U.S. Department of Justice

Drug Enforcement Administration

Washington, D.C. 20537

MAR 1 6 1993

Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
Washington, D.C. 20002-8002

Dear Judge Wilkins:

We have reviewed paragraph number 10 of the proposed amendments to the Sentencing Guidelines. That paragraph would amend the guidelines so as to exclude the amount of any uningestible, unmarketable portions of drug mixtures.

As the head of the Office of Forensic Sciences of the Drug Enforcement Administration (DEA), I wish to express a particular concern that we have about the ability of DEA laboratories to conduct procedures which may be expected as a result of this amendment. Please note that this letter concerns only the ability of DEA to separate the relevant parts of controlled substance mixtures from the excluded part, pursuant to the proposed amendment. We have expressed certain other concerns about this proposed amendment to the Criminal Division of the Department of Justice, and we understand that they will communicate them to you.

It is often not possible for DEA chemists to extract all of the controlled substance(s) from a "mixture" such as a suitcase or a statue that has been saturated with or bonded to the controlled substance. Our chemists must work within reasonable safety and health standards which do not permit them to utilize methods of extraction that may be utilized by those trafficking in illegal controlled substances. Such extractions will often necessitate, for example, the use of such large amounts of solvents as to pose a substantial health risk to the chemist.

Our chemists will be able to identify the nature of the controlled substance(s) present, and will often be able to make reasonably accurate extrapolations or estimates of the likely amount of the controlled substance(s) in the particular item. I am informed by our Office of Chief Counsel that such evidence is often considered sufficient for purposes of sentencing. See, e.g., United States v. Uwaeme, 975 F.2d 1016 (4th Cir. 1992); United States v. Clonts, 966 F.2d 1366 (10th Cir. 1992); United States v. Hilton, 894 F.2d 485 (1st Cir. 1990). However,

I am concerned that the implication of this proposed amendment is that such separation of all of the controlled substance(s) from the excluded part will usually or always be possible. Therefore, it is our request that you acknowledge this problem in the commentary to the amended paragraph, and explicitly refer to the possible necessity to rely upon reasonably supportable estimates of the amount of the controlled substance(s) present in such "uningestible, unmarketable mixtures."

Thank you very much for your consideration of our comments on this matter. Please do not hesitate to contact us if we can provide any further information.

Sincerely,

Aaron P. Hatcher III
Deputy Assistant Administrator
Office of Forensic Sciences

FEDERAL PUBLIC DEFENDER
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BARRY J. PORTMAN
Federal Public Defender

Telephone (415) 556-7712

March 15, 1993

BY FAX

The United States Sentencing Commission
One Columbus Circle, N. E.
Suite 2-500
Washington, D.C. 20002-8002

ATTN: Public Information

Dear Commissioners:

I am writing to implore you to correct the terribly unfair, and indeed cruel, LSD guidelines that require the weight of the carrier medium to be weighed in the determination of the offense level for LSD offenses. The weight of the paper, cardboard or sugar cube obviously has nothing to do with the culpability of the defendant or, more importantly, the weight of the LSD involved in the crime.

I have witnessed the harsh results of this ridiculous offense level methodology first-hand. One of my clients, a single mother of two adolescent children, is currently serving a 24 year sentence. She has no prior record. She is not a drug kingpin and has never hurt anybody, to my knowledge. Yet, under the Draconian LSD guidelines, her children will be about 30 years old before she sees them outside of prison walls. I have enclosed a copy of the Eighth Circuit's decision affirming her conviction and sentence. I urge your particular attention to the dissent's discussion of the sentence for just one illustration of how ridiculous the bases for LSD sentencing can be.

Wouldn't a simple rule to just include the amount of pure LSD make sense?

Sincerely,

BARRY J. PORTMAN
Federal Public Defender

Brian Berson

BRIAN P. BERSON
Assistant Federal Public Defender

BPB:pt
Enclosure

LAW OFFICES
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March 15, 1993

VIA FAX (202) 273-4529

United States Sentencing Commission
1 Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002
ATTN: Public Information

To: Honorable Sentencing Commission:

I am an active criminal defense lawyer and am writing to comment on two of the most serious areas of abuse that I have personally witnessed in my law practice.

AMENDMENT NO. 20 - (pg. 25) - Money Laundering (Chapter Two, Part S) - Consolidate Sections 2S1.1 and 2S1.2 in Sections 2S1.4 and 2S1.4; Ties offense level closer to seriousness of offenses.

In the area of white collar crime this area of the guidelines is the one most frequently abused by prosecutors. In plea bargaining negotiations, we are frequently told "if you don't plead to the mail fraud, then we will charge him with money laundering". It is very unfair when someone can get 6 to 10 months for a mail fraud scheme, and then 40-something months for depositing the check that was the object of the mail fraud. In the first place it does not make good sense, and in the second place it is a very unfair advantage for the Government. Further, it does not in any way mete out fair punishment.

It is very simply an arrow that should be removed from the Government's quiver.

AMENDMENT NO. 40 - (pg. 63) - 100 to 1 Ratio of Crack vs. Powder Cocaine; There is in fact little scientific support for the 100 to 1 Ratio, and unquestionably black persons are impacted by this very unfair requirement. I proved in the case of United States v. Hutchinson, in the United States District Court for the Western District of Oklahoma, Case No. CR-92-31-T, that of all

crack cases since the guidelines (November 1, 1987) in the Western District, 94.39% of the defendants were black.

The enormous disparity in sentences, and the unduly harsh requirements of the guidelines have resulted in the life imprisonment of many persons who deserve a substantially shorter sentence. This should be done immediately, and retroactively.

Thank you for the opportunity to comment on the guidelines.

Respectfully yours,

J. W. Coyle, III

JWC/sm
L-JW.SC

MAPLEMOOR

March 12, 1993

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 2002-8002

Dear Honorable Commissioners:

I read with interest the February 3, 1993, issue of THE CRIMINAL LAW REPORTER published by the Bureau of National Affairs.

It is my opinion that the federal sentencing guidelines indeed are worthy of refinement. In general, the courts have assumed too much in accepting prosecutors' statements of related circumstances as they relate to sentencing. In my observation, these "related circumstances" are often no more than allegations which have not been investigated. Therefore, resulting sentences have been more harsh than warranted.

The specific purpose in writing this letter is to support the proposed amendment to subsection (c) of Section D 1.1. There should be no question as to whether or not only the actual weight of the LSD itself should be counted. It is the actual drug activity itself, after all, that harms society. To penalize citizens for their selection of a carrier medium is absurd. The practical effect of the existing sentencing guideline is to further overcrowd our prison system and to actually inflict unwarranted injustices upon guilty persons and their innocent families.

I offer you this comment not without sympathy for the overall Drug War or for those who fight it. My first front line experiences with the control of illegal substances was in the late 1960's as a U. S. Military officer. For quite some time I shouldered the responsibility for drug control enforcement in a large Army Tank Unit. The ruthless greed and violence are things that can never be described adequately.

Much later in my civilian career, I served as the Executive Director of Drug Free America. Despite some monumental efforts by those involved, that National not-for-profit organization was forced to close its doors, as were many others engaged in similar efforts, because public support simply could not find consensus in how to defeat the problems which drugs inflict on our civilization.

However, there were some concerns that were voiced consistently by many constituencies. Among them was the fear of over-punishing the relatively low volume players (intermediaries to sellers and users).

MapleMoor Corporation, 1360 Beverly Road, Suite 305, McLean, VA 22101 703-821-3544 Fax 703-448-1236

While an argument certainly can be made for attempting to cripple the drug supply system by discouraging the participation of intermediaries and users by holding over them the system's enforceable threat of awful, costly penalties for their participation no one ever argued seriously that such penalties would do much more than simply force the major players to change their marketing and distribution methods; a delaying tactic to permit the "system" to find other, more effective "solutions." The real rub comes in the fact the problem is not strictly a business one. It is not simply a matter of economically discouraging an established sales and distribution system. It is a matter too of balancing the rights of individuals within the context of very fundamental philosophies underlying our entire legal system.

The foregoing is not a suggestion that the rights of individuals always outweigh those of society as a whole. However, when we include as a component of the definition of a criminal act the physical weight of the container of an illegal substance, we fabricate an irrelevant, alternative meaning for the word "severity" which is inconsistent with the harm or potential harm of the act. For any sentencing guidelines framework to work in a truly just system, the very definition of the crime must be accurate, and consistent based upon sound reasoning. The proposed amendment of subsection (c) of section 2D1.1 will ensure that penalties under the Sentencing Guidelines will be consistently applied relative only to the actual weight of the illegal substance itself. In my opinion, the Sentencing Guidelines must be amended as proposed. I strongly urge the Commission to accept that proposal.

Sincerely,

William V. Burke

William V. Burke
President

Post-It ™ brand fax transmittal memo 7671	# of pages ▸ 1
To PUBLIC OPINIONS	From V. CONROY
Co. U.S. SENTENCING COMM.	Co.
Dept.	Phone # 314-781-8160
Fax # 202-273-4529	Fax #

March 12, 1992

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Commissioners:

This letter concerns the series of proposed amendments to the sentencing guidelines. I am writing to advocate the passage of proposed Amendment 50, which will eliminate the weight of the carrier in LSD cases, allowing the actual weight of the drug, not the carrier weight, in determining the offenders sentence.

I believe Amendment 50 will correct the current inequity in the sentencing of LSD offenders. I believe that LSD offenders are being and have been sentenced far in excess of what justice requires due to the inclusion of the carrier medium.

I also advocate passage of proposed amendment 56, which would allow for the correction of the previous guidelines, which were enacted with good intent, but in practice have proven to be at at odds with Congress's mandate to the Sentencing Commission to promote uniformity of sentencing.

Thank you for your consideration regarding this matter.

Sincerely,

Virginia L. Conroy
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St. Louis, MO 63139

PACDL

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Pennsylvania Association of Criminal Defense Lawyers

NACDL Affiliate

March 12, 1993

Honorable William Wilkins, Jr.
Federal Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
South Lobby
Washington, DC 20002-8002

In Re: Proposed Amendments By The Practitioners Advisory Group

Dear Judge Wilkins:

The Board of Directors of the Pennsylvania Association of Criminal Defense Lawyers wishes to express our approval of the proposed amendments to the Federal Sentencing Guidelines as submitted by the Practitioners Advisory Group. As practitioners, we experience first-hand the impact of the Guidelines not only on our clients but on the entire judicial system.

In stating our support, we draw particular attention to the following:

Proposed Amendment 35. Treatment of acquitted conduct under §1B1.3 Relevant Conduct. PACDL prefers Option 1 yet recognizes that the majority of conduct deemed relevant conduct for sentencing purposes is generally not included in acquitted counts but is most often "uncharged conduct". Further, we believe that any conduct used for sentencing should meet the beyond a reasonable doubt standard and should be submitted to the trier of fact during trial.

Proposed Amendment 36. Rule 11 procedure. PACDL supports the recommendation in this comments. It should also be noted that the Federal Court section of the Allegheny County Bar Association is recommending that the local rules for the Western District of Pennsylvania be amended to require a pretrial conference including the Government prosecutor, the defendant and the probation officer in order to disclose the facts and circumstances of the offense and the offender characteristics applicable to the Sentencing Guideline range.

* Proposed Amendment 39. Reduction of offense level for drug quantity. PACDL supports the overall scheme of this proposed amendment and believes that a maximum offense level of 36 achieves the purpose of the Sentencing Guidelines system.

The proposed amendments by the Practitioners Advisory Group are a definite improvement upon the Federal Sentencing Guidelines as they presently exist. The input of attorneys who work with the Guidelines on "the front line" must always be given high priority. PACDL supports the efforts of the Advisory Group.

Very sincerely,

Caroline M. Roberto

Caroline M. Roberto
Board Member and Chair of the
Sentencing Committee

CMR:abs

KAREN S. WILKES
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March 11, 1993

ATTN: Public Information
U.S. Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Commissioners:

As a young trial attorney and taxpaying citizen, I send you a resounding vote of confidence for the proposed amendments to the Sentencing Guidelines.

Although I question the wisdom and legality of the Guidelines, I commend the Commission's efforts to bring back some degree of common sense and fairness to the sentencing process. As we have all seen, the current system has led to a most deplorable paradox: the ringleaders and most notorious criminals actually serve less prison time because they have more information to "assist" the government. This is not justice.

The drastic sentences that are now imposed for drug offenses are equally deplorable. Non violent drug offenders are needlessly crowding our prisons and costing us billions of dollars. So, I particularly encourage you to support the proposed amendments to the drug quantity table in Section 2D1.1.

Finally, I urge you to reconsider the definition and penalty enhancements for "career offenders." The current definition is much too inclusive to result in such harsh penalties. Two different types of crimes committed within 15 years is hardly a "career" in crime, and hardly justifies adding ten or more years to a sentence.

This became painfully clear to me in a recent case where one of my clients was sentenced under the Guidelines for conspiracy to distribute 5 kilograms of cocaine. No cocaine was seized; no witness bought cocaine from my client or sold cocaine to my client. The only cocaine allegedly received by my client was the result of a mistaken

delivery of a kilogram instead of an ounce. For this, my client was sentenced to 360 months.

No one deserves this sentence, regardless of his past, and I urge you to make every effort to put an end to this type of disproportionate punishment. You should pass the proposed changes to the drug quantity table, and you should apply them retroactively. Nothing less will repair injustices like this one.

Please keep my words, and the plight of my client, in mind as you consider the proposed amendments. Also, listen carefully to the representatives of Families Against Mandatory Minimums (FAMM). They have horror stories just like mine.

I will watch closely as you debate the proposals, and I pray that justice will be done.

A friend of Liberty,

Karen S. Wilkes

KSW/kvd

KLINGER, ROBINSON, MCCUSKEY & FORD
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March 10, 1993

United States Sentencing Commission
One Columbus Circle N.E.
Suite 2-500
Washington, DC 20002-8002

ATTENTION: PUBLIC INFORMATION

Dear Sirs:

It is my understanding that there is currently a proposal to take the carrier weight out of LSD sentencing before the Sentencing Commission with respect to the United States Sentencing Guidelines.

I have seen in connection with my representation of people charged with LSD-related offenses the impact that adding the carrier weight in has. In one particular case that I am aware of, it increased the number of grams from slightly in excess of 11 to over 300. As you can tell, the impact such an increase would have would be substantial.

I think to remove the requirement of the carrier weight would bring LSD offenders more in line with offenders in other drug-related cases as contemplated by the Federal Sentencing Guidelines.

I want to thank the Sentencing Commission for its review of this matter.

Very truly,

KLINGER, ROBINSON, McCUSKEY & FORD

Gary L. Robinson

GLR:jsak

March 10, 1993

Attn: Public Information
U.S. Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500 South Lobby
Washington, D.C. 20002-8002

Dear Commissioners:

I am writing to you today to express my interest and support of the 33 proposed amendments that would reduce drug sentences. My interest is personal as well as a concerned taxpayer.

My son was sentenced to 30 years under the Criminal Career law. At the time when the arrests were taken, my son was at work. The codefendants that were arrested all pleaded guilty. Not one of them received the time my son did. The person that the DEA was investigating had prior felonies also, but he didn't receive such harsh sentencing.

I spent everyday at the trial and was astonished as to how the judicial system has failed. The judge apologized for having her hands tied by the sentencing guidelines. This is disgraceful for a judge to be striped of their expertise.

This just makes me wonder what type of respect can our youths expect of our government, when I see the government has no respect for human life.

I worked hard to raise my sons properly. I'm a caring, responsible, and level thinking individual. I just can't imagine my sons life being destroyed by a law that can be revised.

I believe there are other alternatives to this issue. I'm not saying don't punish an individual, I'm saying, let the time fit the crime. I very rarely hear of the government setting up treatment programs, or prevention programs for this nationwide problem on drugs. I believe the drug game is a sickness like anything else, such as a tooth ache. It must be treated.

I would greatly like to believe in my government, but its extremely difficult.

I'm not only concerned for my son, I'm also concerned for first time offenders who are given outrageous sentences.

Let's get these issues resolved and use these tax paying dollars for treatment, prevention, and educate our people.

Respectfully,

Brenda Smith
4508 15th Street, N.W.
Washington, D.C. 20011

/bs

cc: President Clinton-White House

FIRST NATIONAL BANK
CAPITAL CITY GROUP

P.O. Box 900 • Tallahassee, Florida 32302-0900
(904) 224-1171

March 10, 1993

Attn: Public Information
U. S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D. C. 20002-8002

Dear Members:

* We support proposed amendments to reduce drug sentences as endorsed by Families Against Mandatory Minimums. Please give their representatives every consideration. They know the problems we families face.

Our 39 year old son was convicted in a drug conspiracy case because a government-arranged "sting" group discussed locations at his homesite. He received a 10 year sentence! He is a non-violent first time offender. The real victim is his son, our totally blameless 3 1/2 year old grandson. We are helping our daughter-in-law raise this innocent child. We hope for relief on appeal. We have NOT received the justice in which we were raised to believe. PLEASE help our family and others like us help ourselves.

Thank you for your attention.

Sincerely yours,

Newell & Richard Lee

Newell M. and Richard M. Lee
413 East Park Avenue
Tallahassee, Florida 32301
(904) 222-1155

cc: Families Against Mandatory Minimums (202) 457-5790, Julie Stewart
Bill Clinton, United States President
Bob Graham, Florida Senator
Connie Mack, Florida Senator
Pete Peterson, Florida Representative
Clyde Taylor and Judge Griffin Bell, Attorneys

Re: George Martin Croy - 09645-017
Case No. 92-00300405 LAC
U. S. District Court for the Northern District of Florida, Pensacola Division

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH, PENNSYLVANIA 15219

CHAMBERS OF
DONALD E. ZIEGLER
U.S. DISTRICT JUDGE
412-644-3333

March 10, 1993

Hon. William W. Wilkins, Jr.,
Chairman, U.S. Sentencing Commission
Suite 2-500, South Lobby
One Columbus Circle Northeast
Washington, D.C. 20002-8002

Dear Judge Wilkins:

Re: United States Sentencing Guidelines

I am responding to the invitation of the Sentencing Commission to comment on the proposed amendments to the Guidelines and the proposals of various groups. I have served as a state court trial judge for five years and a federal district court judge for 15 years in a metropolitan area. Hence, I bring to my work a fair understanding of the best and worst of both criminal justice systems in reviewing the Proposed Guideline Amendments. In my judgment, the federal sentencing guidelines are inferior to the state court guidelines in Pennsylvania, and therefore I have scanned the Proposed Amendments in an attempt to select the amendments that will improve the federal sentencing scheme.

Proposed Guideline Amendment No. 1, Pg. No. 1 should be adopted as urged by the Practitioners Advisory Group in Option 1 at Pg. 56. Most citizens and virtually every juror would be shocked to learn that a court is required to include conduct in the sentencing equation that their representatives have found not proven by the prosecution. In addition, any exception to a complete bar of such evidence strikes most informed observers as unfair and one-sided. Prior to the guidelines, federal trial judges did not consider acquitted conduct at the time of sentencing, and the supporters of the guidelines have failed to sustain their burden of proving that § 1B1.3, as constituted, has had any deterrent effect upon aberrant conduct, or has promoted uniformity in sentencing.

Proposed Guideline Amendment No. 10, Pg. 20 should be adopted to promote uniformity of law and introduce common sense in a difficult area of sentencing. The inclusion of uningestible mixtures in the weight of a controlled substance promotes public cynicism and contempt by the offender. It also leads to grossly disproportionate sentences in certain cases and therefore undermines the foundation on which the guidelines are bottomed.

Proposed Amendments 29 and 30 (Judicial Conference) are long overdue. The members of the Commission and staff are fond of stating at various Circuit Judicial Conferences and in other fora that departures are authorized in appropriate cases under the guidelines. The courts of appeals are often blamed by members of the Commission for being too rigid in interpreting the departure provisions. The Criminal Law Committee of the Judicial Conference has now provided the Sentencing Commission with the opportunity to stand up and be counted on this issue.

Proposed Amendments 31, 32 and 33 (American Bar Association) are progressive proposals that recognize that prisons are limited resources that should be reserved for the most serious offenders. They also recognize that for many non-violent offenders there are effective alternative sentences. For many years prior to the guidelines, I kept a record concerning the number of offenders that violated a probationary sentence. The number of violators totalled 15% This means that 85% of the defendants did not violate probation and for these offenders a non-prison sentence was successful, effective and obviously less expensive.

Proposed Amendments 37 and 38 (Practitioners Advisory Group) are sensible and deserve adoption. They advance uniformity of application and fairness for offenders who do not profit from an offense. This is especially important for non-violent offenders for whom alternatives to total confinement may be entirely appropriate.

Amendment No. 40 (Practitioners Advisory Group) correctly captures the disparate impact of the guidelines upon minorities. The 100 to 1 quantity ratio is irrational and leads to unfair sentences. Quantity based sentencing involving crack cocaine produces sentences, in many cases, that are harsh, have no deterrent impact and are grossly disproportionate. The same reasoning applies to Amendment No. 50 (Federal Offenders Legislative Subcommittee). Congress could not have intended such results.

Thank you for giving me the opportunity to comment on the matters pending before the Sentencing Commission.

Yours very truly,

Donald E. Ziegler

Donald E. Ziegler

ef

Executive Director and Administrator
Charles and Pauline Sullivan

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CURE-NH
William J. Manseau, D.Min.
Chairperson
6 Daniel Webster Highway S.
Nashua, NH 03060
Phone: 603-888-3559

CITIZENS UNITED FOR REHABILITATION OF ERRANTS

"A National Effort to Reduce Crime Through Criminal Justice Reform"

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

March 10, 1993

Attention: Public Information

To Whom It May Concern:

I wish to express my full support for proposed amendment #50 to the Federal Sentencing Guidelines for 1993 which reads as follows: "In determining the weight of LSD, use the actual weight of the LSD itself. The weight of any carrier medium, e.g. blotter paper, is not to be counted."

I urge you to specify that it be fully retroactive and that you submit it to the Congress on or before May 1, 1993. There are approximately 2,000 individuals incarcerated in the federal system to date, the majority of which are first-time, non-violent offenders, who have already been unjustly sentenced to outrageous amounts of time in LSD offenses for the sheer weight of carrier mediums.

Also, I wish to state my support for the Edwards Bill, The Sentencing Uniformity Act of 1993. Please work to repeal the mandatory minimum sentencing law and restore sentencing justice to all.

Thank you.

