacks, which contained \$1500 in cash. White took the other one.

Also, on August 14, the UCE recorded a telephone conversation with Paul Jacobs. During this conversation, the UCE asked Paul Jacobs if he (Jacobs) had a cell phone number for WD. Paul Jacobs told the UCE that he would get the number. The UCE asked if it was still \$10,000 for expenses. Jacobs replied: "If you told me, you know, that doesn't work and you needed more I could . . . . It is not a problem." Paul Jacobs also said that this matter was between the UCE, himself (Paul Jacobs), and his father (Robert Jacobs), and that we "pride ourselves on not having a big mouth." Indeed, during an August 18, 2006 recorded call between Paul Jacobs and the UCE, the UCE said that he had a "good feeling" about Paul Jacobs' confidentiality, and that he could get in trouble with his employer if they discovered that he was taking money in exchange for locating fugitives. Paul Jacobs agreed with the UCE, and added: "I would be in just as much trouble. So far as I'm concerned the money is going to an informant and uhhhh, or actually there is no money going out, ummm maybe with the cash it is all hush hush."

On September 1, the UCE received a telephone call from White. During the recorded

call, White told the UCE to call him (White) immediately after he arrested WD. White told the UCE that he would call Robert Jacobs after the arrest and tell Jacobs that they had spent a little more money than they originally thought and was it still \$15,000. White stated that Jacobs would agree to the increase, but warned the UCE not to call Paul Jacobs because he was cheap. White also said that they might even be able to get it up to \$20,000.

On September 13, the UCE, with the assistance of the FBI, located and arrested Fugitive WD. The UCE consensually recorded a telephone call with White. The UCE told White that he had arrested WD. Later that day, the UCE made and received several more consensually recorded conversations with White. During these calls, White told the UCE that he (White) had just called Robert Jacobs and informed him (Robert Jacobs) that it was worth "15." White also told the UCE that he (White) did not need to come to the arrest location in Waterbury. Later on September 13, the UCE called Paul Jacobs and discussed the payment that Paul Jacobs would make for WD's capture. Paul Jacobs told the UCE that he did not have a problem paying "fifteen." Paul Jacobs thanked the UCE and told him that he would give the money to his father (Robert Jacobs) in the morning.

On September 15, the UCE recorded several more telephone conversations with White. During the first conversation, White told the UCE that he picked up the money, but it did not feel like a lot was there. White stated that he did not open it because he was with someone. The UCE told White to open the envelope, and that he would meet him later. During a later conversation, White told the UCE that he had still not opened it because he was with someone. The UCE told White that he would see him in fifteen minutes. Following the telephone calls with White, the UCE, who was equipped with a recording device, met with White in New Haven.

During the meeting, White opened an envelope, which contained a “blank check” (signed, but no payee listed) for \$9500; \$3500 in cash; a letter addressed to William White; and several printouts relating to Fugitive #3’s bond. The check was signed by Paul Jacobs. The UCE and White discussed the check, how to cash it, and how they were going to split the cash. White asked the UCE how much he owed his guys and informants. The UCE told White that he had two guys who he wanted to “tighten up,” referring to fictional officers on his squad. White replied, “Yeah, tighten them up.” Later in the conversation, White stated, “I’m gonna call Bobby [Robert Jacobs] up right now, say what are you writin’ fuckin letters with my name on it for?” White then stated, “Fuckin’ jerk . . . There’s thirty-five hundred, right?” The UCE told White that there was thirteen thousand dollars in check and cash. White again asked the UCE how much he had to pay his people. The UCE again told White that he had two people to pay. White stated, “Whatever you got to pay them, you gotta pay them.” Later in the conversation White stated, “Pay your guys, okay, pay your people you gotta pay. Gimme five hundred and when we cash that we’ll meet up then we’ll do what we have to do, alright?” The UCE and White discussed cashing the check, as well as the letter addressed to White. At one point in the discussion, White stated, “Give me that fuckin’ letter, I’m gonna stick it in his fuckin’ ass.” White took \$500 cash and the letter addressed to him. The UCE kept the \$3000 in cash, the \$9500 check, printouts relating to Fugitive #3’s bond, and the original envelope (addressee: ”Bill White will pick up.”).

Later that day, at approximately 1:14 pm, the UCE made a consensually recorded telephone call to Robert Jacobs. Robert Jacobs told the UCE that the check was good, but that White did not want to cash it. The UCE told Jacobs that the check would generate too much of a record. Jacobs agreed with the UCE that cashing the check would generate a record. Jacobs

instructed the UCE to bring the check to him on Monday (this conversation took place on a Friday), and said that he would “convert” it. Later on September 15, the UCE spoke with Paul Jacobs in a recorded call. The UCE told Paul Jacobs that the check was impossible to deal with because they could not have a record. Paul Jacobs asked the UCE if he could get a stranger to cash the check. The UCE responded that he did not want to get anyone else involved. Paul Jacobs said that there were two issues for him: first, he could not go after the fugitive’s wife if he did not have some record showing that something was paid; and second that he usually deals in checks and the bank had told him that if he withdrew too much cash there would be an electronic record with the IRS. Paul Jacobs said that his father and brother were different because they dealt with cash all the time. Paul Jacobs also said that his father had screamed at him for agreeing to pay \$15,000. The UCE then, again, complained that the check created a trail, and explained that Robert Jacobs agreed to convert it to cash and take care of it with White. Paul Jacobs also said that he had text-messaged White, stating that the check was payment for the informant. Paul Jacobs said that he was discreet in regard to the text-message, however, because he did not know whether text messages were recorded.

