

Dr. Steven and Mrs. Linda Goltz

August 23, 2011

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002
Attn: Public Affairs—Priorities Comment

Dear United States Sentencing Commission,

We submit this public comment in response to the Sentencing Commission's *Notice of Proposed Priorities* for the amendment cycle ending May 1, 2012. We respectfully ask that the Sentencing Commission expand the list of its priorities for this cycle to include retroactively applying Guideline Amendment 699.

Our interest in retroactively applying Amendment 699 is in part personal: [REDACTED] was sentenced in 2002 under a higher (and then-mandatory) guideline range than he should have been as a result of a critical omission of intent in Appendix A of the Guidelines. Amendment 699 addressed the omission in Appendix A, and we firmly believe that the ends of justice and fairness would be served by giving [REDACTED] the benefit of Amendment 699's correction. But, in a broader sense, we also believe that retroactively applying Amendment 699 would affirm the Sentencing Commission's commitment to a guideline system that is *clear* on its face, *uniform* in its application, and *proportional* in the punishment it provides.

Before the Sentencing Commission adopted Amendment 699, Appendix A specified four offense Guidelines for violations of 18 U.S.C. § 1992 (wrecking a train): 2A1.1, 2B1.1, 2K1.4, and 2X1.1. If a defendant's violation of 18 U.S.C. § 1992 resulted in a death, three of these four sections would not apply: Section 2B1.1 relates to destruction of property, section 2K1.4 relates to damage by use of explosives, and section 2X1.1 relates to conspiracies and attempts. If the violation of 18 U.S.C. § 1992 did result in death, the relevant guideline section was 2A1.1. The problem was that Guideline section 2A1.1 addresses only one particular type of homicide: first-degree murder.

Indeed, the pre-Amendment 699 version of Appendix A relating to 18 U.S.C. § 1992 omitted reference to the homicide Guidelines corresponding to lesser mental states—i.e., sections 2A1.2 (second degree murder), 2A1.3 (voluntary manslaughter), and 2A1.4 (involuntary manslaughter). In ignoring other possible mental states and

listing only the first-degree murder Guideline, Appendix A inexplicably treated violations of 18 U.S.C. § 1992 unlike virtually every other homicide. For example, the Appendix A listing for 18 U.S.C. § 32 (wrecking an aircraft where death results) accounted for an offender's possible mental states by referencing Guideline sections 2A1.1, 2A1.2, 2A1.3, and 2A1.4. The airplane-related Guideline thus accounted for the basic element of a violator's mental state in a way the train-related Guideline did not. Similarly, Appendix A also accounted for all four types of homicides and their corresponding mental states in its entry for 18 U.S.C. § 37 (violence at an airport that causes death). Appendix A even listed all four types of homicide for a person who, under 18 U.S.C. § 1751(a), kills the President, Vice President, or the President Elect.

For all those who were sentenced prior to Amendment 699, this discrepancy raises an obvious and troubling question: Why account for an individual's mental state with respect to airplanes or airports, for example, but not trains? The Sentencing Guidelines are meant to eliminate arbitrary sentencing disparities, not create them. And yet, with regard to 18 U.S.C. § 1992, an arbitrary guidelines disparity was precisely what existed—at least in those instances where a judge or jury determined an offender's mental state was something less than intentional.

In Amendment 699, effective November 2007, the Sentencing Commission modified Appendix A with respect to the 18 U.S.C. § 1992 train-wrecking statute in an important way.¹ Amendment 699 changed Appendix A by deleting reference to the first-degree murder Guideline of 2A1.1 and in its place listing Guideline 2A5.2 ("Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle"). Where the violation of 18 U.S.C. § 1992 results in death, Guideline 2A5.2(c)(1) instructs that a sentencing court "apply the most analogous Guideline from Chapter Two, Part A, Subpart 1 (Homicide) . . ." Chapter Two, Part A, Subpart 1 consists of the various mental states relating to homicide: 2A1.1 (first-degree murder), 2A1.2 (second-degree murder), 2A1.3 (voluntary manslaughter), and 2A1.4 (involuntary manslaughter). The bottom line is that, as a result of Amendment 699, Appendix A finally accounted for mental state with respect to 18 U.S.C. § 1992 in a way it previously had not. An offender's mental state counted under the train-wrecking statute just as it counted, for example, under the airplane-wrecking statute.

