IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION

UNITED STATES OF AMERICA

No. 3:08cr79

v.

MARK BARRY LYON,

Defendant.

UNITED STATES' SENTENCING MEMORANDUM

The United States, by and through undersigned counsel, hereby submits this memorandum in support of the upcoming sentencing of defendant Mark Lyon.

I. Introduction

The sentencings in this case are the culmination of an Internal Revenue Service investigation into Pinnacle Quest International that began in 2003. PQI encouraged its members to defy the tax laws, and through its vendors, sold them tools to get away with it. One of the most popular of PQI's vendors was the Southern Oregon Resource Center (SORCE), who specialized in selling structures designed to "protect assets." As told by defendants Eugene Casternovia, Mark Lyon, and others, asset protection was the first and most important step in achieving financial freedom. SORCE customers were instructed to arrange their financial affairs such that "predatory authorities" would be unable to seize their assets. But like so many other products offered through PQI, these asset protection tools were designed precisely to facilitate tax evasion.

This lawbreaking was rationalized by an elaborate ideology or "belief system," which was interwoven into the marketing and implementation of the products. Casternovia and Lyon

took full advantage of their customers' distrust for the United States government. Playing to this audience, they told customers that a shadowy government had duped them into paying taxes that the government had no authority to assess or collect. Motivated by greed, SORCE exacerbated customers' paranoia while enriching themselves. The Court must now provide the appropriate punishment for encouraging such wide-scale lawbreaking.

II. Summary of Offense Conduct

The main product sold by SORCE was a set of nominee or sham entities known as "structures." These structures were organized in the United States and Panama and included domestic LLCs and trusts, and Panamanian corporations and private interest foundations. The purpose of establishing the structures was to allow SORCEs clients to retain control of money and assets while altering who nominally held title to it, thereby hiding beneficial ownership. But while the means were complex, the goal was clear: tax evasion. SORCE also helped its clients attempt to become "sovereign" – a term that, in the tax protestor world, is interpreted to mean that one is not subject to the laws of the United States (particularly the internal revenue laws). In this regard, SORCE sold its clients purported "private" birth certificates, identification documents, driver's licenses, and passports – products intended to replace their legal counterparts and help the client get off the government's radar screen. Of course, "sovereignty" had a tax benefit as well, as it provided the clients with a justification for not paying taxes.

As the Operations Director at SORCE, Mark Lyon was second in command only after Eugene Casternovia. Among his duties, Lyon was responsible for drafting and maintaining the SORCE client workbook provided to all SORCE customers. The workbook outlined SORCE's various product offerings, and provided explanations underlying the various theories related to

sovereignty and the freedom movement. Lyon also published a SORCE weekly newsletter under the pseudonym "Sovereign Sam." The newsletter described many of the half-baked theories floating around the so-called "freedom movement" and provided free advertisement and contact information for like-minded vendors. Lyon also acted as a marketer and offered customer support to SORCE's existing customer base. He helped customers trouble-shoot when IRS problems inevitably arose, and he referred customers to other vendors like MYICIS, for additional protection from the taxing authorities.

But Lyon knew that SORCE's products would not pass muster with the IRS or the courts. He watched as John David Van Hove, a/k/a "Johnny Liberty," was indicted and convicted for tax crimes for peddling a substantially identical scheme. Indeed, Van Hove's book "the Individual Sovereignty Process" was part of SORCE's "sovereignty" package. Gvt. Ex. 8.01, p. 93. Van Hove started and directed the Ashland Resource Center, SORCE's predecessor, when Casternovia and Lyon were Van Hove's employees. Van Hove devised the system of offshore entities which would later inspire SORCE's "kite structure." And just as with Global/PQI, when Van Hove was indicted, Casternovia and Lyon took his place, filling the vacuum left by their predecessor.

Under Casternovia and Lyon's lead, SORCE became affiliated with PQI – a symbiotic partnership which benefitted both parties. Lyon attended approximately six offshore conferences, and SORCE's business grew exponentially as a result of PQI's marketing influence. And until his guilty plea, Lyon practiced what he preached by sending his SORCE earnings through offshore and nominee bank accounts. Lyon merits an appropriate sentence.