On the following Monday, September 18, the UCE, who was equipped with a recording device, met with White and Robert Jacobs in New Haven. At the meeting, the UCE gave Jacobs the blank check for \$9500. In another meeting later that day, the UCE and White met with Jacobs, and Jacobs provided them with \$9500 in cash. White counted the money after leaving Jacobs, and handed \$5000 in cash to the UCE. White kept \$4500 in cash for himself, which brought his total to \$5000 for the arrest of WD.

On October 12, the UCE was approached by White at the New Haven Police Department,

and the UCE was unable to activate the recording device. White told the UCE that he had done a “utility” check on LM, and had spoken to a landlord at a possible address for him.

On November 3, the UCE , who was equipped with a recording device, met with White in West Haven. At one point during the meeting, the UCE asked White if he had heard from Jacobs (referring to Robert Jacobs). White informed the UCE that Jacobs had called recently, and Jacobs told White that the reward was still out, but he might get out from under the bond. As explained to the UCE by White, Jacobs told White that he (Jacobs) wanted to talk to him, but not on the phone. White told Jacobs to tell him what he had to say, because “nobody listens to these phones,” meaning that his phone was not being tapped. After some coaxing, Robert Jacobs told White that he (Jacobs) had told “them” that he (Jacobs) had taken LM out for “you” (referring to White), and that, as a result, he might be able to get out from under the bond. Jacobs asked White if this was alright, and White said “yeah, I’ll tell ‘em I asked you to take him out for me, I didn’t know he was going to run away.” When telling the story over again, White recounted his response to Jacobs’ question whether it was alright to have said that he had issued the bond for “you” (White): “I said yeah, that’s alright, I don’t give a fuck. What are they going to say to me? The guy wanted to make a deal, I asked Bobby if he wanted to take the guy out, I didn’t know the guy was gonna run.” Subsequent to the arrests of the Jacobs and White, the government confirmed that Robert Jacobs intended to falsely represent to a court that he bonded out LM for White in an attempt avoid having to pay money on the bond and that White agreed to go along with the fraud on the court.

Between December 2006 and February 2007, White and the UCE discussed finding other fugitives for the Jacobs and the payments. The government has not summarized all the

conversations for purposes of this memorandum. One transaction, however, does merit a discussion. On January 16, 2007, White called Robert Jacobs and asked him whether he had a particular fugitive on the run (hereinafter "FL"). Jacobs said that he did, and White asked how much "we" could pay. Jacobs said FL belonged to Philip and Bail Bonds Company A. Jacobs said he would inquire, and call White back. A few minutes later Jacobs called White and told him that Bail Bonds Company A and Phil had issued the bond on FL. According to Robert Jacobs, they did not want to pay anything because they had somebody already working on it. White then asked Jacobs to call him back, and said "I won't catch him for the other guys, I'll catch him for you guys." Jacobs then reiterated that they wouldn't pay, and White responded: "Oh, he don't want to pay? Fuck him, let . . ." A few minutes after that, Robert Jacobs again called White and told him to "offer \$1000, I'll pay it myself." White then indicated that he would talk to his informant and see what she wanted to do.

Later on the evening of January 16, White called Robert Jacobs and asked if he could come up with \$1200 for FL. White explained that he needed more money because "I gotta pay about six guys . . . Can you come up with 1200 for that guy cuz I gotta [pause] we had to raid a place where he's at." Jacobs agreed to pay the new amount. White then reiterated several more times that he needed the extra money because a lot of guys were needed to raid the house where the fugitive was located. A short while later, White again called Jacobs to explain that FL was arrested in East Haven, and that he now had drug charges against him. The two agreed to meet the following morning for payment. White again took this opportunity to explain to Jacobs: "Like I said, I had to get about two more guys, three more guys to do this thing. You know, so I have to pay them something, you know?" Jacobs again mentioned that the persons holding the

bond did not want to pay anything, but that he would pay the money himself.

On January 17, White called Robert Jacobs to complain that Bail Bonds A's bounty hunter showed up, trying to take credit for the arrest of FL. White told Jacobs to tell the people at Bail Bonds Company A that their bounty hunter did not have anything to do with the arrest, and that they should "pay the rest of the money to our guys." Jacobs said that Bail Bonds Company A would not pay, that he could not do business with those people, but that he (Jacobs) would leave "everything" on "Orange Street" with White's name on it. White asked when he was going to leave it, because he had a police officer [the UCE] who wanted to get out of there. Jacobs said he would put it there within fifteen or twenty minutes, and that White could just drive by and pick it up.

When the UCE and White were traveling to Robert Jacobs' office on Orange Street to pick up the money, White complained about how the other bondsmen did not want to pay the money. White told the UCE: "Bobby said those other guys don't want to pay for shit, that's why I said if we ever caught that other kid we'd have to hold him hostage 'til they gave us the money." They then proceeded to pick up an envelope at 350 Orange Street. The envelope contained \$1400 in cash which White split evenly with the UCE. Contrary to his representations to Robert Jacobs, there were no other cops who needed to be paid. Rather, White just pushed to get more money from Robert Jacobs.

