United States v. Carey, 895 F.2d 318, 326 & n.4 (7th Cir. 1990). Responding to this circuit conflict, in November of 2000 the Commission amended the guidelines by attempting to slightly relax the "single act" rule in some respects and provide guidance and limitations regarding what can be considered aberrant behavior. The Commission also determined that this departure is available only in an extraordinary case.

On October 8, 2003, the Commission adopted emergency amendments, effective October 27, 2003, implementing a number of PROTECT Act directives. Included in these amendments were newly prohibited grounds for departure relative to aberrant behavior. For example, the Commission determined that an aberrant behavior downward departure is not warranted if the defendant has any significant prior criminal behavior, even if the prior behavior was not a federal or state felony conviction. The Commission also determined that an aberrant behavior downward departure is not warranted if the defendant is subject to a mandatory minimum term of imprisonment of five years or more for a drug trafficking offense, regardless of whether the defendant meets the "safety valve" criterial at §5C1.2. As you know, studies conducted after the enactment of the PROTECT Act show that judges are not abusing their departure authority. As a result, the Committee believes that further downward departure limitations are unwarranted.

The Committee 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 appears that some of the proposed amendments, for example, the proposal to increase the offense levels for "date rape" drugs, second-degree murder, voluntary manslaughter, and involuntary manslaughter, are intended to address such concerns. Unfortunately, it appears that the Commission's remedy for these proportionality issues is to increase the penalties for these offenses.

The Judicial Conference has repeatedly expressed concern with the subversion of the sentencing guideline scheme caused by mandatory minimum sentences, which 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. The Committee continues to believe that the honesty and truth in sentencing intended by the guidelines is compromised by mandatory minimum sentences. The Committee also believes that the goal of proportionality should not become a one-way ratchet for increasing sentences, especially in light of data showing that the majority of guideline sentences are imposed at the low end of the applicable guideline range. This data indicates that in most cases judges find the existing guidelines more than adequate to allow significant punishment.

The Committee takes no position in response to the directive to the Commission 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 Committee has no position, but would be willing to review any proposals developed in this regard. Also, the Committee takes no position with respect to the appropriate guideline for a new offense that prohibits access to or use of a protected computer to transmit multiple commercial electronic messages (18 U.S.C. § 1037). Likewise, the Committee takes no position with respect to the proposals to provide greater penalties for offenses involving official victims.

With respect to immigration offenses, the Commission has already made revisions to U.S.S.G. §2L1.2 in 2001, 2002, and 2003. Since acts of terrorism can be separately charged by the government, we support the delay in any revisions to the immigration guidelines until a comprehensive package can be developed.

Finally, the Committee reviewed the proposed revisions to the organizational guidelines. The Committee opposes the elimination of the prohibition for the three-point reduction in the culpability score for an effective compliance program if the organization unreasonably delayed reporting an offense to appropriate governmental authorities after becoming aware of the offense. The Committee believes that the claim to have an effective compliance program is inconsistent with unreasonable delay in reporting the offense after its detection. The Committee generally supports the increase in the reduction of the culpability score under §8C.25(f) for an effective compliance program.

We appreciate the opportunity to present our views. If you need any additional information, please feel free to contact me at (713) 250-5177, or Judge William T. Moore, Jr., Chair of the Committee's Sentencing Guidelines Subcommittee, at (912) 650-4173.

Sincerely,

Sim Lake

CHAPTER 8 OF THE SENTENCING GUIDELINES

PUBLIC COMMENT SUMMARY

ADDENDUM

as of 3/08/04

NOTE: New comments are indicated in bold.

I. Scope of Program--§8B2.1: "Violation of Law" vs. "Criminal Conduct"

No additional comment.

