

**FEDERAL PUBLIC DEFENDER  
District of Arizona  
850 West Adams Street, Suite 201  
PHOENIX, ARIZONA 85007**

**JON M. SANDS  
Federal Public Defender**

**(602) 382-2700  
1-800-758-7053  
(FAX) 382-2800**

March 13, 2007

Honorable Ricardo H. Hinojosa  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002

**Re: Comments on Proposed Amendments Relating to Miscellaneous Laws**

Dear Judge Hinojosa:

With this letter, we provide the comments of the Federal Public and Community Defenders on the proposed amendment relating to the statute criminalizing unapproved demonstrations at national cemeteries and the issues for comment regarding Internet gambling.

**I. Demonstrations at National Cemeteries, Military Funerals**

Pub. L. 109-228 created a new offense prohibiting unapproved protests at cemeteries under the control of the National Cemetery Administration or on the property of Arlington National Cemetery, and created a no-protestor zone around military funerals that begins one hour before a funeral and ends one hour after its conclusion. *See* 38 U.S.C. § 2413. The statutory maximum is one year, *see* 18 U.S.C. §1387, making it a Class A misdemeanor.

Understandably, there is no guideline for sentencing defendants for engaging in political speech. Thus, we agree that the offense should be referred to §2B2.3 (Trespass).

We oppose the 2-level enhancement under subsection (b)(1) for this offense. Currently, that specific offense characteristic applies if the trespass was on a secured government installation, a nuclear energy facility, on a U.S. vessel or aircraft, in a secured airport, at a residence, or on a critical computer system. *See* U.S.S.G.

§2B2.3(b)(1). Those locations are not ordinarily open to the public and involve special security concerns. Engaging in a demonstration at a national cemetery does not entail any similar potential for security breach or injury to anyone. The core offense is trespassing. Adding two levels based on naming the place, a public cemetery with no special security or safety concerns, is unjustified.

## **II. Internet Gambling, Issues for Comment**

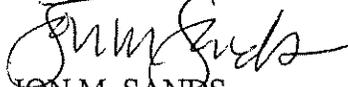
Public Law 109-347 created a new offense at 31 U.S.C. § 5363, entitled “Prohibition on acceptance of any financial instrument for unlawful internet gambling.” The offense should be referenced to USSG § 2E3.1 (Gambling Offenses) because it covers the conduct prohibited by § 5363.

The Commission should not add a cross reference to § 2S1.1 or 2S1.3. The statute does not prohibit money laundering or structuring. Rather, it prohibits a person engaged in the business of betting or wagering from knowingly accepting payment by credit card, electronic funds transfer, check, and other financial instruments from a person engaging in unlawful Internet gambling. The purpose of the law, according to its sponsors, is to protect families from devastating losses through Internet gambling. *See* Conference Report on H.R. 4954, Safe Port Act at H8029 (House of Representatives - September 29, 2006). The “Congressional findings and purpose” also mentions debt collection problems, but mentions nothing about money laundering or structuring. *See* 31 U.S.C. § 5361. Indeed, Congress admittedly does not know whether or not Internet gambling is used to launder money. *See* Pub. L. No. 109-347 § 803 (encouraging United States government in deliberations with foreign countries to study *whether* Internet gambling is used to launder money). Thus, after a careful review of the record, Congress did not direct or suggest that the guideline for this offense should punish Internet gambling operators for money laundering. Accordingly, there is no justification for adding a cross reference to § 2S1.1 or 2S1.3.

Further, the Commission should not add cross references that permit a person convicted of one offense to be punished for another. Cross references allow defendants to be sentenced for offenses that cannot be proved with reliable evidence beyond a reasonable doubt, create unwarranted disparity, result in unfairness, and are a primary source of criticism of the Guidelines. If Internet gambling operators launder money, they can be charged and convicted of that offense.

We hope that these comments are useful. Please do not hesitate to contact us if you have any questions or concerns, or would like additional information.

Very truly yours,



JON M. SANDS

Federal Public Defender

*Chair, Federal Defender Sentencing Guidelines  
Committee*

AMY BARON-EVANS

ANNE BLANCHARD

SARA E. NOONAN

JENNIFER COFFIN

Sentencing Resource Counsel

cc: Hon. Ruben Castillo  
Hon. William K. Sessions III  
Commissioner John R. Steer  
Commissioner Michael E. Horowitz  
Commissioner Beryl A. Howell  
Commissioner Dabney Friedrich  
Commissioner *Ex Officio* Edward F. Reilly, Jr.  
Commissioner *Ex Officio* Benton J. Campbell  
Tom Brown, Assistant General Counsel  
Judy Sheon, Staff Director  
Ken Cohen, Staff Counsel