**\_\_\_\_\_ B. Theft of Funds And Civil Rights Violation**

\_\_\_\_\_ William White was a Lieutenant in the New Haven Police Department. He was the leader of the Narcotics Unit and supervised approximately 5 detectives, including Justin Kasperzyk and Jose Silva. Yet, between November 9, 2006 and February 16, 2007, he agreed to

steal money from a residence on Truman Street, a vehicle, and a residence on Starr Street.

During this four month period, White exhibited a callousness toward the citizens of New Haven and a lack of concern for the safety and rights of individuals. He had the power to enforce the laws but his actions reflect a belief that the laws did not apply to him. He violated the public trust, and the damage in many ways is simply not quantifiable because the public perception becomes not simply that White committed crimes but that police officers cannot be trusted.

On August 4, 2006, during the undercover investigation and the day that White and the UCE split the first installment payment for the arrest of AW, *see* above, White made a statement to the UCE suggesting his willingness to steal cash seized during the course of a search. White referenced a car parked nearby the New Haven Police station and said:

White: Now that car, six-hundred thousand was in the trunk.  
UCE: Wish I could take that one.  
White: Six-hundred thousand was in that trunk.  
UCE: Holy fuck!  
White: **[Redacted name]** and I looked at each other and we said, should we search it here, or maybe we should bring it . . . **[redacted name]** got involved. I looked at him and said you fucking asshole.  
UCE: Oh, Jesus Christ.  
White: Six-hundred thousand dollars.  
UCE: That's a good retirement fund, fuck, all cash.  
White: Yuh.

In other words, White was saying that he would have stolen a portion of the money, if he had a chance, but he was unable to do so because of who else got involved. On August 15, the UCE met with White to conduct physical surveillance of a location in New Haven. Prior to leaving the police station, White again referred to the car mentioned above, and said the following:

White: That car, six-hundred thousand in it when we got it locked up.

UCE: Yeah.  
White: The wrong guy searched it. Hah, hah, hah.  
UCE: Oh yea.  
UCE: Six-hundred thousand would make a nice fucking retirement.  
White: We just kept pulling out (UI). Fucking stacks of money. This big. Just kept pulling them out. This big. What the fuck! How much money have they got in here.

That White in fact stole money is evidenced by his conduct during the searches executed on Truman Street and Starr Street in New Haven as well as during a January 31, 2007 sting operation.

### **1. Truman Street Search**

On November 9, 2006, the UCE participated in the execution of a search warrant on Truman Street, New Haven. When the UCE met with White, the UCE was equipped with a recording device and \$2000 in United States currency, which had been provided to him by the FBI and which constituted federal funds.<sup>2</sup> Upon entering the Truman Street apartment, the police found an individual in the back bedroom. During the search, the UCE and White were searching this bedroom and discussed the possibility of finding stashes of cash. After White left the bedroom, the UCE placed the \$2000 in FBI money into some clothing located in the bottom drawer of a dresser located at the foot of the bed. The UCE then made eye contact with White, who was in the kitchen, and motioned for White to come back to the bedroom. When White entered the room, the UCE motioned for White to close the bedroom door, which White did. The UCE showed the money to White, and White asked how much was there. The UCE responded by saying, "It looks like a couple," and the UCE showed how there were three stacks

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<sup>2</sup> It later turned out that the recording device malfunctioned, and the events that occurred during the search were not recorded.

of money. White said: "Fuck it. Take it out of here. Take it out of here." The UCE responded by asking, "Ok. We'll take care of it later?" White said, "Yes," and the UCE put the money into his vest while White was still looking. White then said, "Keep looking, there may be more." White then left the bedroom, and the UCE continued his search. Later on the evening of the search, the UCE spoke with White on the phone in a call that was not recorded (because the UCE could not use the recording device where he was located). The UCE told White that he wanted to see him. White asked the UCE if he (the UCE) knew where White's desk was. The UCE stated that he did, and White told the UCE to get the keys that were under his desk, to open the top right drawer, and to put the keys on top of his desk when done. White did not explicitly mention why the UCE should be opening the desk, or what he should put there, but the UCE interpreted White's instructions to mean that the UCE should put White's share of the "stolen" money into White's desk drawer. The UCE told White that he did not want to do that because he did not want to be in the squad area without White. White replied that they could do it the next day, it did not matter. The UCE informed White that he needed to do some paperwork that night, and might not be around the following day because he needed to get his daughter into her apartment. White told the UCE that he would call the UCE when he was done eating. At approximately 9:46 pm, the UCE, equipped with a recording device, met with White at a gas station in New Haven. The UCE parked his car next to White's, and White exited his car and got into the UCE's. The UCE pulled out the money that he "took" from 65-67 Truman Street. White asked if the UCE had counted the money, and the UCE said he had not. The UCE handed White a stack of money to count, and the UCE started to count one of the other stacks. The UCE counted his stack and stated that he had \$500.00, and he then placed the stack onto the center console of

the vehicle. The UCE started counting a second stack of bills, when White stated he had \$1000. White began to put his stack next to the other stack that had been counted, but instead he pulled the money back and put it under his leg. The UCE completed counting his second stack of bills, and stated he had \$1000 in total. White said okay, and told the UCE he would see him later. White never suggested that the UCE keep all the money; rather, he took the money from under his leg and left.

