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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	Case No. 4:07-cr-00005-02-JWS
)	
Plaintiff,)	GOVERNMENT’S SENTENCING
)	MEMORANDUM AS TO
vs.)	DEFENDANT JAMES C. HAYES
)	
)	
JAMES C. HAYES,)	
)	
Defendants.)	

COMES NOW the United States of America, by and through counsel, and submits its sentencing memorandum as to defendant James C. Hayes in the above captioned case as follows:

I. INTRODUCTION

James C. Hayes (Jim Hayes) stands convicted to 16 felony offenses for his actions, in conjunction with his wife Murilda C. Hayes (Chris Hayes), illegally diverting funds awarded to Love Social Services Center (LSSC) for programs to benefit disadvantaged children for the personal benefit of the Hayes' and their church Lily of the Valley Church of God in Christ (LOVCOGIC). James Hayes was charged in the Second Superseding Indictment with 24 counts of Conspiracy, Misapplication from an Organization Receiving Government Funds, Money Laundering and Filing False Tax Returns. He was convicted at trial of one count of Conspiracy to Misapply Funds (Count 1), four counts of Misapplication concerning the years 2001 - 2004 (Counts 2-5), nine counts of Money Laundering (Counts 13,-16, 18 - 21 and 37), and two counts of Filing False Tax Returns for the tax years 2003 and 2004 (Counts 95 and 96). Hayes was acquitted of one count of Misapplication concerning 2005 (Count 6) and three counts of Money Laundering relating to cashier's checks issued to Marlin Leasing (Counts 71,73 and 77). The jury hung on seven counts and the court later granted the government's motion to dismiss these counts. They involve five counts of money laundering (Counts 7,9,10,12 and 31) and two counts of Filing False Tax Returns (Counts 93 and 94).

The Presentence Report calculates an offense level of 28 derived as follows:

Misapplication and Conspiracy

Base Offense Level	6
Loss Amount (Over \$400,000).....	14
Misrepresentation Concerning Charitable and Educational Institution...	2
Obstruction of Justice.....	2

Total for Misapplication Offenses **24**

Money Laundering

Base Offense Level.....	22
Adjustment for Money Laundering.....	2
Adjustment for Sophisticated Laundering.....	2
Obstruction of Justice.....	2

Total for Money Laundering Offenses **28**

The offense level for the tax counts is 18. Under the grouping rules no units are added for these offenses. Thus, the total offense level is 28, and the applicable guideline range for this offense level is 78 - 97 months.

Defendant James Hayes submitted numerous legal and factual objections to the PSR. His legal objections fall in to two general categories: First, he claims that the loss amount attributable to him under U.S.S.G. § 2B1.1 is limited by the

amount of theft required to be proven as an element of the crime. In other words, he claims that relevant conduct, as defined by § 1B1.3, is irrelevant to the guideline calculation and therefore only amounts necessarily found beyond a reasonable doubt by the jury may be considered as “losses.” Related to this argument, he also claims that acquitted conduct, conduct encompassed by counts on which the jury failed to reach a verdict, and court findings based on evidence introduced at trial cannot form the basis for the court’s loss determination.

Second, Hayes argues that the PSR improperly applies § 2S1.1(a)(1) for the base offense level on the money laundering counts when the court should apply § 2S1.1(a)(2). Finally, Hayes appears to combine and conflate the above two theories by arguing that an acquittal or hung jury on a money laundering count is a finding that funds related to that count were not misapplied and cannot be considered for purposes of loss. Each of defendant’s objections, as explained below, is contrary to well established principles of sentencing law which not only permit, but require, the court to consider relevant conduct

Although difficult to discern from his objections, a review of defendant’s calculations suggests that other than his dispute with the loss amount calculation under § 2B1.1 and §2S1.1(a)(1), defendant’s only other objection to a guideline adjustment is to the finding of sophisticated laundering under § 2S1.1(b)(3). PSR ¶¶

98. Thus, Hayes does not appear to dispute the adjustments for misrepresentation concerning a charitable organization under § 2B1.1(b)(8) applicable to the misapplication counts and obstruction of justice under § 3C1.1 applicable to both the misapplication and money laundering counts. .