Sincerely,

William J. Manseau, D.Min.
Chairperson, CURE-NH

WJM/

Dear CHARLES+PAULINE..... .....Monday March 1st 1993

Greetings from F.C.I. Danbury. I am currently serving a 128 month sentence without parole, for conspiracy to distribute LSD. I have no history of violence what so ever, nor any prior felony convictions. I have taken responsibility for my crime. I continue to demonstrate, diligently, my whole-hearted conviction to reform my life. I am biding my time wisely, attending Marist College (I made high honors last semester,..intend to do so again), and the Comprehensive Chemical Abuse Program, among other programs. In 21 months, I've done *all* this--128 months are entirely unnecessary and unfathomable. I *am* an asset to our society, and to the world.

An interesting turn of events has unfolded, and it warrants your *immediate attention!* I have enclosed information that documents and explains the "quirk in the law" that justifies these absurd sentences for LSD offenses, by including the irrelevant weight of carrier mediums. You will also find an excerpt, from the Federal Register, containing 1993 amendments to the Federal Sentencing Guidelines, as proposed by the U.S. Sentencing Commission. See amendment #50--*synopsis of proposed amendment and proposed amendment*--which reads: "In determining the weight of LSD, use the actual weight of the LSD itself. The weight of any carrier medium (blotter paper, for example) is not to be counted." This amendment seeks to rectify a truly gross misappropriation of justice.

This means that prison stays (which are costly to the American taxpayers and public at large, as well as the individuals and their families, in both tangible and intangible ways) could be dutifully shortened, for myself and 2000 other human beings serving 10, 15, and 20 year sentences (with out parole), for the sheer weight of *irrelevant* carrier mediums....This would not be mocking the fact that LSD is illegal, it would simply serve to produce *just sentences*, in which the "time would fit the crime".

I earnestly request that you write the U.S. Sentencing Commission, and voice your support for crucial amendment #50! IT IS ESPECIALLY IMPORTANT FOR YOU TO URGE THAT IT BE RETROACTIVE!! This needs to be done by March 15th, since public hearings are scheduled in Washington D.C., on March 22nd. (See Federal Registar excerpt).

I hope and pray that you will find the time and understanding to act on this issue,..it's not only for my benefit, but thousands just like me, encompassing all our families and loved ones, as well as all those that will continue to be federally prosecuted for LSD offenses. Please, justice and equity *must* transcend rhetoric!

3/10/93

Dear Sirs,

I wish to express my full support for proposed Ammendment Number 50 to the Federal Sentencing Guidelines for 1993 which reads as follows: "In determining the weight of LSD, use the actual weight of the LSD itself. The weight of any carrier medium (blotter paper for example) is not to be counted".

I urge you to specify that it be fully retroactive and that you submit it to Congress on(or before) May 1st 1993.

This Ammendment could affect the fates of approximately 2000 induviduals currently incarcerated within the Federal Penetentiary System. These induviduals need to be resentenced justly and proportionately for their crimes as many are first offendors and the cost to us, the American taxpayers, is roughly $25000.00 per inmate, per year to incarcerate them. This is NOT an acceptable expenditure of our tax dollars!

In addition to this, I also fully support the Edwards Bill (The Sentencing Uniformity Act of 1993) as well.

Please work to repeal the Mandatory Minimum Sentencing Law and restore Sentencing Justice for all Americans.

I thank you for your attention and concern in this matter.

Sincerely,
Ernie Voegtlin

GraybaR
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WEST PALM BEACH, FLORIDA 33402
Attn: E. Voegtlin

BROWN & MOREHART

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March 8, 1993

Mr. Mike Courlander
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

RE: Proposed Amendments to Sentencing Guidelines

Dear Mr. Courlander,

This letter is to provide my input on several of the proposed changes and amendments to the sentencing guidelines. I hope that these are of some use to you as these changes are contemplated. I am limiting my comments to three proposals, but on a broader scale would suggest that the Commission give favorable consideration to all changes which result in a more equitable situation.

Prior to expressing my views I wanted to give some background on myself. I am an attorney in Cincinnati, Ohio. The majority of my practice involves federal criminal sentencings and post-conviction motions related to sentencing. I handle cases in federal court across the country. Because of my work I have become familiar with the contents of the guidelines. It is with this understanding that I provide the following comments.

The proposal that would permit a District Court Judge to make a downward departure, without the United States Attorney making the request, if the Judge believes the Defendant has provided substantial assistance is one which should be approved. The current scenario permits the United States Attorney to plea bargain with the Defendant and decide after the Defendant provides information whether to make a request for a downward departure. Absent unconstitutional motivation on the part of the U.S. Attorney, there is nothing a Defendant or Judge can do, if the U.S. Attorney does not request a downward departure. This system smacks of unfairness. The U.S. Attorney, gains the information and then can decide not to give the Defendant any credit for it. The Defendant may have already put himself at grave personal risk and additionally is not able to retrieve what he has provided to the U.S. Attorney. Permitting the Judge to have control on this situation would level the playing field and result in a more just situation.

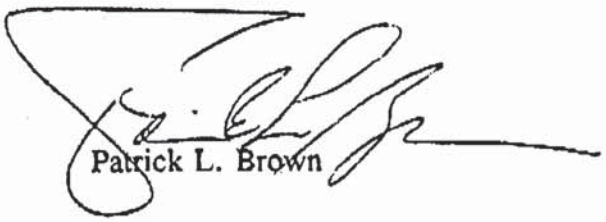
The proposal reducing the top guideline from 43 to 32 is another one which should be approved. The length of sentences in drug cases has simply gotten out of hand. As a society we can not continue to pay the costs of warehousing individuals for twenty and thirty years, especially when they are first time offenders. The comparison is made repeatedly

between violent offenders and drug offenders and the relative disparity is sentences received. The proposed amendment would help alleviate this disparity and more importantly result in sentences, especially for first time drug offenders, which are more in keeping with a system of fairness and justice.

The third proposal I am writing about relates to eliminating the weight of the carrier in LSD cases when calculating the weight of the drugs involved. It is difficult for me to understand the rationale behind adding to the weight of the actual drug the weight of the carrier paper. This would easily result in a situation of a supplier or manufacturer who has not separated the drug into doses and thereby not placed it on carrier paper being treated the same as the street seller because of the added weight of the paper the drug is placed on. Simply, a person should be held accountable for the drugs involved, not the material it is carried on.

I thank you for the opportunity to comment on these specific proposed amendments, and the amendments in general. I hope that the amendments will receive favorable consideration. Additionally, I would welcome the opportunity to provide testimony or additional information at any scheduled hearings on these proposed amendments. If I can be of further assistance please do not hesitate to contact me at (513) 651-9636.

Very Truly Yours,



Patrick L. Brown

PLB\wpf
cc: Congressman David S. Mann

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March 8, 1993

United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, DC 20002-8002

Attention: Public Information

Re: Proposed Amendments to the Federal Sentencing Guidelines

To the Members of the Commission:

I urge you to act decisively in amending subsection (c) of §2D1.1 of the Guidelines by adding the proposed paragraph requiring that in determining the weight of LSD the actual weight of the LSD itself be used, and not that of the carrier medium.

My only son, Stanley, is presently rounding out his fifth year of a 20-year sentence, as a first offender, caught up in a sting operation, and involving a minor amount of LSD. At his sentencing, adding the weight of the blotter paper to the imposition of a mandatory minimum sentence resulted in a bizarre and inhumane sentence for an individual who poses no threat to society. Stanley is now 35 and cannot expect to see freedom until the age of 48.

Stanley expressed himself far better than I could, in a written statement on mandatory minimums and the use of the weight of the carrier medium in determining LSD sentences, and he has requested me to submit the enclosed article, *Hard Time for Heavy Paper,* as written testimony for the hearing scheduled for March 22nd. In addition, I respectfully request you to accept this letter as written testimony.

Yours sincerely

RICHARD T. MARSHALL

xc: MR. STANLEY J. MARSHALL
07832-026-UW
9595 West Quincy Avenue
Littleton, CO 80123

RTM:m
ENCL.
STAN\SENTCOMM.LTR

HARD TIME FOR HEAVY PAPER . . . . . *by Stanley Marshall*

The United States is the world's leading jailer. We imprison more persons per capita than Russia, Iraq and Haiti. Out of every 100,000 American citizens, 455 are imprisoned. South Africa is a distant second, with 311. The 19th Century notion that penitentiaries were secure facilities designed for rehabilitation of offenders is today nothing more than a historical footnote. Today it is universally conceded that America's prisons are a return to the dungeons of yore -- places for warehousing human beings, like so much nuclear waste; to get them out of sight and out of mind.

Why does America differ from England, France, Germany, Canada, Australia..and all the other democratic countries in maintaining a monumental prison population? The reason is obvious: the War on Drugs. In Federal prisons, 56% of the inmates are drug offenders. By 1995, that figure will be 70% Nearly ten years ago President Reagan declared America's second War on Drugs, and Congress enacted the Sentencing Reform Act of 1984. What this act did was to set Mandatory Minimums for federal judges to apply as punishment terms for drug offenders. Judges were not permitted to set lesser sentences than the absolute lower limits set out in the Sentencing Reform Act, no matter what the extenuating circumstances.

The Act also provided for sentencing guidelines. The effect of these rigid guidelines has been, over the years, to further pigeonhole the convicted offender into numerous series of sentencing ranges, depending upon the nature of the offense, and not of the offender. The guidelines include enhancements that increase penalties, and some departures that reduce sentences. Despite these guidelines, no federal judge may sentence any offender to less than what is prescribed by the mandatory minimum. One of the very few downward departures is the one granted to an offender who assists prosecutors and federal agents in a sting operation or set-up of another prospective offender. If the offender testifies that the offense was the brain child of the prospective offender, the first offender gets a further downward departure from his sentence, and the prospective offender is due for a substantial upward enhancement of his sentence. To say these guidelines encourage a doubling of the prison population would seem appropriate. Incidentally, they certainly seem to encourage a proliferation of bad tips, which result in defective search warrants, under which the homes of innocents have been raided. In some of these raids agents have shot and killed law-abiding homeowners. The United States is facing damages of millions of dollars in lawsuits arising out of these mistakes. Under the guidelines, however, furnishing such information, no matter how inaccurate it may be, is about the only way to get a sentence reduced. On the other hand, there are far more ways a sentence can be enhanced.

Compounding this state of affairs is the wide range of federal conspiracy statutes. Minor participants, including those even marginally or peripherally connected to a drug transaction, are subject to a range of punishments comparable to those meted out to the persons who financed, orchestrated and profited from the crime. Of course, the kingpin is thus in an excellent position to bargain with his prosecutors for downward

departures, because he can testify against all his underlings, including some who may not even have been aware of their roles at the time of the offense. Thus, under the Sentencing Reform Act and the sentencing guidelines, it is not unusual to witness the bizarre result of drug lords receiving relatively lesser punishment than minor offenders. The concept of a mandatory minimum sentencing scheme was not new in 1984. It had been enacted back in 1970, but was quickly repealed. Ironically, George Bush, at that time a congressman from Texas, was one of the voices calling for repeal. Of course, that was before the Willie Horton era, when it became politically expedient to maintain the appearance of being tough on crime at any cost in the midst of the War on Drugs.

Federal judges are almost unanimous in their opposition to Mandatory Minimums. A number have taken senior status, when faced with the grossly unjust sentences they were being forced to impose. A few judges have ignored the mandatory minimums, running the risk of being reversed on appeal. What outrages the judges is the fact that the Mandatory Minimums have relegated learned judges into rubber stamp roles. They no longer judge. They apply a formula from a chart. They are prohibited from taking into account any human, economic or societal factors, in sentencing. They are no better than computer terminals.

The Sentencing Reform Act of 1984 also abolished parole for drug offenders. Nobody gets one third or more off their time anymore. The only remaining good behavior incentive is a maximum of 54 days of "good time" each year, which is 14.79% of the time assessed. That means that an inmate sentenced for a single minor drug transaction to 10 years will have to serve at least 85% of his sentence, and can hope for a maximum good time reduction of 17 months and 21 days, after being locked up for eight years, six months and nine days. It is amazing that our federal prisoners are as well behaved as they are, considering this almost total lack of good behavior incentive.

I am a drug offender. I'm serving four years for selling LSD, and an extra 16 years because of the paper it was on, because Congress unintentionally failed to distinguish blotter paper, upon which LSD is marketed, from common adulterants used in the marketing of heroin and cocaine. Heroin and cocaine are cut with powdered milk or similar substances, thus enhancing the profits of the drug dealers, who sell those drugs by *weight*. LSD is sold on the basis of the *number of doses*. Congress apparently was unaware of this when it permitted the use of language which could be interpreted as including the weight of the paper, or capsule, or sugar cube, along with the LSD. The result, in the case of LSD, where the weight of the paper, which is not an adulterant, but merely a carrier medium, adds no value and is hundreds or thousands of times the weight of the drug, was characterized as bizarre, by the five members of the Seventh Circuit Court of Appeals who dissented from the affirmance of my conviction.

When I was sentenced we had tried to explain this distinction to the trial judge, but he found that I had been guilty of selling 100 grams of an illegal drug. This was even after a government witness, a chemist, had testified that there was only 67% of one

gram of LSD involved in the transaction. At my appeal, we argued that it was irrational to impose upon me the same sentence for 10,000 hits of LSD that I would have received for selling two million doses of heroin, or $5 million worth of cocaine. In a dissenting opinion, one of the appellate judges wrote, "To base punishment on the weight of the carrier medium makes about as much sense as basing punishment on the weight of the defendant."

A case similar to mine was argued before the Supreme Court. It was explained to the Justices that because the weight of the carrier medium was included, someone who sold three doses of LSD on sugar cubes would receive the 10-year mandatory minimum, while a kingpin who distributed 19,999 doses of LSD in its pure crystalline form would not be required to serve any mandatory minimum sentence at all. Despite this argument, seven members of the Court upheld the sentence, based on a "positivistic" or literal view of the wording of the law. In his dissent, Justice John Paul Stevens said, "The consequences of the majority's construction [of the statute] are so bizarre that I cannot believe they were intended by Congress." Congress clearly stated that its aim was to punish those who sell large quantities of drugs more severely than those who sell small quantities. Weighing the carrier medium for the purposes of enhancing punishment clearly thwarts the purpose of Congress.

Since the Supreme Court has chosen to apply a narrow interpretation of the wording of the law, I am condemned to serving 17 years, five months, at the very least. I have been locked up five years so far. Reason demands that Congress refine its definition of "a mixture or substance" to more precisely indicate an adulterant and not a carrier medium. Along with others in my situation and their families, I look forward to a review by Congress of this tragic oversight.

The sentencing guidelines are due for revision this year. We have a new president. We have a new Congress. We have new members on the judiciary committees in both houses, including two women, for the first time, on the Senate Judiciary Committee. It's time for a new, pragmatic look at a problem which has evoked only knee jerk reactions in the past dozen years.

Our federal prisons are now operating at 147% of their rated maximum capacities. At the present rate of convictions, we'll have to build fifty new 2000-bed facilities in the next decade. It costs over $20,000 per year to keep one inmate in federal prison. Convictions are on the rise and sentences are longer and longer. This year's budget for the Bureau of Prisons is $2,134,297,000. Can we really afford to build more prisons? We can only hope for a return to rational laws and realistic and compassionate sentencing, keeping in mind that people who break the law are still people.

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March 9, 1993

United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, DC 20002-8002

Attention: Public Information

Re: Proposed Amendments to the Federal Sentencing Guidelines

To the Members of the Commission:

This letter is to supplement the letter I sent you yesterday, urging you to act decisively in amending subsection (c) of §2D1.1 of the Guidelines by adding the proposed paragraph requiring that in determining the weight of LSD the actual weight of the LSD itself be used, and not that of the carrier medium.

On December 17, 1992, *USA Today* published an article entitled, *Quirk in law weighs heavily on sentences*, which states the case most succinctly and most effectively. It is interesting to note, also, that, according to *USA Today*, this weight-of-the-carrier quirk was recognized by Congress in 1989, when remedial language was included in the 1989 crime bill.

I enclose a copy of page 11A of the December 17, 1992 issue of *USA Today*, including this item, and others pertaining to LSD, and I respectfully request that you include the same in the Commission's record of written testimony on this proposed amendment to the Guidelines.

Yours sincerely

RICHARD T. MARSHALL

xc: MR. STANLEY J. MARSHALL
07832-026-UW
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Littleton, CO 80123

RTM:m
ENCL.
STAN\SENTCOM2.LTR

GRATEFUL DEAD FOLLOWERS

Attack on Deadheads is no hallucination

Band's followers handed stiff LSD sentences

By Dennis Cauchon
USA TODAY

David Chevrette was a young, free-spirited hippie.

His only possessions were his clothes, a dog and a 1970 Volkswagen bus painted with peace signs. For fun, he followed the Grateful Dead rock group on concert tours.

Then, the 20-year-old got busted for selling LSD in 1990 to a guy he met on the beach.

Now, he's doing 10 years without parole in federal prison — a longer sentence than those given in federal court to rapists, armed robbers and some big drug dealers.

Chevrette is a victim of a concerted crackdown on Grateful Dead fans — called Deadheads — and a quirk in federal drug law.

That quirk — involving whether to weigh the paper or sugar cube the LSD is stored on — has resulted in what Sen. Joseph Biden, D-Del., calls an "unintended inequity."

In short: LSD sentences are out of proportion — by a factor of 50 or more — with other drug sentences.

Chevrette's term for $1,500 worth of LSD is more severe than if he'd smuggled $100,000 worth of heroin.

The quirk — buried deep and unnoticed in a large drug law — has been turned into a bludgeon in the battle against Deadheads.

Today, 1,500 to 2,000 Deadheads are in prison, up from fewer than 100 four years ago. Most are young middle-class whites or old hippies. Many are serving mandatory no-parole prison terms of 10 or 20 years.

"We've opened a vein here," says Gene Haislip, head of LSD enforcement at the Drug Enforcement Administration. "We're going to mine it until this whole thing turns around."

The DEA has tripled spending, personnel and arrests for LSD since January 1990. "We've seen a marked pattern of LSD distribution at Grateful Dead concerts," says Haislip. "That has something to do with why so many (Deadheads) are arrested."

The Grateful Dead — top-grossing concert act last year ($34 million) — has been around since the 1960s.

Some people are weekend fans, such as Vice President-elect Gore and his wife, Tipper, who took their daughter to a June Dead show.

Others are more devoted. They wear tie-dyed shirts and catch five or 10 shows a year.

The most dedicated fans follow the band from show to show, creating a traveling village of 3,000 to 6,000 sometimes called "Deadland."

The values are pure '60s: peace, love, vegetarianism, communal living and partying. To many, mind expansion is also part of the Deadhead experience — and that means LSD.

"Yes, LSD is my sacrament," says Franklin Martz, a Haight-Ashbury-born hippie who saw his first Grateful Dead show in 1967. He's now serving a 40-year LSD sentence.

This brazen advocacy of LSD angers many parents and police.

A USA TODAY review of more than 30 Deadhead cases found they routinely have their musical tastes, dress and lifestyle used against them in the criminal justice system:

▶ **More police searches.** A University of New Hampshire police officer acknowledged to the student newspaper that he pulled over cars with Grateful Dead bumper stickers.

▶ **Bond denial.** Deadhead Janet Godwin's license plate was presented at her North Carolina bond hearing to prove she was a flight risk. The plate read RAMBROS[illegible]er the Grateful Dead song *Ro[illegible] Rose.*

▶ **Negative portray[illegible]y and news media.** Police told the media that Michael Thrasher's 1,984 doses of LSD had a satanic symbol — an upside down pentagram. No mention was made of the word "LOVE" stamped across the LSD paper.

The jury learned that Thrasher, 19, a college student from Portland, Ore., was in a band named Ethel & Jake's Psychedelic Jug Band, Jamboree and Wino Wrestling Team. "A big issue at my trial was my 'alternative lifestyle,'" Thrasher says.

▶ **Sentencing prejudice.** Deadhead Todd Davidson, 20, sentenced to 20 years without parole, was described in his pre-sentence report in Florida as a member of the "cult that follows the Grateful Dead."

▶ **Prison labels.** Richard Cash is classified as "gang-affiliated" in the Colorado prison system because he's a Deadhead. That label — usually reserved for Crips, Bloods and members of Aryan Nation — is used to determine where a prisoner is placed in order to curb gang violence. But Cash, a pacifist, complains: "I'm exposed to harsher conditions all because I'm a Deadhead."

Nadine Strossen of the American Civil Liberties Union says: "People shouldn't be singled out because their lifestyles or musical tastes are unpopular with the majority."

Deadheads get few breaks behind the scenes, too.

North Carolina lawyer Charles Brewer entered into what he thought were routine plea talks for a client. He was surprised to find prosecutors unwilling to deal. "They were powerfully impacted by the fact that she was a Deadhead," he says.

Deadheads often are subject to what's known as "jurisdiction shopping" — prosecuting a case where it gets the greatest punishment.

Thrasher was arrested and prosecuted entirely by local authorities.

But the case was switched from state to federal court to get a longer sentence. In state court, he would have gotten 16 months; in federal court, he got 10 years without parole.

Davidson, now 22, is scheduled to be released from prison on March 19, 2010. He'll be 40.

"I'd go back on tour in a heartbeat," Davidson says. "It was a big happy family." At least until the real world intruded.

"It's funny," says Deadhead Christopher Jones, who just finished an LSD sentence in Virginia. "Everyone is like 'We gotta be careful,' but everyone is do[illegible] same old thing. You've still [illegible] walking around shows yellin[illegible]s! Doses!' "

By Steve Slocum, AP

DOING TIME: Michael Thrasher, 19, in Sheridan, Ore., prison, where he is serving 10 years for possession of $2,000 worth of LSD — his first offense.

Quirk in law weighs heavily on sentences

People imprisoned on federal LSD charges are treated more harshly than other drug offenders because of a quirk in the law.

The 1986 law sets sentences by a drug's weight for charges of possession, sale or conspiracy. But LSD, unlike other drugs such as cocaine or heroin, isn't sold by weight. It's sold by the dose, or "hit."

A dose of pure LSD is so tiny that it's not practical to sell. A penny weighs the same as 50,000 LSD doses. To make LSD usable, producers put the drug onto something big enough to sell.

An LSD crystal is dropped into water or alcohol, and the solution is sprayed onto a "carrier," usually paper or gel. The carrier could also be dental floss, a sugar cube or a glass of juice. The carrier's weight has no relation to the drug's potency or price.

Should the carrier be weighed during sentencing?

The issue wasn't discussed during debate of the bill. There's no indication anyone even knew it mattered.

The Justice Department could have interpreted the law's wording to weigh only the drug. Then LSD penalties would be comparable with other drug sentences.

But the Reagan Justice Department said the carrier's weight should be counted. In 1991, the Supreme Court agreed, saying it was within Congress' power to make inequitable sentences.