II. Effective Program--§8B2.1(a)&(b): Due Diligence, Culture, & Ethics

Comment: The proposed amendments fails to enunciate "any real measures of effectiveness." On the contrary, the amendments focus on due diligence criteria that could be met with a "paper" program. (Meta)(Mason) (Dreilinger)(Gruner)**(Michaelson)**
Recommendations: 1) Employ "ethics" in determinations of effectiveness: Check for a code of ethics; its application; and tested/observed changes in knowledge, attitudes, and practices. (Meta)(Mason)(Gruner)
2) Make sure that an evaluation of effectiveness measures both positive behavioral changes and thes sustainability of these changes. (Dreilinger)
3) To fully evaluate effectiveness, look at the seven minimum steps *and* other relevant characteristics. **(Michaelson)**

Comment: The absence of any new ethics requirement(s) is appropriate, for despite pressure to adopt one, it is clearly beyond the Commission's mandate. (Pharm)(Chem)**(Michaelson)**
Recommendation: Continue to leave ethics as an aspirational goal.
(Pharm)(Chem)**(Michaelson)**

III. Seven Minimum Steps--§8B2.1(b)(1-7)

A. Step One--§8B2.1(b)(1): Establish Compliance Standards and Procedures

No additional comment.

B. Step Two--§8B2.1(b)(2): Organizational Leadership

Comment: The "organizational leadership" should be given a more active role. (EPIC/Johnson)(HCCA)(ERC)**(HIPAA)**
Recommendations: 1) Add a requirement in proposed §8B2.1(b)(2) that obligates the leadership to demonstrate a commitment to the compliance program. (EPIC/Johnson)
2) §8B2.1(b)(2) language should be changed to: "The organizational leadership shall provide direction to and be knowledgeable of the content and operation of the program." (ERC)
3) Amend the language in §8B2.1(b)(2) to make it clear that the compliance officer "coordinates," "evaluates," and "reports" to, and for, the organizational leadership and governing authority–who share responsibility for implementation with them. (HCCA)**(HIPAA)**

Comment: The proposed language at §8B2.1(b)(2) suggests that the compliance officer, as opposed to the management of an organization, has the responsibility to "ensure the implementation and effectiveness of the program." The amendment overstates the role and authority of the compliance officer and absolves management of its responsibility. History and case precedent state that the corporation and its senior management are ultimately responsible, not the compliance officers. (CHW)(Pharm)(Prov)**(ALLINA)**
Recommendations: 1) Change language in §8B2.1(b)(2) to "specific individuals within high-level personnel of the organization shall be assigned direct, overall responsibility to coordinate the design, oversee the implementation, and evaluate and report to management and the board on the effectiveness of the program to prevent and detect violations of laws." (CHW)**(ALLINA)**
2) Clarify that the responsibility for implementation and effectiveness is an organization-wide commitment involving all of management. (Pharm)(Prov)

C. Step Three--§8B2.1(b)(3): Substantial Authority Personnel

No additional comment.

D. Step Four--§8B2.1(b)(4): Training

Comment: The proposed amendments could provide more explicit guidance about the nature and extent of the training obligation – for example, to provide senior management training. (Dreilinger)(HCCA)(EPIC/Johnson)**(HIPAA)**
Recommendations: 1) Add to proposed §8B2.1(b)(4) language that makes it clear upper-level personnel are subject to comparable training. (Dreilinger)
2) Add a new Application Note 5 to §8B2.1 to clarify that, if a training obligation extends to independent contractors, this obligation can be met by the contractor through its own internal training program. (HCCA)**(HIPAA)**
3) Add to proposed §8B2.1(b)(4) language examples of the organizational leadership engaging in appropriate communications to demonstrate commitment to the program. (EPIC/Johnson)

E. Step Five--§8B2.1(b)(5): Monitor, Audit, Evaluate & Report

1. §8B2.1(b)(5)(A)&(B): Monitor, Audit & Evaluate

Comment: The addition of periodic evaluations is a positive development, but there needs to be further definition as to what is expected in this area. **(ALLINA)**
Recommendation: Add clarifications that describe the "high-level requirements for this evaluation." **(ALLINA)**

2. §8B2.1(b)(5)(C): Internal Reporting/Guidance

No additional comment.