III. Required Sentencing Procedures

In making its sentencing determination, "the district court must impose a sentence that is both procedurally and substantively reasonable." United States v. Williams, 526 F.3d 1312, 1321-1322 (11th Cir. 2006). After United States v. Booker, 543 U.S. 200 (2005), in order to impose a procedurally reasonable sentence this court must correctly calculate the defendant's advisory Guidelines range. Williams, 526 F.3d at 1322; United States v. Talley, 431 F.3d 784, 786 (11th Cir. 2005). For a sentence to be substantively reasonable, the court must consider "the totality of the circumstances," including the factors set forth in 18 U.S.C. § 3553(a), in addition to the Guidelines. Williams, 526 F.3d at 1322. The court is vested with wide discretion to apply the § 3553(a) factors as long as the Guidelines are the "starting point and initial benchmark" for the determination. Gall v. United States, 552 U.S. 38, 49 (2007); Kimbrough v. United States, 552 U.S. 85, 108-109 (2007). As a result, when the district court imposes a sentence that is within the Guidelines range, that sentence is ordinarily expected to be a reasonable one. Talley, 431 F.3d at 788; United States v. Snipes, 2010 WL 2794190 at *10 (11th Cir. 2010). Once the sentence is selected, the district court must "adequately explain the sentence", including some description of the substantive factors that it considered. United States v. Docampo, 573 F.3d 1091, 1100 (11th Cir. 2009) (citing Gall).

IV. Application of the Sentencing Guidelines

A. Count One

Mark Lyon pleaded guilty to count one of the indictment, which charges conspiracy to defraud the United States and conspiracy to commit wire fraud. While these two objects are part of a single conspiracy, each object should be treated separately for purposes of calculating the

sentencing guidelines. United States v. Hersh, 297 F.3d 1233, 1248 (11th Cir. 2002); U.S.S.G. § 1B1.2(d). After calculating the offense level for each such "separate" conspiracy, the court then must group the various offenses, "such that instead of sentencing the defendant[] for each object offense, the court would sentence the defendant[] on the basis of only one of the offenses." United States v. Dale, 991 F.2d 819, 854 (D.C. Cir. 1993) (citing § 3D1.2). The court will then sentence according to the offense level for the most serious counts constituting the group. With Lyon, as with every other defendant, the wire fraud conspiracy produces the higher offense level, so in the interest of brevity, the government's analysis will omit the Klein prong and proceed directly to the wire fraud prong.

1. Base Offense Level - Conspiracy to Commit Wire Fraud

Section 2, Part X, of the Sentencing Guidelines governs attempts, solicitations or conspiracies to commit substantive offenses that are not specifically addressed elsewhere in the guidelines – including conspiracies to commit wire fraud. Section 2X1.1(a) provides that the base offense level for conspiracies covered by this section is that from the guideline for the substantive offense. Hence, we refer to part B, entitled Basic Economic Offenses.

Section 2B1.1 provides the base offense level for defendants convicted of crimes involving fraud and deceit, and various increases in the offense level depending on the amount of money at issue. In determining the loss attributable to relevant conduct, the government bears the burden of proving loss with reliable and specific evidence. See United States v. Dabbs, 134 F.3d 1071, 1081 (11th Cir.1998). The Sentencing Guidelines define actual loss as "the reasonably foreseeable pecuniary harm that resulted from the offense." U.S.S.G. § 2B1.1 comment. (n. 3)(A)(i). Pecuniary harm "means harm that is monetary or that otherwise is readily

measurable in money." Id. at comment. (n.3)(A)(iii). A district court may hold all participants in a conspiracy responsible for losses resulting from the reasonably foreseeable acts of co-conspirators in furtherance of the conspiracy. Dabbs, 134 F.3d at 1082; see also United States v. Rayborn, 957 F.2d 841, 844 (11th Cir.1992).

Because defendant Lyon was charged with and convicted of only conspiracy to commit wire fraud, and not the substantive offense of wire fraud, his initial base offense level is 6. *See* U.S.S.G. §§ 2B1.1(a)(1), (2).

