2. PAG's proposed alternate amendment if the Commission is determined to adjust the mitigating role cap

With all of that said, if the Commission is determined to modify the role cap in a way that would provide less of a reduction for offenders deemed less worthy – which we think it should not – we would conditionally propose that the reduction should be scaled differently based on base offense level, before application of the role reduction itself. **That is, for persons who will receive a role reduction and whose base offense level is 30, the offense level should be capped at 29. For persons who receive a role reduction and whose base offense level is 32 or 34, the offense level should be capped at 30. For persons who will receive the role reduction and whose base offense level is 36, the offense level should be capped at 32. For persons who will receive the role reduction and whose base offense level is 38, the offense level should be capped at 34.**

We make this proposal conditionally, in the event the Commission is determined to Act, and make plain our belief that the role cap should not be amended at all. However, our proposed conditional amendment would account for any concern that a person at an extremely high offense level of 36 or 38 would receive a more modest benefit from the role cap – a four level reduction at each offense level instead of a six or eight level benefit from the role cap. From what we can tell, there are few drug mules receiving role reductions at offense level 36 or offense level 38, but such an amendment would provide a more scaled and less generous benefit for couriers responsible for such prodigious amounts of drugs. This alternate proposal also conditionally answers the first two issues for comment: if there is a change, the reduction should begin at a lower offense level (the benefit should inure to persons at level 30), and the reduction should be scaled differently.

3. If the Commission adopts amendment 6 as written, it should adopt the greatest "additional reductions" in the proposal as written

Finally, while we oppose the proposed amendment as currently written, if it is enacted as proposed, we urge the Commission to make the "additional reduction" one level at offense level 30, 2 levels at offense levels 32 to 34, and 3 levels at offense levels 36-38. This would be an amendment that would encompass the greatest reduction in the proposed amended USSG §3B1.2(b)(1), (2), (3).

Conclusion

In 2002, less than two years ago, the Commission found that base offense level 30 adequately reflects the culpability of defendants who qualifying for a mitigating role adjustment. That finding is no less true today, and is unchallenged. Given that, and without any indication that the mitigating role cap is operating in a way other than it was

intended, and with our demonstration that the cap is modest and is effectively controlled by the Department of Justice, we respectfully urge the Commission to reject amendment 6 in its entirety.

II. Proposed Amendments to Chapter 8 (Amendment #2)

In our February 27th letter, we addressed the issues for comment relating to proposed Amendment #2. In this letter, we address the proposed amendment to the organizational guidelines commentary where this Commission would, for the first time, take an affirmative position on questions concerning waiver of attorney-client privilege, as well as work product protections. PAG strongly urges the Sentencing Commission not to enact the proposed amendments as currently drafted.

We are aware of the Ad Hoc Advisory Group's Report, issued October 7, 2003. Even that body acknowledged when it presented its report, however, that "[t]his is a topic of hot discussion currently." Oct. 7, 2003 Presentation, at 28. In fact, it noted how "there probably is not a hotter topic right now." *Id.* at 29. As the Report itself also indicates, "there is a significant and increasingly entrenched divergence of opinion between the U.S. Department of Justice and the defense bar as to (1) the appropriate use of, or need for, waivers as a part of the cooperation process, and (2) the value of adding a statement in the organizational sentencing guidelines that would clarify the role of waivers in obtaining credit for cooperation." October 7, 2003 Report, at 103.

We recognize that the Ad Hoc Advisory Group claims to have reached a "consensus" on its recommendations for waivers of privilege and work product protections. The problem with this consensus, however, is that its admittedly "diplomatically articulated language," October 7, 2003 Presentation, at 30, leaves too much undefined and uncertain. *See id.* at 62 (Judge Sessions: noting how provision is "somewhat vague ... in many ways"). The proposed amendments, for example, state that, "in some circumstances waiver of the attorney-client privilege and of work product protections may be required in order to satisfy the requirements of cooperation." What are these circumstances? Are they frequent or rare? And who is to determine what the circumstances are? More importantly, what standards are to be applied in this determination - or are there even any standards? These crucial questions were apparently passed over in an effort to reach a nominal "consensus," but the result is no real guidance at all.

