

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 05 CR 727-01
v.)	
)	The Honorable Amy J. St. Eve
CONRAD M. BLACK, et al.,)	
)	
Defendant.)	

**CONRAD BLACK’S SUBMISSION IN RESPONSE
TO THE PRESENTENCE INVESTIGATION REPORT**

Defendant Conrad M. Black submits this response to the Presentence Investigation Report (“PSI”) received from the Probation Office on November 13, 2007. This submission will set forth (1) Mr. Black’s position on the factors contained in 18 U.S.C. §3553(a) and (2) substantive disagreements with the PSI’s calculation of the advisory Sentencing Guidelines.¹

Factors set forth in 18 U.S.C. §3553(a) indicate that Conrad Black should receive a sentence under the range set forth in the PSI. Consideration of the nature and circumstances of the offense reveals limitations in Conrad Black’s role. Policy concerns of general and specific deterrence have already been largely accomplished based on the wide ranging effects of this case already suffered by Mr. Black. Concerns as to uniformity in sentencing weigh in favor of a sentence closer to that agreed to by the prosecution for Mr. Radler than to the guideline range set forth in the PSI. Information about the history and characteristics of Mr. Black himself indicate that he is a person with a deep reservoir of kindness and generosity consistently exhibited to

¹There were also some non-substantive matters in the PSI as to which the defense seeks correction. These are set forth in Exhibit A hereto.

people of all stations in life and an individual who has made significant contributions to society. The circumstances of Count Thirteen were such that §3553 factors weigh against increasing the guidelines level on the basis of that count.

I. STATUTORY FACTORS SET FORTH IN 18 U.S.C. §3553(A).

The federal sentencing system is ultimately governed by 18 U.S.C. §3553(a). *United States v. Booker*, 543 U.S. 220, 233-34, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). According to 18 U.S.C §3553(a): “[t]he court shall impose a sentence sufficient, but not greater than necessary to comply with the purposes set forth in” 18 U.S.C. §3553(a)(2). According to those enumerated purposes, an appropriate sentence should:

(A) Reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; (B) afford adequate deterrence to criminal conduct; (C) protect the public from further crimes of the defendant; and (D) provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. §3553(a)(2). Section 3553(a) goes on to provide a list of seven factors for courts to consider in determining the appropriate sentence in addition to the general purposes set forth above. Those factors include:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed –[enumerates (A) – (D) set forth above]; (3) the kinds of sentences available; (4) the kinds of sentences and the sentencing range established [under the Sentencing Guidelines] subject to any amendments made to such Guidelines by an act of Congress...; (5) any pertinent policy statement...issued by the Sentencing Commission subject to any amendments made to such policy statement by an act of Congress...; (6) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to the victims of the offense.

18 U.S.C. §3553(a). More significant than the sentencing range established by the advisory Sentencing Guidelines is consideration of the factors set forth in the statute against the background of the counsel to select a sentence “sufficient, but not greater than necessary” to accomplish the statutory purposes. This section of the submission will discuss several of the factors enumerated in the statute that have not previously been discussed in connection with this case.

A. Nature and Circumstances of the Offense

18 U.S.C. §3553(a)(1) provides that in determining the appropriate sentence, Courts should consider “the nature and circumstances of the offense.” This Court presided over a trial of nearly four months in this case and is familiar with both the nature and the circumstances of the offense. Nevertheless, certain aspects of the case bear emphasis in this context.

It is undisputed that the only documented connection between Conrad Black and the offense conduct for which he was convicted was his receipt of payment on two occasions and his signing a non-compete agreement with APC on one. Mr. Black’s principal function at Hollinger during the relevant period was the management of *The Daily Telegraph* in London and *The National Post* in Canada. David Radler was the Chairman of APC and was in charge of directing the staff that effectuated those payments. Conrad Black did not author, direct or effectuate either the APC or the supplemental payments. Such testimony that existed at trial concerning Conrad Black came predominantly from David Radler. Yet with respect to Radler’s testimony on APC, the PSI found that the evidence suggested Radler was “mistaken.” (PSI p. 9 line 265) The Court Order concurred, stating in the Rule 29 context that viewing the evidence with all inferences drawn in the government’s favor, the jury could have concluded that “Radler’s testimony was simply wrong.” (Nov. 5 Order p. 11) If such determination is made, it must also be allowed that

Radler may have been intentionally or unintentionally mistaken on other points including his vague and internally inconsistent descriptions of conversations he says he had with Conrad Black. This renders Mr. Black's connection with the offenses of conviction even more attenuated.

The prosecution has argued that Conrad Black should be sentenced as if he were convicted of the entire scheme they allege in Count One of the Information. However, Conrad Black was not convicted of that scheme. He was convicted, rather, of mailings connected with two discrete transactions and of a concealment of document offense from 2005. In evaluating the offense conduct for purposes of sentencing, these facts are critical as are the limitations on Conrad Black's role in the offense conduct. Both factors argue for a sentence below the guidelines range.

B. General and Specific Deterrence

According to 18 U.S.C. §3553(a)(2), an appropriate sentence should “afford adequate deterrence to criminal conduct” and “protect the public from further crimes of the defendant.” These factors approximate policies of general deterrence – the aim of cautioning the public not to engage in misconduct and specific deterrence – the goal of preventing the defendant from engaging in similar action in the future. Analysis of these factors should properly include the effects an individual has already suffered based on the actions that were the subject of the case prior to the imposition of sentence. This is particularly true when, as here, the public has become well acquainted with the effects of the case and has already received a strong and unambiguous message about the result of the actions that are the subject of the case.

There can exist no doubt that Conrad Black has already paid an enormous price for the actions that were the subject of this case. He has been ousted from the company that he built and

to which he dedicated his professional life. He has lost the ability that he so dearly cherished to participate in public debate on political issues. He has watched his family suffer untold agonies at the hands of the savage and reckless press. He has personally paid over \$30 million and has lost more than \$250 million on stockholdings that declined along with the precipitous decline of Hollinger stock following his departure from the company. He continues to battle a wide range of civil cases here and in Canada. His assets in Canada have been frozen and he must account to a court appointed official for his expenditure of his own money. Even after the final resolution of the last case based on these facts, Mr. Black will suffer lasting impact. He will never again work for a public company, or in all likelihood, serve on another public board. These facts should be considered in connection with specific deterrence policies in sentencing in that it is not simply the case that Conrad Black is more than sufficiently personally deterred by the events that are the subject of this case, but that these events will actually prevent him from ever being in a position in which such events would be possible.

As numerous letters have recounted, Conrad Black is a man whose many professional, intellectual and political accomplishments in his native Canada and abroad earned him the respect of untold numbers of academics, historians, politicians, and businesspeople. His achievements also allowed him to extend an umbrella of protection over his wife and children and to shield them from some of the worst effects of his fame and notoriety for a series of heartfelt but politically unpopular positions. Now the respect that Mr. Black had built over a lifetime of work as a businessman, author and intellectual has been compromised and his capacity to protect his family has been severely diminished. During the course of the last five years, both of Mr. Black's sons, James and Jonathan, have suffered severe health problems that bear connection to the tribulations endured by the entire family. Nothing can describe much less

rectify the immeasurable suffering attendant upon these realities. As many who wrote on Conrad Black's behalf have stated from knowledge and observation, the pain has been unimaginable.

The suffering and loss that Mr. Black has endured over the course of the last 5 years has been made obvious to the world at large. Countless newspapers, periodicals and books have featured this case and have cruelly and vociferously proclaimed Conrad Black's professional demise. As noted by Gerald Schwartz, a prominent Canadian businessman, Conrad's "suffering, his financial loss and his humiliation are already recognized by everyone in the business and financial communities as a steep price already paid." Many others in Canada, in the United States and in England echo the same sentiments. Under these circumstances, the sentencing policy of general deterrence, like that of specific deterrence, has already been largely accomplished by the fact of this case as well as by the prison term to which Conrad Black will be sentenced. Under these circumstances, no additional months of incarceration are necessary to amplify the message.

C. Avoidance of Unwarranted Sentencing Disparity

18 U.S.C. §3553(a)(6) provides that in determining the appropriate sentence, courts should consider "the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct." As has been discussed in Conrad Black's Submission Regarding the Court's Choice of Federal Sentencing Guidelines, the sentence agreed between prosecution and defendant David Radler is a sentence of 29 months with an opportunity to be sent to Canada and released from incarceration after six months. As noted in Mr. Black's submission, Mr. Radler is entitled to some leniency based on cooperation under *United States v. Boscarino*, 437 F.3d 634 (7th Cir 2006). Yet even after crediting Mr. Radler for his willingness to serve as a prosecution witness at trial, the ninety percent difference

between the sentence the prosecution has accepted for David Radler and that which they propose for Conrad Black offends fundamental concepts of fairness. This reasoning is all the more compelling when one recognizes that David Radler claimed personal responsibility in his plea agreement for a significant amount of conduct for which Conrad Black was not convicted. Furthermore, the evidence at trial including: (1) the many lawyers and businesspeople who dealt only with David Radler and never with Conrad Black in connection with the United States Community Newspaper group sales that were the subject of the case; and (2) the Hollinger employees, including David Radler himself, who verified that Mr. Radler was indeed in charge of the U.S. Community Group, illustrate the fact that David Radler was indeed the lead actor in the counts for which Conrad Black and the other defendants were convicted. Under these circumstances, the prosecution has accepted that a 29 month sentence for David Radler, with the substantial discount in time served available upon transfer to Canada, is a reasonable and just sentence in this case. A just and appropriate sentence for Conrad Black should reflect that judgment after adjustments to account not only for Mr. Radler's role as a cooperator, but for his more direct role and actualizing role in the misconduct charged in the case. Policy concerns relating to avoiding unwarranted sentencing disparity are persuasive argument for a sentence below the guideline range in this case.

D. History and Characteristics of Conrad Black

18 U.S.C. §3553(a)(1) provides that in determining the appropriate sentence, courts should consider "the history and characteristics of the defendant." Even for those who sat through each day of the trial in this case, the information that emerged as to Conrad Black's character was in the form of an outline rather than a description. His wife, Barbara and daughter Alana attended the trial almost every day which evidenced a closeness with his nuclear family.

