Paul D. Stockler
ABA No. 8606032
Law Office of Paul D. Stockler
1309 West 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564
(907) 272-4877/Facsimile
E-mail: paulstockler@aol.com

Counsel for Thomas T. Anderson

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **THOMAS T. ANDERSON,** **Defendant.**	**NO.: 3:06-cr-00099 JWS** **DEFENDANT THOMAS T. ANDERSON'S SENTENCING MEMORANDUM**

COMES NOW, Defendant, Thomas T. Anderson, and hereby submits his *Sentencing Memorandum* for the purpose of aiding the Court in imposing sentence.

A. INTRODUCTION

The Defendant, Thomas T. Anderson ("Mr. Anderson") recognizes that he violated an important public trust and must be punished. Mr. Anderson also recognizes and admits that he, in fact, violated the law, although that was not his intention when he began his discussions in 2004 with Bill Bobrick and Frank Prewitt. As explained below, Mr. Anderson believed *at the time,* that his actions were not in any way unlawful. Shortly, he will stand before this Court, and also before his family and

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

the community where he was born, raised, and has lived, and asking ultimately, for forgiveness. He also will ask this Court's consideration of granting a measure of leniency, compassion and mercy. He will recognize that he erred; he will confirm that he accepts responsibility for his actions; he will ask with humility that this Court consider a sentence below the projected United States Sentencing Guideline level (hereinafter referred to as "U.S.S.G."). He will not justify or rationalize his actions as they are not justifiable. He will not ask the people of the State of Alaska to trust his remorse, as he recognizes that he has compromised that trust. Mr. Anderson merely asks that the Court sentence him as an individual, devoid of public sentiment and pressure; devoid of unjustified emotion; devoid of anger. Mr. Anderson recognizes that he will be incarcerated. It is anticipated that the Defense and the Government will not concur as to what represents a sufficient - and reasonable - sentence and appropriate prison term.

The Presentence Investigation Report (hereinafter referred to as "PSI") recommends that Mr. Anderson be sentenced to the statutory maximum of 63 to 78 months of imprisonment. The Defense suggests that under all of the facts and circumstances, the imposition of such a sentence would be unreasonable. The PSI does a thorough, thoughtful and largely accurate job of detailing the offense characteristics, but it provides an

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

incomplete, if not clinical view, of Mr. Anderson's life and accomplishments. Accordingly, the PSI assigns little value in its sentencing recommendation to the wealth of exceptional contributions that Mr. Anderson has made throughout his public, civic and professional life. Instead, it mechanically applies the Federal Sentencing Guidelines Manual to this case and, in so doing, declines to credit Mr. Anderson's unique offense and offender characteristics such as civic contributions, charitable work, his remorse, and the aberrant nature of his actions.

B. ANALYTICAL FRAMEWORK

As the Court is undoubtedly aware that on January 12, 2005 the United States Supreme Court inexorably altered the doctrinal landscape of federal sentencing with its decision in *United States v. Booker,* 542 U.S. 220 (2005). The Court, in *Booker*, made it clear that United States District Courts are no longer bound or restricted by a mandatory and unwavering application of the United States Sentencing Guidelines. Writing for the merits majority, Justice Stevens wrote that:

> If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

As well, Justice Breyer, in writing for the majority in the remedial portion of the decision, stated:

> We answer the question of remedy by finding the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C. §3553(b)(1) (Supp. 2004), incompatible with today's constitutional holding.

Certainly, the inherent wisdom of 20 years of sage case law as well as academic and institutional research should not be disregarded and it is anticipated that this Court, like the many other United States District Courts, will continue to seek guidance from, rely on, consult, and utilize the provisions of the 1984 Sentencing Reform Act, as amended; the United States Sentencing Guidelines; and the vast decisional resources interpreting and applying the above. However, with the Court's release from the mandatory strictures of the United States Sentencing Guidelines, it is submitted that this Court may and should more broadly exercise its discretion, and its role as the final arbiter of the disposition in this case that best serves the interests of justice, and fashion an individualized sentence.[1]

[1] "The District Courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing... The courts of appeals review sentencing decisions for unreasonableness. These features of the remaining system, while not the system Congress enacted, nevertheless continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary." *Booker* at 264-265.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

The Ninth Circuit has held that "we review post-*Booker* criminal sentences in two steps. First, we determine whether the district court properly calculated the applicable range under the advisory guidelines." *United States v. Cantrell,* 433 F.3d 1269, 1279 (9th Cir. 2006); *see also United States v. Kimbrew,* 406 F.3d 1149, 1151-52 (9th Cir. 2005). In evaluating the district court's application of the advisory guidelines, "we review its construction of the guidelines *de novo* and we review any factual findings made by the district court for clear error. *Cantrell,* 433 F.3d at 1279. We review the district court's application of the guidelines to the facts of the case for abuse of discretion." *See, also, United States v. Torres-Flores,* --- F.3d ----, 2007 WL 2473162 (9th Cir. 2007).

To be sure, sentencing courts must still consider the Guidelines after *Booker*, but those advisory Guidelines are but one of seven (7) statutory factors that are pertinent to the Court's sentencing judgment. 18 U.S.C. §3553(a)(l) specifically requires the Court to consider Mr. Anderson's history and characteristics when imposing sentence.

Title 18 U.S.C. §3553(a) (main ed. and Supp. 2004) provides:

> Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court,

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

in determining the particular sentence to be imposed, shall consider:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed;

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(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 kinds of sentence and the sentencing range established for —

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines —

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(5) any pertinent policy statement —

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

> (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
> (7) the need to provide restitution to any victims of the offense."

As a result of *Booker,* no longer are courts *required* to impose a sentence "within the range" as provided for in the United States Sentencing Guidelines and as previously required by 18 U.S.C. §3553(b)(1). Courts may now take into consideration the myriad of sentencing factors, explicit and implicit, and historically considered under 18 U.S.C. §3553.

Initially, we stress the importance of the parsimony provision of the 18 U.S.C. §3553. That provision provides that "The court *shall* impose a sentence sufficient, *but not greater than necessary*, to comply with the purposes set forth in paragraph (2) of this subsection." (Emphasis added) Thus, the Court is statutorily bound *not* to impose a sentence greater than what would be necessary to comply with the relevant sentencing provisions discussed in *United States v. Wilson*, 350 F.Supp.2d 910, (DC Utah 2005) in which the court stated, "It is possible to argue that this provision requires the courts to impose sentences below the Guidelines range, because Guidelines sentences are not parsimonious." *Id*. at 921.

Indeed, Judge Cassell noted that it was certainly debatable that "the parsimony concept is powerful evidence... that both the Senate and the House were attempting to pass a statute

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

giving more substantial power to sentencing judges to impose a sentence outside the guidelines range." *Id.* at 923. "District court sentencing after *Booker* centers around 18 U.S.C. §3553(a), which calls on the district court to 'impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection' and to 'consider' the [remaining §3553(a)] factors...." *See United States v. Castillo,* 460 F.3d 337, 354 (2nd Cir. 2006); *see also*, *United States v. Ministro-Tapia*, 470 F.3d 137 (2nd Cir. 2006).