The Ad Hoc Advisory Committee's Report suggests that the defense bar wanted the Commission to "explicitly clarify the role of waivers in obtaining credit for cooperation." Report at 103. While it is true that many in the defense bar asked the Commission to clarify that waivers should never be required, this statement is not accurate if it is meant to suggest that the defense bar wanted a clarification at all costs, even if it meant that the defense's requested clarification was rejected, and a green light would be given to some coerced waivers. While we appreciate the Ad Hoc Committee's

willingness to state that waivers cannot always be required in this context, the language that follows and blesses waivers in "some" circumstances essentially vitiates any help this language might provide, particularly when no parameters are placed on what those circumstances are, or how often "some" acceptable circumstances may exist. If the Commission were to simply enact the provisions stating that waivers are not required in order to get a cooperation adjustment or substantial assistance departure, we would concur that this would represent the true clarification the defense bar sought. If the Ad Hoc Committee's entire current recommendation is considered, however, including its blessing of waivers in some circumstances, this is not a clarification at all. *We would rather that the Commission do nothing at this time than do this.*

As the Commission noted during the Ad Hoc Committee's presentation, the Justice Department plans to issue a memorandum soon detailing what it considers "best practices in regard to the waiver of privilege as a basis for cooperation." Presentation at 62. We concur with Judge Sessions that the Commission "need[s] to know specifically what the Justice Department's position is," *id.* at 62, before it codifies these amendments and buys into a process whose parameters could soon change, perhaps even dramatically. At present, there is apparently "a great divergence of opinion" on this issue even among U.S. Attorneys around the country. *Id.* at 63. It is unclear what position will ultimately prevail, particularly when some agencies, such as HHS, have policies that "appear to rule out waiver as a factor in leniency as it pertains to Medicare and other civil fraud investigations," Report at 97 - a significant segment of current organizational guidelines cases. This Commission should not affirmatively bless waivers in the face of such contrary regulations, effectively overruling them and siding with the DOJ.

Moreover, even if this Commission were to decide to bless waivers over our objections, we strongly submit that additional specific limitations should be codified in any such amendment. For example, in arguing why such waivers should not always be prohibited, the Justice Department told the Ad Hoc Committee of circumstances in which such waivers were supposedly "the only means by which a cooperating organization can disclose critical information." Report at 100. The current proposal does not codify this "last resort" exception, however – as would be far preferable. Instead, the proposed amendment does not even build into the new language even the minimal protection expressed in Deputy Attorney General Thompson's Justice Department memo, that any waivers "should be limited to the factual internal investigation and any contemporaneous advice given to the corporation concerning the conduct at issue," as opposed to advice concerning the criminal investigation itself. Report at 95. Worst of all, the proposed amendments fail even to codify the present state of affairs - that waivers are, and should remain, the "exception rather than the rule." Report at 98. Were these alternatives rejected by the Ad Hoc Committee? If so, why? If not, why not? The answers are unclear.

We recognize the natural tendency for the Commission to view favorably any "consensus" language reached by a committee that has worked for 18 months, even if the

Ad Hoc Committee did also work on many other issues during that time. Nevertheless, doing "something" is not always preferable to doing nothing, particularly when it may bring unintended consequences. Even the Ad Hoc Committee's report suggests that its recommendations would be merely the beginning, and not the end, of discussion on this subject. *See* Report at 5 ("the Advisory Group has identified *a possible approach* to modifying the organizational sentencing guidelines in this regard."); *id.* at 103 ("the Advisory Group suggests [this as] a *possible solution* for *further consideration* by the Sentencing Commission"); Presentation at 30 ("we would expect, *if the Commission does decide to promulgate a proposal based on our report,* that this particular section will engender much discussion during your process.... I'll leave it at that.").

For its part, the Justice Department told the Ad Hoc Committee "that there is no need for language to be added to the organizational sentencing guidelines" on this point. Report at 103. The proposed amendments do the defense bar no great favors, and we submit at a minimum that they should be deferred for further study. *Cf.* Presentation at 55 ("[W]e did run into some real data problems and there just isn't a lot of data out there.... So it's hard to draw any conclusions."). *See also* Report at 98 (only 35 surveys received from U.S. Attorney's offices, with most responders prosecuting only about 2 corporations a year). With only 39% of only 238 organizations last year even subject to the organizational guidelines, Report at 25, the urgency of adopting an amendment on this divisive issue at this time, based on less than complete information, is not apparent.

