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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT LYNAM EDDLEMAN
and TERRI JABS KURTH,

Defendant.

Cause No. CR 08-148-BLF-RFC

DEFENDANT, ROBERT EDDLEMAN'S, SENTENCING MEMORANDUM

COMES NOW, the defendant, Robert Lynam Eddleman, by and through his attorneys of record, Brian P. Fay, of Angel, Coil & Bartlett, Attorneys at Law, and Matthew J. Wald, of Vogel & Wald, PLLC and hereby submits the following Sentencing Memorandum for the Court's consideration.

I. U.S.S.G. § 3C1.1: Obstructing or Impeding the Administration of Justice.

The rationale for this enhancement appears in paragraphs 30 to 34 of the PSR. Eddleman's objection to this rationale for the enhancement appears in the Addendum to the PSR. Eddleman stands by this objection with regard to the rationale contained in paragraphs 30 to 34 of the PSR because the information contained therein fails to demonstrate that Eddleman

1 willfully engaged in conduct which impeded or obstructed the administration of justice in the
2 instant case.

3 In the Probation Officer's Response to Objection Number Three it is noted that two law
4 enforcement officers "are ready to testify under oath that they brought drugs (sic) cases before
5 Robert Eddleman while he was the Carbon County Prosecutor that were not filed on" and that the
6 cases involved defendants associated with the instant offense.

7 This is a horse of a different color altogether. If this matter is not resolved before the
8 Sentencing Hearing, Eddleman is prepared to present evidence that will completely vitiate this
9 proposition and ineluctably lead the Court to the conclusion that this enhancement has no merit.

10 Although this matter is still being investigated by Eddleman's counsel, the information
11 presently known is that:

12 1. Before July 1, 2006, when Eddleman became Carbon County Attorney, Montana
13 Department of Family Services (DFS) and Montana Department of Criminal Investigations (DCI)
14 were engaged in operations which violated certain Montanans' Fourth Amendment rights under
15 the United States Constitution and the right to be free from unreasonable searches and seizures
16 and the right to privacy as guaranteed by Article II, Sections 10 and 11 of the Montana
17 Constitution.

18 2. Specifically, when DFS investigated a complaint of child abuse or neglect, DCI agents
19 routinely tagged along. Thus, DCI agents obtained access to homes of Montana citizens without
20 a search warrant or exigent circumstances. Warrantless searches would then take place or
21 consent to search was demanded in exchange for not removing the child from the home.

22 3. On March 21, 2006, a search of this nature took place at the home of Carl Lauritzen
23 and Brittany Eckman in Red Lodge, Montana. Drugs were found at their home by a DCI agent.
24 Lauritzen/Eckman hired Eddleman, then in private practice, to represent them with regard to their
25 dealings with DFS. Eddleman did so. In August, 2006, after Eddleman became Carbon County
26 Attorney, he was asked by DCI agents to prosecute the Lauritzen/Eckman for the drugs found at
27 their home on March 21, 2006. Eddleman informed the agents that Lauritzen/Eckman were his
28 former clients and that he could not, under the circumstances, prosecute them. The charges were

1 subsequently filed in Red Lodge City Court (disposition presently unknown). Eddleman referred
2 the matter to the Stillwater County Attorney for prosecution (disposition presently unknown).

3 4. Several people in both Carbon and Stillwater counties were charged with drug
4 violations as a result of the illegal DFS/DCI operation. Attorney Ray Kuntz handled several of
5 these cases. The DFS/DCI operation was subsequently brought to the attention District Judge
6 Blaire Jones. Judge Jones instructed Eddleman, then the Carbon County Attorney, to call DCI
7 and to inform it that its illegal operations would not be countenanced in his Court. Eddleman did
8 so.

9 These facts do not provide a basis for an obstructing enhancement for several reasons.

10 1. Eddleman could not ethically prosecute his former clients for alleged criminal activity
11 arising out of the same transaction in which he had previously represented them.

12 2. Eddleman referred the matter to the Stillwater County Attorney for prosecution.

13 3. Even if Eddleman could have prosecuted the case, he had wide discretion to refuse to
14 do so because the evidence was obtained in violation of Montana and United States
15 Constitutions.

16 4. Even if Eddleman could have prosecuted the case, it is strictly a matter of speculation
17 as to (1) whether he would have been successful (which is unlikely) and (2) if successful, that
18 Lauritzen/Eckman would have provided information concerning the instant offense.

19 To conclude, there is simply no factual basis for the Court to find that Eddleman willfully
20 impeded or obstructed the administration of justice in the investigation or prosecution of the
21 instant offense when he refused to prosecute Lauritzen/Eckman.

22 Presently, counsel is unaware of any other criminal cases, involving people associated
23 with the instant offense, which Eddleman refused to prosecute.