Result: LSD sentences are set by packaging weight, not drug weight. Sentence for 100 hits, worth $100:

▶ pure LSD, 10 months.
▶ on paper, five years.
▶ on sugar cubes, 16 years.

When Sen. Joesph Biden Jr., D-Del., chairman of the Judiciary Committee, learned of the problem, he put a correction in the 1989 crime bill. The crime bill passed the Senate, but the House took no action. Nothing has happened in Congress on the matter since.

Comparing times for crimes

How the prescribed prison sentence for a first-time offender with $1,500 worth of LSD compares with sentences[1] for other federal crimes:

Crime	Minimum	Maximum
LSD possession	10.1	13.9
Attempted murder with harm	6.5	8.1
Rape	5.8	7.2
Armed robbery (gun)	4.7	5.9
Kidnapping	4.2	5.2
Theft of $80 million or more	4.2	5.2
Extortion	2.2	2.7
Burglary (carrying gun)	2.0	2.5
Taking a bribe	.5	1.0
Blackmail	.3	.8

1 – No parole is available on any sentence
Source: U.S. Sentencing Guidelines Manual; Drug Enforcement Administration

The ABCs of LSD effects

LSD became popular in the 1960s and is used by an estimated 2.8 million people annually.

A Primer of Drug Action, a classic college psychopharmacology textbook, says of LSD:

▶ Its main effect is perceptual: sounds and sights become more vivid. Laughter and sorrow are easily evoked, sometimes simultaneously.

▶ Psychotic episodes that would normally have been suppressed sometimes occur.

▶ The drug loses half its potency in three hours, but effects last 10 to 12.

▶ Occasional use of LSD for experimental purposes does not induce physical damage.

▶ No overdoses have been reported, but flashbacks, accidents and suicides have.

March 7, 1993

Attn: Public Information
U.S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Committee Members:

I would like to express my concern about a serious injustice in the American judicial system that you all can help correct. A close friend of mine is currently sentenced to 10 years in a federal facility for procession of L.S.D. His sentence was determined from the total weight of the drug and the carrier medium (paper) on which it was transported.

Proposal #50 would clarify the existing law concerning how L.S.D. would be measured by adding the following paragraph, "In determining the weight of L.S.D., use the actual weight of the L.S.D. itself. The weight of any carrier medium (blotter paper, for example) is not to be counted." Had this specific paragraph been in effect when my friend was sentenced, the outcome would have been drastically different.

As L.S.D. is a dose specific drug which is unique from other drugs such as cocaine (which can be cut with a benign substance to increase the quantity of the drug while lowering its potency), it is transported on many mediums. The L.S.D. carrier medium has been confused with these "cuts". 100 doses of L.S.D. whether on blotter paper or sugar cubes should be considered equal in terms of sentencing. Under the current judicial guidelines the following inequity exits:

Amount of Drug		Sentence
100 doses of pure LSD (approx. 5 milligrams)	=	10 months
100 doses transported on blotter paper	=	5 years
100 doses transported on sugar cubes	=	16 years

I urge to all to look favorably on and support Proposal #50 and see it as a clarification of statutory intent so that it will assist those who are currently and inappropriately sentenced.

Thank you for your time, attention and consideration.

Respectfully,

Rachelle Rose

Rachelle Rose

BENEVA CHRISTIAN CHURCH
(DISCIPLES OF CHRIST)

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EDD AND MARY PAT SPENCER
CO-MINISTERS

March 5, 1993

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, DC 20002-8002

Attn: Public Information

Dear Madam or Sir:

Subject: Amendments 50 and 56

Please know that I feel very strongly that a people are serving unusually long prison sentences based on the weight of the paper that L.S.D. is on, not the drug weight alone.

Two of our young adult members of Beneva Christian Church received ten years minimum mandatory sentences without parole for less than $1,000 worth (street value) of L.S.D. Knowing that it was a crime that they committed, I feel it is an equal crime that they serve such a long sentence; especially in light of the fact that people who are big time drug dealers or who commit crimes of rape, abuse, and murder spend less than ten years in our federal prisons. Please note the following ***"Comparing times for crimes"*** found in the December 17, 1992 edition of USA TODAY.

Comparing times for crimes

How the prescribed prison sentence for a first-time offender with $1,500 worth of LSD compares with sentences[1] for other federal crimes:

Crime	Minimum	Maximum
LSD possession	10	[illegible]
Attempted murder with harm	6.5	8.1
Rape	5.8	[illegible]
Armed robbery (bank)	4.7	5.3
Kidnapping	4.2	[illegible]
Theft of $80 million or more	4.2	5.2
Extortion	2.2	2.7
Burglary (carrying gun)	2.0	2.5
Taking a bribe	.5	1.0
Blackmail	.3	.5

1 - No parole is available on any sentence
Source: U.S. Sentencing Guidelines Manual; Drug Enforcement Administration

I am in favor of weighing the drug, not the paper. Also, I am in favor of Amendment 56, which would allow changes in sentences. Thank you for your time and attention to this matter.

Sincerely,

Mary Pat Spencer

Mary Pat Spencer
Co-minister
Beneva Christian Church (Disciples of Christ)

Richard D. Besser
13 Arrowhead Way
Clinton, NY 13323

TEL (315) 853-4370 FAX (315) 853-4371

March 4, 1993

Attn: Public Information
U.S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Gentlemen:

I am writing to voice my opinion on the amendments to the sentencing guidelines that are currently under consideration by your Commission.

While I believe that the entire concept of mandatory minimums is abhorrent and unconstitutional, there are three amendments that I believe rise above the others in importance:

1. Eliminate the carrier in determining sentencing in LSD cases.

2. Reduction in the top guideline level from 43-32.

3. Allow Federal Judges to depart from guidelines if he believes the defendant has provided substantial assistance without the approval of the prosecutor.

I am sure you are aware of the inequities in sentencing that result from application of the current guidelines in LSD cases. If not I would offer the following:

One gram of pure LSD (no carrier)=63-78 months, guideline level 26
One gram of LSD on 100 grams of paper=188-235 months, guideline level 36

Reduction of the highest sentence for a first time offender to 121-151 months is a modest reduction at best. Where else in our legal system does a first time offender for a nonviolent crime receive a 10

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year plus sentence, without parole? People who commit armed robbery are let off with less severe sentences. Should the Federal Courts apply sentences that are more severe for nonviolent crimes than the state courts do for violent crimes? I think not.

As to allowing judges to have latitude in sentencing, I would postulate that the justice system was designed to have prosecutors prosecute and judges and juries determine guilt and impose sentences. In Federal drug cases discretion is taken from the judges and given to the prosecutor who's motives are typically self-serving. It appears that in their zealousness to apply justice even-handedly they created a system that recognizes no extenuating circumstances and have denied judges the ability to perform their judicial responsibilities.

It appears to me that your Commission could do a lot to correct these and other inequities in sentencing, to say nothing of what you would do for prison over-crowding and the drain on the Country's resources, both financial and human, by passing these amendments.

As someone who has been personally impacted by these guidelines I would be more than happy to offer additional testimony.

Sincerely,

R.D.Besser

cc: Families Against Mandatory Minimums

United States District Court
Central District of California
751 West Santa Ana Boulevard
Santa Ana, California 92701

Chambers of
Alicemarie H. Stotler
United States District Judge

714 / 836-2055
FTS / 799-2055

March 03, 1993

Judge Billy W. Wilkins, Jr.
Chairman
U. S. Sentencing Commission
One Columbus Circle, N.E., Ste. 2-500
Washington, D.C. 20002-8002

Re: 1993 Proposed Amendments

Dear Chairman Wilkins:

I wish you and the Commission and the Judicial Working Group a productive March 8th conference.

I submit herewith comments on the proposed amendments for the 1993 cycle. As always, silence is ambiguous and may signify one or more of the following: approval; no opinion; deference to others more knowledgeable; no experience; no clue. One almost overriding consideration governs my responses: everyone complains when changes occur and therefore only absolutely necessary changes should be made. Those, we recognize by the vague notion of "consensus," untoward appellate attention, and by the insights contained in comments by Sentencing Commission "consumers."

On separate pages, then, numbered to match with the number of the proposed amendment, I comment where (1) I cannot restrain myself; (2) where I feel certain that reasonable minds will differ and I want my vote recorded; (3) where I feel qualified to take issue with the need for any change at all; and, (4) where I disagree for reasons stated.

If any member of the Commission/staff reviewing these remarks wishes further explanation, please call.

Sincerely,

Alicemarie H. Stotler

Alicemarie H. Stotler
United States District Judge

Amendments 8, 9, 11, 39, 48, and 60

The mere existence of all these options suggests that changes concerning greater latitude for minimal criminal participation (and therefore less harsh sentences) and, possibly, a distinction among offenders involved with "less dangerous" types of controlled substance are widely thought to be desirable.

Hearing the discussion of the members of the Working Group is essential to be able to cast a well-informed vote on any of these. At least one, however, seems unnecessary, and that is **Amendment 60.** One can only infer that "ghost" co-defendants have been invoked so as to justify comparative role status in some single-defendant cases.

Amendments 9 and 39 are more extensive in their reach than **Amendment 8**, but they are more complicated. If the Working Group concludes that emphasis on the role of firearms is required, then **Amendment 9** is on target.

Adoption of **Amendment 8** and possibly **Amendment 48** would show movement in the apparently desirable direction. We could work with cases under the refined definitions of "mitigated role" defendants and those whose offenses do not concern heroin and cocaine, and see if the goal for more "individualized" sentences might be achieved.

Finally, I find **Amendment 11** arbitrary. I think it was meant to be, but I prefer *status quo*.

Henry N. Blansfield, M.D.
1 Cedarcrest Drive
Danbury, CT 06811
(203) 744-6222
Fax (203) 744-6336

February 26, 1993

United States Sentencing Commission
1 Columbus Circle, N.E., suite 2-500, South Lobby
Washington, DC 20002-8002

Attention: Public information

As a physician currently engaged in providing services to psychoactive drug users in our society and concerned with reducing harm to them, I strongly support amendments to sentencing guidelines that would drastically lessen their length. I am opposed to mandatory lengths of incarceration based upon the type of illicit drug involved in felonious drug selling and its weight. There must be a return to consideration of an arrested individual's prior record and willingness to accept rehabilitation and treatment if a compulsive drug user. Most of all, leniency would seem indicated if the nature of the crime, namely selling, has not directly harmed another. Reforms in the length of sentences need to be retroactive to allow redress for those already imprisoned by previous unfair and inhumane mandatory rules of sentencing.

Working as a clinician in the drug/alcohol field for twenty years has led me to believe that chemical dependence is a disease resulting from alterations in neuron receptor - transmitter mechanisms. Paradoxically society criminalizes the use of certain agents acting on the central nervous system while permitting the legal acquisition and consumption of others that have been repeatedly shown to have morbid deleterious heath effects, i.e. alcohol and tobacco. This, in itself, is the epitome of hypocrisy.

There is increasing awareness of the adverse impact of present drug laws on society, particularly the urban minority young male population. Racism and the drug war have been addressed by Clarence Lusane in his book "Pipe Dream Blues". A study of the impact of current drug policy, from a crime and corrections standpoint, has been carried out by the Monroe County Bar Association (Rochester, New York and environs) and detailed in a report called "Justice in Jeopardy". This report can be obtained from :

James C. Gocker, Esq.
130 East Main St.
Rochester, NY 14604
(716) 232- 4448

I enclose a copy of a New York Times article dealing with alternative sentencing, a policy whose time has come. Such approaches need to be strongly considered not only because they are dictated by the evidence pointing to the failure of present drug policy involving crime and corrections to succeed in alleviating or reducing the problem, but also because alternatives may be much less costly. The crime and corrections industry will, of course, lobby strongly against any change in the 70% dollar allocation they are now receiving.

Sincerely yours,

Henry N. Blansfield, M.D.

NY Times 1/20/93

Dealing With Drug Dealers: Rehabilitation, Not Jail

Hynes Tries Alternative Approach Intended to Stop a Problem by Curing an Addiction

By FRANCIS X. CLINES

In 15 years of selling cocaine and heroin in the doorways and abandoned buildings of Brooklyn's pervasive Borough Park narcotics mart, Guillermo Rios developed an entrepreneurial sense of a good deal, even as he indulged his own deep addiction.

Mr. Rios, who once managed seven tidy street outlets, had to hurriedly put his deal-maker's sense to good use 20 months ago when he was caught, fix in hand, selling drugs to undercover detectives. At the arraignment, District Attorney Charles J. Hynes of Brooklyn offered him a deal he never expected:

Either complete an experimental long-term rehabilitation program and be treated like an addict with all the struggle of self-reform, or face mandatory prison time as just another common criminal with all the attendant lost freedom and wasted life.

Limited Experiment

It was a deal that Mr. Rios and more than 200 other addicted drug dealers in Brooklyn have taken gladly but warily over the last two years in an unusual program that is attracting attention from other law-enforcement officials who are intent not so much on declaring a truce in the war on drugs as in attempting a little creative triage.

The Brooklyn program is a limited experiment, but it is showing enough progress at retaining phlegmatic addicts in long-term treatment in lieu of prison that the state has decided to extend it to the other city prosecutors' offices this

Continued on Page B2

Joyce Dopkeen/The New York Times

"What I am learning is to finally begin valuing my life," said Guillermo Rios, left, who chose an experimental rehabilitation program after being caught selling drugs. He talked with Ed Hill of Daytop Village in Swan Lake, N.Y.

Dealers' Deal: Rehabilitation, Not Jail

Continued From Page B1

year. Mr. Rios, who is finishing his first year in rigorous rehabilitation, said, "I had already been in jail and that just made me a little crazier."

He remains free, as ever, to walk away from the deal. But if he does, a special pursuit team will try to track him down and put him back on the narcotics court treadmill toward the overwhelming likelihood of serving long years in prison, with no second chance at mercy from Mr. Hynes.

The program is intended to deal with the legions of drug dealers who basically underwrite their own addiction with the money they make selling. Second offenders like Mr. Rios face very tough laws providing mandatory prison time and no easy plea bargains. Prison reformers say such second-felony laws are unrealistically harsh, but Mr. Hynes is exploiting the harshness, in effect, in his new carrot-and-stick program.

Half the states have comparable drug crackdown laws mandating prison time for repeat offenders and these have been instrumental in the mushrooming of prison populations and expenses across the nation through a high turnover in drug arrests. This growth has not necessarily focused on the more violent criminals who are at the heart of the public's alarm and the politicians' enactment of harsh remedies.

Up to 2 Years

With prisons becoming glutted, some criminal-justice officials are looking for cheaper, more productive alternatives. Few new programs besides Mr. Hynes's Drug Treatment Alternative to Prison offer such a powerful combination of seduction and penalty to try to change addicts who have been carefully screened and not merely to detain them behind bars until they come out to deal again.

Under the program, arrested dealers who spend up to two years completing private drug-rehabilitation programs like Daytop Village and Samaritan Village are rewarded by having the drug charges for which they were arrested dropped; the arrested dealer is free to pursue a new drug-free life with one less felony blot.

But those who yield to the temptation to walk out on the rehabilitation program's rough self-examination, job training and other responsibilities immediately face the full force of New York State's predicate felony law, which mandates prison time for second-time drug offenders, with little leeway afforded sentencing judges.

For public officials, the cost of treatment versus incarceration of nonviolent drug offenders is increasingly important. The Brooklyn program costs about $17,000 a year for each dealer in treatment, less than half the cost of imprisonment, about $40,000. But the real choice in public policy is not that simple, and alternative approaches to prison can prove risky for responsible officials.

'A Terrifying Experience'

An assistant district attorney, Susan A. Powers, recalled the initial anxiety that the program, rooted in Mr. Hynes's unusual use of his case-disposal powers, might prove to be a gamble that failed, with addicts scandalously fleeing in droves. "It was a terrifying experience," she said. "But the results so far have been rather amazing." Ms. Powers pointed out that 70 percent of the addicts admitted to the program have stayed, versus a rate of about 13 percent nationally in voluntary drug-treatment programs.

"Retention is the key to success, studies show, even if you're forced to enter a program," she said. "They can change you if they can keep you,"

> 'This is the hardest thing an addict's going to do,' a director says.

providing the programs are as long term and experience proven as Daytop and Samaritan.

"This is actually a lot harder for them than jail," said Ed Hill, director of the privately run Daytop Village center in Swan Lake, in the Catskills, where Mr. Rios, ever a manager, has risen in 11 months to be the chief administrator for running the woodshop and its staff.

"This is the hardest thing an addict's going to do because it represents true and total change," Mr. Hill said. "No more the swaggering tough guy with the .45 pistol in his belt or the 9-millimeter in his boot. We're talking complete overhaul."

He stressed that society was right to want its streets cleaned of the plague of addict-dealers like Mr. Rios but that the real issue, finally faced fully by this program, was whether to try to change them or to merely guarantee a deeper problem with prison-toughened criminals.

Mr. Rios, a trim, watchful man with more than half his 29 years of life already invested in drugs, said pragmatism was as effective as idealism in Mr. Hynes's program. He conceded that he had jumped at the program mainly to avoid prison and had thought he could ease through and feign dedication when needed, as with other more casual programs that he had gone through inside prison and out.

Mr. Hill, a Daytop graduate from Brooklyn's street-drug pathology of two decades ago, smiled, noting that avid peer-pressure is only one tool intended to root out routine fakery. Mr. Rios said he eventually found change and growth in himself necessary to stay in the program.

"Here, instead of doing 7 to 15 in prison, I'm not even doing time," he said gratefully. "I'm learning a lot about myself, what a threat I am to me and to others. What I am learning is to finally begin valuing my life."

Of the 30 percent in dropouts from the program, Mr. Hynes's pursuit squad, put together especially for this program, has arrested 95 percent to resume the court process. Of 64 returned to court, 51 received felony prison terms and 11 cases were pending as of the latest tally in November. Only two received misdemeanor treatment — a tribute to the original selection of firm second-felony drug cases by the District Attorney to guarantee the harsh stick needed to complement the program's inviting carrot.

Long-range effects are yet to be measured since only the first 14 graduates have returned to their communities. "I had my hand on the doorknob several times, ready to walk," said Angelo K., a 30-year-old graduate who completed the program's residential and re-entry programs, learning to be a diesel mechanic in the process. Through the program he has obtained a job in his old neighborhood, Sunset Park, still as drug-infested as when he began dealing as a 14-year-old.

'Finally Be an Adult'

"It was like I was frozen in my childhood back then," Angelo said. "The program resumed my life. I feel like I lived the rest of childhood in a year and sped forward to finally be an adult. Basically, they taught me we're not bad people," he said of the Samaritan Village program and his fellow addicts aiming for change.

Despite the program's modest enrollment, its surprising retention rate among the notoriously unreliable addict community is encouraging enough to attract praise from the office of Gov. Mario M. Cuomo and a decision to expand it to the other city prosecutors. A $700,000 state allocation of Federal anti-drug money will help finance 300 new residential treatment slots beyond the 200 in the Brooklyn program.

"The future of this approach is very dependent on the available treatment slots," Ms. Powers stressed. "There are only something like 15,000 full-scale residential slots available nationally — amazingly small — and maybe two-thirds of them are in New York and California. If the Clinton Administration is serious with its talk about changing the 70-30 approach of law-enforcement-to-treatment to something more of a 50-50 breakdown, then this program and others like it have a future."

746 U.S. POST OFFICE
AND COURT HOUSE
5th AND MAIN STREET
CINCINNATI 45202-3980

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

February 23, 1993

U. S. Sentencing Commission
One Columbus Circle, N. E., Suite 2-500
Washington, D. C. 20002-8002
Attention: Public Information

Dear Judge Wilkins

Attached hereto are personal comments regarding certain proposed guideline amendments. I have written a separate document for each of the issues on which I commented. Understand that the comments provided are only my own and are not representative of this agency or the Court for which I work.

Thank you for the opportunity to comment on the proposed amendments.

Sincerely

David E. Miller

David E. Miller, Deputy Chief
U. S. Probation Officer

746 U.S. POST OFFICE
AND COURT HOUSE
5th AND MAIN STREET
CINCINNATI 45202-3980

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

DATE: February 16, 1993

RE: Proposed Amendment #11

FROM: David E. Miller, Deputy Chief
U. S. Probation Officer

TO: U. S. Sentencing Commission
Public Information

✳ The synopsis of this proposed amendment indicates that a "snapshot" of the offender's involvement arguably provides a more reliable method of determining culpability. I strongly disagree with that theory and with the intent of this proposed amendment.

I contend that one adverse affect of this proposed amendment is to create an adaptation to the application and meaning of relevant conduct as defined in section 1B1.3. An exception to how 1B1.3 is applied is foreseen if this amendment is passed. This will create inconsistencies with the application of other guidelines, eg. 2B1.1 and 2F1.1 to name a few.

Drug distribution, almost by definition, is a continuous, ongoing crime. The overall philosophy of the guidelines appears to be to sanction, without double counting, all harms to the victim or victims of the criminal activity. The approach suggested by this amendment compromises that philosophy deeply.

Additionally, the proposal will create difficulty for the Court and probation officer in application and dispute resolution. Another element of factual determination is required and another issue for potential dispute is raised.

THOMAS P. JONES
ATTORNEY AT LAW
EAST CENTER STREET
P. O. DRAWER 0
BEATTYVILLE, KENTUCKY 41311
(606) 464-2648

February 22, 1993

U.S. Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, DC 20002-8002

To the U.S. Sentencing Commission:

I would like to express my support for the proposed amendments to the Sentencing Guidelines. I would especially like to voice my support for the following four amendments:

Proposal II, option 1: restructures 2D1.1 so that the offense level is based on the largest amount of a controlled substance in a single transaction.

Proposal 39: reduces the offense levels associated with higher drug quantities by two levels.

Proposal 50: bases the offense level in 2D1.1 on the amount of actual L.S.D. involved without including the weight of any carrier medium.

Proposal 56: pertains to 1B1.10, expanding the court's ability to apply changes in the Sentencing Guidelines retroactively.

These proposals would all help to insure fairer judgment in dealing with small-time drug offenders. It is only fair and reasonable to make any changes retroactive, providing convicted offenders the same reduced sentences being granted to new offenders. Thank you for your efforts at making the guidelines more equitable, so that the punishment will truly reflect the crime.