He listened attentively to the proceedings, made and kept notes and unfailingly displayed respect for the Court and the trial proceedings. Beyond that, observations of Mr. Black during the course of the trial yielded no substantive information.

Conrad Black's prior words, whether advanced by the prosecution or the defense, did little to augment this incomplete picture. He spoke and wrote in an educated and somewhat elaborate manner. He expressed optimism for the long term welfare of Hollinger in his musings and corporate presentations. He expressed frustration with those who fought him for control of Hollinger during the period of this fight and shared a self-deprecating sense of humor and good wishes with close friends in relaxed moments. The few trial witnesses who had direct interaction with Conrad Black described him as hard-working, serious and skilled as a newspaper proprietor, and unfailingly courteous.

The only remaining source of information about Mr. Black, and perhaps the most misleading, consists of the things he had. Although it was never advanced as an argument that Mr. Black's character was dictated by the trappings of his economic success, the human impulse for those that sat through the trial evidence was to wonder as to what type of person would employ a chauffeur and other personal assistants, use a corporate jet, and reside in elegantly appointed homes in several cities. The media, to be sure, wasted no time weaving the information about Mr. Black's possessions into an elaborate and page turning fiction of a money hungry elitist whose highest ambition was social advancement in the upper echelons of New York and London society. "Lord" Black, the media mocked, was receiving his comeuppance in a Chicago court room – as if the trial were a proxy for all the social injustices of the world with Conrad Black the villain and his downfall the justified and preordained result. It would be nonsensical to imagine that the human interests and foibles the press was appealing to in crafting

their coverage can simply be ignored. It would be small exaggeration to say that everyone who learned of the case against Conrad Black composed a mental rough draft of the content of his character.

The task that now faces this Court, however, is to sentence a human being in all of his complexity. The comments on Conrad Black's history and character provided by letters submitted by Mr. Black's family, friends and colleagues make that task possible by illuminating aspects of his personality that did not feature in the trial, have not been discussed in recent media, and could not be assumed from his lifestyle. Added to these observations are personal reflections on religion and family written by Mr. Black himself in his 1993 autobiography *A Life In Progress* and political reflections submitted by Mr. Black to the *Report on Business* insert to the Canadian *Globe and Mail* publication in the late 1980s. His writings reveal a deep spiritualism and sensitivity as well as a long-standing devotion to and support for the United States. It is in the dozens upon dozens of letters submitted for Mr. Black from individuals inhabiting an astonishing breadth of stations in life, however, that the most valuable insights into his personality can be located. Conrad Black's attributes described in these letters, as displayed quietly and consistently over a lifetime of personal and professional interactions, are what best define the content of his character.

In relationships with his closest family members, Conrad Black is intensely loyal, protective and private. In his autobiography, Mr. Black wrote in deeply affecting terms of his relationships with his mother and father and the experience of their untimely deaths within ten days of one another. He succinctly described the circumstances of his divorce from his first wife, Joanna. He made reference to his love and devotion for his three children, Jonathan, Alana, and James, dedicating the book to them, but eschewing any detailed discussion of their

lives. The same was true with respect to the discussion of his wife, Barbara. Conrad Black's devotion to Barbara was clear through the combination of the words encapsulating his admiration and the sentiments withheld from the public domain.

Mr. Black's father, George Black, as recounted in Barbara's letter, was "an erudite and successful businessman" but "something of an eccentric." The bond forged between Conrad Black and his father was based on exchanging conversation and ideas on history, finance, and literature.² It was from his father that Mr. Black learned his love of history and of language so that it is the memory of his father that animates Mr. Black's continued adherence to these disciplines.

From the time that he went off to college, Mr. Black was able to earn his tuition and living expenses rather than to ask his family for support although they were able and willing to provide it.³ He pursued studies that paralleled the interests he cultivated under the tutorship of his father, focusing on history and political science before earning a degree, though never becoming qualified to practice in the field of law.

Mr. Black's mother, Betty, died of liver cancer on June 19, 1976 at the age of 63. Mr. Black has described his mother as "a natural, convivial and altogether virtuous person."⁴ He has written that she was "as straightforward as my father was complicated and sophisticated, as affable as he was prone to be aloof, as constant as he was temperamental."⁵ He recalled his last conversation with his mother two days before she died at home as being "intense, difficult, and

²Letter of Barbara Black, p. 7

³Id.

⁴Conrad Black, *A Life In Progress*, p. 3

⁵Id.

brief, but we actually did say goodbye, and it helped; at least it helped me.”⁶ Mr. Black had one brother, George Montegu Black, or “Mont” who, along with Conrad, Black was close to their parents, particularly with their mother. Reflecting about his mother, Mr. Black has written; “The memory of her that predominates, that never abates or ceases to be inspiring, is her burning partisanship for us. The power of her fine example is even strengthened by the excruciating end.”⁷

On June 29, 1976, ten days after the death of their mother, Conrad and Mont Black lost their father in a tragic accident. While ascending the stairs of his Toronto home, with Conrad Black present, Mr. Black senior fell backwards through the stairway banister to the floor below. After the accident, Conrad Black has written, “My father and I had a little conversation, one more effort to bridge the gap of years and pathos that separates a man from his son. He called me “a good son.” It was a deeply affecting exchange. I tried to be hopeful in words and thoughts, but he had sustained a terrible shock and had practically no will to go on. He began to lapse in and out of consciousness, and I was taken out by the presiding doctor and warned in the most unambiguous terms that he might not make it.”⁸ Conrad Black’s father passed away later that same evening.

In the brief period following the death of his mother but before the death of his father, Conrad Black attempted to minister to his father and to encourage him not to abandon hope. Recognizing that his father did not share his religious faith but was rather confirmed in his atheism, Conrad Black did not try to impose his own theology. Rather, he attempted to impart to his father some of his own optimism and resilience. Of conversations with his father in this

⁶Id. at 167-72.

⁷Id.

⁸Id.

period, Conrad Black has written: “In surviving my mother, I said, he had at least spared her the sadness he was now experiencing. Even after all he had achieved and endured, especially this latest and heaviest deprivation, his life still had meaning, and there were few practical limits to the happiness he might yet attain or recreate if he could look past, without being disrespectful, the gloom of recent events.”⁹ At the time Conrad Black’s father fell from the staircase, he was in the process of retrieving a volume of humorous writings by H. Alan Smith in response to Conrad Black’s suggestion that they coordinate their readings. Although his father’s life was extinguished by the accident before it could have been determined whether Conrad Black’s encouragement could have taken root, Conrad Black’s unfailing ability to exhibit hope rather than despair even in moments of the most profound personal darkness was exhibited in this instance, as in so many instances throughout his life.

As explained by Barbara Black in her letter on behalf of her husband, Conrad “always sees the best in events and people. For Conrad, the glass is always half full no matter what life dishes out for him.”¹⁰ Alana Black echoed the same sentiments in her letter for her father. Alana wrote: “My father sees the world through rose colored glasses and fresh eyes – no matter what problems or issues arise, he finds something positive to focus on. He sees and believes in the good in everything and everyone.”¹¹ Mr. Black’s positive pronouncements regarding the likely outcome of the trial pre-verdict as well as his statements of perseverance in the post verdict phase are born of the same spirit. And whatever one’s opinion as to some of Mr. Black’s public statements, it is irrefutable that his personal fortitude in dealing with this case as in dealing with other tragedies that have befallen him in his life has had the effect of sustaining

⁹Id.

¹⁰Letter of Barbara Black p. 7

¹¹ Letter of Alana Black p. 5

those closest to him in times of need. After describing a lifetime of personal turmoil in her letter for her husband, Mrs. Black attests: “I could not have gotten through a week of the sort of assault we have now taken for the past four years without the strength and love [Conrad] has given me.”¹² Mr. Black’s sister-in-law, June Black, writes of the solace Conrad was able to provide during the illness of her husband, Conrad’s only brother, Mont as well as after Mont’s death. June describes the manner in which, on hearing the news of Mont’s cancer diagnosis, Conrad immediately rearranged his schedule to spend the maximum time possible with June and Mont in Toronto. In addition to standing by their side during medical discussions as to Mont’s course of treatment and assisting them in their financial burden, Conrad served as a constant and uplifting presence for June and Mont Black in their time of need. June wrote of Mr. Black: “His visits were too numerous to count and phone calls were constant. Each time he raised the spirits of both Monte and myself. As we came to lose this battle, Conrad took the burden from my shoulders in everything that, sadly needed to be done.”¹³ Conrad’s support to his brother’s widow included not only taking care of funeral arrangements and executing Mont’s will, but volunteering use of his home for June’s family Christmas observance after divining that June would need a place to gather her family free from the painful memories of her husband’s recent demise. Mr. Black’s sensitivity to the grief of others extended to friends. Dominic Lawson writes of the fact that when his younger daughter was born with a significant genetic disability, Conrad came to his home to offer moral support when other friends he had known more intimately than Conrad had felt unable to do the same.

¹²Id. at p. 4.

¹³Letter of June Black, p. 1

It was not the case that Mr. Black's personal strength and optimism were revealed only in times of sorrow. To the contrary, his ability to meet and confront tragedy was matched by a profound enthusiasm for life. Barbara Black describes the manner in which Conrad taught her of love, acceptance and the possibility of real happiness.¹⁴ Alana Black writes of a childhood filled with reading, games, biking, badminton and diversions which helped an eight-year-old tolerate 75 minute Latin masses. June Black described numerous occasions at her home in which Conrad immersed himself in the joyous problems of young people – choices of schools and jobs as well as burgeoning relationships – offering assistance, advice or a sympathetic ear. Young law students such as Adam Daifallah, once aspiring journalists such as Heather Reisman, musicians such as John McDermott and artists such as Tony Scherman have written of the vicarious pleasure Conrad has taken in their professional development and the support and encouragement he has extended along the way. It is both sad and ironic that after Mr. Black spent a lifetime deriving such joy from assisting other people to find success, so many revealed so cruelly in his tribulations.