The Second Circuit has stated that: "We have recognized that district courts are to impose sentences pursuant to the requirements of §3553(a) - *including the requirements of §3553(a)'s parsimony clause* - while appellate courts are to review the sentences actually imposed by district courts for reasonableness." *United States v. Williams,* 475, 476 F.3d 468, (2nd Cir 2007) (emphasis added).

Thirteen years ahead of his time, Judge Jack Weinstein of the United States District Court for the Eastern District of New York wrote: "A key provision [of sentencing] embodies the concept of 'parsimony,' a principle of the American Bar Association Standards for Criminal Justice." *See* American Bar Association, Standards For Criminal Justice, Chapter 18, "Sentencing Alternatives and Procedures", 18 - 3.2(iii) ("Parsimony in the use of punishment is favored. The sentence

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

imposed should therefore be the least severe sanction necessary to achieve the purposes for which it is imposed...") (1993). See also Richard S. Frase, *Sentencing Guidelines in the States: Lessons for State and Federal Reformers,* 6 Federal Sentencing Reporter 123, 124 (1993). This principle, when applied to interpretation of criminal statutes, is known as lenity. "The Court will not interpret a federal criminal statute so as to increase the penalty... when such an interpretation can be based on no more than a guess as to what Congress intended." *United States v. Abbadessa*, 848 F.Supp.369, 378 (E.D.N.Y.1994). *See, also United States v. Granderson,* 511 U.S. 39, (1994).

The parsimony provision of 18 U.S.C. §3553 requires that the Court impose the *minimum* sentence possible under the circumstances taking into account all of the 18 U.S.C. §3553(a) factors. Therefore, the Court should not - and cannot – impose a guideline sentence of 5.3 to 6.5 years if it concludes that a lesser sentence would be sufficient to satisfy the goals of punishment in the statute. Mr. Anderson respectfully submits that a sentence of more than 27 to 33 months (Level 18) far exceeds the "necessary" punishment in this case.

Prior to proceeding to the merits of the relevant 18 U.S.C. §3553 factors, the Defense renews and recites its remaining objections to the PSI calculations.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

C. OBJECTIONS TO PSI CALCULATIONS

Pursuant to U.S.S.G. §3D1.1 the Office of Probation grouped the counts into two separate groups as follows:

Group 1 (Counts 1, 2 3 and 7): 18 U.S.C. §371 (Conspiracy), 1951 (Extortion) and 666, (Hobbs Act.)

Group 2 (Count 4, 5 and 6): 18 U.S.C. §1956 (Money Laundering).

As to each, the Office of Probation suggested a Total Guideline Level as follows:

Group 1:

Base Offense Level (USSG §2C1.1)	14
Specific Offense Characteristics	
USSG §2C1.1(b)(1) (more than one bribe)	0[2]
USSG §2B1.1 (more than $10, 000)	4[3]
USSG §2C1.1(b)(3) (elected official)	4
Adjusted Offense Level for Group 1	22

[2] The Draft PSI initially recommended that Mr. Anderson receive a 2 point upward enhancement for receiving more than 1 bribe, positing that the ATA consulting fees constituted a bribe. The Government concurred with this initial position and, of course, the Defense objected and addressed the issue on the merits. In the final PSI, the Office of Probation concurred with the Defense and concluded that it is legally and factually improper to apply the enhancement, and revised the calculations accordingly. Assuming, *arguendo*, the Government will continue to pursue the enhancement, the Defense addresses the issue at Section G *infra.*

[3] Likewise, the initial Draft PSI also included the amount of Mr. Anderson's 2003 ATA contact ($20,000), and in so doing, posited that for USSG§2B1.1 the amount of loss was a total of $46, 000. The Office of Probation has concluded that there is not sufficient

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

Group 2

Base Offense Level (U.S.S.G. § 2S1.1(a)(1))	22
Specific Offense Characteristics	
USSG §2S1.1(b)(2)(B) (more than one count)	2
USSG §2S1.1(b)(3) (Sophisticated laundering)	2
Adjusted Offense Level for Group 2	26

The Defense has no objection to the advisory guideline level calculation as to Group 1 but argues below that Mr. Anderson can and has demonstrated the requisite acceptance of responsibility so as to be entitled to an adjustment pursuant to U.S.S.G. §3E1.1. The Defense does object to the Specific Offense Characteristic as to the sophisticated laundering and believes that the proper guideline calculation for that Group should be 24, absent any Chapter 3 adjustments. Pursuant to U.S.S.G. §3D1.3(b), the highest offense level between the groups apply.

(i) Sophisticated Laundering - U.S.S.G. §2S1.1(b)(3)

As stated above, the Defense does not believe that the offense characteristics support the conclusion that the crime involved "sophisticated" money laundering.

> (A) Sophisticated Laundering under Subsection (b)(3). — For purposes of subsection (b)(3), "sophisticated laundering" means complex or intricate offense conduct pertaining to the

---

evidence to suggest that the ATA contract involved a bribe and has reduced the amount, removing the corresponding upward enhancement.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

> execution or concealment of the 18 U.S.C. § 1956 offense.
>
> Sophisticated laundering typically involves the use of –
>
> (i) fictitious entities;
> (ii) shell corporations;
> (iii) two or more levels (i.e., layering) of transactions, transportation, transfers, or transmissions, involving criminally derived funds that were intended to appear legitimate; or
> (iv) offshore financial accounts.

The lynchpin of the Office of Probation's supposition for the application of the enhancement is its erroneous belief that a shell corporation and layering was involved in the payments from Pacific Publishing to Mr. Anderson.

The evidence presented at trial, as well as other investigative materials, forces a contrary conclusion. The evidence is unchallenged that Mr. Bobrick created Pacific Publishing in the early summer of 2004. It was a public corporation registered through the Alaska Department of Commerce. Mr. Bobrick in his statement to the FBI on October 10, 2006, as documented in an FBI *302* (attached as Exhibit A)[4] made it very clear that his initial relationship with Mr. Anderson was intended to "groom" Mr. Anderson to become a lobbyist after serving in public office, so that he, Bobrick, could ultimately retire from lobbying:

> During their acquaintance, ANDERSON spoke with source and stated he wanted to be a

[4] In the *302*, William Bobrick is identified as "Source."

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

> lobbyist. After 18 years as a lobbyist, source felt "burned out." Source did not want to just "drop" clients after many years of representation, and felt that he/she could groom ANDERSON as a lobbyist for those clients. Source believed he/she could have a lobbyist firm with ANDERSON, and gradually transition out of the business.
>
> (Exhibit A, p.2)

Further, it is very clear that Pacific Publishing was created as a legitimate business by Mr. Bobrick, and was created and used as a legitimate corporation:

> PACIFIC PUBLICATIONS was an on-line business concept created by source. The concept was every municipality, city, and incorporated towns across the State of Alaska could place their legislation and political information in one central location. There were no sites like this in Alaska, and it was difficult to research different legislation related to areas of Alaska.
>
> ANDERSON was involved with PACIFIC PUBLICATIONS. Source said in hindsight the only thing ANDERSON had to offer to the company was the fact he was a "sitting legislator." ANDERSON was the managing editor and advertiser for the company, although source admits he did very little work for the business and did not provide any work product. Source stated ANDERSON is "kind of scattered", not very focused.
>
> ANDERSON recommended that Republican KEN ERICKSON create the web site, which would highlight different stories and have a banner at the bottom with advertisements. ANDERSON also recommended his legislation employee, JOSH APPLEBEE, make lists of all the incorporated towns and cities in Alaska. APPLEBEE was also to locate a "contact person" and telephone number for each contact person to solicit as contributors to the