24 **II. Miscellaneous Matters.**

25 It is anticipated that at the time of sentencing, Eddleman will meet the criteria under
26 U.S.S.G § 5C1.2(1-5) and may be entitled to a decrease of two offense levels. Eddleman is
27 scheduled to be debriefed on Tuesday, July 14, 2009, at the hour of 1:00 p.m.

28 The statement in ¶ 58 of the PSR that Eddleman refused to answer questions regarding

1 drug or alcohol use was accurate when the first draft of the PSR was authored. This sentiment
2 was expressed to Ms. Roberts at the time counsel and Eddleman met following the Change of
3 Plea Hearing on March 11, 2009. However, Eddleman has subsequently offered to speak to the
4 Ms. Roberts both orally and in writing regarding drug and alcohol use. This offer is evidenced
5 by the statement to that effect in counsel's letter to Ms. Roberts which is contained in the
6 Addendum to the Presentence Report.

7 Finally, an explanation regarding the contents of ¶ 72, which state that Eddleman is listed
8 as an attorney on the NORML web page, is in order. During Eddleman's dark days, in private
9 practice primarily as a criminal defense attorney, he attended a CLE seminar which provided for
10 substantially reduced tuition if he joined NORML. So he did. He saved money on the seminar
11 and got free advertising on the NORML web page. Almost any advertising is good advertising
12 but free advertising is the best advertising. And advertising on the NORML web page is good
13 business for a criminal defense lawyer. Upon becoming Carbon County Attorney, he forgot to
14 have his name removed from the NORML web page.

15 **III. Sentencing Recommendation.**

16 Although the Sentencing Guidelines are now advisory, the Court should begin all
17 sentencing proceedings by correctly calculating the applicable guideline range. *Rita v. United*
18 *States*, 551 US. 338, 127 S.Ct. 2456 (2007).

19 Eddleman believes, that since the obstructing enhancement is inappropriate, the proper
20 Total Offense Level is 15. With zero criminal history points, the proper Sentencing Guideline
21 range is 18-24 months.

22 After the appropriate guideline range is determined the Court should then determine (1)
23 whether the Guidelines sentence properly reflects the § 3553(a) considerations, and (2) whether
24 the case falls outside the "heartland" and a departure is warranted. *Id* at 2465.

25 For the reasons stated below Eddleman believes that a sentence below the advisory
26 Guidelines range is appropriate. Specifically, Eddleman believes that the Court should depart
27 downward to an offense level 12 and a Guideline range of 10 to 16 months. The Court should
28 sentence Eddleman to 10 months of incarceration with five months to be served in a detention

1 facility and five months of house arrest; and, one year of supervised release with the requirement
2 that he obtain, pay for, complete and follow the recommendations of a chemical dependency
3 evaluation performed by a certified chemical dependency counselor

4 **A. 18 U.S.C. § 3553(a) Considerations.**

5 18 U.S.C 3553(a) provides that:

6 The Court shall impose a sentence sufficient, but not greater
7 than necessary, to comply with the purposes set forth in paragraph
(2) of this subsection. The court, in determining the particular sentence
8 to be imposed, shall consider—

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

10 (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;

11 (B) to afford adequate deterrence to criminal conduct;

12 © to protect the public from further crimes of the defendant; and

13 (D) to provide the defendant with the needed educational or vocational
training, medical care, or other correctional treatment in the most
effective manner.

14 **1. Nature and Circumstances of the Offense**

15 Eddleman has pleaded guilty to the charge of conspiracy to maintain drug involved
16 premises. The circumstances of the offense are that periodically Eddleman and Kurth would host
17 parties at their residences in Billings and Red Lodge. These parties would generally coincide
18 with special occasions like birthdays, Superbowl celebrations and New Years Eve parties. The
19 attendees were social and professional friends of Eddleman and Kurth. Some of the attendees
20 would retreat to a bathroom or bedroom where a line of cocaine was snorted. Many of the
21 attendees at these parties did not participate in this activity and were not aware it was going on.
22 Sometimes Eddleman and Kurth would provide cocaine and sometimes it was provided by
23 others. The cocaine was always shared. There were no drug sales or profit motive involved.
24 This behavior went on for a considerable period of time. Although Eddleman does not dispute
25 the amount attributable to him for sentencing purposes, he does believe the amount is overstated.

26 **2. Eddleman's Personal Characteristics.**

27 The letters which have been submitted for the Court's consideration give the Court an
28 accurate notion of who Bob Eddleman is. Here's a list of the words used over and over again to

1 describe the type of person Bob Eddleman has made himself:

2 hard working

3 outgoing

4 gregarious

5 generous

6 caring

7 optimistic

8 good neighbor, friend, son and brother

9 positive influence on the community

10 down to earth

11 tough

12 But the personality trait most obvious to all who know Eddleman is how much he loves
13 his two kids, James and Emma. He is a fantastic father. I don't have the words to convey to the
14 Court how much Eddleman hurts inside for letting his kids down the way he did. How selfish,
15 stupid and inconsiderate — and he didn't even know it at the time. Of course, he feels the same
16 way with respect to his family, friends, the citizens of Carbon and Stillwater Counties, and the
17 law enforcement community but it's his two kids that he feels he let down most.