Description of Mr. Black's strength and optimism should not lead one to believe, however, that he is immune to sadness and disappointment. One of the bleakest periods in Mr. Black's life, as described in his autobiography, was the disintegration of his first marriage. "It was a time" he has written "laden with fears, self-reproach, heartaches and loneliness." Mr. Black described the pain that resulted from his separation from his children saying:

Never more than when my connection with them became more tenuous did I appreciate the accuracy of Dr. Freud's famous aphorism that "my children are my joy and my riches." The saddest and lowest moment in all of the unraveling of my marriage came when our five year old James, a brilliant, adorable and

¹⁴Letter of Barbara Black p. 4.

spontaneous child repeated over the transatlantic telephone that was now my principal contact with my progeny, “It makes me sad.” All I could say was that it made me sad, too “Do you still like mummy a little bit?” I did and I do. His comments were heart breaking and inspired feelings of failure, helplessness, and remorse. We almost wept together.¹⁵

Although the divorce was requested by Mr. Black’s first wife and despite his heartbreak at the demise of his marriage, Mr. Black has never cast blame in the matter. He has written that “[f]or a proud and traditional man who believes in marriage and loves his family as I do, this was a harsh fate.”¹⁶ Yet in accounts of the divorce, Mr. Black has described it as “a no-fault or joint fault break-down” with failings on both sides.¹⁷ No doubt in part because of the balance with which Mr. Black has approached these events in public as well as in private contexts, his daughter, Alana, did not suffer a painful and tumultuous experience during her parent’s divorce. His former wife, Joanna, remains a staunch supporter of Conrad’s as evidenced by her presence in Court on several days of trial proceedings.

Worse yet than the pain he experienced when separated from his young children because of his divorce is the vicarious suffering Mr. Black has experienced as his grown children have endured the scrutiny and scorn of the public in connection with this case. Jonathan Black writes powerfully of the realities he has had to endure because of the trial. As recounted in the letter submitted by Father Raymond J. de Souza, Conrad has many times confided in him “that the greatest sources of the enormous suffering he has endured over the past four years have been the effects of this case on his loved ones.” When one grasps the utter powerlessness that Mr. Black feels and has felt based on the grief of his children and his wife, it is no wonder that he has

¹⁵Id.

¹⁶Id.

¹⁷Id.

issued belligerent rejoinders to his detractors in the press. As recognized by the Court, Mr. Black is a man to stand his ground and to fight. It stands to reason that this impulse would be powerfully unfurled when those he holds most dear are so deeply affected.

Many who have written on Mr. Black's behalf describe strongly held values and beliefs to which Mr. Black has publicly and privately adhered over the course of many years. Chief among these values is Mr. Black's identification with the Roman Catholic faith and many of its causes. Mr. Black was not born into Catholicism but rather converted to this religion later in life after a period of inquiry and soul searching. Mr. Black's oldest and dearest friend, Brian Stewart, was aware of the process of Mr. Black's conversion. Mr. Stewart wrote that in the 1970s, he learned that "Conrad was spending a great deal of time studying religion as he wrestled with his innermost beliefs. Eventually this period of introspection would lead to his conversion to Roman Catholicism, but it was a long process to which he devoted enormous effort."¹⁸ Conrad's formal conversion to Catholicism was completed in 1986. Of this experience, Mr. Black has written: "I have no standing or desire to proselytize, but I concluded that atheism is barren, unremitting, and illogical. Of course spiritual forces exist; of course there is a God by some definition, before whom humility is appropriate, if not required. The world is not just an accident and life is sacred in general and valuable..."¹⁹

Mr. Black approached his faith with the same intellectual honesty he displayed in his writings. He acknowledged disagreement with the Catholic Church on such matters as its prohibition of birth control and divorce. Yet, Mr. Black recognized, "no institution based on universality, permanence, and eternal truth exists chiefly for the convenience of any individual.

¹⁸Letter of Brian Stewart p.3

¹⁹Conrad Black, *A Life In Progress*, p. 104.

Such [disagreement] may affect my practice but not my beliefs.”²⁰ Mr. Black’s practice of his Catholic faith led him to make several visits to the city of Lourdes in Southern France where he was, in the words of Brian Stewart, “deeply affected by the spiritual and physical comfort that faith brought so many of the sick and severely disabled.” As related in the letter of Jean Loiselle, Conrad served on the board of the Canadian Council for Refugees which was co-chaired by Quebec Cardinal Paul-Emile Leger. The council raised funds and worked out logistical arrangements to receive and accommodate 30,000 refugees from Vietnam. Cardinal Leger was so grateful for Conrad Black’s personal dedication to this project that he asked Conrad to become “the moving force”²¹ behind a formally funded organization known as “Cardinal Leger and his Endeavors.” The largest project of the organization was a modern hospital in Yaounde, the capital of the Cameroons which ministered to those afflicted with various diseases including leprosy. As part of his work with the organization, Conrad traveled to Cameroon where he took instruction from Cardinal Leger. Conrad devoted enormous amounts of time and energy to the Cardinal’s cause assisting the Cardinal in his endeavor to mobilize Canadian support for African medical relief. Mr. Jean Loiselle who headed the Leger Foundation observed of Conrad Black: “I cannot count the hours he spent helping us help the poor and the destitute here and abroad.”²²

As a newspaper publisher, Mr. Black had the opportunity to assist Catholic publications which he did with regularity. Monsignor Fred Dolan, the head of the Canadian branch of the Opus Dei organization, wrote of Conrad’s gesture of opening his home for a reception for a new Canadian publication with a religious bent. Sir Rocco Forte describes getting to know Conrad based on their efforts for *The Catholic Herald*, the leading Catholic newspaper in Britain.

²⁰Id..

²¹Letter of Jean Loiselle

²²Id.

William Oddie, editor of *The Catholic Herald*, wrote that Conrad supported the publication in any way that he could and was always responsive to problems encountered by the editorial staff despite the paper's relatively small circulation and limited profit potential. Charles Moore's letter also references the time and encouragement Conrad routinely provided to this publication. Father Ian Boyd, the editor of the Catholic publication *The Chesterton Review* wrote of Conrad's unfailing kindness to him and the time Conrad always took to meet with people from his organization. Lord Weidenfeld wrote of Conrad's support for Catholic periodicals, funding of the Brompton Oratory and his support for the Order of Malta. Mr. Black also made himself available to friends who sought him out based on their knowledge of his strong religious faith. According to a letter written by one friend of Conrad's, she came to him in a time of profound personal crisis when she felt ready to forsake her religious background and yield to despair. Conrad shared with her his own journey of faith and provided counseling which the friend credits for saving her from this crisis and with restoring her faith.

Mr. Black's religious life, however, consists principally of private worship. He has a chapel in his home in Toronto, described by long time friend Seth Lipsky, as "spare and elegant." The chapel has an anteroom with tomes on Judaism, a symbol of his marriage to Barbara and his way of honoring her religious traditions alongside his own. As recounted in the letter of Father Raymond J. de Souza, Conrad's religious faith "has been a source of strength for him during these difficult years." On Saturday evenings during the trial, Mr. Black could be found attending mass at Holy Name Cathedral before taking long, contemplative walks along the Chicago lake front. Father De Souza wrote: "During the trial itself, I heard from numerous people who had encountered Mr. Black in parishes in Toronto and Chicago, all of them reporting a man quietly going about his worship, one parishioner among other, and unfailingly gracious to

all who approached him about his legal troubles.” The comment is informative as to both the sincerity of Mr. Black’s beliefs and a reminder of the fact that for Conrad Black, privacy has become an illusory goal with even moments of private worship being interrupted by the well-meaning and the curious.

In addition to his devotion to family and commitment to religious causes, Mr. Black has remained consistently passionate about the defense of the United States. In the words of George Will, Conrad “loves this country with a deeply informed passion.” As explained in the letter of Brian Stewart, Conrad’s support for the United States and his willingness to come forward when he felt this country was being unfairly attacked have been harshly criticized in both Britain and Canada. In 1986, for example, when the United States was being criticized by its allies for its raid on Libya and threat to abandon SALT II talks in response to terrorist attacks by that country, Mr. Black wrote:

The rather mindless reaction of much of Europe was to dread the re-emergence and assertion of American strength. In support of this fear, most unbecoming the allies of the nation upon whose power, will, and integrity their independence and prosperity chiefly rely, a kaleidoscope of anxieties arose.²³

In November of 1986, Mr. Black took issue with the description of the American Fourth of July and centennial celebrations which appeared in the *The Globe and Mail* in Canada as “self-centered, assured, vigorous and predictably garish.” Mr. Black countered:

Of course the United States, like all other countries, commits foreign policy errors and is at all times the legitimate and often deserving subject of criticism. Yet it is unseemly for those countries that benefit most conspicuously from the existence and occasional exercise of American strength to seize or invent pretexts to rail at the United States. And it is demeaning to all

²³Conrad Black; “The Legitimate Use of American Might,” *Globe & Mail, Report on Business*, September 1986.

Canadians to make anti-American nit-picking a cornerstone of Canada's national *raison d'etre*.²⁴

His stance was consistent throughout the years. Particularly in the wake of the September 11 tragedy, Mr. Black offered an often times lone voice of support for American actions designed to promote the security of this country and its citizens. He made a speech in Great Britain designed to marshal British support for American military action. With respect to September 11, Mr. Black stated: "The United States does feel under some threat after September 11, and it will destroy the threat. Its policy is one of strength, constantly maintained but sparingly applied."²⁵ In that same speech he defended the United States against the European view that it was a purveyor of vulgar commercialism, writing of the United States:

More powerful than its mass culture is America's concept of individualism and freedom. Under the Constitution of the United States, all unallocated powers reside with the people, who famously endowed themselves with that Constitution; its rights were not devolved to them by any other authority. This even more than their economic, military and cultural force is the source of American power. When the students and dissidents of Eastern Europe were dismantling the Soviet empire, their public readings were of Jefferson and Lincoln, and the occupants of Tienanmen Square built a replica of the Statue of Liberty. Our satirists and intellectuals and leftists journalists may prattle as they will, but there has never been anything like the rise of America in two lifetimes from a few vulnerable colonies with a population smaller than Great Birmingham's, to, as Mr. Churchill said in his parliamentary eulogy of President Roosevelt, "a height of strength, might, and glory never achieved by any nation in history."²⁶

Barbara Black writes of Conrad Black's many speeches, writings and commentaries which "offered beacons of support for America when its entire ethos under administrations of both

²⁴Conrad Black; "For Those Of Us Who Yearn To Breathe Free", *Globe & Mail, Report on Business*, November 1986.