More time and consideration should be given to the unresolved, and currently unresolvable "litigation dilemma," which currently subject litigants asked to waive privileges in a criminal case "to potentially crippling civil damages in addition to criminal penalties," Report at 102.[2] Greater consideration should be given to defining parameters and specifying limits – so that, if allowed at all, waiver coercions should be permitted, at most, only as a matter of last resort. The Commission should also consider whether further distinctions might be drawn between waivers permitted in the departure context, U.S.S.G. § 8C4.1, and those affecting an organization's mere culpability score, U.S.S.G. § 8C2.5, where we strongly submit none should be allowed. Concern should also be focused on whether any authorization of waivers in these organizational guidelines might be cited in the future as establishing Commission precedent for a change in other guidelines, with individuals perhaps to be asked in the future to waive attorney-client and work product protections in order to receive a U.S.S.G. § 5K1.1 benefit, or even to receive acceptance of responsibility. Given the gravity of these issues, the admitted limits on empirical data, and the divisiveness of debate, we ask that the Commission not enact these provisions at this time.

Again, we appreciate the opportunity to provide the Commission with our perspective on these important issues.

Sincerely,

James Felman & Barry Boss
Co-chairs, Practitioners' Advisory Group

cc: Charles Tetzlaff, Esq.
Timothy McGrath, Esq.

[2] As the Committee seemed to recognize, this "dilemma" cannot be alleviated without passage of new federal legislation, and even the SEC's proposed legislation now before Congress would exempt from a general waiver only disclosures made to the

SEC—not to all federal prosecutors or investigators.

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March 10, 2004

MEMORANDUM

TO: Commissioners

FROM: Charles R. Tetzlaff
General Counsel

SUBJECT: Public Comment

We are enclosing additional public comment received since our mailing of last week. The Chapter Eight additional comment is in the same format as last time.

We have also added a letter from ChevronTexaco at the end of the comment letters which was just received today. Any additional comment received after today will be provided to you at next week's meeting.

Enclosures

PUBLIC COMMENT SUMMARIES
Addendum
March 1, 2004

Amendment No. 1 - PROTECT Act, Child Pornography and Sexual Abuse of Minors

Committee on Criminal Law (CLC)
of the Judicial Conference of the United States
The Honorable Sim Lake, Chair
Houston, TX

The Committee on Criminal Law (CLC) fully supports the proposal to consolidate §§2G2.2 and 2G2.4 because it believes sentencing guideline applications will be simplified with this consolidation.

The CLC takes no position on the Commission's response to the directive in the PROTECT Act to increase the penalty for child pornography offenses based on the number of images involved. With respect to defining the term "image" or how such images should be counted, the CLC has no position, but would be willing to review any proposals developed in this regard.

Probation Officers Advisory Group
Cathy A. Battistelli, Chair
Concord, New Hampshire

The Probation Officers Advisory Group (POAG) strongly supports the consolidation of §§2G2.2 and 2G2.4 as, in its opinion, the current cross references create confusion and disparity in application, often resulting in lengthy sentencing hearings. The POAG chooses Option 1 for ease of application and notes that Option 2 could produce the same issues as in the existing cross reference applications.

Issue for Comment #1

The POAG thinks it appropriate to consider relevant conduct and recognizes that this approach is consistent with guideline application as a whole. In its view, there does not appear to be any compelling reason to justify treating child pornography cases differently from those defendants who commit bank robberies, drug crimes, or fraud.

Issue for Comment #2

The POAG suggests the proposed definitions would assist the field in guideline application. It notes there are continuing concerns as to the lack of instruction for counting the number of images and requests more guidance in the form of an application note. In addition, if the existing specific offense characteristics (SOCs) regarding an increase for the number of items as well as the number of images remain, the POAG

requests an application note explaining whether this is "permissible double counting" or whether these SOCs should be applied in the alternative.

Issue for Comment #3

The group does not think the Commission should include definitions for sadistic or masochistic or other depictions of violence. The POAG recommends leaving the interpretation of these definitions with the courts.

Issue for Comment #4

The POAG supports the creation of a new guideline for "travel act" offenses at §2G1.3 with specific offense characteristics to distinguish these acts from other crimes. In addition, the POAG recommends Option 1A as, in its view, it provides ease of application by remaining in a "travel act guideline." Option 2A is preferable to Option 2B as, in the POAG's view, Option 2B poses ex post facto problems if there are changes to the statutory definitions. In addition, the POAG notes, there may be some confusion over whether a conviction of 18 U.S.C. § 2423(d) is required for this enhancement.