F. Step Six--§8B2.1(b)(6): Incentives and Discipline

No additional comment.

G. Step Seven--§8B2.1(b)(7): Program Modification

No additional comment.

IV. Addition of Risk Assessment--§8B2.1(c)

No additional comment.

V. Waiver --§8B2.1(g): Cooperation / §8C4.1: Substantial Assistance

Comment: The Advisory Group is to be commended for seeking to bolster the guidelines' respect for the importance of the attorney-client privilege. The Advisory Group offers a middle-of-the road position on the addition of commentary. This progress is laudable, but it falls short because it likens the importance of the attorney-client privilege to a bargaining chip. Language suggesting that waiver of the attorney/client privilege or work product protection may be necessary for cooperation or substantial assistance credit is problematic. Respect for these privileges is essential to ensure frank and candid determinations by an organization as to whether criminal conduct has occurred. (ACC)(Biz Rndtbl)(NACDL)(Chem)**(PAG)**
Recommendations: 1) Recognize that the attorney-client privilege is the foundation of the attorney-client relationship as well as the foundation of trust by clients. Keep the first sentence of the proposed commentary and eliminate the second sentence. (ACC)(Biz Rndtbl) (NACDL)(Chem)
2) If the Commission concludes that deletion of only the second sentence is impossible, then delete the entire segment and leave defendants to make their arguments freely. (Chem)**(PAG)**

VI. Issues for Comment

A. Unreasonable Delay in Reporting: Issue One for Comment

Comment: What constitutes "unreasonable delay" depends upon the context, and there are many circumstances where a substantial delay in reporting may in fact be reasonable. The only delays that should unequivocally be deemed unreasonable are those where organizational officials possessed clear evidence and declined to report to the appropriate authorities in a reasonable manner. (Gruner)**(CLC)**
Recommendation: Maintain the existing guideline that characterizes compliance programs as deficient in cases of unreasonable delay. In cases of unreasonable delay, any relief should be limited to cooperation. (Gruner)**(CLC)**

B. High-Level Involvement: Issue Two for Comment

Comment: The proposed rebuttable presumption for cases involving high-level personnel misses an opportunity to promote appropriate positive behavior in favor of sanctioning negative behavior. This approach maintains a disincentive to initiate an effective compliance program rather than providing a true incentive to implement one. (HCCA)(Pharm)**(ALLINA)(HIPAA)**
Recommendation: A rebuttable presumption in favor of effectiveness should be introduced in cases where a corporation discovers and self-reports. Introduction of this type of positive rule would promote investigation and disclosure. (HCCA)(Pharm)**(ALLINA)(HIPAA)**

C. More Credit for Effective Program: Issue Three for Comment

Comment: A greater culpability score reduction for an effective compliance program is an opportunity to give an incentive for companies to re-examine their compliance programs. (PAG)(Gruner)(Beacon)(Chem)**(CLC)**
Recommendations: 1) Increase the culpability score reduction from 3 to 4. (PAG)(Beacon)(NACDL)(Chem)**(CLC)**
2) Consider increasing benefit to 5 points and establishing a graduated scale based on how many of the required compliance program features have actually been adopted. (Gruner)

D. Small Business Considerations: Issue Four for Comment

No additional comment.

VII. Miscellaneous Issues

No additional comment.

ADDENDUM INDEX

2004 Chapter Eight Public Comment & Testimony

PROBATION OFFICERS ADVISORY GROUP
to the United States Sentencing Commission

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Chair, 1st Circuit

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March 5, 2004

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

Dear Commissioners:

The Probation Officers Advisory Group (POAG) met in Washington, D.C. on February 3 and 4, 2004 to discuss and formulate recommendations to the United States Sentencing Commission regarding the proposed amendments published for comment January 13, 2004. We are submitting comments relating to the following proposed amendments.