During the same Truman Street search, White participated in a conspiracy to violate the civil rights of an individual. Two members of the Narcotics Enforcement Unit, Detectives Justin Kasperzyk and Jose Silva, have plead guilty to civil rights violations in connection with the Truman Street search. Kasperzyk has admitted that he and other detectives and officers executed the search warrant at 65-67 Truman Street, first floor apartment. Upon entering the first floor apartment, he observed a black male coming out of the back bedroom. The individual was secured during the execution of the warrant. As part of the search, the defendant and Jose Silva searched the basement of 65-67 Truman Street, access to which was from the common hallway. The following narcotics were found in the basement: a sandwich bag containing a white powder-like substance (suspected cocaine) with an approximate weight of 7.4 grams; 19 white rock-like substances (suspected crack cocaine); and 1 clear plastic bag containing 40 small red baggies, each with a green plant-like substance (suspected marijuana). As described below, the defendant moved the suspected narcotics from the basement to the back bedroom of the first floor apartment, resulting in the unlawful arrest of the individual found within the apartment.

The evidence shows that White was aware of and tacitly approved the unlawful arrest. Prior to directing the UCE to take the money but during the time that the White and the UCE

were searching the bedroom, Justin Kasperzyk came into the bedroom quickly with his hands close to his chest. Kasperzyk went to the closet where White was searching. Kasperzyk quickly put his hands into the closet and removed them. According to the UCE, and as Kasperzyk has admitted, Kasperzyk stuck his hands in and out so quickly that he could not and did not pull anything out of the closet. However, when Kasperzyk pulled his hands out of the closet, he turned held out a bag in each hand and exclaimed, "look what I found." He then told the occupant of the back bedroom, "I saw you throw it into the closet. I'll swear to it." After Kasperzyk left the bedroom, the UCE asked White, "where did Justin get the bags, out of the closet?" White responded that "I don't know. I was just standing here and he pushed me out of the way. I guess it came out of there now." White then laughed and later set a high bond on the person arrested.

## **2. January 31 Sting**

As part of a "sting" operation, the FBI arranged to place a large sum of money in a rental car. The plan involved placing the money in the trunk of the car, and then using a supposed "informant" to tell the UCE and White that there was money stashed there. On January 31, 2007, the UCE informed White that, according to a "female informant," a drug dealer had left his car somewhere near the Long Wharf area of New Haven. The UCE also told White that the "informant" said that the vehicle might contain a large amount of money. After being told this, White requested that the UCE pick him up. The UCE then met with White and they drove to the Long Wharf area, where they began to look for the car. Once the UCE and White found the car, the UCE received information from the "informant" that the car would be left in the lot overnight. White then discussed whether he and the UCE should search the car. White was very

concerned that the car could be seen by some cameras mounted on a nearby building, and that it was still daylight. White ultimately decided: “Hey, we can go open the trunk and see what’s in there, just put it back, and if you want to do it legit, do a fucking search warrant for the car.”

White proceeded to search the trunk of the car. From the trunk he removed a paper bag that contained approximately \$27,500 in cash, which belonged to the FBI. White brought the bag back to the UCE’s car, where he looked inside and saw thousands of dollars of cash. White stated: “They might kill [her]. Somebody’s killing for that. What do you think, man?” White then continued to discuss at great length his belief that, if he stole the money, the UCE’s “informant” would be killed as a result. White also discussed whether he could steal the money and make it look like a break-in. During these discussions, White repeatedly added his view that someone might get killed over the stolen money. For example, at one point he said: “What do you think? The only thing I don’t like, I’m gonna kill him. That’s the only thing.”

Eventually White decided to keep several stacks of money (about \$5000), and to put the rest back. After doing so, however, he said: “. . . you know, fuck it, we should have took the whole fucking thing [unintelligible (“UI”)] kill the [UI].” When White and the UCE counted the stolen money and determined it to be \$5000, White said: “Well, I don’t think they’ll kill anybody for this.” They then left the scene. White continued, however, to express concern that someone, including the female “informant,” might be killed over the theft, even that of \$5000. At the same time, however, White continued to discuss whether they could go back and steal the rest of the money and make it look like a robbery. White was concerned that, if he smashed the car window to make it look like a robbery, the police would respond and he might be chased. Later, White continued to talk about stealing the money that had been left behind. White talked

about how they could make the theft look like a break-in, and he continued to express concern about the near-by camera. He also continued to express his belief that the “informant” would get killed if the money was stolen.

White next considered whether they could steal the money, and leave a sign that said “sucker” on it, to make it look like a robbery. They then discussed writing “estupido” (“stupid” in Spanish) on the note. White made several phone calls to figure out how to spell “estupido.” While White continued to scheme about how to steal the money, he again expressed his belief that the girl would be killed. He also expressed concerns about the near-by cameras. At one point he decided: “Fuck it, let’s go. Estupido on everybody probably.” Nonetheless, before taking action, he again expressed concerns: “I don’t like her, man. That’s the only fucking thing I don’t like. If she wasn’t in this thing, sppppp, forget it.”