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

> site. ERICKSON and JOSH APPLEBEE were both paid $1,000 for their work. The belief for ANDERSON'S involvement in the company was the idea as a current legislator, ANDERSON could assist companies and individuals advertise and direct the ads toward politicians. MICHAEL CAREY, former editor of the Editorial Page of the Anchorage Daily News (ADN) told source they had to "feed the beast" everyday, which meant put labor and effort into the web site on a daily basis. At one point, source decided he/she did not want to "feed the beast" daily. Source told ANDERSON he could have the company. Source believed ANDERSON did not want to work, and pretty much "screwed it up" (the company).
>
> (Exhibit A, p. 2)

What is also clear from the above recitation was that Pacific Publishing was not a shell. Rather, it was created to provide a centralized political information resource for which Mr. Anderson could work segue into lobbying after retiring. In the interim, Mr. Bobrick and Mr. Anderson would set up and host an informational web site. They hired several employees, Messrs. Erickson and Applebee, for the purpose of getting requisite information and base data. Apparently, the original concept, like innumerable “dot-coms” never effectively got off the ground, but what is clear is that it was not created and established for the purposes of acting as a shell corporation to launder funds. It was set up by someone other than the defendant, well prior to the time the acts constituting the crime were thought of or committed. It was, in fact, an actual corporation that was originally created for the purposes of

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

political news, internet advertising and promotion. Certainly, it was not a fictitious entity.

Further, it can hardly be suggested that simply depositing money from one account to another is "complex or intricate." In fact, in this case it was *overly simplistic* as everything was transparent, done through registered corporations with legitimate bank accounts and paid by very traceable negotiable instruments - standard checks. There was no layering, subterfuge or offshore accounts. Contrary to the suggestion by the Office of Probation, layering is typically designed to hide or conceal a financial transaction through the use of numerous accounts and entities or by converting one negotiable instrument into another through subterfuge. There was no layering here - and certainly there was not two or more layers involved in depositing a check. To the contrary, Mr. Anderson merely took a check from Pacific Publishing and deposited it into his own company checking account. According to the Office of Probation's proffered definition of "layering," almost every financial transaction heretofore devised would be considering layering. Every financial transaction takes one form of funds and converts it to another. Here, a corporate check simply was given to another. There were no checks converted to money orders or cash and given to a third party or otherwise layered

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

or even anything remotely considered "sophisticated." Accordingly, the 2 point enhancement is erroneous.

U.S.S.G. §2S1.1(b)(3) was adopted relatively recently which explains the dearth of case law interpreting its provisions. However, it was largely taken from the provision of U.S.S.G. §2B1.1(b)(9)(C) applying an enhancement for "sophisticated means." Generally, "sophisticated means" would involve schemes that were "more complex" than an ordinary crime, *see, e.g. United States v. Soni* 231 Fed.Appx. 612 (9th Cir. 2007)(unpublished); or "singularly or uniquely sophisticated", *United States v. Little,* 230 Fed.Appx. 701 (9th Cir. 2007)(unpublished). Simply misappropriating funds and lying about the origin is insufficient to support a sophisticated means enhancement by clear and convincing evidence. *U.S. v. McLaughlin* 203 Fed.Appx. 891 (9th Cir. 2006). Facts common and needed to commit the crime, rather than conceal the crime, are insufficient to support the sophisticated means enhancement. *United States. v. Montano*, 250 F.3d 709 (9th Cir. 2001). None of the aforementioned indicia or criteria exists in this case.

It is equally clear that Pacific Publishing was more than a shell. Pacific Publishing was established for legitimate purposes and initially had a legitimate objective. It turns out, according to Mr. Bobrick, that a limitation of assets and resources (manpower) curtailed performance of the site and its

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

completion, but these facts are insufficient to demonstrate the corporation being a shell. Accordingly, the adjusted offense level should be 24 rather than 26.

(ii) ACCEPTANCE OF RESPONSIBILITY

"It is clear that a judge cannot rely upon the fact that a defendant refuses to plead guilty and insists on his right to trial as the basis for denying an acceptance of responsibility adjustment." *United States v. Mohrbacher,* 182 F.3d 1041, 1052 (9th Cir. 1999). *See also, United States v. Vance,* 62 F.3d 1152, 1157-58 (9th Cir. 1995). Even a defendant who contests his factual guilt at trial may, under some circumstances, be entitled to such an adjustment. *See, United States v. Ing,* 70 F.3d 553, 556 (9th Cir. 1995) (entrapment defense is not inconsistent with downward adjustment for acceptance of responsibility); *United States v. McKinney,* 15 F.3d 849, 852-53 (9th Cir. 1994) (defendant who had assisted authorities immediately upon his arrest, attempted to plead guilty, and declined to call any witnesses or raise an affirmative defense was entitled to acceptance of responsibility credit despite contesting factual guilt at trial through cross-examination of prosecution witnesses).

First, as is clear, Mr. Anderson raised the entrapment defense and, in part, proceeded to trial on that basis. He never denied nor challenged the basic facts of the charges.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

There was never a dispute that he received approximately $12,000 from Pacific Publishing and $2,000 from Mr. Prewitt and acted as a consultant. At the time he received the money, however, he did not believe that he was acting illegally. Rather, he erroneously and indeed naively, thought that he could properly serve two masters: the people of the State of Alaska and a private consulting client seeking to capitalize on access to a legislator. No one in these circumstances could serve two masters. Mr. Anderson realized that too late.

Mr. Anderson never disputed that he accepted $12,000 from Pacific Publishing and $2,000 from Mr. Prewitt. The core question in this case was whether he did so with the intent to do Cornell's bidding in Juneau. At first blush, Mr. Anderson did not believe his efforts for Cornell involved a quid pro quo. But he now recognizes and understands that the sequence of events and actions he ultimately took made a finding of a quid pro quo by the jury nearly inevitable. For that, Mr. Anderson accepts full responsibility.

Mr. Anderson conveys to the Court:

> I accept full responsibility for the choices I've made and the damage I've done and the damage here transcends the personal loss and pain that has been suffered by my wife and family. Government leaders have an obligation to stand as an example and to be above reproach. I badly failed to meet that standard. I hold myself accountable for violating the public trust. I know, and I deeply regret, that the conduct I engaged in has damaged the public's

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

> confidence in the government of the State of Alaska. There are many good and dedicated men and women serving in public life in Alaska and I am deeply sorry for the shame, embarrassment, and damage my conduct has caused them and the institutions they serve.

D. Sentencing Considerations

In determining a fair and reasonable sentence in this case, the defendant agrees that the Court is bound by the statutory mandate of 18 U.S.C. §3553(a). The statute mandates that when determining the proper sentence to be imposed, the Court shall consider seven factors:

1. the nature and circumstances of the offense and the history and characteristics of the defendant;
2. the need for the sentence imposed –
   (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
   (B) to afford adequate deterrence to criminal conduct;
   (C) to protect the public from further crimes of the defendant; and
   (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 kinds of sentence and the sentencing range established for by the Guidelines;
5. any pertinent policy statement issued by the Sentencing Commission; pursuant to 28 U.S.C. 994(a)(2) that is in effect on the date the defendant is sentenced;
6. the need to avoid unwarranted sentence disparities among defendants; with similar records who have been found guilty of similar conduct; and
7. the need to provide restitution to any victims of the offense.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

With the exception of factors 5, 6 and 7, these considerations are addressed *in seriatim*:

(i) Offense Characteristics

Mr. Anderson and his family recognize the serious nature and gravity of the conviction in this case. Mr. Anderson recognizes that his breach of the public trust has undermined confidence in Alaskan government. There are, however, several points that are relevant to the Court's understanding of the "nature and circumstances of the offense" in this case, that he respectfully requests that the Court take into consideration.