2. Specific Offense Characteristics

a. Loss Amount, § 2B1.1(b)

When determining whether to apply an increase under the specific offense characteristics, the court must first determine the amount of loss arising from the charge of conviction. Evidence introduced at trial established the monetary scope of the conspiracy to commit wire fraud. Through sales of PQI memberships and associated fees from 2002 through 2008, PQI/SPI earned gross income of $14,727,150. Gvt. Ex. 48.02. Through sales of structuring packages from 2002 through 2006, SORCE earned gross income of $4,291,078. Gvt. Ex. 48.05.[1] From 2002 through 2005, Financial Solutions earned gross receipts of $2,075,687 for sales of debt relief and asset protection products. Gvt. Ex. 48.10. Through these three entities, the defendants defrauded customers to the tune of $21,093,915. The corresponding increase in offense levels would be 22.

However, Lyon did not join the PQI conspiracy at its inception in 2002. Rather, he

[1] This figure is derived from SORCE's profit and loss statements for 2002-2005 and a deposit analysis of SORCE's MYICIS accounts for 2006.

joined the conspiracy on approximately August 20, 2003 – when SORCE became a PQI vendor. Gvt. Ex. 8.30. Thus, under Pinkerton and relevant conduct principles, the court must calculate the gross receipts attributable to the conspiracy after Lyon joined it. All the 2002 gross receipts of PQI and Financial Solutions,[2] as well as the 2003 gross receipts from before August 20, must be excluded from Lyon's loss calculation. Yet there is no ready way to divide the 2003 gross receipts into the periods before and after August 20, although it would be possible in theory by scouring the thousands of pages of bank records in evidence. But a precise figure is not necessary; the purpose of the calculation is to arrive at a loss range that permits an accurate calculation of the Guidelines. Thus, the government submits that because Lyon joined the conspiracy on or about Aug. 20, 2003, his loss calculations should exclude 2/3 of the 2003 receipts from PQI, Financial Solutions, and the individual defendants, but should include all the SORCE receipts.

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[2] At the sentencing hearings of co-defendants Manansala, Perry, Leitner, Leonard, and McPhillips, the court excluded all of SORCE's gross receipts from the tax and fraud losses attributable to each defendant. The court's theory for doing so is that (i) not all SORCE clients were PQI members, (ii) the government cannot readily establish which SORCE clients were PQI members or were referred via PQI channels, therefore (iii) the government cannot establish which of SORCE's gross receipts are attributable to the PQI conspiracy, and which are not. But all of SORCE's gross receipts should be imputed to Lyon as relevant conduct. Even assuming SORCE's 2002 and pre-August 2003 earnings were outside the scope of the conspiracy alleged in the indictment, they are nonetheless are relevant conduct within the meaning of U.S.S.G. § 1B1.3. Specifically, relevant conduct includes, with "respect to offenses of a character for which § 3D1.2 would require grouping of multiple counts, all acts and omissions [committed, caused, or reasonably foreseeable by the defendant] that were part of the same course of conduct or common scheme or plan as the offense of conviction." U.S.S.G. § 1B1.3(a)(2). This provision allows, for purposes of a loss calculation, the inclusion of uncharged conduct with "distinctive similarities" to the offense of conviction, such that the charged and uncharged conduct is "part of a single course of conduct rather than isolated, unrelated events that happen only to be similar in kind." United States v. Vallardes, 544 F.3d 1257, 1268 (11th Cir. 2008). SORCE's fraudulent sales before joining forces with PQI surely qualifies as a single course of conduct.

The calculation proceeds as follows. In 2002, PQI earned $1,614,421 and Financial Solutions earned $240,341. In 2003, PQI earned $2,002,732 and Financial Solutions earned $1,316,045. The 2002 combined earnings total $1,854,762; two-thirds of the combined 2003 earnings of Financial Solutions is $2,212,518. Once those figures are subtracted from the total fraud loss, it is apparent that the fraud loss attributable to the period of Lyon's membership falls in the $7 million to $20 million range. Excluding all the 2002 loss ($1,854,762) and 2/3 of the 2003 loss ($2,212,518) from the overall total ($21,093,915),Lyon should be held responsible for a fraud loss of $17,026,635. Thus, Lyon's wire fraud conspiracy offense level should be increased by 20, not 22, based on the foreseeable fraud loss amount attributable to the conspiracy during the period of his membership in it.