Sincerely,

Thomas P. Jones

Thomas P. Jones
Attorney at Law

TPJ/bm

McCORMICK & CHRISTOPH, P.C.
ATTORNEYS AT LAW
1406 PEARL STREET, SUITE 200
BOULDER, COLORADO 80302-5348
TELEPHONE (303) 443-2281
FAX (303) 443-2862

G. PAUL McCORMICK
JAMES R. CHRISTOPH

February 12, 1993

United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, DC 20002-8002

Attn: Public Information

Dear Sir or Madame:

I am responding to your request for feedback concerning the proposed amendments to the Federal Sentencing Guidelines. In particular, I am responding to Amendment No. 50 which proposes that the weight of the carrier in LSD cases be excluded from sentencing guideline consideration. I am strongly in favor of this proposed amendment. As a former prosecutor, public defender, and now private practitioner, I can assure you that nowhere is there a larger discrepancy between state and federal law than in LSD cases. Let me give you an example. I recently worked on a case where the defendant was involved in distributing 250 "hits" of LSD. Because the weight of the paper exceeded 10 grams, the defendant was facing approximately 15 years in prison. Under the same scenario in almost all state courts, if not granted probation, he would have been facing somewhere between two and five years in prison.

The other reason I support this amendment is that the current guidelines punish street-level users and sellers of LSD 100 times more severely than the manufacturers and producers of LSD. Usually when street-level persons possess LSD it is affixed to paper or cardboard or put in sugar cubes. Manufacturers, on the other hand, often possess pure liquid LSD. On a per-dosage basis, LSD affixed to blotter paper is 100 to 1,000 times heavier than the liquid concentrate. The manufacturer of LSD who possess 250 dosage units in the form of liquid LSD is only facing approximately 2 years under the guidelines. I would suggest that a sentencing scheme that punishes street-level possessors much more severely than drug manufacturers is backwards. Removing the weight of the carrier from the sentencing guidelines would remedy this gross disparity.

I enthusiastically encourage you to amend the guidelines as proposed in Amendment No. 50. Thank you for your consideration.

Sincerely,

Paul McC

G. Paul McCormick

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

CHAMBERS OF
HAROLD D. VIETOR
U. S. DISTRICT JUDGE
U. S. COURT HOUSE
DES MOINES, IOWA 50309

February 9, 1993

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

Attention: Public Information

This letter sets forth some comments I have concerning proposed guideline amendments. I may supplement these comments with a later letter after I have had an opportunity to examine the proposed guidelines amendments in greater detail.

By and large, the proposed amendments look good to me. I strongly favor proposed amendments 1, 9, 10, 11, 12, 23 and 25.

In respect to 13, issue for comment, I believe that section 2D1.1 should be amended to reduce the amount of drugs for which the defendant should be held responsible to the amount that the negotiated payment would fetch on the actual market.

In respect to 24, issue for comment, I believe that the court should have downward departure power for substantial assistance, without a government motion, when the defendant is a first offender and the offense involves no violence. Indeed, I would prefer an even broader power.

In respect to 40, issue for comment, I believe the Commission should ask Congress to eliminate the 100 to 1 ratio for powder and crack cocaine. The Draconian sentences required for crack offenders are unconscionable.

In respect to 66, issue for comment, I strongly oppose a 4 level enhancement for felonies committed by a member of, on behalf of, or in association with a criminal gang because I believe that such a guideline would be difficult to apply, would border on guilt by association, and would tend to infringe on constitutional rights of free expression and association. It would work far more mischief than good, I fear.

Sincerely,

Harold D. Vietor

Harold D. Vietor

Laurienne Moss
3921 Pemberly Ct.
Ann Arbor Mi. 48103
Phone & Fax #
(313) 668-0716
(call first for fax)

U.S. Sentencing Commission
One Columbus Circle, NE.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Commissioners,

I am writing to urge you to please consider the proposed amendments to the sentencing guidelines that would reduce sentences for first-time, non-violent offenders in drug cases. My husband, Robert Moss, is serving a 25-year sentence for conspiracy to import & distribute marijuana. As a first time, non-violent offender, he does not deserve to receive this harsh treatment by our courts. My family, which consists of two girls, ages 1 & 2 and a twelve year old, and myself, desperately need Robert to keep us going - as we have been emotionally and financially devastated by the federal courts decisions. Please give those like my husband

and their families a second chance at becoming productive members of this society which prides itself in giving fair & just treatment to its citizens who break the law.

In addition, I would like to remind you, as distinguished members of the sentencing commission, that the guidelines, which were intended to be used as a tool against drug use and abuse, has had no effect in this area. Abuse of drugs has remained the same or even risen in some cases, in spite of these stiff sentences. This leads me to believe that we should not use our courtrooms to rectify a social problem - rather it is a health problem. The money spent on prisons would be put to more effective use in education and prevention. This opinion is shared by many judges, and others

throughout this country. Government officials such as yourselves, need to get <u>out</u> of the business of destroying lives like ours by the thousands, and instead restore fair treatment to these offenders, which gives them a second chance in life.

Respectfully Yours,
Laurienne M. Moss

Mandatory Sentencing Dispute

Man with clean record gets long prison term for drug trafficking

By Ken Hoover
Chronicle Staff Writer

Christian Martensen, a 22-year-old San Francisco man with no previous convictions, has surrendered to begin serving a prison term that may end up lasting 17 years.

The case of Martensen, who was convicted of being part of a drug-trafficking conspiracy, is being spotlighted by critics of mandatory minimum sentences, who argue that it arbitrarily subjects marginal participants in a crime to time behind bars that should be reserved for hardened career criminals.

Martensen's story began in 1989 when he met a man at a Grateful Dead concert who said he wanted to buy some LSD. He did not supply it to him, Martensen says, because he did not deal in drugs.

He may serve 17 years for a drug deal in which he was to make $400

Over the next two years, Martensen says, he saw the man at various Grateful Dead concerts around the country, and he repeatedly asked Martensen for LSD. Martensen says that in 1991, because he was short of cash, he introduced the man, whom he thought to be a fellow "Deadhead," to two men who supplied the drug. Martensen was paid $400 for the introduction, but the man turned out to be an informant for federal drug agents. The meeting was secretly videotaped by agents, and Martensen was arrested.

Federal sentencing guidelines that went into effect in 1987 impose minimum sentences on drug dealers depending on the quantity of drugs involved.

The LSD in the case had been dropped onto blotter paper. The issue in the appeal was whether the hallucinogenic drug should be weighed with or without the blotter paper. Prosecutors contended it constituted a "mixture" of blotter paper and drug, which weighs enough to constitute a sizable amount of drugs justifying a harsher sentence.

The defense said that just the minute amount of drug should be weighed, which would have made Martensen eligible for a lighter sentence.

U.S. District Judge Vaughn Walker had accepted the defense argument that Martensen should receive the lighter sentence, and prosecutors appealed.

Just before he turned himself in last Saturday at the federal prison at Boron, the U.S. Court of Appeals in San Francisco ruled he would have to be sentenced as if he had dealt in a large quantity of drugs. Had the court ruled his case involved a small quantity, the sentence of five years imposed by Judge Walker would have stood.

"I'm upset by this one," said Martensen's attorney, John Runfola, noting his client's youth and lack of a criminal record.

Runfola said he would ask the full U.S. Court of Appeals, rather than the three-judge panel that decided the case, to reconsider the decision.

Martensen's story first came to light in an article in The Chronicle written by Dannie Martin, the paroled bank robber and award-winning author of more than 50 newspaper articles about prison life.

BY FREDERIC LARSON/THE CHRONICLE

Christian Martensen awaiting sentencing for selling LSD

Hard Time for Heavy Paper

Dear Commissioner Wilkens,

Enclosed for the commissions' review is a petition signed by nearly 1,000 concerned citizens. As taxpayers we highly commend your wisdom. We recommend our support for all amendments that create shorter more equitable sentences, especially for non-violent first time offenders like Christian Martensen. (article with update on the book also enclosed)

We especially endorse Amendments * 48, 49, 50 and 56. Thank you and the other commissioners for your time and support. We appreciate your work and know the passage of these vital amendments will be a gateway to Congress in restoring justice. I hope you and the rest of the commission finds this information helpful. Thank you.

Respectfully,

Shari Himel

WE, the undersigned concerned citizens and registered voters of the United States of America demand a fair solution to the LSD carrier weight issue. We want Congress and the United States Sentencing Commission to develop a coherent and realistic calculation in the drug quality table of the Federal sentencing guidelines concerning the carrier weight issue. Let the punishment fit the crime, don't destroy the futures of these unfortunate young people who are receiving these cruel and excessive sentences. Please enact legislation to reform this serious error in the Federal sentencing guidelines.

	NAME	ADDRESS	CITY	STATE	ZIP	SIGNATURE
1.	Mark Leyse	17 Harwood St.	San Fran.	CA.	94133	Mark Leyse
2.	Mike Bergstrom	200 Racetrack	Vallejo	Ca.	94591	Mike Bergstrom
3.	KARL GABRIELSON	1436 OHARE DR	BENICIA	CA	94510	
4.	Claudia Deluan	50 Baker St	CA	94117		
5.	Erik Mathews	179 Hillcrest	G.P.F.	MI	48236	Erik Mathews
6.	Elizabeth G. O'Brien	10282 Aqueduct Dr	Cypress	CA	90630	
7.	Michael Sutherland	490 Arbol Verde St	Carpinteria	CA	93013	
8.	Brandi Tarbow	8843 Shady Meadows dr	Sandy	UT	84093	
9.	Glenn Bouchard	911 Vista Del Mar,	Aptos	CA	95003	Glenn Bouchard
10.	Eric Alsop	1271 Excelsior	Oakland			
11.	Chris McLaughlin	441 High St,	Santa Cruz,	Ca	95060	
12.	Quinn McLaughlin	4454 Rhoads Ave.	Santa Cruz,	CA	95065	
13.	Melissa Meyers	1020 Agate St	San Diego	CA	92109	
14.	Brad Sargent	1204 California	Huntington Beach		92672	
15.	ESSE GERSHFIELD	14 WESTMINSTER #B	VENICE	CA	90291	
16.	Joe Bishop	26446 oliver rd.	Carmel	CA	93923	Joe Bishop

Executive Director and Administrator
Charles and Pauline Sullivan

NATIONAL OFFICE:
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CITIZENS UNITED FOR REHABILITATION OF ERRANTS

"A National Effort to Reduce Crime Through Criminal Justice Reform"

PUBLIC COMMENT OF CHARLES SULLIVAN TO THE
UNITED STATES SENTENCING COMMISSION

CURE very strongly opposes "in an exceptional case, however, such conduct may provide a basis for an upward departure" (amendment to Commentary to 1B1.3).

CURE is dedicated to reducing crime through rehabilitation. One of the first steps in this process is the perception by the person convicted that "the system" is fair.

When the potential is there in the Guidelines to use acquitted conduct to enhance a sentence, then I believe the system will be perceived as "rigged".

In fact, in my opinion, this proposed amendment goes against the very spirit of the confirmation hearings of the first commissioners that were conducted in 1985 by Sen. Charles Mathias, the Republican from Maryland.

I shall never forget Sen. Mathias asking the commission-appointees "to raise their hands" if they had ever spent time in jail. For those who had not, he encouraged them to visit the jails and prisons.

By this exercise, Sen. Mathias was encouraging a word that is almost non-existent today, "mercy". Sen. Mathias was indirectly telling the Commission that their attitude should be one of coming down of the side of reducing (not enhancing) the sentence whenever appropriate!

In the same way, I encourage you to support the 33 proposed amendments that would reduce drug sentences especially the one that would eliminate the weight of the carrier in LSD cases.

In this regard, I have attached a copy of a recent letter that we have received. I have removed the name since we are not certain if he wants his name to be known.

Dear CHARLES + PAULINE ....Monday March 1st 1993

Greetings from F.C.I. Danbury. I am currently serving a 128 month sentence without parole, for conspiracy to distribute LSD. I have no history of violence what so ever, nor any prior felony convictions. I have taken responsibility for my crime. I continue to demonstrate, diligently, my whole-hearted conviction to reform my life. I am biding my time wisely, attending Marist College (I made high honors last semester,..intend to do so again), and the Comprehensive Chemical Abuse Program, among other programs. In 21 months, I've done *all* this--128 months are entirely unnecessary and unfathomable. I *am* an asset to our society, and to the world.

An interesting turn of events has unfolded, and it warrants your *immediate attention!* I have enclosed information that documents and explains the "quirk in the law" that justifies these absurd sentences for LSD offenses, by including the irrelevant weight of carrier mediums. You will also find an excerpt, from the Federal Register, containing 1993 amendments to the Federal Sentencing Guidelines, as proposed by the U.S. Sentencing Commission. See amendment #50--*synopsis of proposed amendment and proposed amendment*--which reads: "In determining the weight of LSD, use the actual weight of the LSD itself. The weight of any carrier medium (blotter paper, for example) is not to be counted." This amendment seeks to rectify a truly gross misappropriation of justice.

This means that prison stays (which are costly to the American taxpayers and public at large, as well as the individuals and their families, in both tangible and intangible ways) could be dutifully shortened, for myself and 2000 other human beings serving 10, 15, and 20 year sentences (with out parole), for the sheer weight of *irrelevant* carrier mediums....This would not be mocking the fact that LSD is illegal, it would simply serve to produce *just sentences*, in which the "time would fit the crime".

I earnestly request that you write the U.S. Sentencing Commission, and voice your support for crucial amendment #50! IT IS ESPECIALLY IMPORTANT FOR YOU TO URGE THAT IT BE RETROACTIVE!! This needs to be done by March 15th, since public hearings are scheduled in Washington D.C., on March 22nd. (See Federal Registar excerpt).

I hope and pray that you will find the time and understanding to act on this issue,..it's not only for my benefit, but thousands just like me, encompassing all our families and loved ones, as well as all those that will continue to be federally prosecuted for LSD offenses. Please, justice and equity *must* transcend rhetoric!

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 91-3205NI

United States of America,

Appellee,

v.

Nancy Irene Martz,
a/k/a Nancy Lebo,

Appellant.

* Appeal from the United States District Court for the Northern District of Iowa.

Submitted: February 12, 1992

Filed: May 18, 1992

Before MAGILL, Circuit Judge, HEANEY, Senior Circuit Judge, and LARSON,* Senior District Judge.

MAGILL, Circuit Judge.

Nancy Irene Martz appeals her conviction and sentence for distributing LSD. Martz alleges the district court[1] erred in refusing to allow her to admit a California court document into evidence to impeach a key government witness. Martz also contests the district court's sentence, claiming the computation of the amount of LSD involved was erroneous. We affirm.

*THE HONORABLE EARL R. LARSON, Senior United States District Judge for the District of Minnesota, sitting by designation.

[1]The Honorable David R. Hansen was a United States District Judge for the Northern District of Iowa at the time judgment was entered. He was appointed to the United States Court of Appeals for the Eighth Circuit on November 18, 1991.

EXHIBIT A

I.

Postal inspectors executed a search warrant on June 26, 1990, and opened a first-class letter addressed to Paul Richard Smith in Charles City, Iowa. The letter, mailed from Oakland, California, contained 500 dosage units of LSD on blotter paper. Smith was arrested and agreed to cooperate in the ongoing investigation. Smith, acting with federal authorities in Iowa, twice wrote to Martz in Oakland requesting to purchase LSD. On both occasions, Smith received the requested LSD blotter sheets in return.

Martz was arrested and charged with three counts of distributing LSD, three counts of using the United States mails to distribute LSD, and one count of conspiracy to distribute LSD. A jury convicted Martz on all counts. The district court attributed 187.9 grams of LSD to Martz for an offense level of 36. The court found that Martz was the manager of a criminal enterprise involving more than five persons and increased Martz' offense level by three to 39. The judge also denied a two-level reduction for acceptance of responsibility. This put the total offense level at 39. With a criminal history in category I, Martz had a sentencing range of 262 to 327 months. The district court sentenced her to 288 months in prison and five years of supervised release.

A. Impeachment of Smith

During Smith's testimony, Martz' attorney cross-examined Smith about the plea agreement Smith had reached with federal prosecutors. Martz also sought to introduce evidence of two prior guilty pleas Smith had entered in California and Utah.[2] Martz

[2]The two documents included the certified record of an unrelated 1987 criminal case from California. In that case, Smith pleaded guilty to two drug possession misdemeanors while two felony drug charges were dismissed. The other document laid out Smith's guilty plea to a Utah felony which resulted in other related charges being dropped.

contended the documents would show Smith's knowledge of how cooperating with authorities could aid Smith in his own criminal case.

The district court allowed questioning about the prior pleas to the extent they demonstrated Smith's knowledge of the benefits of plea agreements and his concomitant incentive to aid prosecutors. Smith admitted in testimony that he had been charged with drug crimes in California, but he denied that he received a reduction in charges. Smith testified outside the jury's presence that he never entered a plea agreement in California, but merely pleaded guilty to two misdemeanors. The district court sustained the government's objection to the introduction of the California plea document. The court found that since the California plea required no cooperation or testimony from Smith, it gave Smith no incentive to cooperate with prosecutors and had no bearing on Smith's potential bias or prejudice. Therefore, the California document was excluded under Rule 608(b) of the Federal Rules of Evidence, which precludes the use of extrinsic evidence to prove specific instances of conduct to attack the witness' credibility. On appeal, Martz asserts the district court erred in refusing to allow introduction of the California document to impeach Smith.

Rule 608(b) gives the court discretion to allow questioning during cross-examination on specific bad acts not resulting in the conviction for a felony if those acts concern the witness' credibility. United States v. Hastings, 577 F.2d 38, 40-41 (8th Cir. 1978). The rule, however, forbids the use of extrinsic evidence to prove that the specific bad acts occurred. Fed. R. Evid. 608(b). The purpose of barring extrinsic evidence is to avoid holding mini-trials on peripherally related or irrelevant matters. Carter v. Hewitt, 617 F.2d 961, 971 (3d Cir. 1980) (citing 3A Wigmore on Evidence, § 979 at 826-27 (Chadbourn rev. ed. 1970)). The introduction of extrinsic evidence to attack credibility, to the extent it is ever admissible, is subject to the

discretion of the trial judge. United States v. Capozzi, 883 F.2d 608, 615 (8th Cir. 1989), cert. denied, 495 U.S. 918 (1990).

The district court allowed Martz to cross-examine Smith about prior guilty pleas he had made and whether he had come to realize the benefits of cutting deals with prosecutors in the past. But in conducting this questioning, Martz was required to "take his answer." Capozzi, 883 F.2d at 615; McCormick on Evidence § 42 at 92 (3d ed. 1984). While documents may be admissible on cross-examination to prove a material fact, United States v. Opager, 589 F.2d 799, 801-02 (5th Cir. 1979), or bias, United States v. James, 609 F.2d 36, 46 (2d Cir. 1979), cert. denied, 445 U.S. 905 (1980), they are not admissible under Rule 608(b) merely to show a witness' general character for truthfulness or untruthfulness. United States v. Whitehead, 618 F.2d 523, 529 (4th Cir. 1980); James, 609 F.2d at 46. The credibility determination pertinent to the Martz trial concerned whether Smith would lie in his testimony against Martz to receive favorable treatment from prosecutors. The issue was not whether Smith, in fact, received a reduced sentence in California for pleading guilty to two misdemeanors, or whether the charges were merely dropped by prosecutors on account of lack of evidence, crowded court dockets, or other unrelated reasons. Martz' attorney argued to the district court that "a sufficient record has been made at least to establish a question for the jury at least as to whether or not a plea bargain was entered into and whether or not the defendant received the benefit of the bargain." Tr. at 192. This argument represents exactly the type of mini-trial over a collateral matter that Rule 608(b) forbids.

Martz relies on Carter, 617 F.2d 961, for the proposition that documents admitted as evidence during cross-examination of the witness do not violate Rule 608(b). Carter's holding was much

narrower. In Carter,[3] the Third Circuit admitted the letter in question only after the witness admitted its authenticity. The court specifically held that extrinsic evidence could not be admitted after a witness denied a charge.

> [I]f refutation of the witness's denial were permitted through extrinsic evidence, these collateral matters would assume a prominence at trial out of proportion to their significance. In such cases, then, extrinsic evidence may not be used to refute the denial, even if this evidence might be obtained from the very witness sought to be impeached.

Carter, 617 F.2d at 970. Therefore, the district court did not abuse its discretion in refusing to admit the California plea document into evidence.

B. Sentence

Martz contests her sentence based on the district court's computation of the total weight of the LSD involved. Martz contends the district court should have compiled the total weight by using the Typical Weight Per Unit Table contained in application note 11 of U.S.S.G. § 2D1.1. Utilizing this table, Martz argues, would have resulted in an offense level of 28 rather than 36.

The district court attributed 33,800 dosage units of LSD to Martz and that figure is not contested on this appeal. In computing the total weight, the district court correctly included the weight of the drug-laced blotter paper. Chapman v. United States, 111 S. Ct. 1919, 1922 (1991); United States v. Bishop, 894

[3]In Carter, a prison inmate sued prison officials in a § 1983 action stemming from an alleged beating. On cross-examination of the plaintiff, defense attorneys introduced a letter written by the plaintiff they allege outlined a scheme to encourage inmates to file false brutality charges against prison officials. Carter, 617 F.2d at 964-65.

F.2d 981, 985 (8th Cir.), cert. denied, 111 S. Ct. 106 (1990). The court, however, noted that blotters that were tested contained varying weights, ranging from .00692 grams per dose to .0055 grams per dose. The actual weight of only 1800 of the dosage units was known. Applying the rule of lenity, the district court attributed the lightest known weight to all dosage units and arrived at a total of 185.9 grams (33,800 doses times .0055 grams). The court added to that figure two liquid grams of LSD that were not applied to blotter paper but were attributed to Martz.[4] The resulting total was 187.9 grams.

Martz argues that the district court should have applied the weight listed in the Typical Weight Per Unit Table contained in application note 11 of U.S.S.G. § 2D1.1. This table reveals a per-unit weight for LSD of .05 milligrams and would result in a total weight of 1.69 grams for the 33,800 doses. Adding in the two grams of liquid LSD and the 11 grams of LSD listed in the indictment would total 14.69 grams of LSD. This computation would have given Martz a base offense level of 28.

The district court's determination that extrapolating the lightest-known unit across the dosage units is a more reliable estimate than using the Typical Weight Per Unit Table was not erroneous. Application note 11 to U.S.S.G. § 2D1.1, itself, notes its inaccuracy and cautions that it should only be used when a more reliable estimate of weight is unavailable.

> If the number of doses, pills, or capsules but not the weight of the controlled substance is known, multiply the number of doses, pills, or capsules by the typical weight per dose in the table below to estimate the total weight of the controlled substance. . . . Do not use this table

---

[4]The district court rejected the government's argument that blotter paper weight should be added to the two grams of liquid LSD merely because Martz' pattern was always to sell LSD on blotter paper.

if any more reliable estimate of the total weight is available from case-specific information.