Proposed Amendment #1 - Child Pornography and Sexual Abuse of Minors

POAG strongly supports the consolidation of §§2G2.2 and 2G2.4. It is the experience of the group that the current cross references create a tremendous amount of confusion and disparity in application, often resulting in lengthy sentencing hearings. When viewing the new combined guideline, POAG chose Option 1 for ease of application and notes that Option 2 could produce the same issues in the existing cross reference applications.

Issue for Comment #1

POAG thinks it is appropriate to consider relevant conduct and recognizes that this approach is consistent with guideline application as a whole. 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

POAG suggests the proposed definitions would assist the field in guideline application. There are continuing concerns as to the lack of instruction for counting the number of images and POAG would request 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 group would request 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 (which may include bestiality or excretory functions). It is our experience that this SOC is factually based and not difficult to apply given the existing case law. POAG suggests the interpretation for these definitions should remain with the courts.

Issue for Comment #4

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 group recommends Option 1A as it provides ease of application by remaining in a "travel act guideline." Option 2A is preferable to the group as Option 2B could pose ex post facto problems if there are changes to the statutory definitions. In addition, 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

POAG proposes there should be some proportionality between the §2A3.1-2A3.3 guidelines and the §2G guidelines. In §2A3.1, there is 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."

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. POAG defers to their judgement on this issue.

Issue for Comment #6

While recognizing that incest cases may be more egregious than other types of sexual assaults due to the loss of trust issue, POAG believes a significant problem could arise if the Commission attempted to define "incest." The group discussed whether it is worse to be sexually assaulted by an "absent" blood relative versus a live-in step parent who has had a long term relationship with the victim. Perhaps the relationship between the abuser and the victim is the more critical factor than the familial bloodline.

Other Application Issues

During our meeting, POAG agreed that the guidelines for production of child pornography should be higher than mere receipt or possession of child pornography. In addition, POAG noted no application difficulties with the proposed SOCs in the production guideline.

In addition, as to §2A3.3, we would recommend an application note be added directing whether or not a Chapter Three adjustment for Abuse of Position of Trust should apply.

POAG recognizes conditions of probation and supervised release are an area of increasing litigation and suggest a complete ban of computer use would be inappropriate. However, in an attempt to safeguard the public, a limit on the defendant's use of a computer needs to be established. This is best left to the Court's discretion at sentencing hearings when imposing limited restrictions.

Proposed Amendment #3 - Body Armor

In viewing the January 13, 2004 draft of this proposed amendment, POAG believes the active employment of body armor should be included in the commentary notes. Otherwise, there are no application difficulties associated with this new guideline.

Proposed Amendment #4 - Public Corruption

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. The group also reviewed the cross reference in §2C1.1 and noted no application issues rising to a level warranting removal. We take no position on Issue for Comment #3 as our experience reveals that offense conduct varies widely in public corruption cases.

In analyzing Issue for Comment #4, POAG suggests there may be a double counting concern if both SOCs at (b)(3) and (b)(4) regarding public officials are applied. POAG would not recommend tiered enhancements based on the degree of public trust held by the public official involved in the offense as application difficulties could arise in establishing the defendant's actual job duties. The proposed SOC at (b)(5) was discussed, with the group not reaching a consensus. Another double counting concern was raised as to why a specific group of individuals and documents were identified as warranting the increase at (b)(5) or whether this conduct was already included in the base offense level (BOL).

According to staff, based on the quoted percentages, raising the BOL to accommodate multiple incidents could unduly punish as many as one-third of the defendants sentenced under these guidelines. Therefore, POAG suggests not increasing the BOL as the enhancement at (b)(1) is a preferable way to sanction this conduct.

Lastly, the group is appreciative of the proposed definitions and examples contained in the application notes as inclusion of these should decrease disputed application issues.

