



rightly applied given the plain and obvious circumstances of this offense. However, in light of the fact-intensive nature of the Court's inquiry in determining the appropriate applicability of the sophisticated means enhancement, the United States would offer further argument.

### **ARGUMENT**

The United States agrees with the Probation Office that a two-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(10)(C) is applicable to this offense. (PSR ¶ 103). The Guidelines call for a two-level increase to the offense level if a scheme involved sophisticated means and the defendant intentionally engaged in, or caused, the conduct constituting sophisticated means. The Application Note to this Guideline enhancement provides that for the purpose of this enhancement, "sophisticated means" is defined as "means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." U.S.S.G. § 2B1.1, cmt. n.9 (B). While the comment provides examples regarding the use of fictitious entities, corporate shells, or offshore financial accounts, those "examples are by their own terms simply illustrative, not exclusive." *United States v. Jones*, 778 F.3d 1056, 1058 (8<sup>th</sup> Cir. 2015) (quoting *United States v. Lewis*, 93 F.3d 1075, 1082 (2<sup>nd</sup> Cir. 1996)). As the United States previously argued in its submitted objections, the scheme must be "viewed in light of the fraudulent conduct and differentiated, by assessing the intricacy or planning of the conduct, from similar offenses." *United States v. Hance*, 501 F.3d 900, 909 (8<sup>th</sup> Cir. 2007) (citing *Lewis*, *supra*).

The Eighth Circuit has held that the sophisticated means enhancement is proper when the offense conduct, viewed as a whole, "was notably more intricate than that of the garden-variety [offense]." *United States v. Jenkins*, 578 F.3d 745, 751 (8<sup>th</sup> Cir. 2009) (quoting *Hance*, *supra*).

“Even if any single step is not complicated, repetitive and coordinated conduct can amount to a sophisticated scheme.” *United States v. Huston*, 744 F.3d 589, 592 (8<sup>th</sup> Cir. 2014) (quoting *United States v. Fiorito*, 640 F.3d 338, 351 (8<sup>th</sup> Cir. 2011)).

Here, the defendant used sophisticated means to facilitate the commission of the offense based upon repetitive and coordinated conduct with his co-conspirators to conceal the detection of his offense. As a general matter, the defendant’s goal was simple: to preserve the state contracts of South Arkansas Youth Services (SAYS) with the Department of Youth Services (DYS). However, the *execution* of the scheme to achieve those aims was complex. Indeed, to achieve the goal of his conspiracy, the defendant engaged in a series of payoffs to Cranford, Person #4, and Arkansas Senator C to obtain favorable official action, all the while disguising these payments as legitimate contract fees. Specifically, to finance and conceal his scheme from the Board Members and investigators, the defendant diverted SAYS funds by creating mock contracts with each of the three co-conspirators, including: (1) a contract for lobbying services with Cranford (at an increased rate); (2) a payroll expense for Person #4 as a W-2 employee “Child care advocate;” and (3) a contract for legal services with Arkansas Senator C.

For the payments to Cranford, in order to enter into the contract with the lobbying firm, the defendant misrepresented his actions as being authorized by the Board Members, in violation of the corporate by-laws. In order to continue the scheme and further conceal it from detection, this contract was omitted from the IRS Form 990s. Unlike many other schemes to defraud, because the defendant used a non-profit to further this offense, the defendant had an affirmative duty to disclose the payments. As the information in the PSR makes clear, SAYS was a non-profit with

a 501(c)(3) tax exempt status. PSR ¶ 18. In order to maintain that status, SAYS is required to file IRS Form 990s which “require[] each organization seeking tax-exempt status to report on the organization’s nonpolitical activities, finances, governance, compliance with certain federal tax filings, and compensation paid to certain employees of the organization.” PSR ¶ 20. The defendant, as chief executive officer of SAYS, was instrumental in the preparation and submission of these forms. The true nature of this series of pay-offs (eventually amounting to over \$130,000 *in toto*) to Cranford for assistance in getting official action from politicians, like Henry “Hank” Wilkins, Arkansas Senator C, and others, was concealed from the Board of Directors, other corporate executives, the United States Government, and investigators.

For the payments to Person #4, the payments were first structured as lobbying payments and then later converted into a no-show job at SAYS as a “child care advocate.” However, to accomplish these series of pay-offs to ultimately benefit Cranford, the defendant facilitated another mock contract for the lobbying services and once again concealed its disclosure from relevant authorities. However, to add a layer of complexity to this scheme, once Person #4 was offered a “no-show” job as a child-care advocate, the defendant further subverted the internal controls of the charity and overruled the requirement of a back-ground check for the position due to this individual’s criminal history and drug abuse. The defendant further deceived the employees of SAYS who would be charged with supervising a day-to-day employee when Person #4 failed to attend regular employment. The execution of this portion of the scheme resulted in over \$130,000 to Person #4.

For the payments to Arkansas Senator C, a mock contract for legal services was created as

Arkansas Senator C was an attorney and he began receiving regular payments that later totaled over \$120,000. These payments, which were in fact payments to Arkansas Senator C for agreement to provide legislative acts, were never disclosed to the Board despite the amount paid to Arkansas Senator C for no actual legal work. Moreover, as detailed in the PSR, according to the information in this investigation, the payments the defendant funneled from SAYS further played a role in a related scheme Arkansas Senator C and Cranford arranged to facilitate the release of GIF funds; \$2,000,000 from Act 791 obtained by Senators Woods, and over \$300,000 from Act 818 by Representative Wilkins. PSR ¶¶ 69-70.

Clearly, the defendant's role in the execution of a complex scheme to safeguard his contracts, steer GIF funds, and influence state agencies was complex. The payments to Arkansas Senator C were themselves structured in a manner to be concealed from the Board of Directors and investigators but also facilitated a larger scheme to steer tax-payer funds from the state of Arkansas to local politicians. The payments to Cranford and Person #4 disguised unauthorized lobbying activity and also facilitated payments to Representative Wilkins, who then arranged for GIF funds for SAYS. The defendant's role in the concealment of the scheme was calculated to shield it from detection internally, through the execution of the sham contracts, and externally, through the falsification of the IRS Form 990s.

For the foregoing reasons, the United States agrees with the United States Probation Office that the two-level increase for the use of sophisticated means in the offense pursuant to U.S.S.G. § 2B1.1(b)(10) should apply.

Respectfully submitted,  
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

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/s/ Marco A. Palmieri

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