²⁵Conrad Black; "Why It Is In Britain's National Interest to be America's Principal Ally."

²⁶Id.

parties was derided and attacked.”²⁷ Even after enduring the snide comments of many who see the trial as emblematic of the fact that the country Conrad Black had so consistently praised had turned on him, Mr. Black “remains consistent in his evaluation of America as the greatest civilization the world has ever seen.”²⁸

It bears noting that Mr. Black’s pro-American stance was not, as it has been depicted in the press, an attempt to denigrate or deny his native Canada. As recounted in the letter submitted by William Johnson, Conrad devoted himself to the cause of resisting Quebec separatism which was, in his view, the most serious national problem facing Canada. Together with Mr. Johnson, Conrad put forth the idea, unique at the time, that Quebec’s succession would violate the rule of law and the constitutional order. Ultimately, in August 1998, this position was validated by the Supreme Court of Canada which ruled that the unilateral succession of Quebec was illegal and that legitimate succession required an enabling amendment to the Constitution which could only be accomplished with the consent of both the federal and provincial governments. Mr. Johnson credits Conrad’s vision and advocacy on this issue with saving Canada from sinking into the devastating political and economic crisis that would have resulted from the separatists and their position emerging victorious in the 1995 period. In his final column for the *Report on Business* insert to the *Globe and Mail*, Mr. Black urged Canada to liberalize trade with the United States and to relinquish what he described as Canada’s “tenacious, corrosive and ill-founded inferiority complex vis a vis the United States.”²⁹ Mr. Black wrote:

Logically, Canadians have little to feel inferior about. This is a great country, capable of competing with Americans or anyone else. The protectionists, evoking the tattered specter of annexation,

²⁷Letter of Barbara Black, p. 6.

²⁸Id.

²⁹Conrad Black, *Famous Last Words*, ROB, April 1988.

are the real jailers of our national self-esteem. With (for the most part) good motives, they would hold us prisoner to an outworn notion of our own vulnerability. Precisely those who are most antagonistic and contemptuous of the United States are those who would perpetuate an irrational fear of that country and a puny self-image of this one.³⁰

Finally, as described in the letters of William A. Goodson and Frederick Langan, Conrad was a driving force in establishing a permanent memorial in London in honor of the 900,000 Canadian soldiers, airmen and sailors who served in the United Kingdom during the two World Wars and the 100,000 who died in combat. Far from being a turncoat on his native Canada, Mr. Black was a patriot whose faith and optimism about his own country allowed him to appreciate, honor and defend the United States.

In describing Conrad's love for the United States and its "democratic flair" Brian Stewart opines that these values were what was behind Conrad's respect for others. Whatever the cause, it is clear from the letters that Mr. Black was uniform in his deference to the opinions, the needs and the humanity of so many of those he encountered regardless of their position or station in life. In the words of Gerald Schwartz, a long-time friend who wrote on Conrad's behalf; "He has always been courteous and helpful – not just to friends and acquaintances of high rank but to everyone I have seen him come in contact with in the course of daily life." Many of Conrad's daily interactions during his working life were with people who worked in Hollinger's offices. He also had frequent contact with the people he employed to assist in his home and with his children. In addition to these contacts, Mr. Black had dealings with people who reached out to him based on their interest in his books or in professional assistance. As described in detail in the letters, Conrad was unfailingly gracious, kind and sincere in these interactions, so much so in

³⁰Id.

fact, that many people recall distinct instances of the care and concern Conrad demonstrated decades later.

Several employees who worked at Hollinger's offices at 10 Toronto Street wrote on Conrad's behalf. Joan Friel, who worked as a receptionist at Hollinger for 12 years dealt with Conrad Black every day either in person or by phone. Ms. Friel commented that it is painful for her to see Conrad portrayed in the media as arrogant "since NOTHING in my opinion, could be farther from the truth." In her dealings with Conrad, Ms. Friel wrote, she found him kind and patient. Ms. Friel attests: "Mr. Black cared about all his staff members from the top rung to the bottom rung." As an example of Conrad's concern for his staff, Ms. Friel explained that Conrad became concerned that Dina, the lady who helped clean the office, was working too far into her pregnancy and expressed his concerns to her personally. As a matter of practice, Conrad advised Ms. Friel that she did not have to tolerate rudeness directed to her or to anyone else from visitors or callers.

Zena Silliphant, who worked at Hollinger's Toronto office as manager of corporate contributions, also submitted a letter on Mr. Black's behalf. Ms. Silliphant identified herself as a visible minority, a Zoroastrian by faith, and as coming from a middle income family. Her experience with Conrad over the course of the 13 years she worked for him, was that "[h]e took great interest in the people who worked for him regardless of their position, or his own for that matter." She described Conrad's emphasis on fairness and an instance in which he expressed concern, whether as one of the youngest members of the office, she had any difficulty with anyone condescending to her.

Vindra Baijnauth worked as an accountant at Hollinger Inc. She wrote of the wonderful atmosphere at Hollinger before the transformation of the company in 2004 describing it as akin

to “going to one’s family each day.” Conrad impressed Ms. Baijnauth with his personal involvement in Hollinger’s charity work and with the graciousness he extended toward her both when she felt compelled to leave because of the changes circumstances at Hollinger in 2004, as well as when she agreed to return at the request of the new board to assist with an accounting inspection.³¹

To his journalists and editors, Conrad offered professional encouragement as well as personal support. Charles Moore related that Conrad was never in too much of a hurry to listen to ones problems and in some instances discovered personal difficulties suffered by his staff even without being told. Conrad discovered, for example, that Mr. Moore’s daughter had a serious health problem, sent her a present and asked for a progress report. Leon Harris reflected on the consistent kindness Conrad exhibited when his Mr. Harris’ brother, Lewis, who had worked for Conrad as the editor of the Sherbrooke record, was diagnosed with pancreatic cancer. Conrad not only stayed in constant touch with Lewis during his illness, but after Lewis’ death contributed to a journalism scholarship the family set up in Lewis’ name. Daniel Colson’s letter told of a time in which Conrad ensured that a non staff editorial contributor who became terminally ill was hired as a full time employee so that he would have health benefits. Emmett Tyrrell related that Conrad kept older writers on staff to protect their livelihood and dignity. William Oddie wrote that it was only after Conrad’s departure from *The Telegraph* that “stories of his personal kindness and of good done by stealth began to surface.” Brian Stewart recalled Conrad’s response when he learned that a former employee was ill, immediately reaching out to

³¹Ms. Baijnauth offers as a side note, but a matter of some importance to her given the pride she took at working at Hollinger in the pre 2004 period that at the conclusion of an audit for which Ernst and Young charged \$20 million they did not find “a single cent in Hollinger Inc.’s books and records that had not been properly accounted for.”

this individual with kindness and support. As Mr. Stewart commented: “This was typical of many such interventions which [Conrad] did not have to make, but which he felt to be only proper.”

Several of the individuals employed by Mr. Black in a domestic capacity wrote letters. Unlike the staff from Hollinger Inc., some of these individuals remain in Mr. Black’s employ in some capacity. Although one might expect these individuals to offer pro forma words of support based on their positions, the sentiments they expressed were truly remarkable. Gus Pedernera explained that through a combination of interest, knowledge and respect, Mr. Black was able to extend to Gus an unparalleled understanding and appreciation for his background. Mr. Pedernera wrote: “I am an immigrant from Argentina and Mr. Black was the first person who really cared about knowing me and where I come from. He validated my education and gave me credit for my experiences, and always paid attention to what I have to say.” Gus’ letter also made it clear that Conrad validated his worth and his ambitions in what was for Gus, a truly life altering manner. “He made me feel that anything I would do was important and appreciated and that hard work would always find a reward. I, for the first time in my life, had the opportunity to feel good about myself and the work I did and to enjoy the warm notion that under his roof I was safe, protected, even successful.” Mr. Pedernera related several instances in which he witnessed Conrad extending concern and support to others who worked for him. Mr. Black arranged for a housekeeper named Leonor whose English was limited to attend Hunter College to advance her opportunities in this country. Mr. Black also paid Leonor’s tuition and ensured she had the time to attend classes. When another housekeeper, Julia, suffered a nervous breakdown due to her divorce, Mr. Black paid close attention to her problems and paid for a year of therapy to help bring her out of her depression. John Hillier also suffered depression as a result of a divorce. As

explained in Mr. Hillier's letter, Conrad welcomed both Mr. Hillier and his two children to live at his home and offered his time and his counsel to Mr. Hillier in his time of difficulty.

Mr. Hillier wrote: "I have found Mr. Black to be a person that shows his compassion and kindness to many people and always will find time to be available to you if needed. I am very privileged to be known by and to call Mr. Black a friend." Werner Jankowsky also wrote of the value he came to place on Conrad's friendship. Conrad validated Werner's unique experiences and welcomed him as part of the family. For his part, Werner was able to observe Conrad with his children and was impressed by Conrad's kind, accepting, non-judgmental nature.

Even to people Mr. Black did not know but who reached out to him for assistance, Mr. Black was uniformly gracious. Many decades later, RW Shepherd still recalled that as a recent college graduate he sent a resume to Argus and received a personal response from Conrad Black.

Robert Genini, a retired high school history teacher in Fresno, wrote on Conrad's behalf to relate that after sending a letter praising one of Conrad's books, he received a gracious reply that began a lengthy correspondence between the two including Conrad's expressions of concern for problems Mr. Genini was experiencing with his son even in the midst of Conrad's own legal difficulties. Ray Panavas, a journalist, noted that although he and Conrad came from vastly different backgrounds and held divergent political views, Conrad was generous with his time and uncomplicated in his dealings. Adam Daifallah, a 28 year old law student with whom Conrad developed a friendship 5 years ago wrote that he was "saddened by the portrayal of Mr. Black as some sort of snob who only cares about his wealthy friends" and attested that his experience with Conrad demonstrated the complete opposite. "Since I have known him" Adam wrote, Conrad "has always made time to meet with me and my friends, most of whom are students. He regularly welcomed me into his Toronto home." Heather M. Reisman, a proprietor of a

bookstore in Canada wrote: Conrad Black “is gender blind in creating relationships and essentially motivated to be with and around people who he finds intellectually stimulating... My personal experience with Conrad is of someone who reaches out to people he finds interesting irrespective of apparent social position. This might be a new recruit to the political arena, an aspiring writer, a young but compelling journalist, or a reader just interested in history and political science.” John O’Sullivan, who has been friend with Conrad for twenty-one years attested that in that time he has seen Conrad take risks recruiting and encouraging bright younger journalists because he thought they deserved a chance and that he had never, in all of those years, seen Conrad “pull rank,” let alone hurt or humiliate anyone.”