First, *outside of the circumstances of this case,* Mr. Anderson was a tireless and selfless representative and advocate for the people of the State of Alaska. Mr. Anderson's exemplary public service record, particularly in the Alaska State Legislature, should also be considered in the Court's analysis. A cursory review of these accomplishments, diligence, and laudatory endeavors is recapped below.

Mr. Anderson was the House Labor & Commerce Committee chairman, and the vice chairman of the House Judiciary Committee as a freshman legislator. This is reflective of the high respect he enjoyed from his legislative colleagues who elected him to those positions. He also served as the chair of the Administrative Regulatory Review Committee, a joint House/Senate committee, during his second term. In these roles, he sponsored

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

innovative policy initiatives, ranging from mandatory insurance coverage for colorectal cancer screening to DNA Database expansion for Alaska's Scientific Crime Lab allowing for exoneration efforts as well as preemptive identification and crime solving.

Many of the letters of support submitted to the court address Mr. Anderson's commitment to good public policy. The Court should also note that passage of any legislation in the Legislature requires a lengthy review process in multiple committees in both the House and Senate, subsequent approval on both body's Floors, and ultimately signature by the Governor to become effective. Often, it requires an arduous and two session endeavor. The thrust of Mr. Anderson's advocacy as a legislator focused on children's and women's issues, criminal law and public safety enhancement, education funding adequacy and teacher benefits, anti-bullying policy, law enforcement and peace officer benefits, and guardian and senior care regulatory improvements, to name a few. Mr. Anderson's successful legislation includes:

HB 49	EXPAND DNA DATABASE	ANDERSON, HAWKER	CHAPTER 88 SLA 03	06/13/03
HB 216	FUEL FUND/MUNI TAX : REFINED FUEL PRODUCTS	LABOR & COMMERCE	CHAPTER 117 SLA 03	06/18/03
HB 418	REAL ESTATE COM'N/LICENSEE/HOME INSPECT	LABOR & COMMERCE	CHAPTER 106 SLA 04	06/29/04
HB 421	DEED OF TRUST RECONVEYANCE	ANDERSON	CHAPTER 113 SLA 04	06/29/04
HB 423	TAXICAB DRIVER LIABILITY	ANDERSON	CHAPTER 69 SLA 04	06/16/04
HB 427	GUARDIANS, CONSERVATORS, OPA, ETC	ANDERSON	CHAPTER 84 SLA 04	06/25/04
HB 467	COMMEMORATIVE QUARTERS COMMISSION	ANDERSON	CHAPTER 33 SLA 04	06/03/04

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

HB 476	AK STATEHOOD CELEBRATION COMMISSION	ANDERSON	CHAPTER 122 SLA 04	06/29/04
HB 517	SECURITY ACCOUNT BENEFICIARY DESIGNATION	LABOR & COMMERCE	CHAPTER 121 SLA 04	06/29/04
HB 540	WORKERS' COMPENSATION INSURANCE RATES	LABOR & COMMERCE	CHAPTER 62 SLA 04	06/16/04
HB 542	CONSTRUCTION CONTRACTORS	LABOR & COMMERCE	CHAPTER 144 SLA 04	06/30/04
HB 81	CONTRACTORS & HOME INSPECTORS	ANDERSON	CHAPTER 9 SLA 06	03/23/06
HB 115	AIRPORT CUSTOMER FACILITY CHARGES	LABOR & COMMERCE	CHAPTER 5 SLA 05	04/01/05
HB 123	OCCUPATIONAL BDS: EXTENSION/RECEIPTS/PSYCH	LABOR & COMMERCE	CHAPTER 36 SLA 05	06/02/05
HB 124	COLLECTION OF DNA/USE OF FORCE	ANDERSON	CHAPTER 12 SLA 05	05/05/05
HB 216	INSURANCE RATES, FORMS, AND FILING	LABOR & COMMERCE	CHAPTER 88 SLA 05	08/04/05
HB 393	INSURANCE FOR COLORECTAL CANCER SCREENING	ANDERSON	CHAPTER 97 SLA 06	08/02/06
HB 482	SCHOOL BULLYING & HARASS POLICIES	ANDERSON	CHAPTER 109 SLA 05	08/08/06

Beyond passage of important and beneficial legislation, Mr. Anderson was pivotal in crossing party lines and emphasizing bi-partisanship. He was appointed as the AMATS legislative designee from the House, created to improve metropolitan transportation in conjunction with the *20/20 Transportation Plan*. While a Republican by affiliation, Mr. Anderson was unanimously chosen by his Anchorage House Democrat and Republican colleagues for four consecutive years, the longest serving chairman of the Anchorage Caucus. There was never an Anchorage Caucus agenda that did not include Mayor Mark Begich, or members of the School Board, Assembly and University.

Mr. Anderson also served on the Anchorage Parking Authority, Municipal Light & Power Commission, Zoning Board of Examiners & Appeals, Anchorage School Board, and multiple non-

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

profit boards ranging from the Big Brothers Big Sisters and Alaska Special Olympics Boards to the Alaska Theater of Youth Board and Anchorage Neighborhood Health Center Finance Advisory Committee. In concert with his legislative accomplishments, these activities reinforce consideration by the Court of a downward departure for exemplary service to Alaska.

Second, by the time the conspiracy that was the focus of this case commenced, each of the co-conspirators referenced, namely Mr. Bobrick, had become personal friends of Mr. Anderson. Mr. Anderson socialized with Bobrick and trusted him. Anderson's family likewise socialized often with Bobrick's family and friends. This took place in a variety of settings, from informal game nights to performances at the PAC. Over time, Mr. Anderson permitted that personal relationship to cloud his moral and ethical judgment.

(ii) Offender Characteristics

In addition to the offense conduct, 18 U.S.C. §3553(a)(l) also requires that the Court consider the "history and characteristics of the defendant." It is sufficient for purposes of Section 3553(a)(l) to highlight several relevant conclusions about Mr. Anderson that cannot be seriously disputed and which should mitigate the severity of the punishment needed in this case. This factor weighs heavily in favor of imposing a sentence well below the Guidelines range.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

Tom Anderson is not a hardened criminal nor is he a man who threatens society. He stands before the Court without any prior criminal record; a man who deeply loves his family and friends and certainly wished nobody harm. His character, his generosity, his general good nature – all these fine qualities showed themselves often and in abundance throughout his life, yet they were not the focus of the lengthy trial that resulted in his conviction. The trial focused almost exclusively on actions, decisions, and judgments Mr. Anderson made that were wrong. Yet, it is beyond question that Mr. Anderson did many more things right during his numerous years in public life. The Defense implores the Court, under Section 3553, to carefully consider his good acts in fashioning a just sentence.