Defendant's factual objections generally follow the defense theme put forth at the trial through argument and Jim Hayes own testimony and necessarily rejected by the jury-- that is that he had no responsibility for of knowledge of anything that happened at any time, at any place or in any organization and if he did it was approved by some government official. The government supports the calculations and findings of the PSR, and of the jury, that James Hayes was a full partner with Chris Hayes in the illegal diversion of LSSC's funds for the benefit of LOVCOGIC, its affiliates, the Hayes and family members.

II. SUMMARY OF PERTINENT FACTS

The court heard the evidence adduced at trial and the government will not repeat the extensive evidence here. Despite the jury's verdicts, however, Hayes continues to claim that he was not responsible for any joint action taken with Chris Hayes; he did not conspire with her; he was not responsible for the financing of the church construction or any non-profit money diverted to family or church uses; and had no responsibility for any other illegal actions. In light of these claims and

anticipated sentencing arguments, the government will highlight some of the pertinent facts and evidence established at trial.

A. Joint Action

Jim Hayes was a full partner with Chris Hayes in illegally diverting money from LSSC for the benefit of LOVCOGIC and its related entities and for the benefit of the Hayes and their family. The joint effort, and Jim Hayes' attitude toward the government grant funds and the charitable organization for which he agreed to be a fiduciary, were evident from the very creation of LSSC. For example, Jim Hayes, as the person in charge of the financing for the church construction project, provided documentation to Mt. McKinley bank showing that the church needed \$350,000 from the sale of the old building to pay for the project as originally budgeted. He then marketed the property for that amount. When there were no offers in 6 months, Jim Hayes and Chris Hayes agreed to sell the old church to LSSC for \$375,000 knowing that all of the money for the sale would be paid out of the HUD grant funds.

At this time Jim Hayes was the treasurer and a director of LSSC. As such he was a fiduciary for the funds to be spent from that organization. His and Chris' actions in knowingly contracting to pay the church above market value with government grant funds simply demonstrates their attitude toward LSSC, and the

funds earmarked for that organization. Both, almost from the creation of the non-profit organization, saw it as a cash cow that could be diverted and used to fund the church and personal uses. The evidence of the thefts of the two \$40,000 checks introduced at trial further highlights how the joint theft worked.

By 2001, it was clear that the construction project on the new church was running significantly over budget and outrunning LOVCOGIC's legitimate funding sources. In June 2001, shortly after all of the funds from the \$375,000 allocated from the grant for purchase of the old church building, James Hayes went back to Mt. McKinley bank and obtained an additional \$200,000 construction loan. This money was also quickly spent and was insufficient to cover LOVCOGIC's construction bills. In the fall of 2001, Jim Hayes again went to the bank requesting an additional \$85,000 to pay off the remaining contractors. The bank granted the \$85,000 supplement, originally believing that this was the final amount needed to pay off any pending bills. The church construction loan was then converted to long term financing in December 2001.

Contrary to Jim Hayes' testimony at trial and continued assertion in response to the PSR, every witness who testified at trial identified Jim Hayes as the person with full and authoritative control of the church financing. He approved all the bills, and he dealt with the bank loans, deciding when to seek

more money and how much the church needed. Jim Hayes was the person the vendors called and were told to call when bills were overdue. When the church ran out of money in November 2001, Jim Hayes was the one who found money to pay for overdue and incoming bills and for more furnishings ordered directly by him and Chris. He did so by conspiring with Chris to illegally divert LSSC funds.

1. The Two \$40,000 Misappropriations

On November 21, 2001, just prior to the closing on the long term financing for the new church, Chris Hayes signed a \$40,000 written from the LSSC HUD account. The memo section falsely stated that the check was to pay LOVCOGIC for “renovation work.” At trial Don Thomas testified that there was no overlap in construction at the two locations. Other witnesses corroborated this testimony noting that LOVCOGIC had never paid for LSSC renovation work. Jim Hayes personally deposited the check in LOVCOGIC’s Edward Jones account. GX 175b states this in Hayes’ own handwriting. All \$40,000 was then spent in a matter of days, at James Hayes direction, to pay pending bills due to contractors on the church construction project – including approximately \$11,000 to pay the closing costs on the long term financing from Mt. McKinley bank for the church project.