In Mr. Black’s professional life, the same quality of respecting a wide diversity of personalities and opinions contributed to his success in building vital and influential publications that promoted free speech, promoted public discourse and raised literary standards. It is critical to remember that Mr. Black’s professional contributions were twofold. On one hand, he was a creator of the Hollinger media entity who built value in the form of jobs and revenue for hundreds if not thousands of individuals. In this sense, he was not a mere manager of an asset. He was rather, the originator of that asset from whose efforts and vision careers were established and opportunities were made possible. On the other hand, Mr. Black was a contributor to the world of ideas. It is of course accurate that newspapers and magazines are a type of a consumer good and that their production is a business. It is also true, however, that unlike most consumer items, newspapers and magazines have the ability to educate public opinion and to inspire public debate. One of the reasons it has become so easy to become cynical about most of which passes as “news” but takes the form of reports of missing persons, house fires and other human tragedies is that there is a real tension between the business of news and the responsibility to

educate the public. The many letters submitted on Conrad Black's behalf that speak of his raising the standards of the publications he ran such as *The London Daily Telegraph* and Canada's *National Post* make it clear that Conrad Black understood and was faithful to the ideals of being a news provider and not just the business aspects of that service.³²

Mr. Black's contributions are recognized not only by staff and by professionals but by persons employed by the competing publications. John O'Sullivan, for example, wrote as an Associate Editor of *The London Times*, a rival London newspaper to *The London Daily Telegraph*. Mr. O'Sullivan recognized that in London, Conrad kept alive two important magazines "which had played important parts in fighting the cold war on questions of culture and historical truth." George Radwanski, editor of *The Toronto Star* which competed directly with *The National Post* during the time that Conrad ran this publication commented of *The National Post*, "its presence has done much to competitively shake up and therefore improve Canadian journalism in general." The sentiment is echoed by Father Jonathan Robinson, founder and provost of the Toronto Oratory and former chairman of the Philosophy Department at McGill University, who asserts that *The National Post* "reintroduced the reality of public debate on important issues into Canada" giving balance to the "left wing ethos" that was previously the only outlook or opinion being heard. Father Robinson asserted: "the gain for the good of the Canadian body politic that has resulted from Black's efforts is thought by many up here, including myself, to be incalculable."

³²An especially clear example of this approach was provided in the letter of Roger Hertog who partnered with Conrad in establishing *The Sun*, a New York City broadsheet. Mr. Hertog described Conrad's ideology that news was not to be exploited for readership or political gain and that the "paper must respect its readers even, if necessary, at the cost of readership."

These contributions are all the more significant because of the fact that Conrad Black did not impose a competing viewpoint at the expense of other ideas but offered one at their accommodation. A series of letters discusses an incident in which one of Mr. Black's writers, Taki Theodoracopulos, submitted a column to the *Spectator* magazine that was not only anti-Israel but, by Taki's own admission, "unfortunate" and Anti-Semitic in nature.³³ Mr. Black's response was not one of reprisal against Taki, although that would have been an easy and available avenue, but of public challenge with a letter to the editor of the publication he owned setting forth a well-reasoned response. As a number of the letters make clear, Conrad's decision to do battle with an opposing viewpoint in the editorial pages of his papers rather than through professional retaliation against the writer was his confirmed practice and one that provided his journalists and editors literary freedom and intellectual integrity.

Other individuals described professional dealings with Conrad evidencing his fairness and propriety. Daniel Colson, an attorney who worked with Conrad for more than a decade at Hollinger and who served as co-chair executive of the *Telegraph* newspapers with Conrad wrote: "In many situations requiring ethical judgment, Conrad has always been governed first by what was right as well as legal. He has never, at any time or in any capacity, considered or tolerated anything but complete compliance with the highest standards of legality, decency and professionalism, in finance as in journalism, and as an author." Conrad refused to go back on a verbal agreement with chief competitor Rupert Murdoch even though he could have legally

³³Conrad himself was a fierce adversary of Anti-Semitism in his personal life as well, spearheading efforts to abolish anti-Semitic rules for keeping people out of clubs as related in Barbara Black's letter.

obtained substantial economic advantage by doing so.³⁴ Conrad negotiated fairly with journalists employed by his publications such that his word was recognized to be his bond.³⁵

Conrad navigated an attempt to increase his holdings from minority to majority status with respect to Australian newspaper holdings with an unblemished record.³⁶ He refused to hold discussions with perspective employees without disclosure to their current employers.³⁷ In the views of those who opposed him, Conrad did not overreach in the context of substantial business dealings.³⁸ The integrity with which Conrad conducted his business life over a period of decades, together with his contributions of high quality publications that advanced free speech and political debate evidence his outstanding character.

In addition to his full time employment as a newspaper proprietor, Conrad Black made significant literary contributions in his role as author and biographer. As many individuals have written, many of them respected authors and historians in their own right, Conrad produced three extraordinary biographies; those of Maurice Duplessis, Franklin D. Roosevelt and Richard M. Nixon. Each of these works was recognized for its contribution to prevailing scholarship on the topic, providing innovative analysis and perspective into the lives of these great men. What was most striking about the descriptions of Conrad Black's efforts as an author as set forth in the letters was the description of the humility and modesty with which Mr. Black set about his work. His practice was to seek critical comment and to endeavor to be fair and balanced in the accounts of the events and individuals he provided. It is both ironic and sad that those who have written

³⁴Letter of Daniel Colson

³⁵Letter of attorney Michael Levine who opposed Conrad when representing journalists in contract matters.

³⁶Letter of Bob Carr, former Labor Party Premier of New South Wales.

³⁷Letter of Gerald Sheff.

³⁸Letter of Gerald Schwartz.

about Conrad Black have been unwilling or unable to apply the same standards of accuracy and fairness in their accounts.

Lastly, in attempting to define Mr. Black's history and his character, it is critical to remember that his life consists not of the headlines, themes and labels of proprietor, author, intellectual, or conservative – but in the countless quiet moments and gestures of everyday life. Conrad's everyday life was marked, in the words of long time friend George Jonas, with “many acts of unheralded charity, altruism and kindness.” When Mr. Jonas, Barbara Black's former husband, suffered a heart attack in Arizona, Conrad ensured that he received the best medical care possible and then arranged housing for George and his wife after their respective health concerns threatened financial instability. He supported musicians, artists, aspiring journalists, students and bankers. He treated older writers as well as the disabled and infirm with courtesy respect and dignity. After having left a conference to take a sick friend to the hospital and stay with him throughout the night, Conrad was astonished that he should be complimented for his thoughtfulness.³⁹ When he and Barbara attended to the elderly mother of a friend at a wedding, he neither identified himself to the individual nor said a word about the event.⁴⁰ When friends encountered professional setbacks or financial concerns, Conrad offered financial support and counsel swiftly, unceremoniously and without asking anything in return. He was ready with care packages and attention for a friend suffering from breast cancer and with invitations and spiritual counsel to a friend who had lost her spouse. He reached out to numerous individuals who were terminally ill or whose parents, children or siblings suffered from physical or mental afflictions. It might fairly be said that human beings are too varied and complex to yield to definition by any

³⁹Letter of David Frum.

⁴⁰Letter of Simon Sebag Montefiore.

set of actions. Yet it is also most emphatically the case that if an individual expresses kindness and generosity in large ways as well as in small over the course of a lifetime, one might come to understand that these are not merely adjectives that describe the person's actions, but attributes that define their character. Over a period of decades, Conrad Black has exhibited an exemplary character in his personal life as well as an enormous amount of integrity in his professional life. These qualities, along with accomplishments in the literary, publishing and political fields that have enriched the world around him should inform the critical determination of sentencing in the context of this case. Conrad Black's personal history and characteristics present persuasive argument for a sentence below the guideline range in this case.

E. Obstruction Enhancement

The PSI conducted a thorough analysis of the technical application of the obstruction of justice enhancement in this case such that the defense can register disagreement with neither the rationale nor the result. Nevertheless, the circumstances of the May 2005 conduct that gave rise to Count Thirteen and to this adjustment are unique. Moreover, Mr. Black's actions in May 2005 bear no similarity to the type of conduct to which this adjustment was intended to apply. Under these circumstances, §3553 factors argue against an increased sentence based on Count Thirteen.

Application Note 1 to §3C1.1 states that the adjustment is to apply if the obstructive conduct both "occurred with respect to" and "related to" the offense conduct. Thus, it is clear that the heartland case to which this adjustment was meant to apply was one in which the defendant, by his conduct, sought to thwart the offense of which he or she was convicted. In *United States v. Perez*, 50 F.3d 396 (7th Cir. 1995), the Court stated: "section 3C1.1 intends that the obstructive conduct have some discernible impact on the investigation, prosecution, or

sentencing of the federal offense...”. *Perez* 50 F.3d at 399. The *Perez* case differs from this one in that in *Perez* the defendant had not been charged with the obstructive conduct in the federal case. The case is instructive, however, as to the purpose of the obstruction enhancement. The requirement set forth in *Perez* that there must be an impact on the investigation for the enhancement to apply relates to the sentencing guideline assessment that conduct that does indeed thwart an investigation is the type of conduct for which additional punishment is warranted. Mr. Black’s May 2005 conduct in this case does not fit that criteria.

The May 20, 2005 conduct on which the charge was based was that on that date, Conrad Black moved 13 boxes from his office at 10 Toronto Street, which boxes contained some documents and personal effects. There was no evidence that Conrad Black was involved in packing the boxes or that he was even aware of their contents. As of May 20, Conrad Black had received notice that he was to be evicted from his long time office at 10 Toronto Street effective May 31.⁴¹ Also as of that date, civil litigation in connection with the conduct at issue in this case was in full swing. Mr. Black had retained counsel who had already combed through the documents maintained at 10 Toronto Street with zero interference or interest on Conrad Black’s part, and had already produced over 120,000 pages of documents to the SEC.