Before his conviction in this case, Mr. Anderson had no prior criminal convictions and lived his life as a law-abiding citizen. He is also a loving man, who cares deeply for his wife and children. Further, he is widely respected for his kind heart and generous spirit. Mr. Anderson has been active in local and national charities both before and after he entered the Legislature. His charitable works have included the donation of significant time and money to charitable and civic organizations. Mr. Anderson accumulated a long record of public and charitable service to our state and community.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

In his early 20s, he was appointed by Mayor Rick Mystrom to the Municipal Light & Power Commission and ultimately served as vice-chairman. He was appointed by Mayor George Wuerch and served on the Zoning Board of Examiners and Appeals with honor. In a well-publicized and very public application process, Mr. Anderson was chosen by sitting Anchorage School Board members to fill a vacancy, in competition against 29 other well-qualified applicants (four of whom later served in the Board) in 2000, and he received the Anchorage School District's *Award of Excellence* in 2001. Later, in 2002, he earned the Chamber of Commerce's *Top 40 Under 40 Award*. From the Alaska Traumatic Brain Injury Association to the N.A.A.C.P., his volunteer efforts are substantive.

Beyond numerous bills and legislation passed for public safety enhancement and education, health and urban design as a state legislator over four years of service, he also received numerous awards including recognition from the Anchorage Fire Employees Association and Public Safety Employees Association, as well as the Anchorage Police Department Employees Association's *Recognition of Outstanding Efforts on Behalf of Law Enforcement Professionals* in 2004, and the *David P. Hutchen Public Service Award* from the Alaska Power Association in 2005 for protecting the interests of electric consumers.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

The Defense recognizes that pursuant to USSG §5H1.11 charitable, civic, public service and other goods works are not ordinarily considered a basis for a departure. However, in a post-*Booker* environment the Court may and should consider Mr. Anderson's civic, charitable and public service as a sentencing factor pursuant to 18 U.S.C. §3553(a).

The Sentencing Commission identifies these offender characteristics as normally not relevant to the departure decision, but also notes that they may be pertinent "if a combination of such circumstances makes the case an exceptional one." U.S.S.G. Ch.5, Pt.H, intro. comment. Guidelines policy statements specifically provide that the Court "may depart from the applicable guideline range based on a combination of two or more offender characteristics or other circumstances, none of which independently is sufficient to provide a basis for departure" if those characteristics, taken together, make the case exceptional, and each unique offender characteristic is present to a substantial degree.

For instance, in *United States v. Canova,* 412 F.3d 331 (2nd Cir. 2005), the defendant was convicted after a jury trial of a wide-ranging conspiracy to defraud the Medicare Program of *$5 million* and of making false statements to the government. The district court ultimately determined that the defendant's base offense level was fourteen (14) and, with no criminal history,

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

set the Guidelines range at fifteen (15) to twenty-one (21) months. However, relying on the defendant's prior community service as a volunteer fire-fighter and his prior honorable service in the military, the district court departed by six (6) levels pursuant to U.S.S.G. §5K2.0. As a consequence, the district court sentenced the defendant to four (4) consecutive *probationary* terms of one (1) year. *Id.* at 334-36,343. On appeal of the sentence by the United States, the Second Circuit affirmed the departure. The Court of Appeals explained that, while Guidelines §5H1.11 discourages departures on the basis of military service and civic contributions, it does not prohibit such departures if those factors are present to a substantial degree. *Id.* at 358. Mr. Anderson's considerable charitable, civic and good works likewise should be considered by the Court.

Further, as the letters from some of those friends, family members and colleagues attest, Mr. Anderson is a devoted, kind and generous man, often putting the interests of others before his own. Although many character letters were submitted to the Court, the following briefly highlights excerpts of letters indicative of Tom Anderson's character.

> ➢ Tom Anderson is a hardworking, kind, generous and most importantly for you to consider, complex man. I think you'll find, upon deep reflection, Tom Anderson is a good man with a good heart. He will suffer from his mistakes, based on the true character and contemplative Tom I know and appreciate, irrespective of any sentence you impose.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

James Patton, Friend

- If I were to recommend Tom Anderson today, for a position in public service or leadership, I would still do it with 100 percent confidence in him as a man of integrity and commitment despite the charges and conviction against him. Tom is an honest man. I knew him at age 19, when as chairman of the Young Republicans, I recruited him to join our organization. He and I have shared, over the years, many details about our lives and things that only good friends would share. We pursued lots of campaigns together. I've walked with him through his personal relationships; I've watched him study for and earn his legal degree; and I've seen him develop his consulting business. In conclusion, while I would quickly describe Tom as competent, funny, and a fighter, Tom is also genuine. He has expressed his remorsefulness to me, regarding the mark on public perception, due to his actions. He recognizes the distinct line between public duty and personal gain and has repented for his sloppiness. I have witnessed him grow through this challenge.

Eugene Harnett, Friend and Colleague

- I have known Rep. Anderson since before his election to any public office. While Tom was an aide to the Alaska House of Representatives I recall working with him as a University of Alaska college student lobbying for increased University funding. In my dealings with him in that capacity, I found him to be incredibly helpful and generous with his time. He was often willing to take an extra minute to offer advice on the legislative process and how I might be more effective in my appointed task. Since then, I have gotten to know Tom further as a friend, supporter, and former employee. Personally, Tom has always shown a tremendous amount of generosity and sincerity. On numerous occasions, Tom has offered the use of his own vehicle or a place to stay in the midst of personal turmoil.

Heath E. Hilyard, Friend and Colleague

- Tom Anderson and I served on the Big Brothers Big Sisters Board of Directors and Anchorage School

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

Board together. I also supported his first election and re-election to the State House in Muldoon. He was our family's state representative for four years, and I worked with him while I served on the Northeast Community Council Board. In that time he was responsive, attentive, and showed care in his representation whether dealing with the vandalism at Susitna Elementary, or the obtrusive snow mound three stories high across from our neighborhood, or when it came to securing much needed funding for a traffic calming study on Muldoon Road and added revenue to spark the ribbon-breaking for the Creekside Town Center construction. From supporting the military Stryker Brigade Base fence to enhancing park and urban design in Muldoon, Tom was our champion. What most impressed me was Tom's good heart.

John Floyd, Colleague and Constituent

- I have always found Tom to be sincere, motivated and intent on making our city, and the state, a better place to live. As much as that may sound like a broad sweeping statement, it is important you know just how many areas Tom has centered his efforts, and aggressively pursued changes for the better in our community, and done it all purely for helping people.

Rina Salazar, Friend

- I know Tom has been crushed by the allegations from the United States; feels repentant and contrite for his actions having embarrassed the Legislature and impugned the process; and now he only seeks to become a better man, for the sake of his God, family, State and self. He may have broken the law, but he still has humility.

Connie Graff, Family Friend

- Tom has been brutally honest with me regarding the developments of his trial. I know he is hurting greatly inside on every level I can imagine. Most, Tom loves his children and wants to hurt them as little as possible. Obviously, damage has been done and will be done. Given our all-too-short lives, I would request the Court be mindful that the longer

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

Tom is separated from his children and his loved ones, the more damage will be done and less time will be afforded for the hoped-for healing.