Hayes provided the Edward Jones statement showing the \$40,000 deposit to

Mt. McKinley bank.¹ The only reason to have provided this statement was to mislead the bank that LOVCOGIC had the funds to pay its final bills. This influx of LSSC funds, however, was still insufficient to pay all pending construction bills.

During the period from late 2001 through early 2002, a host of contractors testified that they were trying to get payment for overdue bills from Mr. Hayes. For example, JoAnn Kockrine of Floorcraft noted that LOVCOGIC's bills were 200-300 days overdue. In February 2002, the Hayes **together** repeated their previous actions, with Chris Hayes writing a check on the LSSC HUD funded account for another \$40,000. This time she falsely wrote that the funds were for "gym rental for 2002 youth programs." The money was again deposited into the LOVCOGIC Edward Jones account and used to pay church construction bills at Jim Hayes' direction. (At this time there was a gymnasium in the LOVCOGIC building, but it was unfinished with an unsealed floor and no lines and no backboards.)

¹In his objections to the PSR, Jim Hayes claims that the court dismissed the count related to this theft. That, however, is not the case. The \$40,000 misapplication was included as part of the 2001 § 666, Count 2. It was not a separate money laundering count. The government did charge that the payments made to various vendors out of the deposit of these funds were money laundering (Counts 7, 10 and 12) and the jury hung on these counts. Indeed, at trial, defendant did not appear to put forth any dispute that these funds were inappropriately diverted to the church's use. His claim instead, appeared to be that he did not know the money came from LSSC. (Either that or that someone from HUD had authorized the use of the funds this way.)

As was undisputed at trial, by November 21, 2001, LOVCOGIC was completely out of legitimate funds to pay for any further construction expenses or furnishings. Despite Jim Hayes' statements to the bank, other bills were still outstanding and there was no money for further furnishings and other operating expenses.

As set forth in government exhibit 150, all future construction bills with the exception of a \$75,000 payment to Star Electric came from LSSC funds, for the most part, funded from the HUD account. Jim Hayes was well aware of this fact. He was in charge of virtually all major decisions for the church; he was in charge of the construction financing, he was the person all others had to go to with questions about how to pay bills; he was the person ordering personal furnishings for his office, signs, a fountain, lucite podiums with his name engraved on them and other items well after he was aware the church had no money and well after he himself had hand walked cashier's checks representing stolen proceeds to vendors to pay overdue bills. He worked directly with Chris Hayes to contract with Marlin Leasing to provide the audio system for the church, knowing that the church could not pay for this high end system and that they were going to divert, defraud and misapply monies that were granted for use of the non-profit to further outfit Jim Hayes' church. As Joe Thomas and Michael Scott testified at trial, this system

was not put in for use of the children of the non-profit. The children were not interested in learning how to use the audio system. It was for the sanctuary of the church. It was because Jim Hayes wanted top quality equipment for **his** church. As Frank McNally pointed out, it could never have been approved as a proper grant allocation. HUD funds could not be used for anything connected with the religious mission of the church and could not be installed in a church sanctuary.²

2. Altered Documents

Other direct evidence of joint action came, for example, in the form of altered documents found in Jim Hayes desk drawer. These were the carbons of the cashier's checks to GCI, ACS and Holm Town Nursery that were used to pay for church operating costs and the fountain. The carbons were then altered to make it look like the remitter on the checks was LOVCOGIC instead of LSSC. The tithes and donations to COGIC entities demonstrate the same type of joint action, in particular the \$1,000 money order to New Jerusalem for the church dedication. This involved the money order obtained by Chris Hayes in response to a letter from Pastor McCormick to Jim Hayes soliciting donations. Jim Hayes' actions concealing from the church the source of construction payments by personally

²The government has attached the key charts from the trial for the court's reference as these provide the basis for the loss amounts listed in the PSR.

writing “paid by pastor (loan)” on invoices he knew to have to paid with stolen funds and, finally, his series of lies and misrepresentations on the stand further underscore his knowledge and deliberate actions to cover up the Hayes’ joint scheme and his continuing attempt to deny responsibility for any and all illegal conduct.