Proposed Amendment #5 - Drugs (Including GHB)

Issue for Comment #2

In discussing this issue, the group had concerns with this concept. For example, a person who is publicizing the sale of drugs over the Internet in an attempt to create a larger distribution network is easier to factually distinguish from an individual who may be a lower level purchaser of the drugs but who then redistributes the drugs to a friend using the Internet. Potentially both could receive an increase for use of the Internet in the distribution drugs. It is suggested that a mass marketing approach may be more appropriate method to sanction distributors using the Internet to sell drugs. The definition and the resulting increase in offense levels could be similar to that found in §2B1.1.

Issue for Comment #3

In discussing this issue with staff, it appears these cases are minimal and POAG suggests an encouraged upward departure be added to include this conduct. This would allow the sentencing court discretion in imposing an appropriate sentence.

Issue for Comment #4

POAG encourages the Commission to resolve the circuit split regarding the interpretation of the last sentence in Application Note 12 of §2D1.1. The group did not reach consensus on this issue.

Proposed Amendment #6 - Mitigating Role

POAG generally agrees with the tiered approach to the mitigating role cap, however, we suggest unless the language is modified, application difficulties will result. Applying a Chapter Three adjustment based on a Chapter Two offense level may be confusing in itself. As currently proposed, §3B1.2(b) refers to "the defendant's Chapter Two offense level." This leaves open the possible application of the reduction after specific offense characteristics have been added or subtracted. 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. Similar application problems might also be present at §§2D1.6, 2D1.7, 2D1.10, and 2D1.11. There may be other guidelines that also contain a cross reference instruction to the 2D1.1 guideline where this issue may arise. Perhaps if the word "pursuant" was changed to "using" this issue would be resolved. A separate issue was discussed whereby a defendant was a minor participant for behavior accounted for at §2D1.1, but a full participant for behavior accounted for at the original guideline. POAG requests some clarification regarding these application issues.

Historically, POAG has requested guidance and examples in application of role reductions. This also extends to the current mitigating role cap issue.

Proposed Amendment #7 - Homicide and Assault

The Chapter Two Homicide and Assault guidelines as written and the current proposals will produce appropriate punishment and pose little application difficulty. In fact, the group recognizes these guidelines along with the robbery guideline to be among the easiest to apply. As to the Chapter Three

issue for comment, POAG does not recommend a tiered approach in application of §3A1.2 as additional fact-finding issues would be required and could increase the number of contested sentencings.

Proposed Amendment #8 - Miscellaneous Amendment Package

(D) USSG §2X6.1 -Use of a Minor

POAG noted some concerns with the guideline as written in the January 13, 2004 version. In particular, a question arose as to how multiple counts of this offense would be grouped and suggest a commentary note be added regarding grouping instructions. In addition, POAG found the language in §2X6.1, comment. (n.1) to be confusing and we had difficulty interpreting the wording "the offense of which the defendant is convicted of using a minor." POAG noted a problem in applying role adjustments to this guideline absent additional instruction.

Proposed Amendment #12 - Immigration

Members of POAG suggest gathering the facts to warrant the proposed enhancements at §2L1.1(b)(4) may be difficult for the probation officer to obtain. This issue may be resolved if the language tracks the provisions found in 8 U.S.C. § 1327 wherein the charging document would outline the specifics of the conduct.

POAG supports an enhancement for multiple deaths noting there are certainly several cases in which more than one illegal alien has died while being smuggled into the United States. However, there would seem to be problems in applying a multiple count calculation from Chapter Three. Therefore, an encouraged upward departure either in the commentary at §2L1.1 or in §5K2.1 could address this issue.

The group found no application problems if the table for the number of aliens smuggled is amended.