The note provides further that the table does not include the weight of the carrying mechanism.

> For controlled substances marked with an asterisk [including LSD], the weight per unit shown is the weight of the actual controlled substance, and not generally the weight of the mixture or substance containing the controlled substance. Therefore, use of this table provides a very conservative estimate of the total weight.

U.S.S.G. § 2D1.1 & comment. (n.11). Since all of these doses were on blotter paper, the weight of the blotter paper and the LSD obviously provides a more reliable estimate than the naked drug itself.

In Bishop, 894 F.2d at 987, we upheld the estimate of a total amount of LSD based on the district court's extrapolating the lightest known weight over the total number of dosage units, including those that were unrecovered. Martz attempts to distinguish Bishop by arguing that the sample of blotter paper tested in her case did not constitute a representative sample. Unlike Bishop, the blotter paper in this case did not come from the same source at the same time. Nevertheless, the district court found that there was adequate case-specific information to estimate the total weight by extrapolating the lightest known weight over all the doses.

Random testing of drugs may be sufficient for sentencing purposes. United States v. Johnson, 944 F.2d 396, 404-05 (8th Cir.), cert. denied, 112 S. Ct. 646 (1991). In Johnson, this court refused to adopt the requirement that a representative sample of drugs from each independent source be tested. See also United States v. Follett, 905 F.2d 195, 196-97 (8th Cir. 1990) (estimate

of drug weight permissible in plea agreement although no LSD blotters were recovered and weighed), cert. denied, 111 S. Ct. 2796 (1991).

While there may arise situations where a sample is too small or too arbitrary to extrapolate fairly over a large number of dosage units that come from disparate sources, this is not such a case. First, all of the dosage units came from Martz. Martz' bare assertion that some of the blotter sheets may have been prepared by someone else is not enough to discredit the finding that the dosage units all were distributed by Martz, consisted of LSD-laced blotter paper, and were similar in appearance. Second, in order to reduce her offense level even one step to 34, Martz would have to show that the average weight of the dosage units weighed about half of the lightest known dosage unit (.0029 compared to .0055). See U.S.S.G. § 2D1.1(c). The evidence does not show that such a wide variance is possible since the known weights were clustered at .0055 to .00692. Moreover, a cursory review of LSD blotter weights from other cases reveals that .0055 rests at the bottom of the logical range. Compare United States v. Marshall, 908 F.2d 1312, 1316 (7th Cir. 1990) (en banc) (per-dose weights of .0057 grams and .00964 grams), aff'd sub nom. Chapman v. United States, 111 S. Ct. 1919 (1991); United States v. Bishop, 704 F. Supp. 910 (N.D. Iowa 1989) (per-dose weight of .0075 grams), aff'd, 894 F.2d 981 (8th Cir.), cert. denied, 111 S. Ct. 106 (1990); United States v. Andress, 943 F.2d 622 (6th Cir. 1991) (per-dose weight of .0065 grams), cert. denied, 112 S. Ct. 1192 (1992); United States v. Leazenby, 937 F.2d 496 (10th Cir. 1991) (per-dose weight of .0060 grams); United States v. Larsen, 904 F.2d 562 (10th Cir. 1990) (per-dose weight of .0061 grams), cert. denied, 111 S. Ct. 2800 (1991); United States v. Elrod, 898 F.2d 60 (6th Cir.) (per-dose weight of .0055 grams), cert. denied, 111 S. Ct. 104 (1990); United States v. Rose, 881 F.2d 386 (7th Cir. 1989) (per-dose weight of .0154 grams); United States v. DiMeo, 753 F. Supp. 23 (D. Me. 1990) (per-dose weight of .0069 grams), aff'd without opinion, 946 F.2d

880 (1st Cir. 1991). Therefore, we find that the district court did not err in determining that extrapolating the lightest known weight over all the dosage units was a more reliable estimate than using the bare drug weight found in the table.

II.

We find that the district court did not abuse its discretion in refusing to admit extrinsic evidence to impugn a witness' credibility. Further, we find that the district court properly calculated Martz' sentence. The decision below, therefore, is affirmed.

HEANEY, Senior Circuit Judge, dissenting.

In my view, Nancy Martz should have been permitted to introduce into evidence two documents which established that the government informant was lying when he testified that he had not entered into plea agreements in state courts in California and Utah. With respect to drug related offenses in those states, the exhibits were not offered to prove that Smith had prior drug convictions, but rather to attack his credibility. Smith's credibility was crucial -- his testimony was essential to Martz's conviction. The admission of these documents could have been accomplished quickly, and it would not have given rise to a mini-trial.

Although the Carter case well supports Martz's position, the majority distinguishes Carter on the grounds that the document in that case was admitted only after the witness admitted its authenticity. Here, however, the trial court did not ever question Smith as to the authenticity of the plea agreement. If faced with questioning about the previous plea agreements, Smith may well have backed off his previous statements, and his credibility would have been damaged.

I also believe that the majority errs in affirming the sentence. This court, over my dissent, recently held en banc that we must follow policy statements and commentary to bring about consistency in sentencing. United States v. Kelley, 956 F.2d 748, 756 (8th Cir. 1992) (en banc). One would think that we would be bound by that decision where the policy statement or commentary requires a shorter sentence as well as where it requires a longer sentence.

But, apparently this is not to be the case even though the application note here is clear and precise: "If the number of doses . . . but not the weight of the controlled substance is known, multiply the number of doses . . . by the typical weight per dose in the table below to estimate the total weight of the controlled substance." U.S.S.G. § 2D1.1 (Application Note 11). The weight of each dose was not known; thus, the table had to be used.

Unlike the majority, I do not believe extrapolation would be proper in this case. Unlike the situation in Bishop, the blotter paper here did not come from the same source at the same time. United States v. Bishop, 894 F.2d 981, 987 (8th Cir. 1990). Moreover, the amount of blotter paper weighed was a small fraction (approximately five percent) of the total amount attributed to Martz. Under these circumstances, the district court did not have enough "case-specific information" from which to make a "more reliable estimate of the total weight." U.S.S.G. § 2D1.1 (Application Note 11). Compare United States v. Shabazz, 933 F.2d 1029, 1034 (D.C. Cir. 1991) (use of table in Note 11 not required where defendant conceded estimated weight of dilaudid pills was accurate, and where estimated weight was supported by data from Physicians Desk Reference, the manufacturer, and the DEA).

The majority opinion buttresses the district court's findings by favorably comparing the district court's calculation of the

average weight per dose of the dosage unit (.0055 grams) to LSD blotter weights set forth in reported cases from other circuits. See ante at 8-9. Although the majority's review is interesting, I do not see how findings of fact from other cases can constitute "case-specific" evidence to support the district court's findings of fact in this case.

The majority also reports that a wide variance in blotter paper weights would not be possible in this case "because the known weights were clustered at .0055 to .00692." See ante at 8. With all due respect, I think this reasoning is circular: because only three samples were taken, there is no way to know whether there was a wide variance between blotter paper weights, yet the limited sample is used as proof that there was not a wide variance in weights. Moreover, there was a wide variance between even the three samples -- the heaviest sample was almost twenty-five percent heavier than the lightest sample.

While it would have taken a short time to accurately determine the weight per dose, the government did not make this effort. Thus, the court was obligated to follow the table.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

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March 10, 1993

United States Sentencing Commission
ATTN: PUBLIC INFORMATION
One Columbus Circle North East
Suite 2-500 - South Lobby
Washington, D.C. 20002-8002

Re: Comment on Proposed Amendments

To The Honorable United States Sentencing Commission:

I write to you, in as brief a form as possible, to express my comments on the proposed amendments in the sentencing guidelines. The fact that I am an assistant federal public defender for approximately 13 years makes me both a well informed and biased source, of which I am sure you are cognizant.

I applaud and encourage the thought and effort made to amend the loss tables and deal with the problem of more "than minimal planning" insofar as it has resulted in disparate treatments and a considerable amount of litigation. With respect to the additional issues for comment in this section, I definitely believe that the loss tables should have fewer and larger ranges in the lower ends. The loss tables at the higher ends are so large as to be beyond my experience and have no opinion as to whether they need adjustment.

Although more work would need to be done, I would encourage the Commission to modify the definition and approach to a more than minimal planning enhancement as opposed to building it into the loss table or, alternatively, building it into the loss table further from the bottom ranges, maintaining the lesser enhancement as long as possible and perhaps adding a third and additional level increase at the far end.

With respect to redefining more than minimal planning, I do have some suggestions:

1. Build in a two level decrease for spur of the moment or sudden temptation conduct;

2. Do not provide for multiple victim enhancement until the number of victims has reached an appreciably large level i.e. 15 or 20 and perhaps make this enhancement an additional one or two levels at an additionally large number such as 40 or 50;

3. Require, by example, truly more than the ordinary conduct to commit the offense before an enhancement is added. Few if any types of fraud or theft escape the current definition.

The proposal with respect to U.S.S.G. § 3B1.2 (role in the offense) is also an improvement. I would suggest option one is the most preferable of the options under Note 7 reading as follows: Option 1 is prefered because it affords the sentencing judge the most flexibility in determining whether or not to apply the two level adjustment for minor role and, unlike option 2, does not repeat the Application Note position contained in Note 8 concerning burden of pursuasion.

The firearms amendments are mostly technical and it would be useful for the Commission to have a period where it does not amend the firearms guideline. I do believe that an appropriate differentiation can be made between different weapons including weapons that fall within 26 U.S.C. § 5845 and its various subdivisions. Whether the differentiation should be made by different offense levels, by placement of the sentence within a the guideline range, or by a Commission-guided departure, depends on the weapon involved. It would seem that a fully automatic machine gun is different from a sawed-off shotgun which is different from a sawed-off rifle which is different from other weapons such as tear gas "pen guns," all of which are prohibited in Title 26.

I have no great critism of the proposed amendment § 3B1.3 abuse of position of special trust or use of special skill. However, perhaps the time has come to separate these two concepts into separate adjustment sections. It would seem to me be best to leave special trust as a Chapter 3 adjustment with appropriate illustrations in the application notes rather than adding it as a specific offense characteristic in a hit or miss fashion to various guidelines relating to fraud or embezzlement or in general to the embezzlement guideline. Certainly the proposed amendment is superior to the additional issue for comment, particularly as it relates to deleting the example regarding "ordinary bank tellers".

The proposal relating to 5K1.1 - issue 24 - will apply to very few cases if it is intended to exclude "crimes of violence" where that concept includes drug offenses. It also has limited usefulness because of the exclusion of anyone who is not a "first offender".

At least it should include all category I offenders and perhaps all category I and category II offenders. The injustice which it is intended to address is not related or necessarily related to whether the defendant is category I or category VI, but the proposal is at least some improvement over the current requirement for a government motion.

I should add with respect to § 5K that I have, as have other attorneys, experienced cases in which this proposed amendment could well have made a difference.

With respect to the proposal number 25 relating to § 6B1.2 the idea is commendable. Perhaps a stronger word than "encourages" should be utilized. I would suggest a policy statement that requires the government to make such the disclosures at either option point and provides as a ground for downward departure the intentional failure of the government to do so. Experiences has taught that toothless platitudes rarely modify prosecutorial behavior in an adversary system.

The Commission should act on issue for comment number 40 relating to the mandatory minimum and distinction between cocaine and cocaine base. Significant support exists not only from the interjection of the Commissions expertise, but also other sectors of the criminal justice system for the elimination of this distinction.

Proposed numbers 44, 45 and 46 are all poor ideas, poor policy, and should not result in favorable action. They would increase unwarranted disparities and would not further the purposes of sentencing indicated by Congress.

Proposal number 57 submitted by the Department of Justice should not be acted upon. It is an attempt to accomplish exactly the opposite of what it purports to do. The Department of Justice obviously intends to utilize its proposed amendment, if it becomes the guideline, as the Commission's position which ought to be followed by the Courts in prohibiting attacks on prior convictions. It is my understanding that the Commission wishes to take no position and allow the courts to develop their own procedures. If the Commission does intend to take a position on this procedural question, it should study the matter, invite additional comment, and it is hoped, ultimately recommended that the courts permit collateral attacks on prior convictions utilized to enhance sentences.

I had promised to make this letter brief. There are many other things I could or should say, but will not. I will say that the last two cycles of amendments have been encouraging insofar as they have addressed problems of harshness and not simply been "fixes" of guidelines which appear to be too low to some other components of the criminal justice system.

Sincerely,

SCOTT F. TILSEN
Assistant Federal Defender

SFT/tmw

Office of the
FEDERAL PUBLIC DEFENDER
MIDDLE DISTRICT OF FLORIDA

H. JAY STEVENS
Federal Public Defender

Reply to: JACKSONVILLE

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January 2, 1993

Mr. Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Comment on Dec. 31, 1992 Proposed Amendment 61

Dear Mr. Courlander:

Our office represents Mr. Terry Lynn Stinson in **Stinson v. United States**, Case No. 91-8685, in which certiorari was granted on November 11, 1991. The **Stinson** case involves the question whether it is a misapplication of the sentencing guidelines for a court to fail to follow the specific direction of current U.S.S.G. §4B1.2, application n.2, that possession of a firearm by a felon is not a "crime of violence." Proposed amendment 61 would reverse the directive which is the subject of **Stinson**.

The brief on the merits in **Stinson** is due January 6, 1993 and oral argument before the Supreme Court is set for March, 1993. The action taken by the Sentencing Commission in announcing this proposed amendment at this time obviously creates uncertainty as to the proper disposition of **Stinson**. We would request that the proposed amendment be withdrawn until the Supreme Court has ruled in **Stinson**.

Barring that, we would ask permission to present testimony at the scheduled hearing on March 22, 1993 in Washington. We will further written comment no later than March 15, 1993, as required by the announcement in the Federal Register.

Sincerely,

WILLIAM M. KENT
Assistant Federal Public Defender

WMK:wmk

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EDISON ELECTRIC
INSTITUTE

PETER B. KELSEY
Vice President,
Law and Corporate Secretary

March 15, 1993

The Honorable William W. Wilkins, Jr., Chairman
Members of the U.S. Sentencing Commission
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Chairman Wilkins and Members of the Commission:

The Edison Electric Institute ("EEI") is grateful for the opportunity to present comments to the Commission on the proposed amendments to the sentencing guidelines.[1] EEI is the association of electric companies. Its members serve 99 percent of all customers served by the investor-owned segment of the industry. They generate approximately 78 percent of all the electricity in the country and service 76 percent of all ultimate customers in the nation. Its members are pervasively regulated at the federal and state level in all aspects of their business. These electric utilities range in size from ones employing less than 100 employees to ones employing more than 10,000 employees. Our member companies have a real and direct interest in the content of the proposed amendments to the individual guidelines given enforcement trends toward the prosecution of corporate managers and supervisors.

I. Amendment No. 23, Abuse of Position of Trust

The Commission invites comment on a proposed amendment to § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).[2] The proposed amendment attempts to reformulate the definition of what constitutes a "special trust."

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[1] Sentencing Guidelines for United States Courts; Notice, 57 Fed. Reg. 62,832 (December 31, 1992)(hereinafter "Notice").

[2] Amendment No. 23, Notice at 62,842.

from the guidelines.[4] EEI supports the suggestion made by the Committee on Criminal Law of the Judicial Conference of the United States that the language contained in Part A4(b) should be changed to the extent that it discourages departures by encouraging courts of appeals to find that sentences that depart from the guidelines are "unreasonable."[5]

While the language of Part A4(b) concedes that the initial guidelines will be the subject of refinement over time, and that the departure policy was adopted because "it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision[,]" the language that follows nevertheless suggests that departures from the guidelines are improper.[6] The courts must be allowed to exercise reasonable judgment with respect to application of the guidelines, and must not be required to adhere inflexibly to specified types of departures and departure levels. At a minimum, EEI recommends that Part A4(b) be amended to strike the last sentence of the fourth paragraph and the last sentence of the fifth paragraph.

IV. Issue For Comment No. 32, First Time Offenders

The Commission has requested comment as to whether it should promulgate an amendment that would allow a court to impose a sentence other than imprisonment in the case of a first offender convicted of a non-violent or otherwise non-serious offense.[7] EEI believes that there should be a specific provision for departures in the sentencing of first offenders of non-violent offenses. Judges need this departure to prevent the possibility of offenders receiving punishment that does not fit the crime. This departure should be accomplished through providing an additional ground for departure in Chapter Five, Part K.

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[4] Issue For Comment No. 30, Notice at 62,848.

[5] Letter of Vincent L. Broderick, Chairman, Committee on Criminal Law of the Judicial Conference of the United States, to the Honorable William W. Wilkins, Jr., dated November 30, 1992.

[6] Federal Sentencing Guidelines Manual (1992 Ed.) at 6.

[7] Issue For Comment No. 32, Notice at 62,848.

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March 10, 1993

Attn: Public Information
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Washington, D. C. 20002-8002

Dear Members:

We support proposed amendments to reduce drug sentences as endorsed by Families Against Mandatory Minimums. Please give their representatives every consideration. They know the problems we families face.

Our 39 year old son was convicted in a drug conspiracy case because a government-arranged "sting" group discussed locations at his homesite. He received a 10 year sentence! He is a non-violent first time offender. The real victim is his son, our totally blameless 3 1/2 year old grandson. We are helping our daughter-in-law raise this innocent child. We hope for relief on appeal. We have NOT received the justice in which we were raised to believe. PLEASE help our family and others like us help ourselves.

Thank you for your attention.

Sincerely yours,

Newell & Richard Lee

Newell M. and Richard M. Lee
413 East Park Avenue
Tallahassee, Florida 32301
(904) 222-1155

cc: Families Against Mandatory Minimums (202) 457-5790, Julie Stewart
Bill Clinton, United States President
Bob Graham, Florida Senator
Connie Mack, Florida Senator
Pete Peterson, Florida Representative
Clyde Taylor and Judge Griffin Bell, Attorneys

Re: George Martin Croy - 09645-017
Case No. 92-00300405 LAC
U. S. District Court for the Northern District of Florida, Pensacola Division

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March 8, 1993

Mr. Mike Courlander
United States Sentencing Commission
One Columbus Circle, NE
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RE: Proposed Amendments to Sentencing Guidelines

Dear Mr. Courlander,

This letter is to provide my input on several of the proposed changes and amendments to the sentencing guidelines. I hope that these are of some use to you as these changes are contemplated. I am limiting my comments to three proposals, but on a broader scale would suggest that the Commission give favorable consideration to all changes which result in a more equitable situation.

Prior to expressing my views I wanted to give some background on myself. I am an attorney in Cincinnati, Ohio. The majority of my practice involves federal criminal sentencings and post-conviction motions related to sentencing. I handle cases in federal court across the country. Because of my work I have become familiar with the contents of the guidelines. It is with this understanding that I provide the following comments.

The proposal that would permit a District Court Judge to make a downward departure, without the United States Attorney making the request, if the Judge believes the Defendant has provided substantial assistance is one which should be approved. The current scenario permits the United States Attorney to plea bargain with the Defendant and decide after the Defendant provides information whether to make a request for a downward departure. Absent unconstitutional motivation on the part of the U.S. Attorney, there is nothing a Defendant or Judge can do, if the U.S. Attorney does not request a downward departure. This system smacks of unfairness. The U.S. Attorney, gains the information and then can decide not to give the Defendant any credit for it. The Defendant may have already put himself at grave personal risk and additionally is not able to retrieve what he has provided to the U.S. Attorney. Permitting the Judge to have control on this situation would level the playing field and result in a more just situation.

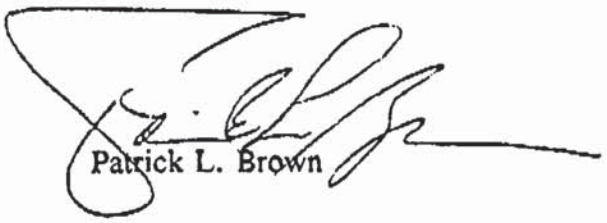
The proposal reducing the top guideline from 43 to 32 is another one which should be approved. The length of sentences in drug cases has simply gotten out of hand. As a society we can not continue to pay the costs of warehousing individuals for twenty and thirty years, especially when they are first time offenders. The comparison is made repeatedly

between violent offenders and drug offenders and the relative disparity is sentences received. The proposed amendment would help alleviate this disparity and more importantly result in sentences, especially for first time drug offenders, which are more in keeping with a system of fairness and justice.

The third proposal I am writing about relates to eliminating the weight of the carrier in LSD cases when calculating the weight of the drugs involved. It is difficult for me to understand the rationale behind adding to the weight of the actual drug the weight of the carrier paper. This would easily result in a situation of a supplier or manufacturer who has not separated the drug into doses and thereby not placed it on carrier paper being treated the same as the street seller because of the added weight of the paper the drug is placed on. Simply, a person should be held accountable for the drugs involved, not the material it is carried on.

I thank you for the opportunity to comment on these specific proposed amendments, and the amendments in general. I hope that the amendments will receive favorable consideration. Additionally, I would welcome the opportunity to provide testimony or additional information at any scheduled hearings on these proposed amendments. If I can be of further assistance please do not hesitate to contact me at (513) 651-9636.

Very Truly Yours,



Patrick L. Brown

PLB\wpf
cc: Congressman David S. Mann

Richard D. Besser
13 Arrowhead Way
Clinton, NY 13323

TEL (315) 853-4370 FAX (315) 853-4371

March 4, 1993

Attn: Public Information
U.S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Gentlemen:

I am writing to voice my opinion on the amendments to the sentencing guidelines that are currently under consideration by your Commission.

While I believe that the entire concept of mandatory minimums is abhorrent and unconstitutional, there are three amendments that I believe rise above the others in importance:

1. Eliminate the carrier in determining sentencing in LSD cases.

2. Reduction in the top guideline level from 43-32.

3. Allow Federal Judges to depart from guidelines if he believes the defendant has provided substantial assistance without the approval of the prosecutor.

I am sure you are aware of the inequities in sentencing that result from application of the current guidelines in LSD cases. If not I would offer the following:

One gram of pure LSD (no carrier)=63-78 months, guideline level 26
One gram of LSD on 100 grams of paper=188-235 months, guideline level 36

Reduction of the highest sentence for a first time offender to 121-151 months is a modest reduction at best. Where else in our legal system does a first time offender for a nonviolent crime receive a 10

Richard D. Besser
13 Arrowhead Way
Clinton, NY 13323

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year plus sentence, without parole? People who commit armed robbery are let off with less severe sentences. Should the Federal Courts apply sentences that are more severe for nonviolent crimes than the state courts do for violent crimes? I think not.