Issue for Comment #5

The POAG proposes there be some proportionality between the §2A3.1-2A3.3 guidelines and the §2G guidelines. In §2A3.1, it has a concern regarding a potential double counting issue between Option 1 and §2A3.1(b)(2) as this SOC already provides for increases based on the age of the minor. If Option 1 is chosen, the group would request an instruction as to whether this is "permissible double counting."

The POAG recognizes the Native American Advisory Group has concerns about the interaction between the new definition for pattern of activity enhancement at §4B1.5 and offenses sentenced under § 2A3.2, and the POAG defers to their judgment on this issue.

Issue for Comment #6

The POAG believes a significant problem could arise if the Commission attempted to define "incest" and suggests that the relationship between the abuser and the victim is the more critical factor rather than the familial bloodline.

Other Application Issues

The POAG agrees that the guidelines for production of child pornography should be higher than mere receipt or possession of child pornography.

As to §2A3.3, the POAG recommends an application note be added directing whether or not a Chapter Three adjustment for Abuse of Position of Trust should apply.

The POAG, recognizing conditions of probation and supervised release are an area of increasing litigation, recommends leaving restrictions to the sentencing court's discretion.

Amendment No. 3 - Body Armor

Probation Officers Advisory Group
Cathy A. Battistelli, Chair
Concord, New Hampshire

The Probation Officers Advisory Group (POAG) believes the active employment of body armor should be included in the commentary notes.

Amendment No. 4 - Public Corruption

Committee on Criminal Law (CLC)
of the Judicial Conference of the United States
The Honorable Sim Lake, Chair
Houston, TX

The Committee on Criminal Law (CLC) supports the proposal to consolidate all four sections of §2C1.1 with §2C1.7, and §2C1.2 with §2C1.6. The CLC reminds the Commission that in 1995 it urged the Commission to undertake an extensive assessment of the sentencing guidelines to determine how they might be streamlined or simplified, and it supports any new efforts in this regard.

Additionally, the CLC believes that the Commission should not include an enhancement in either §2C1.1 for solicitation of a bribe or in §2C1.2 for solicitation of a gratuity. It argues that these enhancements are likely to invite protracted disputes at sentencing over which party initiated the solicitation and it does not view this dispute as vital in terms of relative culpability.

Probation Officers Advisory Group
Cathy A. Battistelli, Chair
Concord, New Hampshire

The Probation Officers Advisory Group (POAG) agrees with the proposal to consolidate §§2C1.1 and 2C1.7, and §§2C1.2 and 2C1.6, with the inclusion of attempts and conspiracies under these guidelines, but takes no position on Issue for Comment #3 as its experience reveals that offense conduct varies widely in public corruption cases.

The POAG would not recommend tiered enhancements based on the degree of public trust held by the public official involved in the offense as, in its opinion, application difficulties could arise in establishing the defendant's actual job duties.

In the POAG's opinion, raising the base offense level to accommodate multiple incidents could unduly punish up to one-third of the defendants sentenced under these guidelines and, therefore, the POAG suggests not increasing the base offense level, but instead argues the enhancement at (b)(1) is a preferable way to sanction this conduct.

Amendment No. 5 - Drugs

Probation Officers Advisory Group
Cathy A. Battistelli, Chair
Concord, New Hampshire

Issue for Comment #2

The Probation Officers Advisory Group (POAG) suggests that a mass marketing approach may be a more appropriate method to sanction distributors using the Internet to sell drugs, and recommends making the definition and the resulting increase in offense levels similar to §2B1.1.

Issue for Comment #3

The POAG suggests an encouraged upward departure be added to include this conduct, and further suggests allowing the sentencing court to use its discretion when imposing an appropriate sentence.

Issue for Comment #4

The POAG encourages the Commission to resolve the circuit split regarding the interpretation of the last sentence in Application Note 12 of §2D1.1.

Amendment No. 6 - Mitigating Role Cap

Committee on Criminal Law (CLC)
of the Judicial Conference of the United States
The Honorable Sim Lake, Chair
Houston, TX

The Committee on Criminal Law (CLC) opposes any attempt to modify the mitigating role cap. The CLC does not believe that the current application of this guideline is problematic, and is unaware of any need to change it.