POAG opposes an enhancement in the case of a fugitive from another country. Probation officers have a difficult time obtaining criminal record information within the United States and foresee greater difficulty in timely obtaining foreign arrest information. In addition, there are concerns about defendants who are fugitives from countries who are escaping political or religious persecution. There also seem to be inherent conflicts within the guideline structure in that a defendant is prohibited from receiving criminal history points for foreign convictions, but may receive an increase for a mere warrant. POAG takes no position with regard to fugitive status from a United States jurisdiction but notes a potential conflict with Chapter Four in that mere arrests cannot be considered in determining an upward departure in a defendant's criminal history category.

Remaining Amendments

POAG takes no position on remaining amendments and relies on the expertise of the Commission staff and other working groups.

Closing

We trust you will find our comments and suggestions beneficial during your discussion of the proposed

amendments and appreciate the opportunity to provide our perspective on guideline sentencing issues. As always, should you have any questions or need clarifications, please do not hesitate to contact us.

Sincerely,

Cathy Battistelli

Cathy A. Battistelli
Chair

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March 8, 2004

Members of the United States Sentencing Commission
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One Columbus Circle, NE, Suite 2-500
Washington, DC 20002

Dear Sentencing Commissioners:

The Judicial Conference Committee on Criminal Law reviewed with great interest all of the proposed amendments to the sentencing guidelines published on January 13, 2004, for public comment. We offer the following general and specific comments to the amendment proposals.

The Committee fully supports the proposal to consolidate U.S.S.G. §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic) and §2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct). We also support the proposal to consolidate all four sections of U.S.S.G. §2C1.1 with §2C1.7, and §2C1.2 with §2C1.6. We believe such consolidation efforts may simplify sentencing guideline applications in these cases.

As you may know, in 1995, recognizing the complexity of the sentencing guideline system, the Committee urged the Commission to undertake an extensive assessment of the sentencing guidelines to determine how they might be streamlined or simplified. We understand this effort stalled after extensive Sentencing Commissioner turnover and a prolonged period of vacancies on the Commission. In any event, we support any new efforts in this regard.

With respect to whether the Commission should provide an enhancement in U.S.S.G. §2C1.1 for solicitation of a bribe, and in §2C1.2 for solicitation of a gratuity, the Committee believes that the Commission should not include such an enhancement because it is likely to invite protracted disputes at sentencing over which party initiated the solicitation, which we do not view as vital in terms of relative culpability.

The Committee also opposes any attempt to modify the mitigating role cap. As you know, in November of 2002, after receiving input from the Committee, the Commission created a sentencing cap at a base offense level 30 for drug traffickers who receive a mitigating role adjustment under U.S.S.G. §3B1.2. The Committee does not believe that the current application of this guideline is problematic, and we are unaware of any need to change it.

Likewise, the Committee opposes any attempt to further limit the courts' discretion with respect to aberrant behavior departures. As you may recall, in December of 1999 the Committee determined that the majority view of the circuits was correct that for this departure to apply there must be some element of abnormal or exceptional behavior: "[a] single act of aberrant behavior...generally contemplates a spontaneous and seemingly thoughtless act rather than one which was the result of substantial planning because an act which occurs suddenly and is not the result of a continued reflective process is one for which the defendant may be arguably less accountable."

United States v. Carey, 895 F.2d 318, 326 & n.4 (7th Cir. 1990). Responding to this circuit conflict, in November of 2000 the Commission amended the guidelines by attempting to slightly relax the "single act" rule in some respects and provide guidance and limitations regarding what can be considered aberrant behavior. The Commission also determined that this departure is available only in an extraordinary case.

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The Committee 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 appears that some of the proposed amendments, for example, the proposal to increase the offense levels for "date rape" drugs, second-degree murder, voluntary manslaughter, and involuntary manslaughter, are intended to address such concerns. Unfortunately, it appears that the Commission's remedy for these proportionality issues is to increase the penalties for these offenses.

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With respect to immigration offenses, the Commission has already made revisions to U.S.S.G. §2L1.2 in 2001, 2002, and 2003. Since acts of terrorism can be separately charged by the government, we support the delay in any revisions to the immigration guidelines until a comprehensive package can be developed.