The prosecution charged that the official proceeding from which documents were concealed was one of the SEC investigation, the federal grand jury investigation, or the criminal case. The bulk of the prosecution evidence, however, focused on the assertion that Conrad Black’s conduct was to have interfered with the SEC investigation. The prosecution introduced evidence that the SEC had informed one of Mr. Black’s US counsel that more document requests

⁴¹ Because of an intervening long weekend, only a few business days remained before that eviction was to take effect.

were coming. Although there was no evidence⁴² that Mr. Black knew of this request until May 23, three days after the movement of the boxes, the prosecution argued that this information was the impetus for Conrad's actions on May 20. Throughout the presentation of evidence on Count Thirteen, prosecutors referred to a December 17, 2004 Canadian Court order. The reference only confused the issue as the Canadian order could not properly be taken into account by the jurors in evaluating the evidence on Count Thirteen.⁴³ While it is not possible to be sure of which proceeding the jurors found was affected by Count Thirteen, the conclusion on which the PSI bases the obstruction enhancement is clear. The PSI imposed the obstruction enhancement solely on the basis of the SEC investigation. (PSI p. 22, lines 725-726)

The reality of Mr. Black's conduct on May 20, 2005 was that it was not directed toward the SEC investigation. Nor was it directed toward the federal grand jury investigation, the criminal case or the Canadian Court order. Mr. Black's actions on that date had to do instead with the frustration and irritation he felt over the fact that he had been ousted from Hollinger and barred from any participation in the company he built and loved and that he was imminently to be evicted from the historic 10 Toronto Street offices of that company that held the memories of his deceased father and brother, of years of hard but satisfying work, and of a the camaraderie of a staff devoted to him and to their professions. To add insult to these injuries, Mr. Black was being told by a corporate inspector of the offices that he would not be permitted to remove boxes of his personal files and effects other than at their sufferance in a time-frame of uncertain

⁴²To the contrary, the defense presented testimony from three of Mr. Black's counsel who stated that they had no recollection of informing him of the additional SEC document request.

⁴³Mr. Black has never been charged in Canada with violation of this Court Order. The continued discussion of the alleged violation of a Canadian court order threatened to transform the presumption of innocence for the accused to the presumption of guilt to the non-accused and is an additional factor to consider in evaluating the sentencing effect that should be given to Count Thirteen.

duration. Mr. Black's reaction in this moment was one of anger and frustration and a judgment that the strictures being imposed, even as he prepared to vacate the 10 Toronto Street offices, were a personal affront. It was with those motivations and intentions that Conrad Black arrived at the 10 Toronto Street offices in broad daylight and in full view of security cameras and personally moved the boxes.

In evaluating this reaction, it is useful to consider the atmosphere of 10 Toronto Street offices at the time. Mrs. Vindra Bajnauth who was employed as an accountant out of 10 Toronto Street contrasted the atmosphere of the office before and after 2004:

Working for Hollinger felt like going to ones family each day. The work environment was so pleasant and respectful from the most senior level of management including Mr. Black to the night cleaners. We all worked hard, and were rewarded with understanding, respect and loyalty from the company. This all changed in late 2004...I left Hollinger in October 2004 to take another position. I really did not want to leave but I knew I could no longer work for the people I was reporting to. They were new to the firm and were taking advantage of the company.

Joan Friel, who worked as the receptionist at 10 Toronto Street wrote; "It became soul destroying to watch the wrecking ball, day in day out, demolish the wealth that [Conrad] had built up over many many years – not to mention those of us, who had the pleasure of working for him, lose our livelihood." The frustration that Conrad Black felt, then, was echoed by the 10 Toronto Street staff. It was a stressful and unhappy time compounded by an atmosphere of suspicion engendered by the presence of the Inspector and a looming eviction deadline.

Against this backdrop, Mr. Black moved 13 boxes packed by Joan Maida. He did not dictate their content and was not aware of what they contained. He had made no effort to move these documents or any others during the time that counsel copied over 120,000 pages of documents in Hollinger's offices and there was no evidence that he took any interest in that

process. None of the documents in the thirteen boxes were unique copies. Rather, everything found therein had already been produced and made available to the SEC, to plaintiffs counsel in civil litigation or both.⁴⁴ As noted in the PSI, the APC non-compete agreement in the boxes was, according to a post-it-note on the document, (at least on the version introduced by the defense), not unique and intended for Conrad Black's personal files.⁴⁵

We do not for present purposes challenge the jury's verdict or the Court's decision to uphold that verdict on post-trial review. But, in evaluating conduct for purposes of sentencing, the Court is free to consider realities that are not provided for in the lines of statute books or guideline application notes. These realities include the fact that the primary motivation for Conrad Black's actions on May 20, 2005 was frustration and powerlessness in the face of his situation rather than the desire or belief that he could change things by hiding documents. In addition, the realities of the May 20 events do not fit comfortably within the conduct intended to be punished by U.S.S.G. §3C1.1 in that they had little connection with the criminal case and did not have the effect of thwarting or even affecting any investigation. Based on all of these circumstances, it would go against notions of justice and proportionality to apply the two point obstruction enhancement in this case and the Court should decline to do so based on the basic fairness factors rooted in §3553.

⁴⁴The prosecution's argument was that one could not be sure that Conrad Black did not interfere with the contents of the boxes. The assertion is unsupported surmise that had no place at trial and should have none at sentencing.

⁴⁵Indeed, the SEC had this document early on in their investigation as evidenced by the fact that it was delineated as document 1 in the SEC's document collection.

II. SENTENCING GUIDELINE POSITIONS SET FORTH IN THE PSI

A. The 2000 Guideline Manual Should be Used to Determine Sentence

The PSI applied the November 2007 edition of the guidelines manual based on its conclusion that the offense conduct ended when Mr. Black moved the thirteen boxes from his office on May 20, 2005 (PSI p. 16, lines 512-514). As we discussed in our November 5, submission to the Court on this subject, application of the 2007 Guidelines in this case would result in a *substantial* increase in Mr. Black's sentence in a manner that quite possibly violates the Constitution's *ex post facto* clause and surely was not anticipated by the Sentencing Commission when it revised the fraud guidelines in 2001 and 2002. The result would be unjust even if the conduct on which Count Thirteen was based was the precise conduct contemplated by the guideline obstruction enhancement. But as has been discussed in Section I(E) above, the conduct that formed the basis for Count Thirteen was not that type of conduct in that it did not bear a clear connection to the criminal case and did not have any actual effect on the criminal case. To allow the May 20, 2005 conduct to drive the entire sentencing result under these circumstances would be even more problematic.

Fortunately, under the current advisory guideline regime, no such result is necessary. In response to the Court's October 29, 2007 Minute Order, the parties have briefed the issue of the version of the sentencing manual that should be applied at sentencing.⁴⁶ The law of the Seventh Circuit is clear that notwithstanding the government's interpretation of the *Demaree* opinion, this Court has the discretion to apply either the earlier or the later guideline manual. That discretion applies with equal force to the decision as to what effect to give to the conviction on Count

⁴⁶The defense hereby incorporates all the arguments set forth in that submission without reproducing them herein.

Thirteen. The factors set forth in 18 U.S.C. §3553(a) have taken on primary importance in the Court's final sentencing determination. Based on these factors, use of the advisory sentencing guideline level dictated by the 2000 book that was in effect at the time of the offense conduct is appropriate because it would take into account the circumstances of the conduct at issue in Count Thirteen, would yield sufficient but not excessive punishment for the offense and would avoid disparity in sentencing.

B. The PSI Overstates The Loss Amount Attributable to Counts One and Six

The Probation Office determined that the offense conduct caused \$5.5 million of loss to Hollinger International with respect to payments made in connection with the American Publishing Company ("APC") agreement. The defense respectfully disagrees with this calculation. As detailed in Conrad Black's Version of the Offense, the \$5.5 million in APC payments is not properly chargeable to Conrad Black as loss to International under the Sentencing Guidelines.

The PSI states that International was the ultimate source of the APC payments, (PSI p. 10, lines 311-21) and that the defendants knew this. This may be true but it is irrelevant. The only evidence about the nature of these payments came from David Radler, who testified that the APC money had been pre-approved to be paid to Ravelston by International as part of the management fee. If this is true (and there is no evidence in the record contradicting Radler's testimony), then the money was an amount due from International to the defendants, *and it did not matter, for purposes of calculating loss, which of International accounts was the source of the funds.* Indeed, International was always the source of the management fee to Ravelston. Thus, the fact that the APC money came from International or that the defendants knew this is wholly beside the point.

Fred Creasey's statements as to how he chose to account for the payments after they had been made is similarly irrelevant. According to the PSI, Fred Creasey stated that the \$5.5 million payment was not credited against the management fee due to "an inadvertent accounting error." (PSI p. 10-11, lines 322-331). But Mr. Black had nothing to do with the APC accounting work. David Radler was the sole supervisor of the accounting office for APC. If Mr. Creasey made an accounting error that resulted in International's not having gotten credit for APC's payment of management fees, that accounting error was not "reasonably foreseeable pecuniary harm" pursuant to the Sentencing Guidelines and thus was not properly counted as actual loss. U.S.S.G. §2B1.1, Application Notes 3(A)(i) and (iv).

The charge filed in this case in connection with the APC payments was that the APC payments were a mischaracterization of payments as non-competes to obtain benefit under Canadian tax laws. (Information p. 20, para. 28) That theory has been consistently put forward in the subsequent government submissions. Significantly, however, nothing about the APC allegations requires International to have lost money in the process. Allegations put forward by the prosecution in these submission: that the APC agreement itself was silent on the source of the money being a management fee intended for Ravelston, that the APC money came from APC's account rather than Ravelston's, and that David Radler initiated the payments do not depend on loss to International. Indeed, nothing about the APC allegations is at odds with Mr. Radler's testimony that he thought the money for APC had been approved in advance and was properly payable to the Ravelston executives without monetary loss to International. Thus, it is not the case that other evidence regarding APC makes Mr. Radler's testimony any more or less believable. Rather, Radler's testimony about APC must be evaluated on its own merit.