3. Personal Items

Jim Hayes was also involved with and well aware that Chris Hayes was using cashier’s checks and money orders to conceal stolen LSSC funds. For example, Jim Hayes hand delivered cashier’s checks to Chandler Plumbing and Fifth Avenue Designs obtained with stolen proceeds purchased with illicit checks to cash written by Chris Hayes. He was similarly aware other monies were being stolen for the benefit of his family. For example, he personally filled out and cashed a \$1,000 money order purchased with another check to cash stolen by Chris Hayes. He went with Chris Hayes to pick out furniture from Bowers Office Supply for their personal offices in the church at a time when he knew that the church was out of money and resources to pay for the items. He went with Chris Hayes, in Memphis, to pick out podiums for the church, again with the knowledge that the church would not be paying for these items. Jim Hayes ordered top of the line plumbing fixtures for his personal bathroom paid for by LSSC funds.

According to the testimony of numerous witnesses, Jim Hayes ran all of the financial matters for the church. It was an autocratic organization with Jim Hayes in charge of all major decision making. Indeed, as testified by Joe Thomas, Jim Hayes repeatedly preached that the men of the church were to act in accord with their wives in all matters including financial. He urged in his sermons that couples should have joint banking accounts and checking accounts. He and Chris Hayes followed this advice. They had joint accounts and even shared a joint check register. With this background and the proof of the Hayes' joint action on so many other matters, other items that stand out as items he certainly knew came from stolen funds include:

1. Allstate car insurance payments. Allstate Agent Jim Ozimkoski testified that throughout his relationship with the Hayes his dealings were mostly with Jim Hayes and that Jim Hayes would hand deliver car insurance payments. The exhibits at trial, set forth in GX 200, the chart of stolen HUD funds, shows that two years of car insurance payments were paid by stolen LSSC funds. As with other items, Jim Hayes was the contact and certainly knew he was benefitting from additional thefts.
2. The plasma T.V. and ornamental lighthouse. These items, costing over \$5,000, although ordered by Chris Hayes, were prominently displayed in the

living room and back yard of the house and are big ticket items that Jim Hayes certainly would have been aware of.

3. The Hayes' son's wedding reception.

4. The many donations and tithes to the church paid for with LSSC funds, reported to the church as family donations and taken off the Hayes' tax returns.

Jim and Chris Hayes abused their positions in the community, in the church and the non-profit to take money meant to run programs for underprivileged youth in order to enhance their own personal standing. As the court saw the LOVCOGIC members were upstanding and honest members of the community who were proud of their new church. None, other than Jim and Chris Hayes, however, engaged in spending money the church did not have. It was Jim and Chris Hayes and no one else who insisted on spending, buying and outfitting the church with no cut backs knowing that they could use her position to steal LSSC funds to pay for what they wanted. In taking these actions to benefit themselves and their image, they abused LSSC, they abused their friends and family who agreed to work and volunteer at LSSC and they abused their colleagues and members of the LOVCOGIC community.

III. ANTICIPATED LEGAL DISPUTES

A. Relevant Conduct and Loss Pursuant to U.S.S.G. §§ 1B1.3 and 2B1.1.

The government anticipates that Jim Hayes will argue that the losses attributable to his conduct for purposes of U.S.S.G. § 2B1.1 are either limited to the statutory amount required to be proven as an element of the offense or to those specific transactions the jury necessarily found him to have been involved with directly. Neither theory comports with the applicable law established by court precedents or the Sentencing Guidelines. In fact, under the facts of this case the loss calculation attributable to Jim Hayes conduct must be identical to that for Chris Hayes as they were involved in, and convicted of a conspiracy, and all losses were a clearly foreseeable result of their joint activity.

1. Relevant Conduct

U.S.S.G. § 2B1.1(b)(1) requires the court to calculate the “loss” amount attributable to Jim Hayes convictions for Conspiracy and Misapplication of Program Funds. The loss amount is determined based on the preponderance of evidence standard. United States v. Garro, 517 F.3d 1163, 1168-9 (9th Cir. 2008). Under Application Note 3 loss includes the reasonably foreseeable pecuniary harm that resulted from the offense. § 1B1.3 (Relevant Conduct) governs the

determination of loss where the crimes involve jointly undertaken criminal activity. It states, in relevant part, that the total offense level shall be determined:

in the case of jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.

