

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FREDERICK JAMES PAQUIN,

Defendant.

No. 2:10-cr-04

Hon. R. Allan Edgar
United States District Judge

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by and through its attorneys, Donald A. Davis, United States Attorney, and Maarten Vermaat and Brian K. Delaney, Assistant United States Attorneys, hereby respectfully files its sentencing memorandum, which sets forth (i) the Government's responses to Frederick James Paquin's (hereinafter "Defendant") objections to the revised Presentence Investigation Report dated December 3, 2010 (hereinafter "PSR"); and (ii) the Government's request for an opportunity for a victim of the offense to make a statement at sentencing.

A. Introduction

The PSR provides a thorough and detailed view of Defendant's activities during the time period of the conspiracy, but, perhaps, falls short in giving a broad perspective on his activities and the motivation behind them.

The charge to which Defendant pled guilty, conspiracy to defraud the United States by dishonest means, stems from his scheme to divert and misuse grant funds that were awarded to the Tribe's Law Enforcement Department (hereinafter "the

Tribal Police Department”) by the Tribal Resources Grant Program (hereinafter “the TRGP”), a program administered by the United States Department of Justice’s Office of Community Oriented Policing Services (hereinafter “the COPS Office”). In short, Defendant, with the assistance of Hope Schlehuber,¹ obtained TRGP grant funds specifically to meet the Tribal Police Department’s most serious – and otherwise unmet – financial needs.² These grants, of course, came with lots of reporting requirements and oversight: of primary importance, the funds had to be spent (i) within a certain time frame, (ii) for specific, approved purposes, and (iii) for the exclusive benefit of the Tribal Police Department. Defendant and Ms. Schlehuber avoided these requirements by using false purchases to divert grant funds to accounts held by various vendors with which the Tribal Police Department did business. In short, Defendant and Ms. Schlehuber created records of purchases that didn’t actually take place. In turn, the Tribe’s Purchasing Department reviewed the paper records of the purchases and then unwittingly paid the vendors for items that were not actually purchased by the Tribal Police Department, thereby creating a credit in the Tribal Police Department’s account at the vendors. Once the grant funds were diverted into these accounts, they were no longer subject to oversight by the Tribal Purchasing Department or the COPS Office. As a result, Defendant could and did use these credits (actually federal taxpayer dollars) in any way he saw fit, without any oversight and in complete violation of the grant terms.

¹ See United States v. Hope H. Schlehuber, case no. 2:09-cr-32.

² This investigation focused on grants obtained by the Tribal Police Department in 2002-2006 and expended by the Tribal Police Department through July 2008.

USA v. F. J. Paquin, case no. 2:10-cr-04
Government’s sentencing memo

Defendant and Ms. Schlehuber were able to carry out this scheme for many years by (i) obtaining an exemption from the Tribe's normal purchasing procedures (see PSR ¶ 33), (ii) blocking attempts by the Tribe's Fixed Asset Manager to inventory the Police Department's equipment (see PSR ¶ 34), and (iii) lying for years to the COPS Office in grant applications and other financial status reporting forms that the COPS Office required grantees to complete. In essence, Defendant and Ms. Schlehuber came up with a way to funnel federal taxpayer dollars into "slush funds" that only they knew about and controlled.

Defendant used many of these illegally obtained credits to enhance his own status within the Tribe. For example, he used grant funds to purchase an ATV that was to be used for a raffle, but told people that he purchased this item with his own money. He also publicly asked vendors to make "donations" to the Tribe's Junior Police Academy, but authorized them to take money from the Tribal Police Department's account, which contained diverted grant funds, to make these donations.

There are some instances of Defendant personally and directly benefitting from the grant diversion scheme. He asked Mackinac Sales to use \$2,457 in money in the Tribal Police Department's account, which contained diverted grant funds, to help his son-in-law lease a new vehicle. In addition, he used funds in the Tribal Police Department's account at Leitz Sports to pay off \$365 in charges on his personal account there.

In addition to the vendor credit fraud set forth above, Defendant cheated the TRGP program in other ways. For examples, he purchased items with grant funds that were, pursuant to the terms of the grants, for the exclusive use of the Tribal Police Department and gave the items to other organizations. Examples include: (i) Motorola radios given to the casinos, (ii) Glock handguns given to the Manistique Police Department, (iii) defibrillators provided to the casinos and a health club, (iv) uniforms given to casino security officers, and (v) various other items such as flashlights and cameras that were given to other police departments. Stating the obvious, a police department that could be that free with its assets could not be said to have serious unmet financial needs.