Probation Officers Advisory Group
Cathy A. Battistelli, Chair
Concord, New Hampshire

The Probation Officers Advisory Group (POAG) generally agrees with the tiered approach to the mitigating role cap, however, it suggests modifying the language to prevent application difficulties as, in its opinion, current language leaves open the possible application of the reduction after specific offense characteristics have been added or subtracted. The POAG suggests that the language be explicit in that the reduction should be premised on the "base offense level" with clear instructions including an example to be added in the commentary at §3B1.2.

Currently, defendants sentenced using the §2D1.2 guideline receive the benefit of the mitigating role cap, however, under this new provision, they would not receive this reduction, the POAG states. It also notes similar application problems might be present at §§2D1.6, 2D1.7, 2D1.10, and 2D1.11 and suggests the word "pursuant" be changed to "using" as a way to resolve this issue.

Practitioners' Advisory Group (PAG)
Co-Chairs Barry Boss and Jim Feldman
Washington, D.C.

The Practitioners' Advisory Group (PAG) opposes the proposed changes to the mitigating role cap provision. In its opinion, the changes are inconsistent with the limited relief provided by the cap, the cap as presently constituted is not overly generous and the concerns that led to the enactment of the cap are present to a greater degree than at the time of its enactment. The PAG notes that only the lowest level drug couriers and mules qualify for it and any benefits from the cap are obtained only at the government's pleasure.

In the PAG's opinion, the cap is a reasoned, limited solution to what is still a pressing problem, enacted in response to concerns that base offense levels from the Drug Quantity Table in USSG §2D1.1 overstate the culpability of certain drug offenders deemed eligible for the mitigating role adjustment. The PAG believes the cap was set at 30 because defendants receiving the mitigating role adjustment could still have a total offense level above 30 due to other adjustments.

It is the PAG's argument that mules and couriers are a limited narrow subclass of drug offenders who have no power within the drug trafficking organization and are often unaware of the exact type or amount of substance they are carrying and the cap is even narrower than this subclass: it is limited to mules and couriers who qualify for mitigating role reduction. The PAG asserts that only the least culpable of the least culpable benefit from the cap and although 1/4 of traffickers received a mitigating role adjustment in 2001, the Commission estimated that only 6% of traffickers benefitted from the cap. The PAG believes no statistical evidence indicates that the 6% figure is too low and the PAG's anecdotal evidence suggests that it might be too high.

The PAG notes that the proposal is described as "less generous" and "more gradual" but no reason is given for a change and no claim has been raised that the cap is operating differently from the way it was designed to work. The Department of Justice (DOJ) has not supported its request for the change by any analysis or evidence, the PAG states, and indeed, the current practice, that the role cap is granted by a judge almost always with the consent of the prosecutor, belies DOJ's position on the cap.

The government effectively controls which offenders receive the benefit of the role cap, in the PAG's opinion, because (1) most role reductions are awarded only when the government concurs in or does not oppose them; and (2) the benefit of the cap only inures when the government makes a substantial assistance motion or the defendant qualifies for the safety valve. Thus it is the PAG's contention that the cap's application is controlled for the most part by the government and the government can reduce the generosity of the cap by opposing anything more than a two level mitigating role adjustment. The PAG states, moreover, the inducement the cap provides in principle for mules and couriers to cooperate with the government actually works in practice. Also, the PAG's own experience and information gathered from supervising probation officers and guideline specialists in many districts reveal that there are many districts in which the cap is virtually unknown and inoperative.

The PAG also believes that the Commission should reject proposals in the issues for comment following this Amendment. The PAG does not believe certain offenses or certain offenders should be categorically disqualified from the cap such as those who use weapons, threaten violence or use minors in the commission of drug crimes as such persons will not qualify for the cap. Already existing guideline enhancements will serve to escalate the offense levels for these offenders, the PAG states. Moreover, in its opinion, the government will still control the outcome for these offenders by its decision not to offer a cooperation deal, by asking for enhancements, by opposing reductions, and by moving for upward departures.

If the Commission is determined to modify the cap, the PAG would propose an alternative amendment. The PAG would have the cap reduction scaled to the offender's base offense level before application of the role reduction. For example, for a person with a base offense level 30, the cap should be 29, for those with a base offense level 32 or 34, the cap should be 30, for those with a base offense level 36, the cap should be 32, and for those with a base offense level 38, the cap should be 34.