The application notes make clear that in cases involving such jointly undertaken activity the court must determine the scope of the criminal activity the particular defendant agreed to jointly undertake – that is “the scope of the specific conduct and objectives embraced by the defendant’s agreement.” Then, if the conduct of others was both in furtherance of that agreement and reasonably foreseeable the court **must** hold defendant accountable for that activity as relevant conduct.

§ 1B1.3 App. Nt. 2.

Contrary to defendant’s anticipated claims, the court must consider all conduct in making this determination not just that encompassed by the counts of

conviction. See United States v. Grissom, ___ F.3d ___, 2008 WL 1722813 (9th Cir. April 15, 2008) (Finding, on government appeal, that district court erred in refusing to consider facts from counts dismissed pursuant to plea agreement if actions were part of the same course of conduct or common scheme or plan and qualified as relevant conduct). Thus, Jim Hayes is responsible for all losses caused by the scheme, whether the result of his own actions, joint actions or actions taken by Chris Hayes alone, if said actions were within the scope of the conspiracy and reasonably foreseeable. See e.g. United States v. Akinkoye, 185 F.3d 192, 202 (9th Cir. 1999) (defendant's losses for purposes of Guidelines not limited to her direct participation in scheme where court found entire loss was reasonably foreseeable); United State v. Cutler, ___ F.3d ___, 2008 WL 706633 (2nd Cir. March 17, 2008) p. 23 (Reversing sentence on ground district court erred in departing downward in massive bank fraud case on grounds loss amount in PSR overstated defendant's role in the offense and culpability where record showed losses were result of defendant's own conduct and the conduct of others that was reasonably foreseeable).

In a case such as the present matter, where the defendant was convicted of conspiracy the court's have been reluctant to limit a co-defendant's liability under relevant conduct. See United States v. Callipari, 368 F.3d 22, 46 (1st Cir. 2004)

(defendant responsible for total loss from defendant and co-defendant's actions is case involving wire fraud conspiracy arising from unauthorized stock options trading). See also, United States v. Osborne, 332 F.3d 1307, 1311 (10th Cir. 2003) (Relevant conduct of defendant convicted of bank fraud based on check counterfeiting organization was intended loss of entire organization.); United States v. Hull, 160 F.3d 265,268-9 (5th Cir. 1998) (Defendant liable in sentencing for fraud scheme for total amount victims were defrauded). The determination is by necessity a fact based analysis applicable to each case, however, the facts of this case compel the finding that Jim and Chris Hayes are jointly liable for sentencing purposes for all of the misapplied funds.

The Second Superseding Indictment charged Jim and Chris Hayes with a conspiracy to misapply program funds "for the personal benefit of Jim and Chris Hayes; and for the construction, furnishing and operation of LOVCOGIC's new church and other LOVCOGIC related religious entities." Ind. ¶18. All of the misapplications detailed in the loss charts, government exhibits 200 and 300, that make up the loss calculation set forth in the PSR were clearly within the scope of the charged agreement. Jim Hayes was convicted of having entered this agreement. He is responsible for the losses listed in the indictment and attributed to the conspiracy. Garro, supra, 517 F.3d at 1168-9. Jim Hayes was the instigator

of the thefts for the benefit of the church. The evidence further showed that he was personally involved in using stolen funds to pay for personal car insurance. He was the beneficiary of many other family items paid for with LSSC funds such as the plasma t.v. and lighthouse placed in his home, his son's wedding reception, and the payment of other family bills. His concern and attention to money and was demonstrated by his submission of receipts for as little as \$4.50 to the church for reimbursement; his participation in double reimbursements of credit card bills charged on Chris Hayes LSSC credit card and then submitted for reimbursement by Jim Hayes (the UAF travel double reimbursement); his request that the church not issue him IRS Form 1099's; his request to double his pastor salary and then failure to report it on his tax returns; his submission of personal credit card expenses for payment by the church and request for round number reimbursements which make any accounting impossible; his use of LSSC funds to make donations to the church and COGIC entities for which the Hayes took credit in the church and on their taxes.