In related illegal conduct, Defendant directed Ms. Schlehuber to provide false time and attendance information on Defendant's daughter, Mary Christine Cullen, to the Tribe so that Ms. Cullen would continue receiving pay as the Tribal Police Department's Lead Dispatcher even though Ms. Cullen had become a full-time student teacher and was no longer working as the Lead Dispatcher. This misappropriation of Tribal funds went on, at a minimum, from September 2004 through April 2005.

The most perplexing question is why? Why would Fred Paquin, a man who received income in excess of \$150,000 per year from the Tribe for his role as Chief of Police and member of the Board of Directors (see PSR ¶¶ 93, 107, 108), engage in this far-reaching scheme to defraud? The answer is simple. The Defendant felt he was above the law. Once firmly ensconced in his position, as both Tribal Chief of

Police and Board member, his power was unchecked and he was beyond reproof or question. He exercised unchecked power within the Tribe and operated the Police Department as his own private fiefdom. The Defendant increased his own personal esteem within the Tribe and in the law enforcement community by dispensing the fruits of his office. He resisted all attempts at oversight, such as the annual fixed assets inventory, and all but prevented the FBI from investigating tribal crimes. He ran his department with an iron fist and instilled fear rather than respect within the ranks of his officers and employees, including Hope Schlehuber. (See PSR ¶¶ 47-53.) He ordered that his daughter continue to receive pay even though she was no longer working as Lead Dispatcher. (See PSR ¶ 23.) Finally, by diverting grant funds into the “slush funds,” he had funds that he could use without oversight from the Tribe or the COPS Office.

B. Objections to the PSR

Issue 1: Defendant’s objection to PSR ¶ 27 (relating to initiation of conspiracy to defraud the United States by dishonest means)

Defendant previously objected to the PSR’s conclusion that Defendant initiated the conspiracy to divert grant funds to credit accounts held by various vendors. Defendant asserted that this plan was jointly formulated by Defendant and Hope Harriet Schlehuber, his administrative assistant and office manager in the Tribal Police Department.

It appears that Defendant has withdrawn this objection. However, if necessary, the Government is prepared to call Ms. Schlehuber as a witness on this issue. She would testify that the idea to divert unused grant funds to credit

accounts held by various vendors was suggested by Defendant, but that she and Defendant mutually agreed to go forward with this idea, thus beginning the conspiracy to defraud the United States by dishonest means in violation of 18 U.S.C. § 371.

Issue 2: Defendant's objection to PSR ¶ 29 (relating to creation and use of credits at Leitz Sports Center, Inc.)

Defendant previously objected to the PSR's conclusion that he and Ms. Schlehuber intentionally created credits at Leitz Sports Center, Inc., through a fictitious purchase of a radar system with grant funds. He further objected to the conclusion that grant funds wrongfully held in the Tribal Police Department's account at Leitz were then improperly used (i) to purchase an all terrain vehicle (hereinafter "ATV") that was used in a raffle, and (ii) to pay off charges on Defendant's personal account.

It appears that Defendant has withdrawn this objection. However, if necessary, the Government is prepared present evidence and testimony showing that grant funds were intentionally used to create a credit at Leitz Sports Center. The evidence would show that the Tribal Police Department ordered a Garmin 3010C radar system on May 25, 2006. This Garmin radar system cost \$5,030. (Exh. 7.) The Tribal Police Department also bought a light kit and generator at the same time for \$1,414. (Exh. 6.) Defendant signed a tribal disbursement voucher on May 25, 2006, that requested that the Garmin radar system, the light kit, and the generator be paid for with funds from Tribal cost center 2252, which corresponds to grant funds from Tribal Resources Grant Program (hereinafter "TRGP") Grant

#2004HEWX0029. (Exh. 8.) Thus, the total payment request was for \$6,444. The Tribe issued a check for \$6,444 to pay for the Garmin radar system, light kit and generator on June 1, 2006. (Exh.9.) Accounting records from Leitz show that the Tribal Police Department's account was debited \$1,414 for the light kit and generator, but no corresponding debit for the Garmin unit. (Exh. 5.) Special Agent Tremaglio from the U.S. Department of Justice's Office of Inspector General (hereinafter "DOJ/OIG") would testify that employees of Leitz Sports Center advised him that the Garmin unit was never delivered.