18 Eddleman's a smart guy. He put himself through law school. He's achieved a great deal.
19 He has no criminal history. He's not a danger to the community. He's extremely remorseful for
20 the pain, embarrassment and hardship he has caused family, friends and community. And, he's
21 got the character and fortitude to make something of himself after this setback.

22 What is apparent from the letters submitted to the Court is that the behavior that has
23 landed Eddleman before you for sentencing comprises a very small part of the man he truly is.

24 **3. Subsection 2(A)&(B) Considerations.**

25 There were approximately nine individuals who were members of the social circle
26 involved in the present offense. All were/are respectable members of the community. There
27 were local businessmen, a car salesman, a restaurateur, store owners and others who all
28 participated. Sometimes the parties were at the Eddleman/Kurth residences and sometimes the

1 parties were at the homes of these other folks. Its fair to say that most, if not all, were involved
2 to the same extent as Eddleman and Kurth. However, with the exception of Eddleman and
3 Kurth, all of them have received transactional immunity.

4 Eddleman and the Court must acknowledge the sentiment in the community that it was
5 hypocritical for him to be enforcing laws which he and his friends were breaking. This is an
6 important consideration for the Court in fashioning a sentence which reflects the seriousness of the
7 offense, promotes respect for the law and provides just punishment for the offense. There is
8 certainly a contingent of the community that feels he deserves harsher punishment because he
9 was Carbon County Attorney during a portion of the conspiracy. And maybe he does deserve a
10 harsher sentence. But the truth of the matter is that just by being charged in Federal Court he is
11 being treated much more harshly than others engaged in the same activity.

12 It is the avowed policy of the U.S. Attorneys office to prosecute drug traffickers and not
13 users. Eddleman and his friends were casual users. Yet Eddleman has been charged in Federal
14 Court and will be sentenced to a term of incarceration.

15 The proposed sentence takes into account these considerations, and when viewed
16 objectively, is a sentence which reflects the seriousness of the offense, promotes respect for the
17 law and provides just punishment.

18 The proposed sentence will also provide adequate deterrence to both Eddleman and all
19 others who are aware of the circumstances of the offense.

20 **4. Protection of the Public.**

21 Given that Eddleman is a first time, non-violent felony offender, the remorse he has
22 displayed and his individual characteristics, it is submitted that this is not an issue of serious
23 consideration.

24 **5. Needed Treatment.**

25 This may be an issue of concern. That is precisely why it is recommended that during the
26 period of supervised release that Eddleman obtain, pay for, complete and follow the
27 recommendations of a chemical dependency counselor.

1 **B. U.S.S.G. § 5K2.0 Departure.**

2 The sentencing court may grant a downward departure if it finds a mitigating
3 circumstance of a kind, or to a degree not adequately taken into consideration by the Sentencing
4 Commission. *See* 18 U.S.C. § 3553(b) and U.S.S.G. § 5K2.0.

5 There are several specific facts which bring this case out of the “heartland.” First,
6 defendants convicted of a federal felony expect to be incarcerated and as a consequence lose their
7 jobs. However, the circumstance not considered by the Sentencing Commission is that
8 Eddleman has not only lost his job but that he will lose his ability to practice law. It is unknown
9 if he will be suspended or disbarred, however, he is sure to lose his ability to practice law for
10 some considerable period of time.

11 Second, due to the fact that he is a former county attorney he has been placed in
12 protective custody while incarcerated since March 11, 2009. That means that he is locked down
13 23 hours a day without physical contact. When counsel visited him in Glendive in late May or
14 early June of this year it was the first time he had had a face to face conversation with anyone in
15 over two months. The nature of his incarceration to date has been far more debilitating than
16 ordinary incarceration and it is expected that it will remain that way for any period of future
17 incarceration this Court imposes. Alternatively, if Eddleman is not placed in protective custody
18 it is likely that he will be susceptible to prison abuse which was a recognized basis for a
19 downward departure in *Koon v. United States*, 518 U.S. 81, 116 S.Ct. 2035 (1996).

20 Third, Eddleman has suffered shame and ridicule to a degree not contemplated under the
21 Guidelines.

22 Finally, although not favored, the care of his mother, daughter and son should be
23 considered by the Court as a basis warranting downward departure.

24 **C. CONCLUSION**

25 Accordingly, Eddleman urges the Court to impose a term of 10 months of incarceration
26 with five months to be served in a detention facility and five months on house arrest, and, one
27 year of supervised release with the requirement that he obtain, pay for, complete and follow the
28 recommendations of a chemical dependency counselor.

1 DATED, this 11th day of July, 2009.

2 ANGEL, COIL & BARTLETT

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4 /s/ Brian P. Fay
5 Brian P. Fay
6 Attorney for Defendant
7 Robert L. Eddleman
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