MAKING A DIFFERENCE IN A FEDERAL SENTENCING MATTER; 30 DAYS VS. 20 YEARS

General Case Background:

A loan officer ("Defendant") was hired by a bank to increase the bank's loans in the minority community. The Defendant was able to increase the amount of bank loans to minorities. One of the techniques he used was to lower underwriting standards. While not a good idea, most likely not a crime.

As certain borrowers stopped making payments, The Defendant became concerned that many of the loans were going to have to be written off and the bank would suffer losses. The Defendant was concerned about the mounting losses and decided on a plan to cover them up.

The Cover Up:

Here comes the crime. In order to cover up the losses, the Defendant created new loans, in higher amounts. The "proceeds" from the new loans were sufficient to create the false appearance that the loans were being timely paid. In reality, no actual new loans were advanced and no payments were made. The "payments" were merely an entry in the loan history system.

The Investigation:

A Federal agency commenced an investigation and discovered a handful of such fictitious loans that were used to create the false impression that the loans were current. The investigators interrogated the Defendant who confessed. After being charged, the Defendant plead guilty. One of the major issues open was the loss to the victim, the bank. In the Federal System in this type of case, the loss to the victim is a significant component in determining the length of the sentence. Generally, once the sentence is determined by the court, under Federal rules the defendant must serve at least 85% of the sentence. Accordingly, the loss to the victim in this type of case is a very important issue.

The Sentencing Officers Report:

A Federal Sentencing Officer wrote a report on the total losses incurred by the bank. I have read reports in similar situations in the past. Often my initial reaction to these types of reports is what if anything can be done to minimize their impact as they seem so authoritative. However, having been tasked with this type of assignment on multiple occasions, I have learned that the devil is often in the details. I advised the attorneys and provided them with a list of documents to request from the prosecution.

The Results:

After some discovery battles, we received documents that allegedly supported the Sentencing Officer's report. What I found was quite interesting. While the bank suffered significant losses on loans, only a relatively small amount of those losses were later covered up by the Defendant's actions of creating the false loans. In addition, in many cases where loan losses were included in the Sentencing Officer's report, the Defendant was not the loan officer. The Sentencing Officer had merely included all loan losses that the bank incurred on loans that were made while the Defendant was employed by the Bank. Based upon my review of the documents, I was able to determine which loan losses were incurred on loans originated by the Defendant, which were coupled with a false loan, and which loans had no related false loan created. None of this could be told from a mere reading of the Sentencing Officers Report.

While I was reviewing and evaluating the documents, another issue came to mind. The alleged crime in the case was the creation of false loans, not the initial making of the loans by the Defendant to the borrowers. There were no accusations that the Defendant committed any crimes when the loans were initially made. It therefore appeared to me that since no new money left the bank, little or no losses actually resulted from the crime charged.

I decided to write a rebuttal report with two scenarios. One assumed that the actual loan losses where the Defendant had created false loans should be counted as loss to the victim. The second assumed that none should since no new money left the bank. I decided this was the best way to handle the situation because the theory that no new money left the bank could be viewed as a legal issue and I felt it appropriate for the court to decide which theory should be applied.

In summary, and to make a long story short, based upon the Sentencing Officers Report, the Defendant could have received a sentence in the fifteen to twenty-year range. In the end, the Federal Judge sentenced the Defendant to thirty days. This is, in my opinion, an example of how the devil was in the details. You can't just accept these types of reports without looking into how well they are supported, if at all.