Expected exhibits would include the following:

Exh. No.	Description	Admitting Witness	Offered	Admitted
7	Leitz Sports Center, Inc., invoice # 117831, dated 5/25/06	S.A. Tremaglio		
6	Leitz Sports Center, Inc., invoice # 117832, dated 5/1/06	S.A. Tremaglio		
8	Tribal disbursement voucher #147651, dated 5/25/06	S.A. Tremaglio		
9	Tribal check #00527997, dated 6/1/06	S.A. Tremaglio		
5	Leitz Sports Center, Inc. monthly account statements for Tribal Police Department for May, June and July 2006 (4 pgs)	S.A. Tremaglio		

The evidence would further show that Defendant and Ms. Schlehuber ordered a Honda ATV from Leitz for use in the Tribal raffle / fund raiser and improperly paid for this ATV with grant funds. Leitz records show that the ATV cost \$4,654. (Exh. 4.) The Tribal Police Department's account, which contained funds from

TRGP Grant #2004HEWX0029, was debited this exact amount on the date of the purchase of the ATV. (Exh. 5.)

Expected exhibits would include the following:

xh. No.	Description	Admitting Witness	Offered	Admitted
4	Leitz Sports Center, Inc. invoice #118336, dated 07/10/2006, showing purchase of ATV for \$4,654	S.A. Tremaglio		

Special Agent Tremaglio would testify that the purchase of the ATV with grant funds was not a proper use of grant funds. In addition, the evidence in this case shows that Defendant sought to claim credit for this purchase. Special Agent Postma from the Federal Bureau of Investigation (hereinafter "FBI") would testify that he interviewed numerous Tribal employees and Board members who told him that Defendant stated that he purchased the ATV that was used in the raffle with his own money.

A review of records from Leitz Sports Center also shows that Defendant used funds in the Tribal Police Department's account, which contained grant funds, to pay off a charge on his personal account. Leitz Sports Center's records for Defendant show a credit paid to Defendant's personal account in the amount of \$365.72 on May 1, 2005. The note on the Defendant's personal account record states "PMT Pd. By Sault tribe law enforcement – per Hope." (Exh. 1.) Leitz's QuickReport for Defendant also shows a credit to his account in the amount of

\$365.72 on May 1, 2005. Finally, Leitz's records for the Tribal Police Department show debits totaling \$365.72 on the same date. (Exh. 3.)

Expected exhibits would include the following:

Exh. No.	Description	Admitting Witness	Offered	Admitted
1	Leitz Sports Center, Inc. account statement for Fred Paquin for 12/31/2004-5/01/2005	S.A. Tremaglio		
2	Leitz Sports Center, Inc. QuickReport January 1, 2000 through July 24, 2008 for Fred Paquin	S.A. Tremaglio		
3	Leitz Sports Center, Inc. monthly account statement for Sault Tribe Law Enforcement, dated 05/31/2005	S.A. Tremaglio		

Issue 3: Defendant's objection to PSR ¶ 35 (relating to inclusion of false purchases for which another Tribal official signed the Tribal disbursement voucher in the total loss amount)

Defendant previously objected to the inclusion of false purchases made in August and September 2007 in the loss total. It appears that he has withdrawn this objection. However, if necessary, Ms. Schlehuber would testify that she obtained eleven invoices from various vendors during the time period in question. (Exh. 12B-12D, 13B-13E, 14B, 14C, 15A, 16A.) She attached these invoices to five Tribal disbursement vouchers (Exh. 12A, 13A, 14A, 15, 16A) that were signed by another tribal official. These documents were then submitted to the Tribal Purchasing Department, thereby requesting payment for the items listed in the invoices. The documents are listed below and will be presented in court at the time of sentencing if necessary.