At one point, White’s concern shifted to whether the female “informant” would believe that they took the money, when the “informant” learned of the theft. At different points, White referred to the female informant as the “weak link.” White therefore coached the UCE on what to say to the girl, in order to make it look like they had nothing to do with it.

White and the UCE left the scene after stealing the first \$5000 but later returned. White continued to discuss stealing the money. White finally decided: “What do you think? That’s the only thing I don’t, I’m afraid of. I mean I’m not afraid . . . to take the fucking money, fuck it. . . . I’m just afraid that, them doing something to her personally. . . .” White then pulled a sweatshirt “hoodie” over his head, and tied a scarf around his head, to cover his face and put on gloves. White had brought these clothes with him when the UCE picked him up to return to the scene. White went back to the car and stole the bag containing the rest of the Government funds. When

back in the UCE's car, White emptied the bag, White wrote "estupido" on the money-bag, and White had the UCE do the same. After expressing concerns about whether his face could be seen, White put the empty bag back in the trunk.

When White returned to the UCE's car, White again expressed concern about the near-by cameras and said: "I hope we're not on film though, that's the only thing." As was the case, all of the doings described above were captured on film by cameras hidden in the money-car as well as in the surrounding area.

After leaving the scene of the theft, White split the money between himself and the UCE. White took, in total, approximately \$14,105 for himself, and gave approximately \$13,395 to the UCE. The UCE drove White directly to his home in New Haven. As they were approaching White's house, White expressed concern about storing the money in his house. White and the UCE continued to discuss the money and what the "victim" drug dealers might think. The UCE offered the opinion that the drug dealers would think that someone Spanish took the money, and he then said he would hide his money in a tool shed. White responded by saying: "I'm too old to be arrested, that's the thing." White then took the money into his house.

White later deposited the cash to his accounts in amounts less than \$10,000. On 2/16/07, White made a \$5500 cash deposit to his New Alliance account. On 2/26/07, White then made a \$5000 cash deposit to his Police Credit Union account. White then requested a check from his credit union and had the payee changed from himself to an individual who had recently loaned him money for his children's college expenses. On 3/8/07, White made a \$1000 and a \$6000 cash deposit to the credit union account and similarly requested a check and changed the payee from himself to the individual to who he owed money.

### 3. Starr Street Search

On February 16, 2007, White, the UCE, and other law enforcement officers executed an arrest warrant in New Haven. The officers located the subject and chased him into a residence located on Starr Street. While in the house, the UCE noticed a sum of cash in an open drawer in the bedroom. The UCE asked another officer to ask White to come into the room. White entered the room and the UCE showed him the money. White told the UCE that the female occupant of the house had told him that there was no money in the house. White then indicated to the UCE that he should take the money. In response, the UCE placed the cash, which later was determined to be \$800, in his pocket, while White watched him do so.

Later on the same day, the UCE met White at the New Haven Police Department parking garage, which is located at One Union Avenue, New Haven. The UCE gave White \$400 in cash, which was his half of the \$800 that they had stolen earlier in the day. White referred to the cash as “spending money,” placed the \$400 in his pocket.

On February 19, 2007, the UCE met with White at his office in the New Haven Police Station. White told the UCE that a female from the Starr Street search had called him regarding money that she believed had been taken from her residence by the police. According to White, the woman complained that \$800 was missing. White explained that he told the woman: “. . . let me check and see if we took it, . . . I don’t think we took any money for evidence, but if we did I’ll let you know . . . .” White said that he also told the woman: “. . . if we didn’t, you want to report money stolen you gotta to go, go to Internal Affairs.” White reported that the woman-caller then said she did not want to start any trouble, and he responded by telling her: “You’re not starting any trouble, you think your money is missing, you think some officer took your money,

go to Internal Affairs.” All the while, of course, this call was in reference to the “spending money” that White knew that he and the UCE had taken from the woman’s home.

### **III. The Sentencing Guidelines**

#### **A. The Law**

The Supreme Court clarified the continuing role of the Sentencing Guidelines and the scope of the sentencing court’s discretion in *United States v. Booker*, 543 U.S. 220 (2005). Booker makes clear that this Court must consider both the sentencing factors set forth in 18 U.S.C. Section 3553(a), and the Sentencing Guidelines in fashioning a reasonable sentence. Id. at 249. While the Sentencing Guidelines are no longer mandatory following *Booker*, they must still be considered in determining the appropriate sentence. Because the Guidelines reflect the Sentencing Commission’s considered judgment about all of the factors set forth in § 3553(a), the Supreme Court and the Second Circuit have made it clear that the Guidelines continue to play a central role in a sentencing court’s § 3553(a) calculus. The Second Circuit has recognized the continuing relevance of the Sentencing Guidelines following Booker in determining an appropriate sentence:

[I]t is important to bear in mind that *Booker/ Fanfan* and section 3553(a) do more than render the Guidelines a body of casual advice, to be consulted or overlooked at the whim of a sentencing judge. Thus, it would be a mistake to think that, after *Booker/Fanfan*, district judges may return to the sentencing regime that existed before 1987 and exercise unfettered discretion to select any sentence within the applicable statutory maximum and minimum. On the contrary, the Supreme Court expects sentencing judges faithfully to discharge their statutory obligation to "consider" the Guidelines and all of the other factors listed in section 3553(a). We have every confidence that the judges of this Circuit will do so, and that the resulting sentences will continue to substantially reduce unwarranted disparities while now achieving somewhat more individualized justice.