This entire $17 million loss was reasonably foreseeable by Lyon. SORCE was one of PQI's main selling points. Access to vendors like SORCE was part of the draw for new PQI customers. Lyon helped fuel PQI's growth; he cannot claim ignorance of it. Lyon was aware of the financial symbiosis between SORCE and PQI, he can reasonably be charged with knowledge that a similar symbiotic relationship existed between PQI and its other vendors. And of course, the scope of SORCE's membership and profits was eminently foreseeable to Lyon. In sum, he should be held accountable for a $7 to $20 million fraud loss.

b. Number of Victims, § 2B1.1(b)(2)

The fraud guidelines include a specific offense enhancement for number of victims. Here, an additional six-point increase is merited because the fraudulent scheme involved more than 250 victims. U.S.S.G. § 2B1.1(b)(2)(C). A victim is "any person who sustained any part of the actual loss determined under subsection (b)(1)." § 2B1.1, comment. (n.1). The government

introduced evidence at trial in the form of a PQI customer database maintained by Claudia Hirmer and Mark Hirmer. The database contained over eleven thousand entries for customer accounts. Some entries were for married couples – indicating that the number of individual members exceeded the number of entries in the database. Thus, at a minimum, PQI had some eleven thousand members. Moreover, according to Lyon's own testimony, SORCE alone had "hundreds" of clients. Given SORCE's gross receipts in excess of $4 million, Gvt. Ex. 48.05, and its pricing structure – the most expensive package cost approximately $10,000, Gvt. Ex. 8.02 p.11 – a conservative estimate would be that SORCE had 400 clients. In addition, the gross receipts of Financial Solutions, in combination with evidence about its pricing structure, suggests that it too had hundreds of clients.

The loss amount of $21,093,915 is directly attributable to PQI members. Each of the members in the database paid either membership costs or consultant fees, or both, to PQI. Further, these members comprised the exclusive customer base for Financial Solutions and the primary customer base for SORCE. The government identified amounts paid to these three entities as product fees due to their size, the timing of the payments, and other factors relevant to establish their inherent appearance as income. In this regard, the nexus between PQI's customers and the pecuniary harm inflicted by PQI supports application of the six-point enhancement found at Section 2B1.1(b)(2)(C).

c. Committed Outside the United States, §2B1.1(b)(9)(B)

Lastly, an additional two-point enhancement is merited because Lyon and his codefendants committed a substantial part of the scheme outside of the United States. U.S.S.G § 2B1.1(b)(9)(B). PQI conducted all Q2 and Q3 seminars "offshore," most often in Cancun,

Mexico. The stated purpose of conducting the seminars in foreign venues was to place PQI outside of the jurisdiction of the United States government. This decreased the chances that United States-based law enforcement would attend and/or monitor the conferences and provided PQI and its consultants an added sales perk: that attendees would have access to "high-yield" investment products unavailable for sale in the United States due to federal securities regulations. Most, if not all, of the clients who paid money for these unregulated securities lost their entire investment.

The total base offense level under the wire fraud prong of count one is 34.

B. Count II - Conspiracy to Commit Money Laundering

1. Base Offense Level

Section 2, Part S, of the Sentencing Guidelines governs offenses related to money laundering. Section 2S1.1(a) provides that the base offense level shall be the same as "[t]he offense level for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense . . . ; and (B) the offense level for that offense can be determined[.]" The "underlying offense" here is wire fraud.

Lyon and each of his codefendants who were convicted in count two committed the underlying offense since each was convicted in count one of conspiracy to commit wire fraud. Further, the offense level for that offense can be determined – as noted above, the offense level is 34. Thus, the base offense level under the money laundering guidelines is 34.

2. Specific Offense Characteristics

a. 18 U.S.C. § 1956(h)

Lyon should receive a two-point increase pursuant to U.S.S.G. § 2S1.1(b)(2)(B) because

he was convicted of an offense under 18 U.S.C. § 1956.

b. Sophisticated Laundering

Each defendant convicted of count two should also receive an additional two-point increase for sophisticated laundering pursuant to U.S.S.G. § 2S1.1(b)(3). A defendant convicted under 18 U.S.C. § 1956, is subject to an additional two-point increase if the offense of conviction involved sophisticated laundering. The guidelines commentary explains that " 'sophisticated laundering' means complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. § 1956 offense" and that it typically involves the use of "fictitious entities," "shell corporations," "two or more levels (i.e., layering) of transactions," or "offshore financial accounts." U.S.S.G. § 2S1.1, comment. n.5(A). The enhancement will not apply when "the conduct that forms the basis for an enhancement under the guideline applicable to the underlying offense is the only conduct that forms the basis for the application [under this] subsection." § 2S1.1, comment. n.5(B). In other words, the same conduct cannot justify an increase in the offense level for the underlying crime (here, wire fraud) and for the money laundering offense. Since a similar enhancement does not apply to the underlying offense in this matter, it is appropriate to include it here.

