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**ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. ROBERT LYNAM EDDLEMAN, Defendant.	CR 08-148-BLG-RFC <u>UNITED STATES'</u> <u>RESPONSE TO</u> <u>DEFENDANT'S</u> <u>SENTENCING</u> <u>MEMORANDUM</u>
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FACTUAL AND PROCEDURAL BACKGROUND

The Defendant engaged in a long-standing conspiracy to maintain residences where cocaine was made available for use during social gatherings. Some of the criminal conduct occurred at a residence

occupied by the Defendant in Carbon County, Montana.

During the latter portion of the conspiracy, the Defendant was the elected county attorney for Carbon County. As the county attorney, he was the only person capable of prosecuting felony crimes that occurred in Carbon County, absent exercise of supervisory control by the Montana Attorney General. See, Mont. Code. Ann. §7-4-2712(2). See, also, *State ex. rel. Woodahl v. District Court*, 159 Mont. 112, 116, 495 P.2d 182, 185 (1972) (holding under the predecessor statute to Mont. Code. Ann. §7-4-2712(2) that a felony information may not be filed independent of the county attorney or his deputy).¹

In approximately August 2006, a Montana Division of Criminal Investigation (MDCI) agent approached the Defendant about prosecuting C.L. for a felony drug offense that had occurred in Carbon County. The Defendant said he had a conflict of interest in prosecuting the case. He then chastised the agent for the manner in which the case was investigated. The Defendant did not suggest to the

¹Prosecution of felony offenses under Montana law must be in the district court and must be by indictment or information. See, Mont. Code Ann. § 46-11-102. Only a county attorney may file a felony information. Mont. Code Ann. § 3-6-103(3). While a district court may initiate a grand jury, such proceedings are rare in state court proceedings in Montana.

agent who should review the case for prosecution in light of the Defendant's inability to prosecute the case.

The agent ultimately referred the case to the Stillwater County Attorney for prosecution. Later, law enforcement authorities learned that the Defendant and C.L. had used cocaine together. They also learned the Defendant had obtained cocaine for C.L.

The grand jury ultimately returned its indictment in this matter. The Defendant pled guilty to Count I, conspiracy to maintain drug involved premises. A presentence investigation followed the Defendant's guilty plea.

The presentence report concluded the Defendant is subject to a two-level increase to his base offense level, pursuant to U.S.S.G. § 3C1.1, because he obstructed justice. The presentence report largely based that conclusion on the fact some of the Defendant's criminal conduct occurred while he resided in Carbon County and during his tenure as the county attorney. The undersigned understands the presentence report may also be amended to increase the Defendant's base level by another two levels, under U.S.S.G. § 3B1.3, for abuse of trust or a special skill.

The Defendant has filed a sentencing memorandum. The United States now responds.

ARGUMENT

The Defendant complains that the increase for obstruction of justice is improper. He also alleges he is the victim of an unfair federal prosecution. Those assertions are groundless.

I. INCREASE FOR OBSTRUCTION OF JUSTICE.

The Defendant maintains that the increase for obstruction of justice is improper because he did not obstruct justice. He bases that conclusion on the following assertions: (1) he was unable to prosecute the case against C.L. as a result of the fact he had previously represented C.L. in connection with the case referred by the MDCI; and (2) the MDCI investigation was itself the product of an unlawful search conducted by the agency. Those assertions are groundless.

First, while the Defendant may have previously defended C.L. and could not prosecute the case against C.L., the Defendant should have undertaken some steps to ensure the case was reviewed for prosecution by a special prosecutor employed by the Montana Attorney General or county attorney acting as a special prosecutor. Although

the Defendant claims he contacted the Stillwater County Attorney to review the case, he did not. Rather, the MDCI itself made the referral of the case to Stillwater County Attorney.

Second, assuming that the Defendant was precluded from handling the prosecution due to his alleged conflict of interest, he should not have expressed an opinion to the MDCI agent concerning any alleged problems with the investigation. If the Defendant's prior representation of C.L. precluded him from assuming the prosecution, that disqualification was complete. Professional propriety dictated the Defendant was obligated to withdraw entirely from the case and could not offer a gratuitous critique of the investigation once he found himself barred from prosecuting the case on the basis of a conflict of interest.

Thus, it is clear the Defendant was not simply avoiding a conflict of interest or exercising discretion to decline a case arising from an allegedly flawed investigation. Rather, he was actively obstructing the prosecution of a fellow drug user and criminal accomplice. Such conduct amounts to a clear obstruction of justice. Hence, the two-level increase under U.S.S.G. § 3C1.1 is appropriate.

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II. ABUSE OF TRUST.

Assuming the presentence report recommends a two-level increase of the Defendant's base offense level under U.S.S.G. § 3B1.3, or if the Court raises the issue *sua sponte*, the Court will have to address whether the Defendant abused a trust or used a special skill in commission of his offense. Given the nature of the conduct underlying the finding of an obstruction of justice, the Defendant may also have abused such a trust or used such a skill in the commission of his offense.

The Defendant was the person responsible for the prosecution of felony drug offenses in Carbon County. Nevertheless, he allowed others to use his home in that county to consume drugs at his home. He failed to prosecute C.L., or at least failed to arrange for an independent prosecutor to review the case. Such is an abuse of trust steeped wholly in the Defendant's desire to shield an accomplice from prosecution.

Ultimately, the Defendant used his position as an elected prosecutor to shield himself and his accomplices from prosecution. That is an abuse of trust which the Court should assess.

III. THE FEDERAL PROSECUTION.

The Defendant complains that only he and his codefendant, Terri Kurth, are the subjects of federal prosecution in this case. He characterizes himself as simply a user of drugs and argues that such cases are not typically prosecuted in federal court. Those allegations are without merit.

The Defendant pled guilty to a federal drug trafficking offense. He allowed homes occupied by his codefendant and himself to be used for the distribution and use of cocaine. One of the homes was in close vicinity to a school. The Defendant was a law enforcement official charged with enforcing the drug laws, but declined to prosecute C.L. under very suspicious circumstances. He was associated with a large scale drug dealer who was engaged in interstate trafficking of cocaine. The Defendant was anything but a typical low-level drug user.

This was a case that required federal intervention. The government properly obtained indictments of the Defendant and his codefendant.

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DATED this 13th day of July, 2009.

WILLIAM W. MERCER
United States Attorney

/s/Joseph E. Thaggard
JOSEPH E. THAGGARD
Assistant United States Attorney
Attorneys for Plaintiff