As to allowing judges to have latitude in sentencing, I would postulate that the justice system was designed to have prosecutors prosecute and judges and juries determine guilt and impose sentences. In Federal drug cases discretion is taken from the judges and given to the prosecutor who's motives are typically self-serving. It appears that in their zealousness to apply justice even-handedly they created a system that recognizes no extenuating circumstances and have denied judges the ability to perform their judicial responsibilities.

It appears to me that your Commission could do a lot to correct these and other inequities in sentencing, to say nothing of what you would do for prison over-crowding and the drain on the Country's resources, both financial and human, by passing these amendments.

As someone who has been personally impacted by these guidelines I would be more than happy to offer additional testimony.

Sincerely,

R.D.Besser

cc: Families Against Mandatory Minimums

LAW OFFICES OF
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606 W. MAIN STREET
P. O. BOX 1126
KNOXVILLE, TENNESSEE 37901-1126

ROBERT W. RITCHIE
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WAYNE A. RITCHIE II
KENNETH F. IRVINE, JR.

TELEPHONE
615-637-0661
FAX
615 524-4623

February 25, 1993

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002

Dear Sentencing Commission:

I have reviewed with great interest your 1993 Proposed Amendments to the Sentencing Guidelines. The opportunity to express my concerns, on a few of the proposed amendments, is greatly appreciated. This particular group of amendments addresses several important areas:

A. Relevant Conduct: Amendments #1 and 35 propose two different ways to deal with acquitted conduct. Amendment #35, option 1, proposes a total ban on the use of acquitted conduct. I personally favor this approach. In addition to my personal preference, this is an area that I have discussed with numerous people. Lawyers and non-lawyers alike are often shocked when they learn that conduct, for which a defendant is acquitted, can still be used as relevant conduct. It is fundamental to our system of justice that persons acquitted of criminal charges are not directly or indirectly punished for that conduct.

B. Substantial Assistance: Amendments #24, 31, and 47 suggest several ways to change the current system for determining when substantial assistance has been rendered. This is an area which should be decided by the sentencing court after the government has had an opportunity to state its position. Without question the government's position should be given careful consideration but the ultimate decision should be the court's. It has been my experience that "substantial assistance" varies from one U.S. Attorney's Office to the next and even from one AUSA to the next. Also based on my experiences the decision not to move for a downward departure, based on substantial assistance, has occasionally been arbitrary.

C. Specific Offender Characteristics: Amendment # 29 would give the sentencing courts some flexibility in fashioning an appropriate sentence. While uniformity is an important objective, it should not be the only consideration.

D. Sentencing Options; Non-violent, first offenders: Amendment # 32 would also give sentencing courts more flexibility. Of the two options suggested in this amendment, it seems that an additional ground for departure would be the most effective way to reach this type of offender.

While many other proposed amendments are equally deserving of comment, I am going to limit myself to the four listed above. If the Commission wishes for any additional input from me I am available at your convenience.

Sincerely yours,

Kenneth F. Irvine Jr.

KENNETH F. IRVINE, JR.

Laurienne Moss
3921 Pemberly Ct.
Ann Arbor Mi. 48103
Phone & Fax #
(313) 668-0716
(call first for fax)

U.S. Sentencing Commission
One Columbus Circle, NE.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Commissioners,

I am writing to urge you to please consider the proposed amendments to the sentencing guidelines that would reduce sentences for first-time, non-violent offenders in drug cases. My husband, Robert Moss, is serving a 25-year sentence for conspiracy to import & distribute marijuana. As a first time, non-violent offender, he does not deserve to receive this harsh treatment by our courts. My family, which consists of two girls, ages 1 & 2 and a twelve year old son and myself, desperately need Robert to keep us going - as we have been emotionally and financially devastated by the federal courts decisions. Please give those like my husband

and their families a second chance at becoming productive members of this society which prides itself in giving fair & just treatment to its citizens who break the law.

In addition, I would like to remind you, as distinguished members of the sentencing commission, that the guidelines, which were intended to be used as a tool against drug use and abuse, has had no effect in this area. Abuse of drugs has remained the same or even risen in some cases, in spite of these stiff sentences. This leads me to believe that we should not use our courtrooms to rectify a social problem - rather it is a health problem. The money spent on prisons would be put to more effective use in education and prevention. This opinion is shared by many judges, and others

throughout this country. Government officials such as yourselves, need to get out of the business of destroying lives like ours by the thousands, and instead restore fair treatment to these offenders, which gives them a second chance in life.

Respectfully Yours,
Laurienne M. Moss

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH, PENNSYLVANIA 15219

CHAMBERS OF
DONALD E. ZIEGLER
U.S. DISTRICT JUDGE
412-644-3333

March 10, 1993

Hon. William W. Wilkins, Jr.,
Chairman, U.S. Sentencing Commission
Suite 2-500, South Lobby
One Columbus Circle Northeast
Washington, D.C. 20002-8002

Dear Judge Wilkins:

Re: United States Sentencing Guidelines

I am responding to the invitation of the Sentencing Commission to comment on the proposed amendments to the Guidelines and the proposals of various groups. I have served as a state court trial judge for five years and a federal district court judge for 15 years in a metropolitan area. Hence, I bring to my work a fair understanding of the best and worst of both criminal justice systems in reviewing the Proposed Guideline Amendments. In my judgment, the federal sentencing guidelines are inferior to the state court guidelines in Pennsylvania, and therefore I have scanned the Proposed Amendments in an attempt to select the amendments that will improve the federal sentencing scheme.

Proposed Guideline Amendment No. 1, Pg. No. 1 should be adopted as urged by the Practitioners Advisory Group in Option 1 at Pg. 56. Most citizens and virtually every juror would be shocked to learn that a court is required to include conduct in the sentencing equation that their representatives have found not proven by the prosecution. In addition, any exception to a complete bar of such evidence strikes most informed observers as unfair and one-sided. Prior to the guidelines, federal trial judges did not consider acquitted conduct at the time of sentencing, and the supporters of the guidelines have failed to sustain their burden of proving that § 1B1.3, as constituted, has had any deterrent effect upon aberrant conduct, or has promoted uniformity in sentencing.

Proposed Guideline Amendment No. 10, Pg. 20 should be adopted to promote uniformity of law and introduce common sense in a difficult area of sentencing. The inclusion of uningestible mixtures in the weight of a controlled substance promotes public cynicism and contempt by the offender. It also leads to grossly disproportionate sentences in certain cases and therefore undermines the foundation on which the guidelines are bottomed.

Proposed Amendments 29 and 30 (Judicial Conference) are long overdue. The members of the Commission and staff are fond of stating at various Circuit Judicial Conferences and in other fora that departures are authorized in appropriate cases under the guidelines. The courts of appeals are often blamed by members of the Commission for being too rigid in interpreting the departure provisions. The Criminal Law Committee of the Judicial Conference has now provided the Sentencing Commission with the opportunity to stand up and be counted on this issue.

Proposed Amendments 31, 32 and 33 (American Bar Association) are progressive proposals that recognize that prisons are limited resources that should be reserved for the most serious offenders. They also recognize that for many non-violent offenders there are effective alternative sentences. For many years prior to the guidelines, I kept a record concerning the number of offenders that violated a probationary sentence. The number of violators totalled 15% This means that 85% of the defendants did not violate probation and for these offenders a non-prison sentence was successful, effective and obviously less expensive.

Proposed Amendments 37 and 38 (Practitioners Advisory Group) are sensible and deserve adoption. They advance uniformity of application and fairness for offenders who do not profit from an offense. This is especially important for non-violent offenders for whom alternatives to total confinement may be entirely appropriate.

Amendment No. 40 (Practitioners Advisory Group) correctly captures the disparate impact of the guidelines upon minorities. The 100 to 1 quantity ratio is irrational and leads to unfair sentences. Quantity based sentencing involving crack cocaine produces sentences, in many cases, that are harsh, have no deterrent impact and are grossly disproportionate. The same reasoning applies to Amendment No. 50 (Federal Offenders Legislative Subcommittee). Congress could not have intended such results.

Thank you for giving me the opportunity to comment on the matters pending before the Sentencing Commission.

Yours very truly,

Donald E. Ziegler

Donald E. Ziegler

ef

746 U.S. POST OFFICE
AND COURT HOUSE
5th AND MAIN STREET
CINCINNATI 45202-3980

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

February 23, 1993

U. S. Sentencing Commission
One Columbus Circle, N. E., Suite 2-500
Washington, D. C. 20002-8002
Attention: Public Information

Dear Judge Wilkins

Attached hereto are personal comments regarding certain proposed guideline amendments. I have written a separate document for each of the issues on which I commented. Understand that the comments provided are only my own and are not representative of this agency or the Court for which I work.

Thank you for the opportunity to comment on the proposed amendments.

Sincerely

David E. Miller

David E. Miller, Deputy Chief
U. S. Probation Officer

746 U.S. POST OFFICE
AND COURT HOUSE
5th AND MAIN STREET
CINCINNATI 45202-3980

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

DATE: February 16, 1993

RE: 7. Issue for Comment.

FROM: David E. Miller, Deputy Chief
U. S. Probation Officer

TO: U. S. Sentencing Commission
Public Information

✳ The Commission should address the issue of whether 2B1.1, 2B1.2 and 2F1.1 fully capture the harmfulness and seriousness of the offense by commentary suggesting an upward departure if the Court thinks it is merited. If and when the Commission identifies, through its monitoring process, a trend of upward departures for this reason, it can address same through the adoption of a specific offense characteristic. This is consistent with the "heartland" approach adopted by the Commission, an approach that is valid, but has, in practice, diminished because of too many amendments during the first 5 years of implementation.

richard crane
attorney at law • corrections & sentencing law
2200 hillsboro road • suite 310
nashville, tennessee 37212
(615) 298-3719 • FAX 298-2467

February 18, 1993

U.S. Sentencing Commission
1 Columbus Circle, N.E.
Suite 2500
Washington, D.C. 20002-8002

Re: Amendments 28(G), 37 and 38
Amendment 25

Gentlemen:

I am writing in support of proposed amendment 28 (G). Some of the problems with the loss definition under § 2B1.1 and § 2F1.1 have been resolved because of the 1992 amendment to the statutory index specifying that either of these guidelines could be appropriate for violation of 18 § 656.

But, the problem persists in other areas. For example, I had a client convicted this past year for conspiring to embezzle from an employee benefit plan. (18 § 371) The offense involved the use of a certificate of deposit from a union pension fund as collateral for a loan. The CD greatly exceeded the amount of the loan, so when the loan was defaulted on, only a portion of the CD was seized to cover the loss. Because the offense involved pension fund money, my client's sentenced was calculated under § 2B1.1 using the full value of the CD , rather than the actual loss. Your proposed amendment 28(G) would, hopefully, resolve this problem.

I also very much favor amendment No. 25 regarding disclosure of information relative to guideline calculations. I practice around the country and there are great differences from one U.S. Attorney's Office to another in providing this information.

Additionally, I think that the amendment should include a requirement

that the government stipulate as often as possible in plea agreements to any facts which impact on guideline calculations. Again, as I practice in various states, some U.S. Attorney's offices are readily agreeable to incorporating stipulations or a separate statement of the offense, while other U.S. Attorney's offices have a "policy" of never stipulating to anything. This only increases the work for the probation officer and for the court, when these matters could easily be resolved during plea negotiations.

Sincerely,

Richard Crane

RC/cm

WHITE,
KOCH, KELLY
&
McCARTHY
A Professional Association

Attorneys and Counselors at Law

Sumner S. Koch
William Booker Kelly
John F. McCarthy, Jr.
Benjamin Phillips
John N. Patterson
David F. Cunningham
Albert V. Gonzales
Janet Clow
Kevin V. Reilly
Charles W. N. Thompson, Jr.
M. Karen Kilgore
Holly A. Hart
Sandra J. Brinck

Of Counsel
Kenneth Bateman

Special Counsel
Paul L. Bloom

Aaron J. Wolf
Jennifer Lea Wise
Jacquelyn Archuleta-Staehlin
Mark A. Basham

March 12, 1993

***VIA* TELEFAX 202-273-4529**

United States Sentencing Commission
Attention: Public Information
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear United States Sentencing Commission:

The purpose of this letter is to express my support for Edwards Bill H.R. 957, Sentencing Uniformity Act of 1993. I have practiced criminal law for the past 17 years and was Chief Public Defender for the State of New Mexico from 1983 through 1985. I believe that mandatory minimum sentences have created injustice throughout the federal system and have clearly created a backlog of civil cases in the State of New Mexico.

I thank you for your consideration of Edwards Bill H.R. 957.

Sincerely,

JANET CLOW

JC/cam
cc: Steve Schiff (*via* Telefax)

433 Paseo de Peralta P.O. Box 787, Santa Fe, NM 87504-0787 (505) 982-4374 Fax Nos. (505) 982-0350; 984-8631

FEDERAL PUBLIC DEFENDER
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March 10, 1993

United States Sentencing Commission
ATTN: PUBLIC INFORMATION
One Columbus Circle North East
Suite 2-500 - South Lobby
Washington, D.C. 20002-8002

Re: Comment on Proposed Amendments

To The Honorable United States Sentencing Commission:

I write to you, in as brief a form as possible, to express my comments on the proposed amendments in the sentencing guidelines. The fact that I am an assistant federal public defender for approximately 13 years makes me both a well informed and biased source, of which I am sure you are cognizant.

I applaud and encourage the thought and effort made to amend the loss tables and deal with the problem of more "than minimal planning" insofar as it has resulted in disparate treatments and a considerable amount of litigation. With respect to the additional issues for comment in this section, I definitely believe that the loss tables should have fewer and larger ranges in the lower ends. The loss tables at the higher ends are so large as to be beyond my experience and have no opinion as to whether they need adjustment.

Although more work would need to be done, I would encourage the Commission to modify the definition and approach to a more than minimal planning enhancement as opposed to building it into the loss table or, alternatively, building it into the loss table further from the bottom ranges, maintaining the lesser enhancement as long as possible and perhaps adding a third and additional level increase at the far end.

With respect to redefining more than minimal planning, I do have some suggestions:

1. Build in a two level decrease for spur of the moment or sudden temptation conduct;

2. Do not provide for multiple victim enhancement until the number of victims has reached an appreciably large level i.e. 15 or 20 and perhaps make this enhancement an additional one or two levels at an additionally large number such as 40 or 50;

3. Require, by example, truly more than the ordinary conduct to commit the offense before an enhancement is added. Few if any types of fraud or theft escape the current definition.

The proposal with respect to U.S.S.G. § 3B1.2 (role in the offense) is also an improvement. I would suggest option one is the most preferable of the options under Note 7 reading as follows: Option 1 is prefered because it affords the sentencing judge the most flexibility in determining whether or not to apply the two level adjustment for minor role and, unlike option 2, does not repeat the Application Note position contained in Note 8 concerning burden of pursuasion.

The firearms amendments are mostly technical and it would be useful for the Commission to have a period where it does not amend the firearms guideline. I do believe that an appropriate differentiation can be made between different weapons including weapons that fall within 26 U.S.C. § 5845 and its various subdivisions. Whether the differentiation should be made by different offense levels, by placement of the sentence within a the guideline range, or by a Commission-guided departure, depends on the weapon involved. It would seem that a fully automatic machine gun is different from a sawed-off shotgun which is different from a sawed-off rifle which is different from other weapons such as tear gas "pen guns," all of which are prohibited in Title 26.

I have no great critism of the proposed amendment § 3B1.3 abuse of position of special trust or use of special skill. However, perhaps the time has come to separate these two concepts into separate adjustment sections. It would seem to me be best to leave special trust as a Chapter 3 adjustment with appropriate illustrations in the application notes rather than adding it as a specific offense characteristic in a hit or miss fashion to various guidelines relating to fraud or embezzlement or in general to the embezzlement guideline. Certainly the proposed amendment is superior to the additional issue for comment, particularly as it relates to deleting the example regarding "ordinary bank tellers".

The proposal relating to 5K1.1 - issue 24 - will apply to very few cases if it is intended to exclude "crimes of violence" where that concept includes drug offenses. It also has limited usefulness because of the exclusion of anyone who is not a "first offender".

At least it should include all category I offenders and perhaps all category I and category II offenders. The injustice which it is intended to address is not related or necessarily related to whether the defendant is category I or category VI, but the proposal is at least some improvement over the current requirement for a government motion.

I should add with respect to § 5K that I have, as have other attorneys, experienced cases in which this proposed amendment could well have made a difference.

With respect to the proposal number 25 relating to § 6B1.2 the idea is commendable. Perhaps a stronger word than "encourages" should be utilized. I would suggest a policy statement that requires the government to make such the disclosures at either option point and provides as a ground for downward departure the intentional failure of the government to do so. Experiences has taught that toothless platitudes rarely modify prosecutorial behavior in an adversary system.

The Commission should act on issue for comment number 40 relating to the mandatory minimum and distinction between cocaine and cocaine base. Significant support exists not only from the interjection of the Commissions expertise, but also other sectors of the criminal justice system for the elimination of this distinction.

Proposed numbers 44, 45 and 46 are all poor ideas, poor policy, and should not result in favorable action. They would increase unwarranted disparities and would not further the purposes of sentencing indicated by Congress.

Proposal number 57 submitted by the Department of Justice should not be acted upon. It is an attempt to accomplish exactly the opposite of what it purports to do. The Department of Justice obviously intends to utilize its proposed amendment, if it becomes the guideline, as the Commission's position which ought to be followed by the Courts in prohibiting attacks on prior convictions. It is my understanding that the Commission wishes to take no position and allow the courts to develop their own procedures. If the Commission does intend to take a position on this procedural question, it should study the matter, invite additional comment, and it is hoped, ultimately recommended that the courts permit collateral attacks on prior convictions utilized to enhance sentences.

I had promised to make this letter brief. There are many other things I could or should say, but will not. I will say that the last two cycles of amendments have been encouraging insofar as they have addressed problems of harshness and not simply been "fixes" of guidelines which appear to be too low to some other components of the criminal justice system.

Sincerely,

SCOTT F. TILSEN
Assistant Federal Defender

SFT/tmw

FIRST NATIONAL BANK
CAPITAL CITY GROUP

P.O. Box 900 • Tallahassee, Florida 32302-0900
(904) 224-1171

March 10, 1993

Attn: Public Information
U. S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D. C. 20002-8002

Dear Members:

We support proposed amendments to reduce drug sentences as endorsed by Families Against Mandatory Minimums. Please give their representatives every consideration. They know the problems we families face.

Our 39 year old son was convicted in a drug conspiracy case because a government-arranged "sting" group discussed locations at his homesite. He received a 10 year sentence! He is a non-violent first time offender. The real victim is his son, our totally blameless 3 1/2 year old grandson. We are helping our daughter-in-law raise this innocent child. We hope for relief on appeal. We have NOT received the justice in which we were raised to believe. PLEASE help our family and others like us help ourselves.

Thank you for your attention.

Sincerely yours,

Newell & Richard Lee

Newell M. and Richard M. Lee
413 East Park Avenue
Tallahassee, Florida 32301
(904) 222-1155

cc: Families Against Mandatory Minimums (202) 457-5790, Julie Stewart
Bill Clinton, United States President
Bob Graham, Florida Senator
Connie Mack, Florida Senator
Pete Peterson, Florida Representative
Clyde Taylor and Judge Griffin Bell, Attorneys

Re: George Martin Croy - 09645-017
Case No. 92-00300405 LAC
U. S. District Court for the Northern District of Florida, Pensacola Division

Executive Director and Administrator
Charles and Pauline Sullivan

NATIONAL OFFICE:
PO Box 2310
National Capital Station
Washington, DC 20013-2310
202-842-1650, ex. 320

CURE-NH
William J. Manseau, D.Min.
Chairperson
6 Daniel Webster Highway S.
Nashua, NH 03060
Phone: 603-888-3559

CITIZENS UNITED FOR REHABILITATION OF ERRANTS

"A National Effort to Reduce Crime Through Criminal Justice Reform"

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

March 10, 1993

Attention: Public Information

To Whom It May Concern:

I wish to express my full support for proposed amendment #50 to the Federal Sentencing Guidelines for 1993 which reads as follows: "In determining the weight of LSD, use the actual weight of the LSD itself. The weight of any carrier medium, e.g. blotter paper, is not to be counted."

I urge you to specify that it be fully retroactive and that you submit it to the Congress on or before May 1, 1993. There are approximately 2,000 individuals incarcerated in the federal system to date, the majority of which are first-time, non-violent offenders, who have already been unjustly sentenced to outrageous amounts of time in LSD offenses for the sheer weight of carrier mediums.

Also, I wish to state my support for the Edwards Bill, The Sentencing Uniformity Act of 1993. Please work to repeal the mandatory minimum sentencing law and restore sentencing justice to all.

Thank you.

Sincerely,

William J. Manseau, D.Min.
Chairperson, CURE-NH

WJM/

Executive Director and Administrator
Charles and Pauline Sullivan

NATIONAL OFFICE:
PO Box 2310
National Capital Station
Washington, DC 20013-2310
202-842-1650, ex. 320

CITIZENS UNITED FOR REHABILITATION OF ERRANTS

"A National Effort to Reduce Crime Through Criminal Justice Reform"

PUBLIC COMMENT OF CHARLES SULLIVAN TO THE UNITED STATES SENTENCING COMMISSION

CURE very strongly opposes "in an exceptional case, however, such conduct may provide a basis for an upward departure" (amendment to Commentary to 1B1.3).

CURE is dedicated to reducing crime through rehabilitation. One of the first steps in this process is the perception by the person convicted that "the system" is fair.

When the potential is there in the Guidelines to use acquitted conduct to enhance a sentence, then I believe the system will be perceived as "rigged".

In fact, in my opinion, this proposed amendment goes against the very spirit of the confirmation hearings of the first commissioners that were conducted in 1985 by Sen. Charles Mathias, the Republican from Maryland.

I shall never forget Sen. Mathias asking the commission-appointees "to raise their hands" if they had ever spent time in jail. For those who had not, he encouraged them to visit the jails and prisons.

By this exercise, Sen. Mathias was encouraging a word that is almost non-existent today, "mercy". Sen. Mathias was indirectly telling the Commission that their attitude should be one of coming down of the side of reducing (not enhancing) the sentence whenever appropriate!

In the same way, I encourage you to support the 33 proposed amendments that would reduce drug sentences especially the one that would eliminate the weight of the carrier in LSD cases.

In this regard, I have attached a copy of a recent letter that we have received. I have removed the name since we are not certain if he wants his name to be known.