Exh. No.	Description	Admitting Witness	Offered	Admitted
12A	Sault Tribe Disbursement Voucher #150990 dated 08/31/2007	Schlehuber		
12B	Nye Uniform Invoice #179891 dated 08/20/2007	Schlehuber		
12C	Nye Uniform Invoice #179893 dated 08/20/2007	Schlehuber		
12D	Nye Uniform Invoice #179896 dated 08/20/2007	Schlehuber		
13A	Sault Tribe Disbursement Voucher #151008 dated 09/12/2007	Schlehuber		
13B	Michigan Police Equipment Co. Invoice #119584 dated 09/04/2007	Schlehuber		
13C	Michigan Police Equipment Co. Invoice #119583 dated 09/04/2007	Schlehuber		
13D	Michigan Police Equipment Co. Invoice #119455 dated 09/04/2007	Schlehuber		
13E	Michigan Police Equipment Co. Invoice #119456 dated 09/04/2007	Schlehuber		
14A	Sault Tribe Disbursement Voucher #151019 dated 09/26/2007	Schlehuber		
14B	Nye Uniform Invoice #184029 dated 9/26/2007	Schlehuber		
14C	Nye Uniform Invoice #184028 dated 9/26/2007	Schlehuber		
15A	Sault Tribe Disbursement Voucher #151021 dated 09/26/2007	Schlehuber		
15B	Michigan Police Equipment Co. Invoice #119460 dated 09/26/2007	Schlehuber		
16A	Sault Tribe Disbursement Voucher #151026 dated 09/27/2007	Schlehuber		
16B	Nye Uniform Invoice #184168 dated 9/27/2007	Schlehuber		

The Government recognizes that Defendant was administratively suspended from August 31, 2007 to March 13, 2008. Nevertheless, these false purchases should be counted against his loss total for three reasons. First, Defendant continued to exercise authority within the Tribal Police Department during this

time. Ms. Schlehuber would testify that she obtained the false invoices and submitted the invoices and disbursement vouchers to the Tribal Purchasing Department in furtherance of her conspiracy with Defendant. She would further testify that Defendant directed her actions.

Second, Ms. Schlehuber's actions constitute "reasonably foreseeable acts and omissions of [another] in furtherance of the jointly undertaken criminal activity." USSG §1B1.3(a)(1)(B).

Third, Defendant was responsible for reviewing and signing various documents associated with TRGP Grant #2005HEWX0032, the grant that was used to pay for these false purchases.

Thus, Defendant should be held accountable for these false purchases.

Issue 4: Defendant's objection to PSR ¶ 41 (relating to use of \$2,457 of credit in Tribal Police Department's account at Mackinac Sales as part of new lease agreement for personal vehicle for Defendant's son-in-law)

Defendant's attorney has recently informed the Government that Defendant no longer intends to dispute this issue. The Government will be prepared to present evidence on this point at sentencing if necessary.

Issue 5: Defendant's objection to PSR ¶ 43 (relating to diversion of a treadmill purchased with Tribal funds designated for the Juvenile Detention Center)

Although it is the Government's position that Defendant wrongfully diverted this treadmill, this issue seems relatively minor compared to the remainder of the sentencing issues and will not make a difference for calculation of loss amount.

Accordingly, the Government will forego presenting evidence on this point at sentencing.

Issue 6: Defendant's objection to PSR ¶ 45 (relating to inclusion in Defendant's loss total of \$9,720 in grant funds that were provided to a state drug task force)

Defendant previously objected to this section of the PSR. He claimed (i) that it was not his intention that grant funds be used to pay the state drug task force, and (ii) that the payment was intended to cover costs associated with having members of the state drug task force ride along with Tribal police officers to provide training.

It appears that Defendant has withdrawn this objection. However, if necessary, the Government will present evidence that shows that Defendant and Ms. Schlehuber created false documents that purported to show that the Straits Area Narcotics Enforcement Team (hereinafter "SANE") conducted training for Tribal police officers and then obtained grant funds to pay for this non-existent training. Specifically, at sentencing, Ms. Schlehuber would testify that she obtained a blank copy of SANE letterhead. (Exh. 30.) She then drafted a flyer purporting to advertise upcoming drug task force training to be conducted by SANE at a cost of \$540 per officer (Exh. 31) and a training roster that falsely listed 18 Tribal police officers who attended this training. (Exh. 32.) Finally, she and Defendant submitted a disbursement voucher that requested a payment of \$9,720 to cover the cost of this training. (Exh. 33.) This disbursement voucher assigned the cost of this training to cost center 2252, which corresponds to TRGP Grant

#2004HEWX0029. Special Agent Tremaglio would testify that the SANE commander informed him that Defendant presented a check for this amount to the head of the SANE team and obtained a receipt in return. (Exh. 34, 35.) The SANE commander did not relate this payment to any specific training. Indeed, Defendant told the SANE commander that this money was an annual donation.³