Lyon's conduct supporting the sophisticated laundering enhancement is the promotion and use of "MYICIS" – a warehouse bank – and the use of offshore/foreign bank accounts. Lyon promoted MYICIS to SORCE clients as a means to open a bank account and receive income anonymously, and Lyon knew that SORCE accepted payment from clients via MYICIS. By design, MYICIS was intended to conceal and disguise the nature, location, source, ownership and control of the funds deposited into the pooled account. So, too, was the purpose of nominee

and foreign bank accounts. Used in conjunction, SORCE received fraudulently obtained profits from SORCE clients, and wired funds offshore, all entirely anonymous. In this manner, Lyon facilitated and used false and fictitious entities and layered structures in order to conceal and disguise the source and ownership of funds earned in connection with PQI. Again, this is the precise behavior described in the application notes pertaining to sophisticated laundering.

The total base offense level for conspiracy to launder monetary proceeds as charged in count two is 38.

C. Chapter Three Adjustments

1. Role in the Offense (Count One Only)

Lyon merits a three-point enhancement as a manager or supervisor of the criminal enterprise described in count one of the indictment.

The guidelines provide for a four-point upward adjustment "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a). If a defendant was a "manager or supervisor, but not an organizer or leader" a three-point upward adjustment should be applied. The factors that a sentencing court considers when determining if this enhancement applies are: "(1) exercise of decision-making authority, (2) nature of participation in the commission of the offense, (3) recruitment of accomplices, (4) claimed right to a larger share of the fruits of the crime, (5) degree of participation in planning or organizing the offense, (6) nature and scope of the illegal activity, and (7) degree of control and authority exercised over others." United States v. Vallejo, 297 F.3d 1154, 1169 (11th Cir. 2002) (citing U.S.S.G. § 3B1.1, comment. n.4). The enhancement requires that the convicted defendant be a manager or supervisor of criminal

activity that involved "five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(b). "A 'participant' is a person who is criminally responsible for the commission of the offense, but need not have been convicted." U.S.S.G. § 3B1.1, comment. (n.1). In order to receive an enhancement for a managerial role, a defendant must exercise influence or control over at least one other participant, or "exercise[] management responsibility over the property, assets, or activities of a criminal organization." § 3B1.1, comment. n.2.

Lyon merits the three point enhancement for a managerial or supervisory role. First, as Operations Director, he exercised "management responsibility" over the "activities" of SORCE. Lyon routinely advised SORCE clients on what products to choose and how to implement those products. He was clearly permitted to speak on behalf of the organization and need not consult Eugene Casternovia in order to make representations on SORCE's behalf. The primary difference between Lyon and Casternovia was in profit sharing. Lyon was paid a salary plus commissions from his sales; Casternovia retained business profits. In this respect, Casternovia was SORCE's leader and organizer and Lyon was a manager or supervisor.

Second, the evidence firmly established that at least five individuals participated in the conspiracy to a degree sufficient to make them criminally responsible. The jury found that at least nine participants were involved to this degree. Moreover, PQI's scheme was otherwise extensive. "In assessing whether an organization is 'otherwise extensive,' all persons involved during the course of the entire offense are to be considered." § 3B1.1, comment. n. 3. In this regard, the conspiracy brought in at least eleven thousand individual PQI members, spanned over seven years, was international in scope, and earned over $20 million. Certainly this qualifies as extensive. See United States v. Gupta, 463 F.3d 1182, 1198 (11th Cir. 2006) (medicare fraud

scheme involving "seven corporations, numerous straw owners, Medicare reimbursement of over $15 million, and repeated failure to disclose related party status over a seven-year period" was extensive); United States v. Rodriguez, 981 F.2d 1199, 1200 (11th Cir. 1993) (geographically dispersed narcotics transaction involving $350,000 in wholesale proceeds was "otherwise extensive"). Due to the symbiotic relationship between PQI and its vendors, SORCE and Financial Solutions were part of the same extensive scheme. PQI and its vendors relied upon the same network of marketers, utilized the same promotional and advertising channels and benefitted from an exclusive, or semi-exclusive relationship.