Dear CHARLES + PAULINE..... .....Monday March 1st 1993

Greetings from F.C.I. Danbury. I am currently serving a 128 month sentence without parole, for conspiracy to distribute LSD. I have no history of violence what so ever, nor any prior felony convictions. I have taken responsibility for my crime. I continue to demonstrate, diligently, my whole-hearted conviction to reform my life. I am biding my time wisely, attending Marist College (I made high honors last semester,..intend to do so again), and the Comprehensive Chemical Abuse Program, among other programs. In 21 months, I've done *all* this--128 months are entirely unnecessary and unfathomable. I *am* an asset to our society, and to the world.

An interesting turn of events has unfolded, and it warrants your *immediate attention!* I have enclosed information that documents and explains the "quirk in the law" that justifies these absurd sentences for LSD offenses, by including the irrelevant weight of carrier mediums. You will also find an excerpt, from the Federal Register, containing 1993 amendments to the Federal Sentencing Guidelines, as proposed by the U.S. Sentencing Commission. See amendment #50--*synopsis of proposed amendment and proposed amendment*--which reads: "In determining the weight of LSD, use the actual weight of the LSD itself. The weight of any carrier medium (blotter paper, for example) is not to be counted." This amendment seeks to rectify a truly gross misappropriation of justice.

This means that prison stays (which are costly to the American taxpayers and public at large, as well as the individuals and their families, in both tangible and intangible ways) could be dutifully shortened, for myself and 2000 other human beings serving 10, 15, and 30 year sentences (with out parole), for the sheer weight of *irrelevant* carrier mediums....This would not be mocking the fact that LSD is illegal, it would simply serve to produce *just sentences*, in which the "time would fit the crime".

I earnestly request that you write the U.S. Sentencing Commission, and voice your support for crucial amendment #50! IT IS ESPECIALLY IMPORTANT FOR YOU TO URGE THAT IT BE RETROACTIVE!! This needs to be done by March 15th, since public hearings are scheduled in Washington D.C., on March 22nd. (See Federal Registar excerpt).

I hope and pray that you will find the time and understanding to act on this issue,..it's not only for my benefit, but thousands just like me, encompassing all our families and loved ones, as well as all those that will continue to be federally prosecuted for LSD offenses. Please, justice and equity *must* transcend rhetoric!

(614)890-6164
OFFICE

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HOME

DAYTON ELECTRONIC SYSTEMS
Roger A. Logan
1605 Bryden Road
Columbus, OH 43205
March 8, 1993

To Whom It May Concern,

Legislation to abolish all federal mandatory minimum sentences was introduced early in the 103rd Congress, by Rep. Don Edwards. This bill will return justice to the sentencing process.

The news media makes you aware of the injustices in this country, but when you come in direct contact with injustices, your morale as a U.S. citizen is devastated. The bitterness of the 50's & 60's that I had has been rekindled. By being a black American, I must say that the backlash of the past 12 years has definitely set the black man behind on the issues accomplished in the 60's & 70's.

My son, Keith Logan, (a first-time offender) was sentenced to 14 years for conspiracy to distribute 8 kilos of cocaine. The undercover officer expressed to me that he knew that Kith was only responsible for conspiracy of one kilo and that if he would testify against someone else, he would have a reduced sentence.

My son confessed to being a part of the sell of one kilo of cocaine the evening the other young men were arrested and never went to trial. His sentence was based on a report submitted by a (young) probation officer and a (young) prosecutor. The reason I emphasize "young" is because the legislatures have taken away sentencing from judges and given it to young inexperienced "white" adults. The judge at her sentencing stated that she knew it was unfair and that black judges have stepped down because of the mandatory minimum sentencing law.

Mandatory minimum sentencing has not worked in the past, and is not working today. This has perpetuated the National debt. The goal should be to produce productive citizens.

Enclosed are statistics of the negative affects that mandatory minimum sentencing has had on America. I urge you to support Rep. Edward's Uniformity Sentencing Bill.

Please reply.

Sincerely,

Roger A. Logan

FAMM FACTS

PRISON OVERCROWDING

* In 1992, America had 1.2 million people behind bars. The United States imprisons more of its citizens per capita than any other country in the world. Per 100,000 people, the United States imprisons 455, with South Africa in second place with 311. In other words, one in every 300 Americans is in prison--not jail, probation, or parole--but in prison. *(The Sentencing Project, Americans Behind Bars: One Year Later, 1992)*

* From 1980 to January 1993, the federal prison population grew by 57,000 inmates--from 24,000 to 81,000. At the current rate of incarceration, by 1995 the federal prison population will reach 100,470, and by the year 2000 there will be 136,980 people in federal prisons. *(Bureau of Justice Statistics, Sourcebook 1991, p. 679)*

* Convictions for federal drug offenses increased 213 percent between 1980 and 1990. *(Bureau of Justice Statistics, National Update, January 1992, p.6)*

* Drug offenders currently make up 57 percent of the federal inmate population, up from 22 percent in 1980. By 1995, nearly 70 percent of federal inmates will be drug offenders. *(Testimony by former BOP director, J. Michael Quinlan, given on February 26, 1992 to House Appropriations Subcommittee)*

* In 1990, more than half of the federal inmates serving mandatory minimum sentences were first offenders. *(Bureau of Justice Statistics, Sourcebook 1991, p.542)*

* Average federal sentences in 1990 for the following offenses were:
Drugs offenses: 6.5 years. Sex offenses: 5.8 years. Manslaughter: 3.6 years. Assault: 3.2 years. *(Bureau of Justice Statistics, Sourcebook 1991, p.532)*

EXCESSIVE TAXPAYER COSTS

* The average cost of incarcerating a federal prisoner is $20,072 per year, or approximately $55 per day. *(Bureau of Prisons, State of the Bureau 1991, Summer 1992)*

* To house, feed, clothe, and guard the 81,000 federal inmates, taxpayers pay a hefty $4.5 million per day or $1.6 billion per year.

* At the state level, taxpayers cover incarceration costs as high as $6.8 million per day in California where over 100,000 people are behind bars at an average of $25,000 per inmate per year. *(The California Republic, July 1991, p.9)*

* States spend more of their budgets on justice programs (6.4%) than on housing and the environment (3.8%) and nearly as much as they spend on hospitals and health care (8.9%) *(Bureau of Justice Statistics, Justice Expenditures & Employment, 1990, Sept. 1992)*

* The federal drug program budget for FY 1993 was $12 billion. *(Office of National Drug Control Policy)*

* Federal spending for corrections increased 44 percent between 1989 and 1992, from $1.5 billion to 2.2 billion per year. *(U.S. Budget FY 93, Part 1, p.198)*

* The Bureau of Prisons' authorized budgets increased 1,350 percent between 1982 and FY 1993, from $97.9 million to $1.42 billion per year. *(National Drug Control Strategy Budget Summary, 1992, p.212)*

* It costs more to send a person to federal prison for four years than it does to send him to a private university (tuition, fees, room, board, books & supplies) for four years. *(Sources: Federal Bureau of Prisons, The College Board)*

* Figures are not yet available for the tax revenue loss from former tax-paying inmates, or the increased cost of social services needed by inmates' families that were previously supported by the inmate.

PRISON CYCLE

Statistics show that people who have been in prison are more likely to have children who will end up in prison. Long mandatory prison sentences are sowing the seeds for the next generation of inmates.

* More than half of the juveniles in state and local jails have an immediate family member who is a felon.

* More than one-third of the adults in state prisons and local jails have an immediate family member who is a felon.

* Relative to the general population, inmates are more than twice as likely to grow up in a single parent family. Seventy percent of juvenile offenders and 52 percent of adult offenders had one, or no, parent.

(Sources: Bureau of Justice Statistics, Survey of Youth in Custody 1987, Profile of Jail Inmates 1989, Survey of Inmates in State Correctional Facilities 1986.)

PUBLIC ATTITUDES

* toward crime: 61% prefer attacking social problems, 32% want more prisons & law enforcement.

* toward purpose of prison: 48% think it should rehabilitate, 38% think it should punish.

* toward spending more money & effort in fight against illegal drugs: 40% prefer teaching the young, 28% work with foreign governments, 19% arrest sellers, 4% help overcome addiction, 4% arrest users.

(Source: Bureau of Justice Statistics Sourcebook 1991, pp.202, 210, 243)

U.S. SENTENCING COMMISSION FINDINGS ON MANDATORY MINIMUMS

* Sentencing power has been transferred from the courts to the prosecutors. The Commission reports that, "Since the charging and plea negotiation processes are neither open to public review nor generally reviewable by the courts, the honesty and truth in sentencing intended by the guidelines system is compromised."

* Mandatory minimum sentences create disparities based on race. Blacks and hispanics are charged with and receive mandatory minimum sentences more often than whites. The Sentencing Commission reports that this racial disparity "reflects the very kind of disparity and discrimination that the Sentencing Reform Act...was designed to reduce."

Blacks, 68 percent of the time.
Hispanics, 57 percent of the time.
Whites, 54 percent of the time.

Sentences for crack cocaine are also 100 times greater than for powder cocaine. Generally, blacks use crack cocaine and whites use powder cocaine.

* Mandatory minimums are counterproductive--low level participants receive mandatory minimums more often than top level kingpins.

Street-level participants, 70 percent of the time.
Mid-level players, 62 percent of the time.
Top-level importers, 60 percent of the time.

* Mandatory minimums create "cliffs" in sentencing based on small differences in weight. Possession of 5.0 grams of cocaine requires a sentence of up to one year, but possession of 5.01 grams of cocaine requires a sentence of **atleast** five years.

COMPARATIVE OFFENSES

Keep in mind: Federal guidelines equate one marijuana plant to one kilo (2.2 pounds) of marijuana, regardless of the size of the plant at arrest. In LSD cases, the guidelines include the weight of the paper, or the sugarcube, or the orange juice in which the LSD is mixed, to determine the total drug weight on which sentencing is based.

Level 24: 4.3 years to 5.3 years

$80 million worth of larceny, embezzlement, other forms of theft. Kidnapping abduction, unlawful restraint.
176 pounds of marijuana, 800 mg. of LSD, 400 grams (less than 1 lb.) of cocaine powder.

Level 26: 5.3 years to 6.6 years

Robbery with life-threatening injury.
220 pounds of marijuana, 1 gram (half the weight of one dime) of LSD, 500 grams (a little over 1 lb.) of cocaine.

Level 28: 6.6 years to a 8.1 years

Conspiracy or solicitation of murder.
880 pounds of marijuana, 4 grams (almost the weight of 2 dimes) of LSD, 8.7 pounds of cocaine powder.

Level 30: 8.1 years to 10.1 years

Kidnapping, abduction, unlawful restraint with ranson demand.
1540 pounds of marijuana, 7 grams (a little over 3 dimes weight) of LSD, 8.7 pounds of cocaine powder.

Level 38: 19.6 years to 24.4 years

Selling or buying of children for use in the production of pornography.
66,000 pounds of marijuana, 300 grams (approx. 3/4 lb.) of LSD, 330 pounds of cocaine powder.

(Source: U.S. Sentencing Commission Guidelines Manual, November 1, 1992)

SOME ORGANIZATIONS THAT OPPOSE MANDATORY MINIMUM SENTENCES

- **The United States Sentencing Commission.** The Commission found mandatory minimums to be racially discriminative, inefficient, counterproductive, and to have had no effect on the rate of crime in America.
- **The Federal Courts Study Committee**
- **The American Bar Association**
- Each of the 11 **Judicial Conferences of Federal Judges**
- **The National Association of Criminal Defense Lawyers**
- **The American Civil Liberties Union**

Richard D. Besser
13 Arrowhead Way
Clinton, NY 13323

TEL (315) 853-4370

FAX (315) 853-4371

March 4, 1993

Attn: Public Information
U.S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Gentlemen:

I am writing to voice my opinion on the amendments to the sentencing guidelines that are currently under consideration by your Commission.

While I believe that the entire concept of mandatory minimums is abhorrent and unconstitutional, there are three amendments that I believe rise above the others in importance:

1. Eliminate the carrier in determining sentencing in LSD cases.

2. Reduction in the top guideline level from 43-32.

3. Allow Federal Judges to depart from guidelines if he believes the defendant has provided substantial assistance without the approval of the prosecutor.

I am sure you are aware of the inequities in sentencing that result from application of the current guidelines in LSD cases. If not I would offer the following:

One gram of pure LSD (no carrier)=63-78 months, guideline level 26
One gram of LSD on 100 grams of paper=188-235 months, guideline level 36

Reduction of the highest sentence for a first time offender to 121-151 months is a modest reduction at best. Where else in our legal system does a first time offender for a nonviolent crime receive a 10

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year plus sentence, without parole? People who commit armed robbery are let off with less severe sentences. Should the Federal Courts apply sentences that are more severe for nonviolent crimes than the state courts do for violent crimes? I think not.

As to allowing judges to have latitude in sentencing, I would postulate that the justice system was designed to have prosecutors prosecute and judges and juries determine guilt and impose sentences. In Federal drug cases discretion is taken from the judges and given to the prosecutor who's motives are typically self-serving. It appears that in their zealousness to apply justice even-handedly they created a system that recognizes no extenuating circumstances and have denied judges the ability to perform their judicial responsibilities.

It appears to me that your Commission could do a lot to correct these and other inequities in sentencing, to say nothing of what you would do for prison over-crowding and the drain on the Country's resources, both financial and human, by passing these amendments.

As someone who has been personally impacted by these guidelines I would be more than happy to offer additional testimony.

Sincerely,

R.D.Besser

cc: Families Against Mandatory Minimums

Henry N. Blansfield, M.D.
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(203) 744-6222
Fax (203) 744-6336

February 26, 1993

United States Sentencing Commission
1 Columbus Circle, N.E., suite 2-500, South Lobby
Washington, DC 20002-8002

Attention: Public information

As a physician currently engaged in providing services to psychoactive drug users in our society and concerned with reducing harm to them, I strongly support amendments to sentencing guidelines that would drastically lessen their length. I am opposed to mandatory lengths of incarceration based upon the type of illicit drug involved in felonious drug selling and its weight. There must be a return to consideration of an arrested individual's prior record and willingness to accept rehabilitation and treatment if a compulsive drug user. Most of all, leniency would seem indicated if the nature of the crime, namely selling, has not directly harmed another. Reforms in the length of sentences need to be retroactive to allow redress for those already imprisoned by previous unfair and inhumane mandatory rules of sentencing.

Working as a clinician in the drug/alcohol field for twenty years has led me to believe that chemical dependence is a disease resulting from alterations in neuron receptor - transmitter mechanisms. Paradoxically society criminalizes the use of certain agents acting on the central nervous system while permitting the legal acquisition and consumption of others that have been repeatedly shown to have morbid deleterious heath effects, i.e. alcohol and tobacco. This, in itself, is the epitome of hypocrisy.

There is increasing awareness of the adverse impact of present drug laws on society, particularly the urban minority young male population. Racism and the drug war have been addressed by Clarence Lusane in his book "Pipe Dream Blues". A study of the impact of current drug policy, from a crime and corrections standpoint, has been carried out by the Monroe County Bar Association (Rochester, New York and environs) and detailed in a report called "Justice in Jeopardy". This report can be obtained from :

James C. Gocker, Esq.
130 East Main St.
Rochester, NY 14604
(716) 232- 4448

I enclose a copy of a New York Times article dealing with alternative sentencing, a policy whose time has come. Such approaches need to be strongly considered not only because they are dictated by the evidence pointing to the failure of present drug policy involving crime and corrections to succeed in alleviating or reducing the problem, but also because alternatives may be much less costly. The crime and corrections industry will, of course, lobby strongly against any change in the 70% dollar allocation they are now receiving.

Sincerely yours,

Henry N. Blansfield, M.D.

NYT Times 1/20/93

Dealing With Drug Dealers: Rehabilitation, Not Jail

Hynes Tries Alternative Approach Intended to Stop a Problem by Curing an Addiction

By FRANCIS X. CLINES

In 15 years of selling cocaine and heroin in the doorways and abandoned buildings of Brooklyn's pervasive Borough Park narcotics mart, Guillermo Rios developed an entrepreneurial sense of a good deal, even as he indulged his own deep addiction.

Mr. Rios, who once managed seven tidy street outlets, had to hurriedly put his deal-maker's sense to good use 20 months ago when he was caught, fix in hand, selling drugs to undercover detectives. At the arraignment, District Attorney Charles J. Hynes of Brooklyn offered him a deal he never expected:

Either complete an experimental long-term rehabilitation program and be treated like an addict with all the struggle of self-reform, or face mandatory prison time as just another common criminal with all the attendant lost freedom and wasted life.

Limited Experiment

It was a deal that Mr. Rios and more than 200 other addicted drug dealers in Brooklyn have taken gladly but warily over the last two years in an unusual program that is attracting attention from other law-enforcement officials who are intent not so much on declaring a truce in the war on drugs as in attempting a little creative triage.

The Brooklyn program is a limited experiment, but it is showing enough progress at retaining phlegmatic addicts in long-term treatment in lieu of prison that the state has decided to extend it to the other city prosecutors' offices this

Continued on Page B2

Joyce Dopkeen/The New York Times

"What I am learning is to finally begin valuing my life," said Guillermo Rios, left, who chose an experimental rehabilitation program after being caught selling drugs. He talked with Ed Hill of Daytop Village in Swan Lake, N.Y.

Dealers' Deal: Rehabilitation, Not Jail

Continued From Page B1

year. Mr. Rios, who is finishing his first year in rigorous rehabilitation, said, "I had already been in jail and that just made me a little crazier."

He remains free, as ever, to walk away from the deal. But if he does, a special pursuit team will try to track him down and put him back on the narcotics court treadmill toward the overwhelming likelihood of serving long years in prison, with no second chance at mercy from Mr. Hynes.

The program is intended to deal with the legions of drug dealers who basically underwrite their own addiction with the money they make selling. Second offenders like Mr. Rios face very tough laws providing mandatory prison time and no easy plea bargains. Prison reformers say such second-felony laws are unrealistically harsh, but Mr. Hynes is exploiting the harshness, in effect, in his new carrot-and-stick program.

Half the states have comparable drug crackdown laws mandating prison time for repeat offenders and these have been instrumental in the mushrooming of prison populations and expenses across the nation through a high turnover in drug arrests. This growth has not necessarily focused on the more violent criminals who are at the heart of the public's alarm and the politicians' enactment of harsh remedies.

Up to 2 Years

With prisons becoming glutted, some criminal-justice officials are looking for cheaper, more productive alternatives. Few new programs besides Mr. Hynes's Drug Treatment Alternative to Prison offer such a powerful combination of seduction and penalty to try to change addicts who have been carefully screened and not merely to detain them behind bars until they come out to deal again.

Under the program, arrested dealers who spend up to two years completing private drug-rehabilitation programs like Daytop Village and Samaritan Village are rewarded by having the drug charges for which they were arrested dropped; the arrested dealer is free to pursue a new drug-free life with one less felony blot.

But those who yield to the temptation to walk out on the rehabilitation program's rough self-examination, job training and other responsibilities immediately face the full force of New York State's predicate felony law, which mandates prison time for second-time drug offenders, with little leeway afforded sentencing judges.

For public officials, the cost of treatment versus incarceration of nonviolent drug offenders is increasingly important. The Brooklyn program costs about $17,000 a year for each dealer in treatment, less than half the cost of imprisonment, about $40,000. But the real choice in public policy is not that simple, and alternative approaches to prison can prove risky for responsible officials.

'A Terrifying Experience'

An assistant district attorney, Susan A. Powers, recalled the initial anxiety that the program, rooted in Mr. Hynes's unusual use of his case-disposal powers, might prove to be a gamble that failed, with addicts scandalously fleeing in droves. "It was a terrifying experience," she said. "But the results so far have been rather amazing." Ms. Powers pointed out that 70 percent of the addicts admitted to the program have stayed, versus a rate of about 13 percent nationally in voluntary drug-treatment programs.

"Retention is the key to success, studies show, even if you're forced to enter a program," she said. "They can change you if they can keep you,"

> 'This is the hardest thing an addict's going to do,' a director says.

providing the programs are as long term and experience proven as Daytop and Samaritan.

"This is actually a lot harder for them than jail," said Ed Hill, director of the privately run Daytop Village center in Swan Lake, in the Catskills, where Mr. Rios, ever a manager, has risen in 11 months to be the chief administrator for running the woodshop and its staff.

"This is the hardest thing an addict's going to do because it represents true and total change," Mr. Hill said. "No more the swaggering tough guy with the .45 pistol in his belt or the 9-millimeter in his boot. We're talking complete overhaul."

He stressed that society was right to want its streets cleaned of the plague of addict-dealers like Mr. Rios but that the real issue, finally faced fully by this program, was whether to try to change them or to merely guarantee a deeper problem with prison-toughened criminals.

Mr. Rios, a trim, watchful man with more than half his 29 years of life already invested in drugs, said pragmatism was as effective as idealism in Mr. Hynes's program. He conceded that he had jumped at the program mainly to avoid prison and had thought he could ease through and feign dedication when needed, as with other more casual programs that he had gone through inside prison and out.

Mr. Hill, a Daytop graduate from Brooklyn's street-drug pathology of two decades ago, smiled, noting that avid peer-pressure is only one tool intended to root out routine fakery. Mr. Rios said he eventually found change and growth in himself necessary to stay in the program.

"Here, instead of doing 7 to 15 in prison, I'm not even doing time," he said gratefully. "I'm learning a lot about myself, what a threat I am to me and to others. What I am learning is to finally begin valuing my life."

Of the 30 percent in dropouts from the program, Mr. Hynes's pursuit squad, put together especially for this program, has arrested 95 percent to resume the court process. Of 64 returned to court, 51 received felony prison terms and 11 cases were pending as of the latest tally in November. Only two received misdemeanor treatment — a tribute to the original selection of firm second-felony drug cases by the District Attorney to guarantee the harsh stick needed to complement the program's inviting carrot.

Long-range effects are yet to be measured since only the first 14 graduates have returned to their communities. "I had my hand on the doorknob several times, ready to walk," said Angelo K., a 30-year-old graduate who completed the program's residential and re-entry programs, learning to be a diesel mechanic in the process. Through the program he has obtained a job in his old neighborhood, Sunset Park, still as drug-infested as when he began dealing as a 14-year-old.

'Finally Be an Adult'

"It was like I was frozen in my childhood back then," Angelo said. "The program resumed my life. I feel like I lived the rest of childhood in a year and sped forward to finally be an adult. Basically, they taught me we're not bad people," he said of the Samaritan Village program and his fellow addicts aiming for change.

Despite the program's modest enrollment, its surprising retention rate among the notoriously unreliable addict community is encouraging enough to attract praise from the office of Gov. Mario M. Cuomo and a decision to expand it to the other city prosecutors. A $700,000 state allocation of Federal anti-drug money will help finance 300 new residential treatment slots beyond the 200 in the Brooklyn program.