Expected exhibits would include the following:

Exh. No.	Description	Admitting Witness	Offered	Admitted
30	Blank SANE letterhead obtained by Ms. Schlehuber	S.A. Tremaglio		
31	SANE Multijurisdictional Counterdrug Task Force Training Flyer	S.A. Tremaglio		
32	Training Roster	S.A. Tremaglio		
33	Sault Tribe Disbursement Voucher #138432	S.A. Tremaglio		
34	Sault Tribe check #00518869, dated 02/14/2006, payable to SANE for \$9,720.00	S.A. Tremaglio		
35	SANE Official Michigan State Police Receipt F10023_ for \$9,720.00 dated 02/17/2006	S.A. Tremaglio		

Issue 7: Defendant's objection to PSR ¶¶ 47-53 (relating to inclusion of description of Defendant's management style as related by Tribal police officers)

Defendant previously asserted that PSR ¶¶ 47-53 did not accurately describe his management style. He further argued that this information was irrelevant to sentencing.

³ It should be noted that the SANE Team is funded primarily through donations and grants. Thus, it would not be unusual for the SANE Team to receive a donation from a law enforcement agency within its jurisdiction.

It appears that Defendant has withdrawn this objection. However, if necessary, Special Agent Johnston would testify regarding his interviews of Tribal police officers, who provided extensive descriptions of Defendant's management style. In addition, Ms. Schlehuber and Chief Marchand would testify regarding this issue. This testimony would establish the accuracy of the information in PSR ¶¶47-53.

Furthermore, this information is relevant to the sentencing. 18 U.S.C. § 3553(a)(1) directs this Court to consider "the nature and circumstances of the offense and the history and characteristics of the defendant." As happens in many public corruption cases, Defendant was able to carry out his criminal acts by causing subordinates to fear that crossing Defendant would put one's career risk. Thus, Defendant's management style was critical to his ability to carry out the offense conduct and relevant conduct.

Issue 8: Government's and Defendant's objections to loss amount and restitution

Defendant appears to acknowledge much of the conduct set forth in the PSR, but still objects to the overall loss calculation. It is the Government's view that this Court could calculate loss amount in two different ways. First, the Court could conclude that the loss amount is the total of (i) the entire federal share of the 2002, 2003, 2004, and 2005 grants, and (ii) other criminal transactions that were not funded by the grants. Under this method of calculation, the loss amount total would be \$819,554.99 (or \$842,962.73, if the Court concluded that the loss amount

associated with Ms. Cullen's employment situation totaled 43,407.74), which results in a 14-point enhancement under USSG §2B1.1(b)(1)(H).

The Court could also conclude that the total loss amount is (i) the diverted portion of these grants (\$242,139.82 based on false invoices, and \$26,000 based on overpayments for vehicles), and (ii) other criminal transactions that were not funded by the grants. Under this method of calculation, the loss amount would be \$337,017.14. This is the method of calculation recommended in PSR ¶ 69. In addition, this is the method of calculation used by Chief Judge Maloney in sentencing Ms. Schlehuber. Under this method of calculation, the loss amount total results in a 12-point enhancement under USSG §2B1.1(b)(1)(G).

1. Loss Calculation Based on Total Federal Share of Grants (Method #1)

The total federal share of the 2002, 2003, 2004, and 2005 grants was \$797,355. In addition, Defendant engaged in relevant conduct not related to grants by directing that his daughter receive pay for work she did not perform (\$21,000 or \$43,407.74 (PSR ¶ 23)). The total amount of loss would then be \$819,554.99 or \$842,962.73, depending on how much loss is attributed to Ms. Cullen's work.

There is one simple reason to adopt this method of calculating loss: if Defendant and Ms. Schlehuber had truthfully informed the COPS Office that they did not need the full amount of the grants and did not have the ability to spend the funds within the time periods of the grants, then the Tribal Police Department would not have been awarded any of these grants and these funds could have been awarded to another police department. The Government recognizes that this

method is based, in part, on the potentially incorrect assumption that the Tribal Police Department had no need for grant funds, or had such a minimal need that they would not have been awarded the grants. Depending on further statements by Ms. Schlehuber and Chief Marchand, the Government may withdraw this method of loss calculation from consideration at the time of sentencing.