Lou Sheehan, Friend

- In the case of former Rep. Anderson, I wish to convey a fairly straightforward message. Tom was a good legislator. In my opinion, he had the best interest of Alaskans on his moral and ethical compass. Conversely, people make mistakes. A person like Tom, who quite honestly, would give you the shirt off of his back, and then interrupt you as you thank him because he has a million thoughts in his head, is a unique person. I truly think that this personality dynamic of Tom Anderson the "legislator," is what put him into the fix he now finds himself. He was too aggressive to help people, and too naïve or ill-prepared to recognize that politics and business are often comparable to a jungle at times, where motivations of an advocacy overrides concern for the public servant.

John Harris, Friend and Colleague

- Our son has had public service in his blood. Perhaps it is genetic. Tom's father was the former director of the Alaska State Troopers, and a former member of the United States Army and Seattle Fire Department. I worked with the Alaska Peace Officers Association and ran the Defensive Driving Programs for many years. Young Tom's Grandpa Torgny Anderson was a county commissioner and mayor in Minnesota. Of the Anderson Family, Torgny's father Tonnes was the first legislator, serving in the House of Minnesota's State Legislature. Our son Tom comes from a long line of public servants dedicated to making our communities better...."

Christiane Anderson, Mother

All of these very positive offender characteristics evidence a man who has devoted his adult life to Alaska, his family and his community, and can grasp an understanding of his wrongdoing. Any punishment that can be called "just" and

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

reasonable should account for the contributions and contrition of such a man.

(iii) Seriousness of the Offense and Providing a Just Punishment

18 U.S.C. §3553 also requires the Court to impose a sentence that reflects the seriousness of the offense, promote respect for the law and to provide a just punishment.

In analyzing the seriousness of the offense, one can not avoid the obvious: Mr. Anderson stands convicted of having violated the Hobbs Act. He fully recognizes, accepts, and acknowledges this fact. But recognition of the seriousness of the offense does not *necessarily* compel the imposition of a lengthy term of incarceration. An analysis of all of the relevant sentencing factors, and sentencing policy, suggest that a two to three year sentence may be imposed; such a sentence would most certainly meet the *ends of justice* and fairly reflect the seriousness of the offense.

(iv) Deterrence

Deterrence to criminal conduct is one of the major considerations embodied in 18 U.S.C. §3553. Certainly, the lessons learned over the past two and a half years suggest that the consequences of criminal conduct are dire and often quite severe. Indictment or no indictment, conviction or no conviction, for the vast majority of Alaska citizens, Tom Anderson was guilty of misusing his office before a single

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

witness took the stand in this case. The investigation itself has turned his life upside down. Many of his friends and associates were interviewed merely because they knew Tom Anderson. Mr. Anderson's reputation has been destroyed. A politician or political employee since college, his political life is over.

Because of the media coverage of this and related cases, there is no need for the Court to sentence Mr. Anderson to a period of incarceration beyond a 27 to 33 month parameter in an effort to deter future conduct. Mr. Anderson's case is a cautionary tale of what happens when one violates the public's trust by ignoring one's conscience and allowing oneself to be motivated by ambition and manipulated by the "carrot" of earning income improperly while being a public servant.

Politicians, staff, lobbyists and public officials in Alaska are all familiar with the Prewitt-Bobrick-Anderson case and former Rep. Anderson's role. Moreover, they are aware that, as a result of his misdeeds, Tom Anderson was publicly disgraced, is now deeply in debt, and has lost his professional reputation, job, financial security, Alaska Permanent Fund dividend, and right to vote. Mr. Anderson's life will never be the same and his story already serves as a deterrent for colleagues and government officials in Alaska.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

Mr. Anderson has lost his remaining political career and will effectively be foreclosed from public service. In all likelihood, he will be prohibited from practicing law for life as well as severely limited and potentially denied from acquiring a real estate, mortgage, securities or insurance license, the very areas he might reasonably pursue with his educational background. Further, he has been subjected to the ostracism of his friends, family, co-workers and associates.

Tom Anderson will now be labeled a "felon." As such, the collateral consequences are indeed severe. Absent an extraordinarily unlikely presidential pardon, he: has lost his right to vote (ALASKA CONST. art. V, § 2.); forever lost his right to serve on a federal jury (28 U.S.C. §1865(b)(5)); forever lost his right to possess any type of firearm (18 U.S.C. §§921 - 930,); is largely disqualified from most state and federal employment; suffers specifically imposed occupational restrictions (18 U.S.C. §§3563(b)(5), 3583(d)); is prohibited from obtaining most types of federal licensure (21 U.S.C. §862(d)(1)); is precluded from obtaining employment with any type of federally recognized labor organization of employee benefit plan (29 U.S.C. §§504, 1111); may become ineligible for grants, licenses, contracts, public housing and other federal benefits (21 U.S.C. §862 and 42 U.S.C. §1437f(d)(1)(B)(iii)); is no longer eligible to receive food stamps or temporary

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

assistance to needy families, and the amount payable to any family or household of which such a person is a member is reduced proportionately (21 U.S.C. §§862a(a), (b), (d)(2); and will face severe limitations on international travel because of anti-felon policies.

The judicial system is well equipped to provide adequate means of deterrence for future criminal conduct. By the imposition of even a modest period of incarceration and lengthy period of supervised release with special conditions, the Court can contour a punishment with systemic safeguards. Monitored through the Office of Probation, the Court can require that Mr. Anderson inform any potential future employer of his crime; the Court can require that Mr. Anderson not be employed in a position involving public trust; and he can be required to submit to home confinement conditions, submittal of detailed financial statements and any other conditions that the Court believes will adequately deter future criminal conduct.

(v) Protect the Public from Future Criminal Conduct

The need to protect the public from the Mr. Anderson is also one of the critical sentencing factors to be considered. However, it can hardly be suggested that Mr. Anderson is a hardened criminal with a long past of endangering public safety or putting anyone but himself at risk. He is a 40-year-old member of the community with no criminal history and it appears

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

unlikely that the public needs to be protected in the future from Mr. Anderson. This is certainly not a situation where incarceration is the only means available to protect the public from future criminal conduct. Indeed, public safety should not even be considered a factor due, in part, to the societal isolation Mr. Anderson is already facing.

(vi) Kinds of Sentences Available

It is not surprising that there is a dearth of authority and academic study over the last 23 years discussing alternatives to incarceration as the United States Sentencing Guidelines typically did not permit a wide range of discretionary alternatives once certain Guideline levels were mathematically attained. This Court, however, now has the discretionary authority to consider alternative sentences for Mr. Anderson. As discussed below, it is suggested that a lengthy term of incarceration, under these circumstances, is the least effective method in achieving stated Congressional sentencing policy - even under the previously determinate U.S.S.G. sentencing system. It bodes no less beneficial to his family, either.