Thus, whether Jim Hayes himself directly stole or solicited the theft of LSSC money for the church or had specific knowledge of each diversion has little bearing on the loss calculation; such actions by Chris were clearly within the scope of the conspiracy. It was also clearly foreseeable to Jim Hayes that Chris

Hayes might take money through the checks to cash method and other diversions. He was directly involved in a number of these transactions; he certainly never tried to stop the misapplication of moneys or withdraw from the conspiracy and he continued to solicit the use of government funded LSSC money to pay for church and personal expenses throughout the period of the indictment. The bottom line is that this was a two person scheme and conspiracy and the loss amount for purposes of sentencing should be identical for both conspirators.

B. Sophisticated Laundering – U.S.S.G. § 2S1.1(b)(3)

The government anticipates that both Jim and Chris Hayes will object to the enhancement for sophisticated laundering at ¶¶ 98–99 of the PSR. Jim Hayes objects that the individual actions of Jim Hayes were not sophisticated, and that he should not be held responsible for the actions of Chris Hayes. Chris Hayes objects on the grounds that her money laundering transactions were not particularly complex or intricate. The Hayes' transactions did involve, however, multiple layers attempting to obscure the source and destination of the misapplied funds. Further, Jim Hayes acted as part of a joint plan to misapply government funds for personal benefit and to finish construction on his church along with his wife Chris Hayes. As part of that scheme, the Hayes worked together to layer transactions to hide the source of the funds. As the case law makes clear, the question for each is

the same. If the laundering activities include sophisticated laundering the enhancement applies to both defendants. The adjustment turns on the crime not the individual defendant's role in the crime.

Laundering is sophisticated if there is a layering of two or more transactions to disguise the source of the funds. U.S.S.G. § 2S1.1(b)(3); United States v. Miles, 360 F.3d 472, 482 (5th Cir. 2004); United States v. Charon, 442 F.3d 881, 891 (5th Cir. 2006). This includes transactions that are not very successful at obscuring the source or the destination of the money but are nonetheless an attempt to hide the flow of money. Miles, 360 F.3d 482. Specifically, it has been held that asking a third-party to purchase a cashier's check and then purchasing property with the cashier's check to disguise the criminal proceeds from a drug transaction constitutes layering for the enhancement. Charon, 442 F.3d 891.

Likewise, a check derived from illegal funds used to buy three cashier's checks and some cash—one of which was deposited into a bank account and taken out the next day, one of which was used to buy a new ford-mustang convertible, and one of which was cashed at a casino—was held to constitute layering for purposes of the sophisticated laundering enhancement. Miles, 360 F.3d 482. Further, where a defendant is found guilty of conspiracy to defraud the government and aiding and abetting and one aspect of the scheme is to hide the

source of the illegally derived funds, the sophisticated laundering enhancement applies even if the defendant's particular transaction "constituted merely one incident in the jointly undertaken activity" as long as it was reasonably foreseeable to the defendant. Id.

The conspiracy that both Hayes' were convicted of was a joint plan and scheme to misapply government funds and hide the source of those funds by layering transactions through writing checks to cash and then buying several cashier's checks or money orders and delivering those cashier's checks and money orders to pay for personal items as well as for overdue bills on the Hayes' church. The scheme is set out in detail in ¶99 of the PSR. Jim Hayes' role in the offense as the head of the financing for church construction— and the primary person vendors complained to about overdue bills—was to communicate the name of the vendor and the amount of money needed to pay overdue church bills as well as personal bills, like Allstate car insurance, to Chris Hayes.

Chris Hayes would then write a check to cash on the LSSC account and get a second signer, either LaNenene Scott or Sharon Miller, to co-sign the check based on a falsely stated purpose. Alternatively, Chris Hayes would forge the signature of the co-signor. In many instances Chris Hayes falsified the memo sections on the checks to cash to hide the true reason for the check. Chris Hayes

would then cash the LSSC check at the bank and purchase several cashier's checks or money orders in the amounts and to the payees that Jim Hayes had to have indicated. Jim Hayes, in some instances, would then deliver these cashier's checks or money orders to pay personal and church-related bills. The remitters were sometimes falsified to further disguise that LSSC was the source of the funds. The carbons of the checks to GCI, ACS and Holm Town nursery were altered to hide from the vendor that the purchasing remitter was LSSC. These altered carbons with false remitters were found in Jim Hayes top, center desk drawer. Jim Hayes further wrote personal notes on a number of invoices that he submitted to the church for their records falsely stating that he was the source of funds to payments that came from LSSC. In one instance he took one of the money orders purchased by Chris with the now common check to cash scheme and filled it in to cash for the amount of \$1,000.