*United States v. Crosby*, 397 F.3d 103, 113-14 (2d Cir. 2005).

Under the non-mandatory Guidelines regime established by *Booker* and *Crosby*, the sentencing judge is empowered to make the factual findings necessary for determining what the recommended Guidelines Sentence is in a particular case. *Crosby*, 397 F.3d at 113 (“the sentencing judge is entitled to find all the facts appropriate for determining either a Guidelines sentence or a non-Guidelines sentence”).

The judge must consider the Guidelines in conjunction with the other factors enumerated in § 3553(a), in order to determine whether there is any reason to deviate from the advisory Guidelines range. These factors include: (1) “the nature and circumstances of the offense and history and characteristics of the defendant”; (2) the need for the sentence to serve various goals of the criminal justice system, including (a) “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment,” (b) to accomplish specific and general deterrence, (c) to protect the public from the defendant, (d) “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner”; (3) the kinds of sentences available; (4) the sentencing range set forth in the Guidelines; (5) policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to victims.

Accordingly, in the majority of cases, a sentence within the Guidelines range is reasonable, and accommodates the congressional purpose set forth in § 3553(a), affirmed by the Supreme Court, of obtaining fair sentences which are uniform to the extent possible. As explained below, this case does not present the rare case in which the Guidelines (including the rules governing departures) fail to produce a sentencing range that fully accords with the various

factors set forth in § 3553(a).

**B. The Guideline Calculation, as Set Forth in the Plea Agreement and the PSR, is Appropriate**

**1. The Guideline Calculations**

William White plead guilty to count one of an indictment which charged bribery conspiracy. (*See* 3:07CR90(JBA)). In addition, he plead guilty to counts one and two of a separate indictment charging him with theft of government funds. (*See* 3:07CR89(JBA)).

White admitted that from at least 2006 to on or about March 13, 2007, in the District of Connecticut and elsewhere, he, together with Robert Jacobs, Philip Jacobs and Paul Jacobs and others entered into an unlawful agreement, namely that William White, as an agent of City of New Haven, did knowingly, willfully and corruptly conspire to solicit, demand and agree to accept things of value, cash, intending to be influenced in connection with official New Haven police business. Specifically, White used his police powers and the resources of the New Haven Police Department and the Connecticut State Police to provide the Jacobs with confidential information and preferential treatment, including but not limited to, finding fugitives for and steering clients to them in exchange for cash. Between July 2006 and March 2007, Robert Jacobs, Philip Jacobs, and Paul Jacobs provided White and the UCE with approximately \$24,400. in cash in exchange for White and the UCE using their official positions to locate three fugitives (identified as AW, WD, and JF) whose apprehension meant that the Individuals would not be required to pay the State of Connecticut as a result of the bonds being forfeited.

Defendant White split the cash with the UCE, keeping \$10,200 for himself.

The defendant contends that his participation in the conspiracy commenced in 2006; he

wants this Court to believe that the only times he acted corruptly were those times that the government caught him on tape. As described in more detail above, the recordings and evidence show the defendant's contention to be false. It is the government's position that the defendant's participation in the conspiracy predates 2006 and that the conspiracy commenced in approximately 2002. In Summer 2006, the defendant himself states in reference to Robert Jacobs, that "I bet you I made \$60,000 off this guy. You know . . . In four or five years . . . easy. easy." In addition, the defendant described a \$10,000 cash payment for the arrest of a fugitive in 2005.

In addition to the bribery scheme, White also plead guilty to stealing government funds and admitted to stealing a citizen's money during the execution of a search warrant in on Truman Street and stealing the money from the vehicle as part of a sting operation.

The November 1, 2007 Sentencing Guidelines Manual applies. PSR") ¶ 21. The counts are grouped together under § 3D1.2(d) into a single groups because the offense levels are determined largely on the basis of the total amount of harm or loss. See United States v. Gordon, 291 F.3d 181, 189 (2d Cir. 2002); U.S.S.G. § 3D1.3, comment (n.6). The figure used to compute the adjusted offense levels under the applicable sections of the guideline is obtained by combining the losses due to the bribery conspiracy and the theft of government property, that is \$10,200 (bribe money kept by the defendant) and \$15,105 (government funds stolen and kept by the defendant) The total loss is, therefore, \$24,305.

With respect to the conspiracy to commit bribery, the base offense level under U.S.S.G. § 2C1.1 is 14. Two levels are added under U.S.S.G. § 2C1.1(b) for more than one bribe, 4 levels are added under U.S.S.G. § 2C1.1(b)(2) based on the value of the bribes (greater than \$10,000

but less than \$30,000), and 4 levels are added under U.S.S.G. § 2C1.1(b)(3) because the offense involved a public official in a sensitive position. Thus, the defendant's offense level for conspiracy to commit bribery is 24.