The final aspect of the PSI conclusion that Conrad Black should be held responsible for all \$5.5 million paid in connection with APC seems to be an assumption that Conrad Black and codefendants concealed the APC payments. (See e.g. PSI p. 22) The circumstances of the disclosure of the \$15.6 million of non-compete payments made in 2000 and 2001 bear brief discussion in this context. International's 10k for the year 2001 was filed in April 2002. The filing states that \$15 million was paid to four senior executives as non-competes in 2000 and \$600,000 was paid on the same basis in 2001. The filing did not discuss each of the individual transactions but simply provided an aggregate figure of the amount paid in each year. No argument has been raised that the disclosure did not include all amounts paid as non-competes as the \$15.6 figure does in fact include every non-compete paid for United States Community newspaper transactions. The argument is that for the portion of the payment represented by APC, it was not technically the case that the payments were in connection with a newspaper sale or that they satisfied a closing condition.

While there is no evidence that defendants in this case came forward to make the case that APC payments should be separately set forth and described in the filings as a unique case, there is also no evidence that any of them attempted to disguise the true nature of these payments. Fred Creasey, as discussed above, was involved in the APC payments and their accounting. Indeed, Mr. Creasey was a recipient of a February 5, 2001 memorandum from Roland McBride regarding "Radler's instruction" to make the APC payments. Mr. Creasey was well aware of the fact that APC was an International affiliate and that the payments Mr. Radler directed were not in connection with a newspaper sale. Fred Creasey was also the individual at International who was most involved in drafting public filings in conjunction with KPMG personnel. This responsibility was based on Mr. Creasey's role as CFO of both International and

Inc. (Tr. 5000) Minutes of the February 25, 2002 Joint Audit Committee and Compensation Committee Meeting (Gov't Ex. Audit 8D) state that Mr. Creasey, with KPMG in attendance, reviewed drafts of International's 2001 financials with the Audit Committee. Following the meeting, Mr. Creasey's direct involvement with the 2001 financials continued. Gov't Ex. KPMG 7, for example, is a March 26, 2002 fax from Marilyn Stitt of KPMG to Jim Winikates and Leslie Coolidge also of KPMG. The fax attaches changes to sections of the 10K to be filed in April and includes the note "Fred needs final comments tomorrow by 12:00." According to Ms. Stitt's trial testimony, the "Fred" in question was Fred Creasey. Despite the integral role Mr. Creasey played in both the APC payments to the executives and the preparation of the 2001 financial statements, there was no evidence that Mr. Creasey was told not to discuss the APC payments with KPMG including the information about the source of the payments that had been in his possession since February 5, 2001 when David Radler instructed him about how to arrange the payments.

The PSI discusses KPMG work papers, highlighted for probation by IRS Agent Sheri Schindler, which show the source of the \$5.5 million APC payment. (PSI p. 10, lines 313-321) According to a KPMG notation on the summary work paper for the transaction, KPMG's documentation for the accounting treatment of the transaction was completed by February 2001. (See Exhibit 12 to Conrad Black's Version of the Offense attached to the PSI; Trial Exhibit JB KPMG 8). The KPMG work paper concluded that the sale was properly accounted for, and that the gain recognized on sale appeared fairly stated. KPMG was aware of the \$5.5 million payment contemporaneously with the transaction, then, but did not conclude that there was any problem whatsoever with the accounting. No evidence exists by which to conclude that any information was hidden from KPMG. Indeed, based on the information provided to the

Probation Office by the IRS agent, the exact opposite seems to be the case. KPMG's approval of International's 2001 financials was communicated to the International Audit Committee at the February 25, 2002 meeting. (Gov't Ex. Audit 8D) KPMG was again made aware of information regarding APC in the 2003 period. Specifically, the PSI states that in 2003, Fred Creasey told KPMG that due to an inadvertent accounting error, the \$5.5 million payment on APC was not accrued against the management fee. (PSI p. 10, lines 325-328) This was the second documented occasion on which KPMG became aware of information regarding APC, available to Fred Creasey since February 2001.

Neither Mr. Creasey's actions and inactions nor those of KPMG are at issue in this submission – those of the defendants are. Yet the language of the PSI regarding the APC payments was the language of “concealment” by the defendants. Given that this assumption seems to drive some of the PSI's findings with respect to APC, it is critical to recall that there was no evidence presented that Conrad Black did anything to hide or to conceal APC payments from Mr. Creasey or from KPMG. The fact that Mr. Black could have done more with respect to monitoring disclosures is certainly a misjudgment for which he has paid and will continue to pay dearly. But it is not a basis on which to conclude that he set about a course of subterfuge regarding these payments. Three members of the audit committee testified at trial that they each missed non-compete disclosures in the financial statements on 11 separate occasions. It is incongruous, to say the least, for the prosecution to argue that these omissions should all be presumed innocent but that any error in a public filing must signal concealment by the defendants.

Analysis of the loss amount for APC comes down to a determination as to whether one credits or discredits Radler's belief that APC money was to have come from International as an

approved but unallocated management fee. As discussed by the defense in detail at pp. 23-31 of Conrad Black's Version of the Offense, there is ample reason to question testimony provided by David Radler. But it is inconsistent to discredit Radler only in the one instance that his testimony would mitigate punishment for the defendants while crediting it on other occasions.

Part of the basis on which the PSI found Conrad Black responsible for the entire \$5.5 million paid to executives in connection with APC was Radler's testimony as to a phone call in which he discussed the payments with Conrad Black. (PSI p. 18, lines 580-582) As with all of Radler's testimony regarding Mr. Black, the conversation was not corroborated by a single piece of documentary or testimonial evidence. As noted in the PSI, no telephone records demonstrating the fact that a conversation even took place were introduced at trial. (PSI p. 18, lines 580-582) Mr. Radler's testimony included no particulars as to the conversation he says he had with Conrad Black. If David Radler was wrong or mistaken that the \$5.5 million was accrued by unpaid management fees, then he may also have been wrong or mistaken about conversations he says occurred with Conrad Black. If Mr. Black's only connection with APC was that he signed an agreement and cashed a check, then he should not be held accountable for the amounts received by the other three Ravelston executives.

Following on from the purported fact of the conversation between Mr. Radler and Mr. Black to which Mr. Radler testified, the PSI states that it can be inferred that Mr. Black would have had to approve the APC payments if they were, in fact, bonuses. (PSI p. 17, lines 553-555) Mr. Radler's testimony on this particular topic was that Conrad Black had authorized bonuses. (Tr. 7944) Significantly, however, there was no testimony that Mr. Black's approval of bonuses was connected to Mr. Radler's idea to try to get tax-free treatment for those payments by using

the non-compete mechanism.⁴⁷ Furthermore, it is not at all clear, as stated in the PSI, that Conrad Black would have had to approve the APC payments in advance. The evidence at trial established that David Radler made the final determination as to the amount of the yearly Ravelston management fee and then presented this figure to Jim Thompson for approval. Formal audit committee approval of fees occurred during joint audit committee and compensation committee meetings which Conrad Black did not attend. (See e.g. Gov't Ex. Audit 8D)

There exists no basis, then, for the inference that Conrad Black authorized allocation of the APC payments. Thus, even if the Court were to find loss to International in connection with APC, the loss chargeable to Conrad Black should be restricted to the \$2,612,500 he actually received. The PSI credits this concept. In discussing the APC payments, the PSI states that the mailing was “a portion of the total \$5.5 million in bonuses *which Radler had arranged for payment to himself, Black, Boulton and Atkinson.*” (PSI p. 8, lines 256-568) (emphasis supplied)⁴⁸ In Part E of the PSI, Factors That May Warrant Departure, the PSI cites §2B1.1, Application Note 19(C) which refers to the possibility for a downward departure in cases in which the offense level overstates the seriousness of the offense. In this context, the PSI refers to the fact that of the \$6.1 million calculated as total loss in the PSI, Conrad Black personally received \$2,885,000. (PSI p. 46, lines 1457-1463) Thus, while making no specific findings as to the limitations on Mr. Black's role with regard to payments to the other three executives, the PSI

⁴⁷Mr. Black would, of course, have been aware that non-competes were employed at the time he received and signed the APC agreement. But by this time the decision as to which executives received what had already been made.

⁴⁸The PSI cites a line from the Government's Version of the Offense to the effect that Mr. Black suggested to Mr. Radler that the executives pay themselves bonuses through APC non-competes in December 2000. (PSI p. 20-21, lines 661-663) The defense is unaware of the basis for this assertion and believes it to be an incorrect statement. It is not contained in Radler's testimony regarding APC at Tr. 7937-7945.

is cognizant of the fact that as to Conrad Black, evidence connecting him to the issuance of the full APC amount is extremely limited.

Finally, in the event the Court determines loss in connection with APC, the loss amount should be reduced to take into account the defendants' own stakes in the company. Conrad Black was International's largest shareholder with indirect holdings of 15% of the company's stock. (Information p. 6, para. k) David Radler owned 3% of International's stock. If loss were determined in connection with the APC payments, the basis would be that Conrad Black and David Radler took International's money when they cashed their APC checks. Logically, then, the portion of International's money that actually belonged to them should be subtracted out of the loss amount. This calculation yields a loss figure of \$2,142,250 on the APC payment made to Conrad Black.⁴⁹

C. The PSI Overstates The Loss Amount On Count Seven And Makes Certain Other Factual Errors.

The PSI concludes that Conrad Black is responsible for \$600,000 of loss based on the full amount paid to all executives for the supplemental payments. Consistent with the position submitted to the probation office in Conrad Black's Version of the Offense, Mr. Black does not contest \$600,000 of guidelines loss as adjusted to take account for Mr. Black's 15% indirect holdings in International stock and Mr. Radler's 3% indirect holdings in International stock. This adjustment yields a loss figure of \$600,000 less 18% or \$492,000. In that the PSI has not made this adjustment, the defense objects to the PSI calculation regarding the supplemental payments.

⁴⁹If, contrary to the arguments set forth above, the Court were to determine that Conrad Black was responsible for all \$5.5 million of the payments made in connection with APC, then the loss figure after accounting for Mr. Black's and Mr. Radler's stock holdings in International would be \$4,510,000 which is \$5.5 million less 18%.