2. Loss Calculation Based on Diverted Grant Funds and Other Criminal Misappropriations and Diversions (Method #2)

It is the Government's view that each individual false purchase should constitute loss because Defendant and Ms. Schlehuber intended to divert the cost of the false purchase to a "slush fund" that was not subject to any of the terms of the grants. These funds were essentially laundered into the "slush funds" and could then be used in any way and at any time that Defendant wished. The commentary to USSG §2B1.1 defines loss as the greater of actual loss or intended loss, with intended loss including the pecuniary harm that was intended to result from the offense. USSG §2B1.1 comment (n.3(A)(i) and (ii)). In the instant offense, Defendant intended to defraud the COPS Office through claims that all available COPS grant funds had been utilized within the terms and period of the grant, when in actuality, a portion of them had not. The intended loss then becomes all credits built with vendors or items, such as the defibrillators and radios, that were diverted away from the Tribal Police Department.

This interpretation is supported by commentary, note 3(F)(ii), which discusses special rules for frauds involving government benefits. That note states the following:

(ii) Government Benefits.—In a case involving government benefits (e.g., grants, loans, entitlement program payments), loss shall be considered to be not less than the value of the benefits obtained by unintended recipients or diverted to unintended uses, as the case may be. For example, if the defendant was the intended recipient of food stamps having a value of \$100 but fraudulently received food stamps having a value of \$150, loss is \$50.

USSG §2B1.1 comment. (n.3(F)(ii)). Based on this note, any diversion for an unintended use constitutes loss. Defendant and Ms. Schlehuber diverted grant funds to the slush funds specifically because they wanted to avoid grant terms that limited (i) the time period in which the grant funds could be used, and (ii) the items the grant funds could be used to purchase. They diverted these funds to circumvent these restrictions. Thus, any subsequent use would have to be described as an unintended use.

The following table summarizes the loss total based on this calculation method:

Source of Loss	Loss Amount
Fraudulent invoices	\$242,139.82 ⁴
Overstated costs associated with purchase 13 vehicles from Mackinac Sales	\$26,000.00 ⁵
Defibrillators diverted to casinos and health club	\$20,722.83 ⁶
Treadmill diverted from the JDC	\$1,199.99
Estimated Wages paid to Ms. Cullen	\$21, 000.00 or \$43,407.74 ⁷
.40 caliber Sig Arms handguns given to Manistique Police Department	\$6,950.00 ⁸

⁴ This amount includes (i) the purchase of the ATV that was used in the Tribe's raffle, (ii) donations by the vendors to the Junior Police Academy, (iii) Defendant's personal purchases at Leitz, and (iv) other improper uses of grant funds held in the Tribal Police Department's accounts at the vendors

⁵ This amount includes the \$2,457 that was used to help finance Defendant's son-in-law's new vehicle lease.

⁶ The purchase of the defibrillators was a legitimate use of grant funds. The diversion of the defibrillators to entities outside the Tribal Police Department was improper and a violation of the terms of the grant.

⁷ The two alternatives are based on different estimates of the amount that Ms. Cullen was paid even though she was no longer working as the Lead Dispatcher. (See PSR ¶ 23.)

⁸ The purchase of the handguns was a legitimate use of grant funds. The diversion of the handguns to an entity outside the Tribal Police Department was improper and a violation of the terms of the grant.

Source of Loss	Loss Amount
Motorola CT-250 radios given to casino security	\$8,554.50 ⁹
Fictitious SANE training	\$9,720.00 ¹⁰
Remington 12 gauge shotguns given to Kinross Police Department	\$730.00
Total	\$337,017.14 or \$359,424.88¹¹

Defendant argues that some of the grant funds that were fraudulently diverted to the Tribal Police Department's accounts at the various vendors were then used for legitimate purposes, and that these purchases should not count against loss amount. The Government disagrees. As noted, these diversions to the "slush funds" were carried out by a series of false statements to the Tribal Purchasing Department and to the COPS Office that were intended to allow Defendant to circumvent specific grant terms. These false statements impaired, obstructed and defeated the lawful function of the COPS Office by dishonest means. These actions meet the definition of "defraud" as set forth in Sixth Circuit Criminal Pattern Jury Instructions, Instruction 3.01B (2009). Moreover, these actions are the core of Defendant's conspiracy to defraud the United States by dishonest means.