Finally, if the proposed amendment is enacted as currently written, the PAG urges the Commission to make "additional reduction" one level at base offense level 30, two levels at base offense level 32 or 34, and three levels at base offense level 36 or 38.

Amendment No. 7 - Homicide

Committee on Criminal Law (CLC)
of the Judicial Conference of the United States
The Honorable Sim Lake, Chair
Houston, TX

The Committee on Criminal Law (CLC) recognizes the need to address proportionality concerns as a result of newly enacted mandatory minimum sentences or direct amendments to the sentencing guidelines by Congress. It states that some of the proposed amendments are intended to address such concerns, but further states that the Commission's remedy for these proportionality issues seems to be to increase the penalties for these offenses. It reminds the Commission that the Judicial Conference has repeatedly expressed concern with the subversion of the sentencing guideline scheme caused by mandatory minimum sentences, which it argues both skew the calibration and continuum of the guidelines and prevent the Commission from maintaining system-wide proportionality in the sentencing ranges for all federal crimes

Additionally, the CLC states that it takes no position with respect to the proposal to provide greater penalties for offenses involving official victims.

Probation Officers Advisory Group
Cathy A. Battistelli, Chair
Concord, New Hampshire

In the Probation Officers Advisory Group's (POAG) opinion, the Chapter Two Homicide and Assault guidelines as written with the current proposals will produce appropriate punishments and pose little application difficulty. As to the Chapter Three issue for comment, the POAG does not recommend a tiered approach in application of §3A1.2, as additional fact-finding issues would be required and could, in its opinion, increase the number of contested sentencings.

Amendment No. 8 - Miscellaneous Amendments

Probation Officers Advisory Group
Cathy A. Battistelli, Chair
Concord, New Hampshire

(D) USSG §2X6.1 -Use of a Minor

The Probation Officers Advisory Group (POAG) noted some concerns as to how multiple counts of this offense would be grouped and it suggests a commentary note be added regarding grouping instructions. In addition, the POAG found the language in §2X6.1, comment. (n.1) to be confusing and it had difficulty interpreting the wording "the offense of which the defendant is convicted of using a minor," and it recommends additional instructions for this guideline.

Issue for Comment No. 10 - Aberrant Behavior

Committee on Criminal Law (CLC)
of the Judicial Conference of the United States
The Honorable Sim Lake, Chair
Houston, TX

The Committee on Criminal Law (CLC) opposes any attempt to further limit the courts' discretion with respect to aberrant behavior departures. It argues that studies conducted after the enactment of the PROTECT Act show that judges are not abusing their departure authority, and as a result, the CLC believes that further downward departure limitations are unwarranted.

PRACTITIONERS' ADVISORY GROUP
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March 5, 2004

VIA HAND DELIVERY

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

Re: 2004 Proposed Amendments and Issues for Comment (Supplemental Submission)

Dear Commissioners:

We write to supplement our prior letter of February 27, 2004, and to provide our perspective on two other important issues being considered by the Commission.[1]

I. Proposed Amendments relating to the Mitigating Role Cap (Amendment # 6)

Introduction

Excessive sentences and mandatory minimum sentences have come under heavy fire in the past several years, from all corners. From two Associate Justices of the Supreme Court to the Sentencing Commission itself, reasonable judges, lawyers and citizens recognize that the federal drug sentences and mandatory minimums meted out every day in federal court for low level, first time non-violent offenders are patently excessive.

The Sentencing Commission has understood this for many years – the excessiveness of mandatory minimum sentences is an open secret among those who practice in federal court. It was this knowledge that drove the Commission to enact the mitigating role cap – Amendment 640, effective November 1, 2002. Amendment 640 was an extremely limited, narrow modification that capped the base offense level at 30 for a narrow class of offenders who received minor or mitigating role adjustments. Amendment 640 was limited not only because it benefitted only a small number of the least culpable offenders who had minor involvement, but because its impact was limited

[1] We note with disappointment that the Commission did not promulgate any proposals relating to "compassionate release," pursuant to 18 U.S.C. § 3582(c)(1)(A), notwithstanding that this issue was listed as a "priority" for the 2004 amendment cycle. We hope that the Commission will address this important issue during the next amendment cycle.