Chris Hayes took further action to hide her activities by lying to the CPA handling the books for LSSC in order to hide the fact of the HUD funds. As David Stephenson testified at trial, he thought he was handling all of the finances for LSSC. Indeed, he believed that he wrote the first check for the organization. When he saw what he thought was the first credit card statement, he asked Chris Hayes about a \$4,300 payment that had already been made on behalf of LSSC. He

wanted to know where the money came from so that he could code the general ledger. Chris lied to him and told him it was a donation from the church when it was actually a payment out of the HUD account that was deliberately concealed from Stephenson. Chris Hayes wrote the two \$40,000 check to LOVCOGIC referred to above and Jim Hayes hand walked them over to Edward Jones and deposited them into the church's account. He then told the church finance officers what checks to write and for how much knowing that those checks to vendors came from LSSC funds and that the audit trail would conceal this fact.

From these facts established at trial, it was reasonably foreseeable to Jim Hayes that Chris Hayes was writing checks to cash and purchasing cashier's checks and taking other actions to conceal the laundering. For example, Chris Hayes would pay for personal items on the Department of Justice American Express card. Chris identified some of the more obvious items as personal and David Stephenson then ran a schedule of amounts for which she needed to reimburse the account. To repay this debt Chris Hayes wrote a check to cash from the LSSC HUD account and then, using the same scheme, purchased two money orders pay off the listed debt to the DOJ account. Trial Ex. 100, transaction 9/15/03.

This case meets the criteria for sophisticated money laundering set forth in § 2S1.1(b)(3) as discussed in the cases set forth above.

To the extent that Jim Hayes argues that it is § 2S1.1(a)(2) that should be used to calculate the proper offense level, that argument is foreclosed by App. Nt. 3(A).

C. Other Potential Issues

Jim Hayes has made a number of factual objections to the PSR. For the most part they appear to follow his legal arguments that he is not responsible for any activity not, of necessity, found by the jury. Most do not affect the guideline sentence and thus, are not necessary to the court's decision. Nevertheless, the government will address some of them here.

Objection to ¶12 - Jim Hayes American Express Bills paid by the church. In fact, the records indicated that Jim would request round number reimbursements. There was never any way to tie payments to church bills, especially since his home utility bills were contained on the same statements. Because of this commingling these figures were not included in the tax computations and, thus, do not affect the guideline calculation.

Objection to ¶ 14. GX 15a was an estimate of value contained in the Mt. McKinley Loan file that was done by the senior loan officer.

Objection to ¶ 24. LOV Janitorial. The testimony and evidence at trial was as set forth in the PSR. LOV Janitorial was created as a fake entity and used to move money from the DOJ account which still had funds to the depleted HUD account. Majestic janitorial was created later by John Miller.

Objections to ¶¶ 27 and 30 are addressed above.

Objections to ¶ 37 --the gym floor. The testimony at trial was that the gym floor was not a proper expense of HUD funds. It appears that Chris Hayes deliberately wrote an obscure description in the grant application in order to hide the fact that the money was for another building. The testimony also established that Jim Hayes had spent the small amount of funds collected to finish the gym on paving the parking lot. However, it also appeared from trial that Jim Hayes may not have been a director of LSSC during 2005 when the funds were diverted.

Objection to ¶48 – Marlin Leasing. The testimony at trial showed that Jim Hayes was directly involved in ordering the Marlin Leasing equipment. It would never have been authorized as appropriate use of HUD funds since it was for the sanctuary of the church. LaNene Scott did testify that her mother told her it was okay since the kids might use it. She did not, however, say that the board approved it, and no board minutes show such approval. Indeed, at trial defendant claimed that Don Thomas had approved it. However, in closing counsel pointed

out that Don Thomas testified that he had never heard of Marlin Leasing and had no idea that LSSC was paying for the church's audio equipment. Michael Scott further testified that none of the kids were interested in learning how to run the equipment and he and Joe Thomas testified that the equipment was used to run church services. This was simply another joint effort by Jim and Chris Hayes to use government monies to fund church purchases while hiding the improper diversion from anyone who asked.