With respect to the theft of government property charge, the base offense level under U.S.S.G. § 2B1.1 is 6. Four levels are added under U.S.S.G. § 2B1.1(b)(1) for the loss amount that is greater than \$10,000 but less than \$ 30,000. Two levels are added under U.S.S.G. § 3B1.3 for abuse of a position of private trust, resulting in an adjusted offense level of 12.

Pursuant to U.S.S.G. § 3D1.3(b), the offense guideline that produces the highest offense level based on the aggregate quantity of the loss is the bribery guideline, and the applicable offense level, therefore is 24. Three levels are subtracted under U.S.S.G. § 3E1.1 for acceptance of responsibility, resulting in a total offense level of 21. A total offense level of 21, with a criminal history category I, results in a range of 37-46 months' imprisonment (sentencing table) and a fine range of \$ 7,500 to \$ 75,000. (U.S.S.G. § 5E1.2(c)(3)).

As part of the plea agreement, the parties reserved their right to argue for any sentence they deem appropriate. The defendant reserved the right to argue for a downward departure on various grounds, including but not limited to that he saved the lives of individuals during the time that he served as a police officer for the City of New Haven. In addition, based on the PSR, it is the government's understanding that the defendant intends to argue for a departure or a non-Guidelines sentence based on his emotional/mental state because of a described untreated PTSD and history of public service or employment related contributions. See PSR ¶88. As part of the agreement, the government reserved the right to object to any downward departure arguments advanced by the defendant.

Based on the offense conduct as well as for the reasons set forth below, the government asks the Court to sentence William White within the guideline range.

**C. General Principles Do Not Favor Departures**

Departures from the sentencing range dictated by the Guidelines are sanctioned only in select cases. As the Supreme Court has stated:

Congress allows district courts to depart from the applicable Guideline range if “the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.

*Koon v. United States*, 518 U.S. 81, 92 (1996) (quoting 18 U.S.C. § 3553(b)). As the Guidelines provide, and as the Court in Koon explained, “[t]he Commission intend[ed] the sentencing courts to treat each guideline as carving out a ‘heartland,’ a set of typical cases embodying the conduct that each guideline describes,” acknowledging that departures may be considered when the conduct differs “significantly” from the norm. *Id.* at 93 (quoting U.S.S.G. Ch. 1, Pt. A(4)(b)).

In *Koon*, the Court found that the Sentencing Commission had provided “considerable guidance as to the factors that are apt or not apt to make a case atypical, by listing certain factors as either encouraged or discouraged bases for departure.” *Id.* at 94. The Court thus recommended that sentencing courts ask the following questions in determining whether a departure is warranted:

- 1) What features of this case potentially take it outside the Guidelines’ ‘heartland’ and make of it a special, or unusual case?
- 2) Has the Commission forbidden departures based on those features?

3) If not, has the Commission encouraged departures based on those features?

4) If not, has the Commission discouraged departures based on those features?

*Koon*, 518 U.S. at 95 (quoting *United States v. Rivera*, 994 F.2d 942, 949 (1st Cir. 1993) (Breyer, J.)). The Court went on to advise that in the case where “the special factor is a discouraged factor, or an encouraged factor already taken into account by the applicable Guideline, the court should depart only if the factor is present to an exceptional degree or in some other way makes the case different from the ordinary case where the factor is present.” *Id.* at 96.

**D. William White Has Presented This Court With No Extraordinary Facts to Support Either A Downward Departure Or A Non-Guidelines Sentence**

It is the government’s understanding that White intends to seek a departure or non-Guidelines sentence based on the his emotional/mental state as well as his history of public service and employment related contributions. PSR¶ 87-88. Specifically, defense counsel has “suggested that the defendant’s emotional/mental state of untreated PTSD could also be considered in contemplation of a non-guidelines sentence. *Id.* White has not demonstrated that any of the factors upon which he relies are present in an unusual or exceptional way and, therefore, no factor supports a departure under applicable Second Circuit precedent. Each departure request should be rejected on its own terms and in the aggregate.

Because White is the party seeking a departure, he bears the burden of showing, by a preponderance of the evidence, that it should be granted. *See United States v. Cotto*, 347 F.3d 441 (2d Cir. 2003).

### **1. Professional And Individual Community Contributions**

Section 5H1.11 provides that “[C]haritable or public service; employment-related contributions and similar prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.” See *United States v. Rioux*, 97 F.3d 648, 663 (2d Cir. 1996). In *United States v. Serafini*, 233 F.3d 758 (3d Cir. 2000), the defendant was a Pennsylvania state legislator who had been convicted of giving perjured testimony to a federal grand jury which was investigating a scheme to funnel corporate political contributions through third-party nominees. During his sentencing hearing, the district court granted the defendant’s request for a three-level reduction in his guidelines range on the basis of his civic activities. The Government appealed the district court’s decision to depart to the extent it relied upon the defendant’s activities as a state legislator. The Third Circuit agreed with the Government on the activities of the defendant as a state legislator, finding that:

As to Serafini’s activities as a state legislator, they are work-related and political in character. . . Conceptually, if a public servant performs civic and charitable work as part of his daily functions, these should not be considered in his sentencing because we expect such work from our public servants.