The PSI contains statements regarding the supplemental payments that the defense believes to be in error. Specifically, the PSI states in two places that Mr. Radler testified that Mr. Black told him how to allocate the supplemental payments. (PSI p. 21, lines 663-664 and p. 21, lines 680-681) Mr. Radler's testimony regarding the supplemental payments is found at Tr. 7834-7837 and Tr. 7930-7932. In this testimony, Mr. Radler initially states that he received a call he believes was from Conrad Black but then changes his testimony to indicate that it was indeed from Conrad Black:

Q. Now I want to direct your attention to the spring of 2001. Did you receive a phone call at that point in time concerning individual non-compete payments in the Paxton and Forum transactions?

RADLER. Yes.

Q. Who did you receive a phone call from?

RADLER. I believe it was Mr. Black.

MR. GENSON: Objection to who he believes. He either knows or doesn't.

THE COURT: Sustained.

BY MR. SUSSMAN: Who do you recall receiving the phone call from, sir?

RADLER.. It was -- it was -- I'll change it then. It was -- I believe it was -- I can't say that.

Q. What do you recall?

RADLER. It was Mr. Black.

(Tr. 7833-7834) It is not even clear from this testimony that Radler is certain that it was Mr. Black he spoke to about the payments. Mr. Radler next testified that Mr. Black asked him if there were non-competes in Paxton and Forum. (Tr. 7835) Mr. Radler then discussed checking with other individuals to see what if anything had been set aside for non-compete payments. (Tr.

7836-7837, 7931) Regarding the allocation, Mr. Radler testified: “Having determined that there was no non-competes, but I did realize at that point that there was the \$600,000 *and I made a decision to allocate the \$600,000.*” (Tr. 7932) (emphasis supplied) Indeed, the only mention of Mr. Black in this context is that Mr. Radler says he asked Mr. Black for his opinion (after Mr. Radler had already made the decision cited above) and that Mr. Black “agreed.” (Tr. 7932) There is no basis on this evidence to conclude that Mr. Black told Mr. Radler how to divide the supplemental payments.

The PSI also refers to Ms. Kravis’ testimony about Mr. Black’s presentation of Executive Committee consents to the board without informing the board that they involved payments to individual executives. (PSI p. 14, lines 439-441) Ms. Kravis’ statement, as reported in the PSI, is inconsistent with the documentary evidence. As revealed by that evidence, the full Board specifically adopted those consents at the December 4, 2000 Board Meeting with the full text of the consents being incorporated by reference as well as inserted in the corporate minute books. The two Unanimous Written Consents of the Executive Committee that were the subject of Ms. Kravis’ testimony were entered into evidence in this case. (Gov’t Ex. Executive 1D and 1E) One, dated September 18, 2000, involved the sale of assets to Paxton. The other, dated September 19, 2000, involved the sale of assets to Forum. Each consent referred to resolutions that were attached and incorporated. Each resolution disclosed that individual non-competes were contemplated, referring to non-competes by “certain executive officers of International”.

These executive consents were discussed at a December 4, 2000 Board of Directors meeting which Ms. Kravis attended via telephone. (Gov’t Ex Board 1D) At that meeting, Conrad Black’s primary role was to summarize the recently concluded CanWest transaction. (Id. p. 1) Mr. Black also presented the Board with the resolutions attached to the meeting minutes.

The Board reviewed the resolutions. (Gov't Ex. Board 1D p. 3) Those resolutions included as point 3, "Confirmation and Ratification of Actions Taken by the Executive Committee." The resolution listed the September 18 resolution that disclosed non-competes to certain executive officers in connection with the Paxton transaction as well as the September 19 resolution that disclosed non-competes to certain officers in connection with the Forum transaction. At the following Board of Directors meeting on February 26, 2001 the formal minutes of the December 4, 2000 meeting were presented to the Board, approved, and adopted. Far from being hidden from the Board, then, the full Board, including Ms. Kravis, adopted these consents. The consents were then inserted into the company's minute books and were incorporated in the resolution by reference.

Based on these facts, there is no basis for the assertion that anything was being hidden from the Board in connection with the Executive Consents. To the contrary, it is clear that information about individual non-compete agreements in connection with Forum and Paxton was made available to the Board members. Indeed, far from supporting Ms. Kravis' inference, as repeated in the PSI, that the executive consents were Conrad Black's attempt to conceal things from the Board, the facts regarding the consents support the inference that Conrad Black believed that Forum and Paxton had requested individual non-competes and that he was making this information available to the Board. Given the fact that by all accounts, Mr. Black had nothing to do with the negotiation of either transaction and never spoke to a single business person or lawyer from either company, that belief is altogether plausible.

D. The Minor Role Decrease Should Apply To Conrad Black

As stated in Conrad Black's Version of the Offense, and based on the evidence presented in this case, Conrad Black should receive a two-point reduction to his sentencing level based on

his minor role in the offense conduct pursuant to U.S.S.G. §3B1.2(b). The PSI declined to apply the mitigating role reduction reasoning that it could be assumed from Mr. Black's title as CEO that he approved the commission of the offense conduct (PSI p. 21, lines 692-694) and that the greater compensation he and Radler received made him more culpable than other defendants. (PSI p. 21, lines 694-696) It is accurate, as stated in the PSI, that Conrad Black obtained more money than Messrs. Atkinson and Boulton. There was no evidence, however, that Conrad Black demanded any particular amount. It seems, rather, that Conrad Black collected a greater share of the payments based on his title of CEO. Because it is the actions of the defendant that must be assessed in evaluating their role in the offense rather than their title, this factor alone should not be dispositive.

Similarly, there is no evidence to back the inference that Mr. Black approved the commission of the offense based solely on his title as CEO. David Radler found the money, set the allocations and directed the payments of both APC and supplemental payment funds. David Radler decided to structure the APC payments as non-competes to obtain favorable tax treatment in Canada where he was a resident and Conrad Black was not. David Radler participated in and reported on the Paxton and Forum transactions. Conrad Black, on the other hand, who was a U.K. resident at the time and was deeply entrenched in running *The London Daily Telegraph* and the *Canadian National Post*, had no role in the offense conduct other than to sign a non-compete and to ask staff that worked for him in Canada to cash checks. In letter after letter submitted on Conrad Black's behalf, friends and associates comment on Mr. Black's great professional contributions with respect to the *Telegraph* and the *National Post*, making it clear, as was presented at trial, that Mr. Black's full time professional focus was on London and Eastern Canada. The letters also make it clear that Mr. Black trusted his employees, delegated authority,

and did not interfere in the actions taken and the decisions made by his staff. Taken in combination with the trial evidence that established Mr. Radler's role as author and effectuator of the offense conduct, these facts suggest that notwithstanding Mr. Black's title, his role in the offense conduct was indeed minor.

Case law on the minor participant enhancement makes it clear that a defendant may receive the minor role adjustment despite disproportionate profit in the offense provided that their role in the conduct was comparatively small. *United States v. Martin*, 369 F.3d 1046 (8th Cir. 2004) (city councilman defendant received minor role enhancement when he received free plumbing services from co-defendant in exchange for his vote) In addition, the case law establishes that even if a defendant understands or facilitates the offense conduct, that would not prevent the individual from receiving the minor role adjustment. (*United States v. Petrelli*, 306 F.Supp.2d 449, 452 (S.D.N.Y. 2004) (minor role reduction granted when defendant took steps such as opening bank accounts, establishing post office boxes and printing fraudulent invoices but was less culpable than co-defendant); (*United States v. Arthur*, No. 04-122, 2006 WL 3857491 at *5 (E.D. Wis. 2006) (granting minor role adjustment when defendant understood and facilitated the misconduct but was less culpable than her co-defendant). In this case, David Radler, who received no adjustment for his role in the offense, was clearly more culpable than the other defendants who made money from Radler's actions but did not otherwise participate in them. Other than his title and receiving more money than the other co-defendants at trial, there is no meaningful distinction between Conrad Black's role in the offense conduct and the role played by the other co-defendants. There is more than sufficient basis for application of the minor role adjustment.

CONCLUSION

In many respects, this case is unique in that it involves Conrad Black the preeminent writer, publisher, historian and businessman. Yet while those facts may have contributed to much of the media sound and the fury surrounding these proceedings, they are not the most important considerations for the Court in making its final determinations as to a just sentence. As Conrad Black stands before the Court for sentencing, he is neither the embodiment of the greatest act of kindness or charity he has ever accomplished nor the personification of his worst mistake. He is a husband, father, friend, patron, benefactor and mentor. He is a combination of all of his thoughts, words, and actions as expressed through 63 years of life. That legacy has touched many individual lives and has made positive contributions on a global scale. A just sentence will take account of all of these aspects of Conrad Black's character as well as the fact that for such a man, to face the loss of all he has worked for and the prospect of imprisonment has already been enormous punishment. Conrad Black is a foreigner who submitted to the jurisdiction of this Court and has respected this Court's authority at every phase of these proceedings based on an abiding belief in justice. That belief persists to this very day and inspires both Conrad Black and those who depend on his daily presence for their very sustenance with confidence that the Court will allow mercy, insight and understanding to illuminate its

determinations and yield a just result.

Respectfully submitted,

/s/ Carolyn P. Gurland

JEFFREY B. STEINBACK
CAROLYN P. GURLAND
53 W. Jackson Blvd., Suite 1459
Chicago, IL 60604
(847) 624-9600

EDWARD M. GENSON
TERRENCE P. GILLESPIE
GENSON & GILLESPIE
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604
(312) 726-9015

EDWARD L. GREENSPAN
GREENSPAN, WHITE
144 King Street East
Toronto, Ontario
M5C 1G8
(416) 366-3961

MARC W. MARTIN
MARC MARTIN, LTD.
53 West Jackson Blvd., Suite 1420
Chicago, IL 60604
(312) 408-1111

CERTIFICATE OF SERVICE

CAROLYN P. GURLAND, an attorney, on behalf of Defendant Conrad Black, hereby certifies that, on November 28, 2007, she served the foregoing,

**CONRAD BLACK'S SUBMISSION IN RESPONSE
TO THE PRESENTENCE INVESTIGATION REPORT**

in accordance with Fed. R. Civ. P. 5, Local Rule 5.5 and the General Order on Electronic Case Filing ("ECF") pursuant to the district court's system as to ECF filers.

Respectfully submitted,

/s/ Carolyn P. Gurland

CAROLYN P. GURLAND
53 W. Jackson Blvd., Suite 1459
Chicago, IL 60604
(847) 624-9600