One of the primary purposes of our national sentencing policy and the Sentencing Reform Act of 1984 is rehabilitation. However, little documentary evidence exists to support the proposition that incarceration has any effect on rehabilitation

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

whatsoever. A May 2004 study conducted by the United States Sentencing Commission belies the critical assumption that a period of incarceration for a first time offender had any effect on rates of recidivism. *Recidivism and the First Offender*, United States Sentencing Commission May 2004. In fact, the conclusion of the study appears to point to the contrary: The more involvement one had in the criminal justice system and the longer in prison, the higher the rate of recidivism. An analysis of the study suggests that recidivism risk is lowest for those offenders with the least experience in the criminal justice system. To some, these results are not surprising. In 2001, the Honorable Jack Weinstein of the Eastern District of New York pre-empted an explanation for this seeming anomaly:

> "It is not surprising that rehabilitation continues to be linked primarily with failed attempts to reform inmates while they are incarcerated. The great shortcomings of the American rehabilitative model have taken place in the context of incarceration. See, e.g., *Powell v. Texas*, 392 U.S. 514, 530, 88 S.Ct. 2145, 2153, 20 L.Ed.2d 1254 (1968) (plurality opinion) (Marshall, J.) ("[I]t can hardly be said with assurance that incarceration serves [therapeutic or rehabilitative] purposes ... for the general run of criminals"); Matthew W. Meskell, Note, *The History of Prisons in the United States from 1777 to 1877*, 51 Stan. L.Rev. 839 (1999) (eighteenth and nineteenth-century American penal system was founded on the philosophy of Dr. Benjamin Rush, who "argued that reformation and deterrence of crime ought to be the sole goals of punishment, that the contemporary criminal codes tended to harden criminals and engender hatred towards the government, and that imprisonment should be used as the primary criminal punishment.").

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

Indeed, it can be fairly argued that national sentencing policy is fostered, not by mandating long periods of incarceration, but by the utilization of alternatives to prison. The Sentencing Reform Act of 1984 has always provided sentencing judges with some level of flexibility to consider which of the core sentencing principles: retribution, deterrence, incapacitation, and rehabilitation, are most important in a particular case, and to provide alternatives to incarceration where necessary in carrying out statutory goals. These four core principles have guided sentencing policy and implementation in one form or another since at least 1984. See, e.g., Kate Stith & José A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* 41 (1998).

The United States Sentencing Guidelines themselves, along with sound sentencing and penological philosophy, have always permitted the courts to view alternatives to prisons in appropriate and defined circumstances and to craft individual sentencing in appropriate cases. Historically, Congress recognized that the sentencing judge must have the flexibility to emphasize one purpose of sentencing over others based upon the individual circumstances of an offender and an offense. *See*, S.Rep. No. 98-225, at 58- 59 (1983) ("The intent... is to recognize the four purposes that sentencing in general is designed to achieve, and to require that the judge consider what

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

impact, if any, each particular purpose should have on the sentence in each case."). "The statute (SRA) gave the U.S. Sentencing Commission... broad authority to structure sanctions, to permit judges to individualize sentences, to be parsimonious in the use of punishment, to use non-prison sentences for nonviolent first offenders, and to avoid overcrowding federal prisons." Note, *What Did the United States Sentencing Commission Miss?* 101 Yale L.J. 1773, 1773 (1992).

In determining whether an alternative to lengthy incarceration is appropriate, courts have examined several general issues, including the risk a particular offender poses to the public, the harm caused by the crime, the defendant's prior criminal behavior, his or her likelihood of committing another crime and potential hardship to others. *Cf.* Model Penal Code § 7.01. Such alternatives for the court to consider are substantial periods of probation/supervised release, community service, drug and alcohol rehabilitation programs, home confinement, electronic monitoring or any combination of the above. Thus, it is suggested that this court can be highly consistent and in all probability fashion a sentence for Mr. Anderson *sans* a period of incarceration exceeding 27 to 33 months and still maintain the spirit and intent of congressional sentencing policy.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

It is respectfully suggested that the Court consider imposing a sentence for an incarceration period of 27 to 33 months, and give Mr. Anderson the opportunity to seek the much needed and required reflection and punishment necessary for moral rehabilitation. It is suggested that a consideration of "public protection" does not warrant a lengthy prison sentence.

E. Aberrant Behavior

For purposes of U.S.S.G. §5K2.20 policy statement - "Aberrant behavior" means a single criminal occurrence or single criminal transaction that (A) was committed without significant planning; (B) was of limited duration; and (C) represents a marked deviation by the defendant from an otherwise law-abiding life.

In considering the application of §5K2.20, "the sentencing court must conduct two separate and independent inquiries, both of which the defendant must satisfy before a departure can be granted. That is, the court must determine whether the defendant's case is extraordinary and whether his or her conduct constituted aberrant behavior." *United States v. Castano-Vasquez,* 266 F.3d 228, 235 (3rd Cir. 2001); *see also, United States v. Jimenez,* 282 F.3d 597, 602 (8th Cir. 2002). In *United States v. Guerrero,* 333 F.3d 1078 (9th Cir. 2003) the court held that prior to departing downward for aberrant behavior under §5K2.20, a sentencing court must find both that the case is

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

extraordinary and that the behavior was aberrant under the three-factor test. Obviously, in a post-*Booker* environment, the Court is not strictly bound by the requisite triptych analysis and can consider the aberrant nature of the crime in its analysis required under 18 U.S.C. §3553(a). A single act of aberrant behavior can support a departure. *United States v. Fairless,* 975 F.2d 664(9th Cir. 1992).

The crime, in Mr. Anderson's case, was committed without significant planning. Although, to be sure, there was some planning involved in the nature of the work that Mr. Anderson would be doing with Mr. Bobrick. Both gentlemen were friends and, as is clear, Mr. Bobrick ultimately wanted to depart from the lobbying business but did not want to simply "drop" the clients that he nurtured and represented. (*See*, Exhibit A, p. 2; PSI ¶ 58). According to the Government and the trial testimony, Mr. Bobrick believed he could have a political website and lobbying firm with Mr. Anderson, and gradually transition out of the business. Indeed, PSI ¶ 61 accurately portrays the planning involved in the anticipated endeavor:

> According to Bobrick, Pacific Publications was an on-line business concept created by Bobrick. The concept was every municipality, city, and incorporated towns across the state of Alaska could place their legislation and political information in one central location. There were no sites like this in Alaska, and it was difficult to research different legislation related to areas of Alaska. Bobrick advised that Anderson was involved with Pacific Publications. Bobrick stated that in hindsight, the only thing

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

> Anderson had to offer to the company was the fact that he was a "sitting legislator." Anderson was the managing editor and advertiser for the company, although Bobrick admitted that Anderson did very little work for the business and did not provide any work product.

"The belief for Anderson's involvement in the company was the idea as a current legislator, Mr. Anderson could assist companies and individuals advertise and direct the ads toward politicians." (PSI ¶ 62). Most of the planning was between Mr. Bobrick and Frank Prewitt - largely unbeknownst to Mr. Anderson. It is undisputed that in July or August 2004 Mr. Bobrick established Pacific Publications and funded it largely through money obtained from Cornell Corrections. (See, PSI ¶¶ 28, 29). Certainly Mr. Anderson was not involved in initially creating or funding Pacific Publishing. Nor was he yet involved in any conspiracy as he had not been approached by Mr. Bobrick with respect to Cornell. In fact it was on July 21, 2004 that Mr. Bobrick initially contacted Mr. Prewitt with respect to enlisting Mr. Anderson. (See PSI ¶ 24.) The first time there was any mention of a quid pro quo, or that Mr. Anderson had any specific knowledge of the methodology of payment, was on August 17, 2004. By that time most of the planning had been done by others and was done prior to Mr. Anderson even entering the conspiracy hatched between Messrs. Bobrick and Prewitt.