*Id.* at 773.

As in *Serafini*, the defendant’s employment related contributions here were to a great extent simply what he was expected to do as part of his job as a police officer. Although, the government does not minimize the difficult job that a police officer performs, taking into account both the good and the bad that this defendant did in his job as a police officer does not result in a record so extraordinarily positive to warrant a downward departure. The front line of the law is the police. And, White severely compromised a citizen’s ability to trust that the police will fairly

enforce the law. It has been suggested that the bribery scheme in this case is not that serious, that fugitives were taken off the street. The government asks the Court, however, to consider the true import of the crime. The Jacobs made money by writing bonds. In assessing the risks involved in a particular case, the Jacobs knew that they had a police officer in their pocket. Thus, the risk evaluation was skewed in determining whether to write the bond. If a defendant failed to appear, the Jacobs knew that they could pay White to use his official police power and police resources to arrest the fugitive. In addition, the Jacobs had the money to pay a police officer for their own personal benefit. Thus, the scheme also resulted in a situation in which a wealthy person was able to buy a cop. Finally, White stole money during the course of his police duties. He put his own greed above the law.

**2. The Defendant does not warrant a Downward Departure Based on Diminished Capacity**

Based on suggestions by defense counsel, the PSR suggests that the Court may consider under U.S.S.G. § 5H1.3 to what extent the defendant's mental and emotional condition played a role in the instant offense. Section 5H1.3 provides that "mental and emotional conditions are not ordinarily relevant in determining whether a departure is warranted except as provided for in Chapter 5, Part K, Subpart 2 (departures)." And, U.S.S.G. § 5K2.13 provides that a trial court may exercise its discretion to grant a downward departure on the ground of diminished capacity if the defendant "committed the offense while suffering from a significantly reduced mental capacity" that "contributed substantially to the commission of the offense." However, a court may not depart below the applicable guideline range if "the significantly reduced mental capacity was caused by the voluntary use of drugs or other intoxicants." *Id.* The Commentary

Application Note for the Guideline defines significantly diminished capacity as meaning that “the defendant although convicted has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful. “The standard here for granting a downward departure on the basis of diminished capacity is not that the defendant recognizes the difference between wrong and right, which may negate intent, but rather that his diminished capacity significantly impaired his judgement or his ability to understand the wrongfulness of his actions.” *United States v. Valdez*, 426 F.3d 178, 184 (2d Cir. 2005).

The defendant has submitted a letter from Dr. Hills in which Dr. Hills opines that the defendant is suffers from PTSD and that the defendant’s belief that the UCE was in “desperate need of money to help his daughters” resonated with the defendant’s symptoms of PTSD and served as a way to expiate the guilt the defendant felt over the death of his son in 1994.” In addition, according to Dr. Hills, the anxiety that White was feeling over his impending retirement; retirement which meant he would lose the structure of his work, caused him to act in a self destructive manner, which is typical of PTSD.

The evidence, however, shows that the defendant understood the wrongfulness of his actions and that he thought about his actions and carefully took steps to insure that, with respect to the bribery scheme, he left no paper trail, and with respect to the theft, that his actions went undetected. William White specifically told the UCE that Jacobs dealt in greenbacks and did not say anything to anyone. Indeed, when Paul Jacobs gave them a check, White was angry and stated that he did not like the check or a letter with his name on it. Moreover, his corrupt activities with the Jacobs predate the UCE’s involvement. As noted above, White was taking

cash from Jacobs for years and in 2005, split a \$10,000 bribe with Justin Kasperzyk. Thus, White's alleged belief that the UCE needed cash had nothing to do with his accepting bribes. Moreover if his actions were really directed at helping the UCE, why did White always keep one-half if not more of the money?

White accepted bribes because he wanted the money, not because he thought he was helping the UCE. Moreover, his conduct during the January 31, 2007 theft belies the notion that he was self destructive. Indeed, White thought about his actions. He was concerned about cameras, concerned about being seen. Indeed, when the UCE picked him up to return to the car, White had a hooded sweatshirt and gloves to hide his face and avoid leaving fingerprints. White considered the fact that the female informant may get killed because of his theft. He expressed the thought several times but chose to take the money. Such conduct does not comport with someone who is trying to get over the guilt he feels because of his son's tragic death. Indeed, that White appreciated the wrongfulness of his actions is perhaps most telling when he said to the UCE, "I am too old to be arrested." There is simply no evidence that White's behavior was PTSD driven. The criminal behavior was not a logical extension of the traumatic event. The behavior was premeditated and done with significant thoughts of concealment (which weigh against PTSD). Indeed a history of property crimes as opposed to assault crimes weighs against the conclusion that an act was PTSD driven. *See PTSD in Forensic Setting, Chapter 15*. The defendant simply does not warrant a departure for diminished capacity.

#### **IV. Conclusion**

This Court must fashion a sentence for William White that promotes respect for the law and that reflects the seriousness of his crimes. As always, the sentence must serve not only to



CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing motion was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. The following parties may access this filing through the Court's CM/ECF System on this 20<sup>TH</sup> day of April 2008:

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/s/  
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