2. Acceptance of Responsibility (All Counts)

Lyon pleaded guilty early in this case. Since the final base offense level exceeds sixteen, and because Lyon assisted authorities by timely notifying the government of his intention to plead guilty, thereby permitting the government to avoid preparing for his trial, he is entitled to a full three point reduction in the final offense level pursuant to U.S.S.G. § 3E1.1 (b).

D. Guidelines Calculations

Count One, Wire Fraud prong:

6 (base)
+ 20 (loss amount)
+ 6 (number of victims)
+ 2 (outside U.S.)
+ 3 (manager/supervisor)
- 3 (acceptance of responsibility)
= 34

Count Two:

34 (wire fraud offense level before Chapter 3 enhancements)
+ 2 (18 U.S.C. § 1956 conviction)
+2 (sophisticated laundering)
- 3 (acceptance of responsibility)
= 35

All these counts group pursuant to §§ 3D1.1 and 3D1.2. Accordingly, Lyon's final offense level is 35. U.S.S.G. § 3D1.3(a).

V. 18 U.S.C. § 3553(a) Factors

Pursuant to 18 U.S.C. § 3553(a), "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," namely,

> (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.

The court must also consider the nature and circumstances of the offense, the history and characteristics of the offender, the kinds of sentences available, the Guidelines themselves, any pertinent policy statement, the need to avoid unwarranted disparities among similarly situated defendants, and the need to provide restitution. 18 U.S.C. § 3553(a)(1)-(7).

First, the Court must consider the Guidelines themselves. The Guidelines are the result of the full-time empirical and analytical research by the Sentencing Commission, which has considered data from as many as 10,000 cases. See U.S.S.G. § 1A1.1, App. Note, Editorial Note. The Guidelines represent an important attempt to inject predictability and uniformity in the system, so that like offenses are treated similarly. The importance of the Guidelines to the system of justice is itself an important factor for the Court to consider. A Guidelines sentence will also promote uniformity among similarly situated defendants.

Second, the Court must consider deterrence. The Sentencing Commission specifically discusses the importance of general deterrence in criminal tax cases:

> The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, deterring others from violating the tax laws is a primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators. U.S.S.G. § 2T.1, Introductory Commentary.

Lyon, like his co-defendant Joseph McPhillips, does not need to be specifically deterred from future schemes of this sort. Lyon has accepted responsibility for his conduct, and readily acknowledged its wrongfulness. Since the time of his plea, Lyon has filed all delinquent income tax returns and presented an offer-in-compromise for his unpaid tax liabilities, and interest and penalties. This manifests a sincere change of heart. But the court still must consider general deterrence. Would-be tax defiers and scammers are watching this case.

Putting this in terms that intelligent, calculating white-collar criminals understand: the financial benefits of tax crimes can be significant, and the risk of getting caught, depending on the nature of the scheme, can be quite low. Therefore, the only way to adequately deter the conduct is to make the cost of getting caught so high that it is not worth running even a low risk. Realistically, the main way to strike this fear in the heart of prospective tax criminals is to impose substantial prison time on those who are caught and convicted. Failing to do that would send the opposite message: that it pays to engage in tax fraud, because you are likely to get away with it; if you are unlucky and do not, you still might escape with a "slap on the wrist." The court should not send that message, even for defendants who readily accept responsibility for their criminal conduct.

To be sure, Lyon deserves less time than many other defendants in this case, as he accepted responsibility for his conduct. But some incarceration is nonetheless warranted, to provide just punishment and adequate general deterrence for fraudulent behavior.

To conclude, Lyon was second in command at SORCE and a long-time tax protestor. He has accepted responsibility for his conduct, and was the first defendant in this matter to do so. But he nonetheless defrauded a great many people, and a term of imprisonment is appropriate.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify on that on September 9, 2010, I filed a copy of this sentencing memorandum via CM/ECF, which will email a copy to all counsel of record.

/s/ Michael J. Watling
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