As to the limited duration, it is admitted, as it must be, that Mr. Anderson received money over a four month period of

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

time beginning on August 21, 2004 and ending on December 21, 2004. Certainly such was of limited duration.

Lastly, it is clear that Mr. Anderson's conduct is without question a marked deviation from an otherwise law abiding life. We point out that the parties concur that Mr. Anderson has a Criminal History Category of 1 with no prior arrests or convictions. It is beyond the pale to suggest that Mr. Anderson did not lead an exemplary and law abiding life.

F. ATA Contract

The draft PSI initially suggested that a two level enhancement pursuant to U.S.S.G. §2C1.1(b)(1) be applied as Mr. Anderson's consulting contract with the ATA was a separate bribe. The Defense objected and the Office of Probation ultimately agreed. It is anticipated that the Government may object to the final PSI in this regard and the Defense desires to address the issue.

It appears that the Government has taken the position that payments received from the ATA were separate, singular acts of bribery from the acts of bribery that Mr. Anderson was convicted of. The Defense vehemently disagrees. First, it is pointed out that at no time was Mr. Anderson charged, indicted or convicted for his conduct with respect to the ATA payments. As a result, he was never afforded the opportunity to defend against these charges. However, it now appears that the Government may seek

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

to punish him upon mere conjecture and for conduct that he has never been convicted of having committed. As well, he would even be denied the opportunity to defend against these charges, face his alleged accuser or be afforded any form of due process relative to these serious allegations. The Court's attention is directed to the Ninth Circuit's admonition in *United States v. Hahn*, 960 F.2d 903, 908 (9th Cir. 1993):

> "In mandating penal consequences for "relevant conduct" in certain cases, the Guidelines implicate the principles enunciated in *In re Winship,* 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). *See Restrepo,* 946 F.2d at 659-60 & n. 9; *id.* at 664 (Norris, J., dissenting) ("[i]n allowing... separate crimes to be used as sentencing factors with mandatory penal consequences, the Guidelines encounter the due process mandate of [*Winship*]"); *United States v. Miller,* 910 F.2d 1321, 1330-31 (6th Cir. 1990) (Merritt, C.J., dissenting), *cert. denied,* 498 U.S. 1094, 111 S.Ct. 980, 112 L.Ed.2d 1065 (1991). *Winship,* of course, interprets due process to "protect[ ] the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime... charged." 397 U.S. at 364, 90 S.Ct. at 1073. Although facts pertinent to sentencing under the Guidelines normally need only be proved by a preponderance, *Restrepo,* 946 F.2d at 661, such facts frequently amount to criminal conduct apart from the offenses of conviction.

The Government cannot prove by a preponderance of the evidence that Mr. Anderson committed any illegal act with respect to the ATA. Indeed, the PSI points out at ¶ 72 that Mr. Anderson did, in fact, perform work for the fees in question. Further, we note that the record is devoid of any evidence that Mr. Anderson took any official or unofficial legislative action

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

with respect to any issues that may have affected the ATA. It is insufficient for the purposes of providing an enhancement that "the Government maintains that this was an additional corrupt contract." (Draft PSI ¶ 79.) The Government must prove that it was a corrupt contract and we do not believe a scintilla of evidence exists to that end. It is wholly improper to attempt to conclude that Mr. Anderson's work with the ATA was anything but a legitimate and permissible consulting contract. The testimony of James Rowe conclusively established that money received from the ATA was legally obtained. The entire transcript of Mr. Rowe is attached, but the critical passage is:

> Paul Stockler: And do you remember how much the Telephone Association paid him?
>
> James Rowe: It was $5,000 a month.
>
> PS: OK. And what kind of work did he do for that $5,000 per month?
>
> JR: We gave Tom a package that included the Telecommunications Act of 1996, which is a fascinating document, and a number of, a piece of legislation that had passed I think the prior year, perhaps it might have been two years before that was very significant to the state of Alaska. And some decisions, copies of some decisions and orders that came down from the Regulatory Commission of Alaska. And there were things that we were unhappy with, particularly in things coming from the Commission. So what it was: We were asking him to do research on how these were going to affect the public policy, if the State enacted legislation that would do such-and-such a thing. What

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

would be the impact on rural customers, and things of that nature?

Actual work was performed by Mr. Anderson on matters unrelated to his position in the Legislature. To elucidate this point, Mr. Rowe continued:

PS: Did, did the two of you ever have a discussion that the work and the money were paying him would not be connected in any way to legislative work?

JR: I understood that. I'm confident he did as well.

PS: OK. I assume he completed his work in December, and then he returned to the Legislature the following year?

JR: He did.

Last, on this point, ATA and Mr. Anderson had a written consulting contract (with payments made via check and duly deposited in Mr. Anderson's consulting firm's account).

PS: And the contract required him to do certain things for that $5,000 a month?

JR: That's correct.

PS: And did he fulfill the terms of that contract?

JR: He did.

PS: Would there have been any reason to invoice you after done?

JR: Only if we failed to do our part and send him the check on a monthly basis.

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

It defies credulity to suggest that someone would take a bribe or participate in an extortionate scheme, in violation of the Hobbs Act, pursuant to a written contract, properly deposit those funds and pay taxes on the income received. At all relevant times, Mr. Anderson and Mr. Rowe, along with others at the ATA, were very public about the consulting contract.

There is no basis for the Government to plausibly posit that the payments made by the ATA had any form of *quid pro quo* attached or in return for any official act. The Supreme Court has held that the Hobbs Act requires proof of a *quid pro quo* agreement between the contributor and the public officer. *McCormick v. United States*, 500 U.S. 257 (1991). Alternatively, "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Evans v. United States*, 504 U.S. 255 (1992). Here there is absolutely no evidence of a *quid pro quo or any official act being taken* and the assertion that the ATA payments were unlawful is nothing short of a bald contrivance. Thus, we respectfully request that the Court overrule the Government's objection, should it be offered, with respect to the addition of the 2 points as provided for in U.S.S.G. §2C1.1(b)(1).

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877

H. Conclusion

For the reasons, arguments and law as stated herein, the Defense respectfully requests that the Court craft a fair and reasonable sentence of incarceration for Mr. Anderson, not to exceed 33 months. Further, it is respectfully requested that the Court reject imposition of any fine upon Mr. Anderson beyond the Bureau of Prison $100 fine, per count, due at the Sentencing Hearing. The Court is also urged to limit the term of supervised release to no more than one year, following incarceration.

DATED this 8th day of October, 2007 at Anchorage, Alaska.

LAW OFFICE OF PAUL D. STOCKLER
Counsel for Thomas T. Anderson
By: s/ Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
Phone: (907) 277-8564
Fax: (907) 272-4877
E-mail: paulstockler@aol.com
Alaska Bar No.: 8606032

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2007, a true and correct copy of the foregoing document was served electronically on the following:

Joseph W. Bottini, Assistant U.S. Attorney
James A. Goeke, Assistant U.S. Attorney
Edward C. Nucci, Acting Chief, Public Integrity Section
Nicholas A. Marsh, Trial Attorney, Public Integrity Section
Edward P. Sullivan, Trial Attorney, Public Integrity Section

s/ Paul D. Stockler

Law Office of Paul D. Stockler
1309 W. 16th Avenue
Anchorage, Alaska 99501
(907) 277-8564 fax (907) 272-4877