"The future of this approach is very dependent on the available treatment slots," Ms. Powers stressed. "There are only something like 15,000 full-scale residential slots available nationally — amazingly small — and maybe two-thirds of them are in New York and California. If the Clinton Administration is serious with its talk about changing the 70-30 approach of law-enforcement-to-treatment to something more of a 50-50 breakdown, then this program and others like it have a future."

Teresa E. Storch
P.O. Box 449
Albuquerque, NM 87103

March 15, 1993

United States Sentencing Commission
Attn.: Public Information
One Columbia Circle, N.E.
Suite 2-500. South Lobby
Washington, DC 20002-8002

Dear Sentencing Commission,

I am writing with the following comments to the proposed amendments to the Sentencing Guidelines. I will refer to the guideline section for which the amendment is being proposed, and I will be following in the order in which the amendments are discussed in the Federal Register, Vol. 57, No. 252.

1. Support the amendment to Sec. 1B1.3 (not using acquitted counts for relevant conduct).

2. No comment on the amendment to Sec. 1B1.11 (use of version of guidelines).

3. Support the policy statement amendment to Sec. 1B1.12 (Juvenile Delinquency Act).

4. No comment on amendment to Sec 2A4.2 (demanding ransom).

5. No comment on amendments to fraud, theft, tax guidelines.

6. Support amendment to Sec. 2D1.1(a)(3), establishing a mitigation ceiling; a mitigation ceiling of level 32 is still too high, however.

7. Support amendment to Sec. 3B1.2, Option 1 (upper limit of drug quantity table at 36).

8. Support amendment to Sec. 2D1.1 concerning "mixture or substance" not including waste.

9. Support amendment to Sec. 2D1.1 (a)(3), Option 1 (offense level limited by amount involved...at any one time).

10. Support future amendment to Sec. 2D1.1 which would take into account "sentencing entrapment" issue in reverse sting operation, and would suggest that amount be based on market rate ant what defendant could reasonably purchase at market rate.

11. No comment to amendment to Sec. 2K1.3 (using Career Offender definition of prior convictions instead of Criminal History definitions).

12. No comment to amendment to Sec. 2K2.1 (definition of firearms).

13. Oppose amendment to Sec. 2K2.1 (knowledge that firearms stolen).

14. No comment to amendments listed at paras. 17 and 18 of Fed. Reg.

15. Levels 6 and 8 for violations of 18 USC 922 and 930 appropriate.

16. Amendment to Sec. 2S1.1 (a)(1) concerning "if defendant committed the underlying offense" and "level for that offense can be determined" is vague. Otherwise, no comment.

17. No comment on amendments to the tax section.

18. No comment to amendment to Sec. 2X1.1.

19. Support amendment to Sec. 3B1.3.

20. Support an amendment to the guidelines which would allow a judge to depart for substantial assistance without government motion for non-violent first offenders.

21. Support amendment to Sec. 6B1.2 (requiring government to disclose information to guideline application).

22. No comment on car-theft guideline.

23. Support consolidation guidelines as outlined at Para. 27 of Fed. Reg.

24. Support the additional language to Introductory Commentary at Ch. 5, Part H, as proposed by the Judicial Conference.

25. Support the Bar Association amendment to 5K1.1, over the Commission's amendment commented on above at Para. 20; should not be limited to first offenders. Support Option A in providing an additional ground for departure rather that B.

26. Supports expanding Zones A and B in general (Para. 33, Fed. Reg.).

27. Supports restricting sentencing court's consideration of conduct that includes the elements of the offense to which Defendant pleads guilty (Para. 34 Fed. Reg.).

28. Support proposed amendments as outlined by Practitioner's Advisory Group, Paras. 35, 36, 37, 38, 39, 40, Fed. Reg.

29. No comment on amendment proposed by IRS and US Postal Service (Paras. 41-46, Fed. Reg.).

30. Support proposed amendments as outlined by Federal Defenders (Paras. 47-56, Fed. Reg.).

31. Oppose amendments proposed by the Department of Justice (Paras. 57, and 60-66, Fed. Reg.).

32. No comment on amendments proposed by the Department of Justice, Paras. 58 and 59, Fed. Reg.

Sincerely,

Teresa E. Storch

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To PUBLIC OPINIONS	From V. CONROY
Co. U.S. SENTENCING COMM.	Co.
Dept.	Phone # 314-781-8160
Fax # 202-273-4529	Fax #

March 12, 1992

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Commissioners:

This letter concerns the series of proposed amendments to the sentencing guidelines. I am writing to advocate the passage of proposed Amendment 50, which will eliminate the weight of the carrier in LSD cases, allowing the actual weight of the drug, not the carrier weight, in determining the offenders sentence.

I believe Amendment 50 will correct the current inequity in the sentencing of LSD offenders. I believe that LSD offenders are being and have been sentenced far in excess of what justice requires due to the inclusion of the carrier medium.

✳ I also advocate passage of proposed amendment 56, which would allow for the correction of the previous guidelines, which were enacted with good intent, but in practice have proven to be at at odds with Congress's mandate to the Sentencing Commission to promote uniformity of sentencing.

Thank you for your consideration regarding this matter.

Sincerely,

Virginia L. Conroy
2187 Clifton
St. Louis, MO 63139

FEDERAL PUBLIC DEFENDER
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March 10, 1993

United States Sentencing Commission
ATTN: PUBLIC INFORMATION
One Columbus Circle North East
Suite 2-500 - South Lobby
Washington, D.C. 20002-8002

Re: Comment on Proposed Amendments

To The Honorable United States Sentencing Commission:

I write to you, in as brief a form as possible, to express my comments on the proposed amendments in the sentencing guidelines. The fact that I am an assistant federal public defender for approximately 13 years makes me both a well informed and biased source, of which I am sure you are cognizant.

I applaud and encourage the thought and effort made to amend the loss tables and deal with the problem of more "than minimal planning" insofar as it has resulted in disparate treatments and a considerable amount of litigation. With respect to the additional issues for comment in this section, I definitely believe that the loss tables should have fewer and larger ranges in the lower ends. The loss tables at the higher ends are so large as to be beyond my experience and have no opinion as to whether they need adjustment.

Although more work would need to be done, I would encourage the Commission to modify the definition and approach to a more than minimal planning enhancement as opposed to building it into the loss table or, alternatively, building it into the loss table further from the bottom ranges, maintaining the lesser enhancement as long as possible and perhaps adding a third and additional level increase at the far end.

With respect to redefining more than minimal planning, I do have some suggestions:

1. Build in a two level decrease for spur of the moment or sudden temptation conduct;

2. Do not provide for multiple victim enhancement until the number of victims has reached an appreciably large level i.e. 15 or 20 and perhaps make this enhancement an additional one or two levels at an additionally large number such as 40 or 50;

3. Require, by example, truly more than the ordinary conduct to commit the offense before an enhancement is added. Few if any types of fraud or theft escape the current definition.

The proposal with respect to U.S.S.G. § 3B1.2 (role in the offense) is also an improvement. I would suggest option one is the most preferable of the options under Note 7 reading as follows: Option 1 is prefered because it affords the sentencing judge the most flexibility in determining whether or not to apply the two level adjustment for minor role and, unlike option 2, does not repeat the Application Note position contained in Note 8 concerning burden of pursuasion.

The firearms amendments are mostly technical and it would be useful for the Commission to have a period where it does not amend the firearms guideline. I do believe that an appropriate differentiation can be made between different weapons including weapons that fall within 26 U.S.C. § 5845 and its various subdivisions. Whether the differentiation should be made by different offense levels, by placement of the sentence within a the guideline range, or by a Commission-guided departure, depends on the weapon involved. It would seem that a fully automatic machine gun is different from a sawed-off shotgun which is different from a sawed-off rifle which is different from other weapons such as tear gas "pen guns," all of which are prohibited in Title 26.

I have no great critism of the proposed amendment § 3B1.3 abuse of position of special trust or use of special skill. However, perhaps the time has come to separate these two concepts into separate adjustment sections. It would seem to me be best to leave special trust as a Chapter 3 adjustment with appropriate illustrations in the application notes rather than adding it as a specific offense characteristic in a hit or miss fashion to various guidelines relating to fraud or embezzlement or in general to the embezzlement guideline. Certainly the proposed amendment is superior to the additional issue for comment, particularly as it relates to deleting the example regarding "ordinary bank tellers".

The proposal relating to 5K1.1 - issue 24 - will apply to very few cases if it is intended to exclude "crimes of violence" where that concept includes drug offenses. It also has limited usefulness because of the exclusion of anyone who is not a "first offender".

At least it should include all category I offenders and perhaps all category I and category II offenders. The injustice which it is intended to address is not related or necessarily related to whether the defendant is category I or category VI, but the proposal is at least some improvement over the current requirement for a government motion.

I should add with respect to § 5K that I have, as have other attorneys, experienced cases in which this proposed amendment could well have made a difference.

With respect to the proposal number 25 relating to § 6B1.2 the idea is commendable. Perhaps a stronger word than "encourages" should be utilized. I would suggest a policy statement that requires the government to make such the disclosures at either option point and provides as a ground for downward departure the intentional failure of the government to do so. Experiences has taught that toothless platitudes rarely modify prosecutorial behavior in an adversary system.

The Commission should act on issue for comment number 40 relating to the mandatory minimum and distinction between cocaine and cocaine base. Significant support exists not only from the interjection of the Commissions expertise, but also other sectors of the criminal justice system for the elimination of this distinction.

Proposed numbers 44, 45 and 46 are all poor ideas, poor policy, and should not result in favorable action. They would increase unwarranted disparities and would not further the purposes of sentencing indicated by Congress.

Proposal number 57 submitted by the Department of Justice should not be acted upon. It is an attempt to accomplish exactly the opposite of what it purports to do. The Department of Justice obviously intends to utilize its proposed amendment, if it becomes the guideline, as the Commission's position which ought to be followed by the Courts in prohibiting attacks on prior convictions. It is my understanding that the Commission wishes to take no position and allow the courts to develop their own procedures. If the Commission does intend to take a position on this procedural question, it should study the matter, invite additional comment, and it is hoped, ultimately recommended that the courts permit collateral attacks on prior convictions utilized to enhance sentences.

I had promised to make this letter brief. There are many other things I could or should say, but will not. I will say that the last two cycles of amendments have been encouraging insofar as they have addressed problems of harshness and not simply been "fixes" of guidelines which appear to be too low to some other components of the criminal justice system.

Sincerely,

SCOTT F. TILSEN
Assistant Federal Defender

SFT/tmw

United States District Court
Central District of California
751 West Santa Ana Boulevard
Santa Ana, California 92701

Chambers of
Alicemarie H. Stotler
United States District Judge

714 / 836-2055
FTS / 799-2055

March 03, 1993

Judge Billy W. Wilkins, Jr.
Chairman
U. S. Sentencing Commission
One Columbus Circle, N.E., Ste. 2-500
Washington, D.C. 20002-8002

Re: 1993 Proposed Amendments

Dear Chairman Wilkins:

I wish you and the Commission and the Judicial Working Group a productive March 8th conference.

I submit herewith comments on the proposed amendments for the 1993 cycle. As always, silence is ambiguous and may signify one or more of the following: approval; no opinion; deference to others more knowledgeable; no experience; no clue. One almost overriding consideration governs my responses: everyone complains when changes occur and therefore only absolutely necessary changes should be made. Those, we recognize by the vague notion of "consensus," untoward appellate attention, and by the insights contained in comments by Sentencing Commission "consumers."

On separate pages, then, numbered to match with the number of the proposed amendment, I comment where (1) I cannot restrain myself; (2) where I feel certain that reasonable minds will differ and I want my vote recorded; (3) where I feel qualified to take issue with the need for any change at all; and, (4) where I disagree for reasons stated.

If any member of the Commission/staff reviewing these remarks wishes further explanation, please call.

Sincerely,

Alicemarie H. Stotler

Alicemarie H. Stotler
United States District Judge

Amendment 3

1. Omit proposed § 1B1.12

Unless the function of Policy Statements has been expanded to alert attorneys to a law that they should already know if they handling a juvenile case in federal court or to alert probation officers to the non-applicability of guideline sentencing to juveniles, this addition is an accurate but superfluous statement of prevailing law. § 1B1.12 is unnecessary inasmuch as the Supreme Court decision states the rule.

(I suppose it is ironic that in a recent juvenile homicide on my docket, neither counsel nor the probation officer appeared to know of U.S. v. R.L.C..)

2. Retain the Second Paragraph of § 5H1.1

We know that "Age" is discussed in Chapter 5 and I favor **retention** of § 5H1.1's second paragraph.

It is still accurate; R.L.C. merely put a cap on the sentence. Either the case citation, or one sentence, or both, could be inserted:

> However, the sentence may not exceed the maximum of the guideline range applicable to an otherwise similarly situated adult. See United States v. R.L.C., 112 S.Ct.1329 (1992).

3. Fix the Index

No entry appears in the Index for "minors" or for "juveniles." The amendment could be downgraded as suggested above and enlarging the Index would be the simplest place to help practitioners and probation officers note this minor addition.

Amendment 56

As suggested on page 5 concerning "healing" amendments, retroactive applications will hopefully be kept minimal.

It seems that § 3582(c) contemplated primarily Offense Level changes as grounds to modify sentences. This Amendment would be the first, as best as I can tell, to inject Chapter 3 Adjustments into Chapter One's list in § 1B1.10(d)'s retroactive amendments.

It certainly is a policy call, of course, but my fairly recent research on this issue indicated that no Circuit was concluding that the amendment to § 3E1.1 was to be applied retroactively. There will be a great number of motions forthcoming, be assured.

746 U.S. POST OFFICE
AND COURT HOUSE
5th AND MAIN STREET
CINCINNATI 45202-3980

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

February 23, 1993

U. S. Sentencing Commission
One Columbus Circle, N. E., Suite 2-500
Washington, D. C. 20002-8002
Attention: Public Information

Dear Judge Wilkins

Attached hereto are personal comments regarding certain proposed guideline amendments. I have written a separate document for each of the issues on which I commented. Understand that the comments provided are only my own and are not representative of this agency or the Court for which I work.

Thank you for the opportunity to comment on the proposed amendments.

Sincerely

David E. Miller

David E. Miller, Deputy Chief
U. S. Probation Officer

746 U.S. POST OFFICE
AND COURT HOUSE
5th AND MAIN STREET
CINCINNATI 45202-3980

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

*****MEMORANDUM*****

DATE: 2-23-93

RE: **26. Issue for Comment.**

FROM: David E. Miller, Deputy Chief
U. S. Probation Officer

TO: U. S. Sentencing Commission
Public Information

✳ The appropriate guideline for carjacking is the robbery guideline found at 2B3.1. It has all the elements needed to calculate the offense level. Carjacking is a violent offense commited against a person and should comprise its own count group for each crime.

THOMAS P. JONES
ATTORNEY AT LAW
EAST CENTER STREET
P. O. DRAWER 0
BEATTYVILLE, KENTUCKY 41311
(606) 464-2648

February 22, 1993

U.S. Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, DC 20002-8002

To the U.S. Sentencing Commission:

I would like to express my support for the proposed amendments to the Sentencing Guidelines. I would especially like to voice my support for the following four amendments:

Proposal II, option 1: restructures 2D1.1 so that the offense level is based on the largest amount of a controlled substance in a single transaction.

Proposal 39: reduces the offense levels associated with higher drug quantities by two levels.

Proposal 50: bases the offense level in 2D1.1 on the amount of actual L.S.D. involved without including the weight of any carrier medium.

Proposal 56: pertains to 1B1.10, expanding the court's ability to apply changes in the Sentencing Guidelines retroactively.

These proposals would all help to insure fairer judgment in dealing with small-time drug offenders. It is only fair and reasonable to make any changes retroactive, providing convicted offenders the same reduced sentences being granted to new offenders. Thank you for your efforts at making the guidelines more equitable, so that the punishment will truly reflect the crime.

Sincerely,

Thomas P. Jones

Thomas P. Jones
Attorney at Law

TPJ/bm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

CHAMBERS OF
HAROLD D. VIETOR
U. S. DISTRICT JUDGE
U. S. COURT HOUSE
DES MOINES, IOWA 50309

February 9, 1993

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

Attention: Public Information

This letter sets forth some comments I have concerning proposed guideline amendments. I may supplement these comments with a later letter after I have had an opportunity to examine the proposed guidelines amendments in greater detail.

By and large, the proposed amendments look good to me. I strongly favor proposed amendments 1, 9, 10, 11, 12, 23 and 25.

In respect to 13, issue for comment, I believe that section 2D1.1 should be amended to reduce the amount of drugs for which the defendant should be held responsible to the amount that the negotiated payment would fetch on the actual market.

In respect to 24, issue for comment, I believe that the court should have downward departure power for substantial assistance, without a government motion, when the defendant is a first offender and the offense involves no violence. Indeed, I would prefer an even broader power.

In respect to 40, issue for comment, I believe the Commission should ask Congress to eliminate the 100 to 1 ratio for powder and crack cocaine. The Draconian sentences required for crack offenders are unconscionable.

In respect to 66, issue for comment, I strongly oppose a 4 level enhancement for felonies committed by a member of, on behalf of, or in association with a criminal gang because I believe that such a guideline would be difficult to apply, would border on guilt by association, and would tend to infringe on constitutional rights of free expression and association. It would work far more mischief than good, I fear.

Sincerely,

Harold D. Vietor

Harold D. Vietor

DEPARTMENT OF THE TREASURY
WASHINGTON

March 19, 1993

The Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1 Columbus Circle, N.E.
Suite 2500
South Lobby
Washington, D.C. 20002-8002

Dear Judge Wilkins:

The United States Sentencing Commission has proposed changes to the sentencing guidelines concerning sentences for money laundering crimes and violations of currency reporting laws. The changes proposed by the Commission would reduce the base offense level for these crimes and violations, and increase this offense level only based upon particularized characteristics of the offense or the state of mind of the offender. The Commission has advanced these suggested changes in response to some perceived excessive sentences with respect to "minor" money laundering offenses, and violations of regulatory reporting requirements.

The efforts of the Commission to change the sentencing guidelines to ensure that the sentence imposed is commensurate with the seriousness of the offense are laudatory. However, Treasury believes that the proposed changes to the sentencing guidelines for money laundering and currency reporting violations are contrary to both the Commission's past efforts and the intentions of Congress in enacting the money laundering and currency reporting laws. Therefore, Treasury opposes the Commission's proposed changes to the sentencing guidelines.

The two major money laundering statutes, 18 U.S.C. 1956 and 1957, provide for 20 and 10 year terms of imprisonment, respectively. It is apparent that Congress recognized money laundering as an offense separate from the underlying predicate crime that is deserving of independent and lengthy punishments.

The proposed changes to the sentencing guidelines for money laundering offenses would lower the base offense level and result in shorter sentences. At a time when the available information and statistics suggest that the volume of currency being laundered has grown tremendously and the methods and schemes of laundering money have proliferated and become increasingly more complicated, to lower the sentences for money launderers would be counter productive to all other law enforcement efforts.

The Department of Justice has submitted comments that include alternatives to the changes proposed by the Commission. While the alternatives suggested by the Justice Department proposal, and the analysis and reasoning offered in support thereof, acknowledge the Commission's concern for lower sentences in certain types of cases, the Justice proposal recognizes the serious nature of the money laundering offense and maintains a base offense level commensurate with the seriousness of the offense. Treasury believes that the Justice Department proposal accommodates the current need for the majority of money laundering offenses.

With respect to the currency reporting violations, 26 U.S.C. 7203 (26 U.S.C. 6050I), 31 U.S.C. 5313, 5314, 5316 and 5324, the Commission proposes to combine current sentencing guidelines 2S1.3 and 2S1.4 and create a base offense level of 8 or 6 with an adjustment for the value of funds involved. Merging 2S1.3 and 2S1.4 would treat the failure to file a monetary instrument report(31 U.S.C. 5316), the same as the failure to file other financial transaction reports. Representatives from Justice and Treasury discussed this alternative prior to its submission to the Commission and concur that the base offense levels proposed by the Commission are too low. Accordingly, the Justice Department has proposed an alternative, enclosed herewith, which combines current sentencing guidelines 2S1.3 and 2S1.4 with a base offense level of 13, 9, or 5.

The Commission considered currency reporting violations to be regulatory violations that need not be sentenced as severely as other money laundering offenses. For the reasons advanced by the Justice Department in its proposed alternative on currency reporting violations and for the additional reasons advanced below, Treasury does not agree that the base offense level for these violations should be reduced from 13 to 8.

The Bank Secrecy Act and its legislative history demonstrate that Congress believed certain reporting violations are criminal in nature and should be punished as such. This Congressional intent is reflected in 31 U.S.C. 5322, the criminal offense section, where enhanced violations are punishable by a term of imprisonment of up to ten years.

The principal anti-money laundering law enforcement effort currently is directed at detecting currency upon its entry into the financial system, the placement stage. The placement stage is acknowledged to be the most vulnerable phase of the money laundering operation. Presently, virtually every regulatory reporting requirement is aimed at recording funds at the placement stage of the money laundering scheme.

The enforcement of financial transaction reporting requirements has created a simple, wide-ranging process which identifies large

transactions in currency and monetary instruments. Congress recognized the value in this process and enacted a separate provision, penalizing the structuring of transactions to avoid the reporting requirements. Sentences must be severe enough to ensure the compliance necessary to support the overall anti-money laundering law enforcement effort; a base offense level of 8 or 6 is insufficient for this purpose.

The United States has participated in the meetings and discussions of the Financial Action Task Force (FATF). Through its membership, the United States has encouraged other nations who participate in the FATF to adopt currency reporting requirements as an important part of an overall anti-money laundering program. Indeed, some of the FATF member nations have begun considering currency reporting requirements.

At the same time that the value of currency reporting is being advanced by the United States in the international forum, the Commission proposes to reduce the sentencing guideline offense levels for failing to comply with those reporting requirements. The Commission's proposal to reduce the base offense level for failing to comply with the currency reporting guidelines is not the appropriate signal to send to the other FATF members and the international law enforcement community, who are eager to join in the fight against money laundering.

The Commission's proposed changes would only increase the level of the offense based upon the value of the funds involved in the reporting offense. The Commission should be mindful, however, that the value of the funds involved in a money laundering offense may not be an accurate measure of the harm caused.

For the reasons advanced above and for the reasons advanced by the Department of Justice, the Department of the Treasury endorses and supports the Department of Justice's proposals concerning the sentencing guidelines for money laundering offenses and for currency reporting violations.

Treasury appreciates the opportunity to share its views with the Sentencing Commission.

Sincerely,

John P. Simpson
Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement)

Enclosure