D. Obstruction

Defendant does not appear to dispute the adjustment for obstruction of justice based on his false testimony at trial.³ Highlighting just a few of these statements, however, reflects the breadth of Hayes' fraud and the deep character issues that should be addressed by the sentence. As the court will recall, Jim Hayes claimed, contrary to the testimony of numerous witnesses, that he was not in charge of the financing for the construction project and did not keep track of or control the Edward Jones funds. He similarly denied that as a director of LSSC he had any oversight responsibility over the expenditure of funds by that organization. He made up an incredible story as to why he had altered check

³Government counsel intended to attach the transcript of that testimony for use at sentencing, but apparently the court reporter was unable to finish the transcription despite a 5 week lead time and it will not be available until the day of sentencing.

carbons in his desk – a story that fell apart when it was pointed out that the carbons were for checks written at least a year and one half before the time that he said he and Chris were living in the church. Hayes' explanation as to why he ordered Don Thomas to put a cement foundation on the fountain that Chris ordered and they paid for with LSSC funds was almost more incredible. As the court will recall, he testified that the fountain was supposed to be delivered and placed in front of LSSC. He had no explanation as to why that would lead him to tell Don Thomas to place a cement base for it in front of the church.

IV. FACTORS UNDER 18 U.S.C. § 3553(a)

A review of the factors under 18 U.S.C. § 3553(a) supports a conclusion that a guideline sentence is called for in this case. The nature and circumstances of this offense was that it was a complex multi-year scheme to steal money. The grant moneys were solicited at a time when Jim Hayes was aware that his church project was over budget. He and Chris Hayes began stealing money and breaching their obligations to LSSC very quickly after they obtained access to the government funds. They continued their actions knowing that there was no oversight of what they were doing and others relied on their honesty and would have no knowledge of their criminal conduct. As the court could see from the numbers of investigators who testified at trial and the need to trace funds through

the bank records to dozens of vendors this was a scheme that was very difficult to detect and prove.

While Jim Hayes has no criminal record and has a long record of achievement, his actions in this case show a complete failure to take any responsibility for his own actions and a constant willingness to blame others.

A significant sentence within the guideline range is necessary to reflect the seriousness of the offense and the difficulty in uncovering such offenses when the various government grant programs must, by necessity and resources, rely on the honesty of those who undertake to administer and expend grant funds. Deterrence is also of major concern as it is easy to take the funds and extremely difficult to bring those who do to justice. This case took a team of four special agents and three auditors two years to put together.

Jim Hayes continued claims that he was not responsible to any misapplications underscore the need to protect the public from him. He is a very accomplished individual. He mislead his friends, many in his family, his church and his community. His attitude suggests he has no understanding of responsibility for any role he undertakes.

The actions taken by Jim and Chris Hayes are analogous to the recent sentencings of Thomas Anderson and Peter Kott in that both Jim and Chris Hayes

abused significant positions of private trust. They did not take bribes, but they took large amounts of money. The sentences should be similar with Jim Hayes Sentence in the range of 78-97 months.

IV. CONCLUSION

Jim and Chris Hayes were engaged in a multi- year scheme to divert program funds for their own benefit and the benefit of a large church project grew to be over budget, over furnished and over emblazoned with items identifying the church with Jim Hayes. The both acted with a complete disregard for their fiduciary obligation to the non-profit whose interest they were bound to serve. The grant of government funds for community benefit, like many government programs relies on the honesty of the persons charged with oversight of those funds. The scheme and widespread fraud engaged in by both of the Hayes was complex, difficult to uncover, and causes untold damage to the community. The program they obtained the money to run is shut down. The church itself is suffering financial ruin and the congregation is apparently suffering from the dishonesty of one they looked to for moral leadership. The guideline

recommended sentence of 78-97 months appropriately addresses the need to address the serious nature of this massive violation of private trust and deter similar conduct. .

RESPECTFULLY SUBMITTED this 28th day of April, 2008, in
Anchorage, Alaska.

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2008
a copy of the foregoing **GOVERNMENT'S**
SENTENCING MEMORANDUM AS TO DEFENDANT
JAMES C. HAYES
was served electronically on:

John Murtaugh

s/Karen L. Loeffler