Nevertheless, if requested by the Court, the Government is prepared to provide a detailed explanation of what happened to the diverted grant funds and the methodology used to arrive at these conclusions. In short, the Government's analysis shows the following:

⁹ The purchase of communications equipment was a legitimate use of grant funds, although these particular radios might not have been useful for the Tribal Police Department. The diversion of the radios to casinos was improper and a violation of the terms of the grant.

¹⁰ The use of grant funds to pay for training was authorized. Defendant was not authorized to distribute this amount grant funds to the SANE commander as an annual contribution or to pay for training that did not take place.

¹¹ These totals do not include the costs of purchases of uniforms for casino security officers. The loss total does not include an estimate of this amount due to difficulties in distinguishing uniform purchases for Tribal police officers from purchases for casino security officers.

a. Disposition of grant funds held as credits by Gall, Inc.:

Minimum amount of grant funds diverted ¹²	\$55,731.24 (PSR ¶ 37)
Amount recovered by investigators	\$13,583.72 (PSR ¶ 59)
Improper donation to Junior Police Academy	\$5,319.60 (PSR ¶ 42)
Other uses of credits that would not have been allowed if, instead, Defendant had attempted to make purchase through of accepted procedures	Approx. \$27,000 (based on analysis by DOJ/OIG)
Use of credits that would have been legitimate if funds not diverted	Approx. \$10,000 (18% of diverted grant funds)

b. Disposition of grant funds held as credits by Leitz Sport Center, Inc.:

Minimum amount of grant funds diverted ¹³	\$13,019.00 (PSR ¶ 37)
Amount recovered by investigators	\$7,403.95 (PSR ¶ 59)
Improper donation to Junior Police Academy	\$0
Other uses of credits that would not have been allowed if, instead, Defendant had attempted to make purchase through of accepted procedures	Unknown, but estimated at \$26,000 ¹⁴ (based on analysis by DOJ/OIG)
Use of credits that would have been legitimate if funds not diverted	unknown

c. Disposition of grant funds held as credits by Michigan Police Equipment Company:

Minimum amount of grant funds diverted ¹⁵	\$112,712.88 (PSR ¶ 37)
Amount recovered by investigators	\$21,034.97 (PSR ¶ 59)
Improper donation to Junior Police Academy	\$5,000.00 (PSR ¶ 42)
Other uses of credits that would not have been allowed if, instead, Defendant had attempted to make purchase through of accepted procedures	Approx. \$62,000 (based on analysis by DOJ/OIG)
Use of credits that would have been legitimate if funds not	Approx. \$24,500.00

¹² This amount is based on very conservative methodology used by DOJ/OIG. Ms. Schlehuber would testify that the actual amount was much more.

¹³ This amount is based on very conservative methodology used by DOJ/OIG. Ms. Schlehuber would testify that the actual amount was much more.

¹⁴ DOJ/OIG noted that diverted grant funds were comingled with other funds, thus preventing accurate analysis of disposition of grant funds diverted to Leitz

¹⁵ This amount is based on very conservative methodology used by DOJ/OIG. Ms. Schlehuber would testify that the actual amount was much more.

diverted	(22% of diverted grant funds)
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d. Disposition of grant funds held as credits by Nye Uniform Company:

Minimum amount of grant funds diverted ¹⁶	\$60,676.70 (PSR ¶ 37)
Amount recovered by investigators	\$17,148.24 (PSR ¶ 59)
Improper donation to Junior Police Academy	\$0
Other uses of credits that would not have been allowed if, instead, Defendant had attempted to make purchase through of accepted procedures	Approx. \$13,000 (based on analysis by DOJ/OIG)
Use of credits that would have been legitimate if funds not diverted	Approx. \$30,500 (50% of diverted grant funds)

Issue 9: Defendant's objection to PSR ¶¶ 60, 64 (relating to restitution owed by Defendant)

The Government concurs with the PSR's recommendation regarding restitution.

C. Request for opportunity for victim statement

The Government respectfully requests an opportunity for a representative of the Tribe to make a victim impact statement at sentencing.

¹⁶ This amount is based on very conservative methodology used by DOJ/OIG. Ms. Schlehuber would testify that the actual amount was much more.

Respectfully submitted,

DONALD A. DAVIS
United States Attorney

Date: December 8, 2010

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