¹ Note that in 2005, Congress slightly adjusted the location of the relevant train-wrecking offense: the provision that had before comprised 18 U.S.C. § 1992(a) was moved to 18 U.S.C. § 1992(a)(1). The relevant statutory provision in the new Appendix A for wrecking a train is thus 18 U.S.C. § 1992(a)(1). (This change in location resulted from additions Congress made to the statute in the PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109-177, and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59.)

The fact that Amendment 699 changed the Guidelines to permit consideration of an offender's mental state in the context of 18 U.S.C § 1992 when death results is of great significance to our family because the judge who sentenced [REDACTED] explicitly found that [REDACTED] violated the statute *neither intentionally nor knowingly*. Despite his finding about [REDACTED]'s mental state, the sentencing judge's discretion was cabined by a sentencing guideline range that was keyed on the then-existing Appendix A's "one-size-fits-all" first-degree intentional murder Guideline of 2A1.1. The Sentencing Commission has rightly fixed this oversight through Amendment 699, and we would respectfully request that it be applied retroactively – not because the amendment results in a reduction of the severity of punishment but because the Guidelines have been amended to consider intent.

In a broader sense, applying Amendment 699 retroactively would also serve to enhance our guided sentencing system and would underscore the reasons for it—i.e., to provide *clarity, uniformity, and proportionality* in federal sentencing.

Unfortunately, the pre-Amendment 699 sentencing Guideline addressing 18 U.S.C. § 1992 failed to achieve even one of the three sentencing goals. First, the Guideline did not provide clarity. A review of [REDACTED]'s sentencing transcript reveals the sentencing judge's confusion about both the Guideline and how to implement the related Application Note. The transcript also reveals the confusion and unhappiness of both the Assistant United States Attorney prosecuting the case and the sentencing judge as they tried to determine what the Guideline called for in the absence of a clear provision addressing a violator's mental state.

Second, the pre-Amendment 699 sentencing Guideline relating to 18 U.S.C. § 1992 failed to provide sentencing uniformity. When guideline ranges are keyed to a violator's mental state for certain crimes but not for others, sentencing uniformity is jeopardized: certain violators who did not intentionally commit their crimes may nevertheless be subject to a guideline range that treats them as if they had. For example, the discrepancy between wrecking an airplane where death results (18 U.S.C. § 32) and wrecking a train where death results (18 U.S.C. § 1992) highlights how the pre-Amendment 699 Guidelines, as applied to individuals like [REDACTED], impaired Congress's goal of achieving "uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders." (2010 Guidelines Manual, Introduction page 2.)

Third and finally, the "one size fits all" nature of the default guideline range that applied to 18 U.S.C § 1992 before Amendment 699 undermined (and continues to undermine) the sentencing proportionality Congress sought to achieve by enacting "a system that imposes appropriately different sentences for criminal conduct of differing severity." (2010 Guidelines Manual, Introduction page 2.) A fundamental aspect of proportionality is that crimes committed intentionally be punished more severely than unintentional ones. In this way, a sentence "reflects the seriousness of

the offense” and provides “just punishment” for it. 18 U.S.C. § 3553(a)(2)(A). Unfortunately, that was not the case with 18 U.S.C § 1992 before Amendment 699.

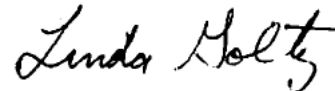
Words cannot express the sorrow we felt to see [REDACTED]'s thoughtless act result in tragedy. But that sorrow has been compounded by a guideline range that was unclear in its application, that treated him differently than it would treat similarly situated individuals, and that punished him as though he intended to cause this terrible accident. We respectfully submit that Amendment 699 be applied retroactively in order to serve the ends of justice and fairness.

Sincerely,

Dr. Steven Goltz, M.D.

Handwritten signature of Dr. Steven Goltz, M.D. in black ink, featuring a stylized 'S' and 'G'.

Linda Goltz

Handwritten signature of Linda Goltz in black ink, written in a cursive style.

From: Tom Burnison [REDACTED]
To: "pubaffairs@ussc.gov" <pubaffairs@ussc.gov>
Date: 7/13/2012 8:03 PM
Subject: drug guidelines

July 13, 2012

Thomas B. Burnison, M.D.
Chief, Emergency Medicine Department
ED Staff Physician
Northern Navajo Medical Center
P.O. Box 160
Shiprock, NM 87420
thomas.burnison@ihs.gov
(505) 368-6354

Home:
Thomas B. Burnison, M.D.

[REDACTED]

Board Certified in Family Practice and Emergency Medicine. ASAM certified in Addictionology.
Certified in ALSO, BLS, ACLS, PALS, ATLS, NRP, APLS, STABLE, IBUM (underwater medicine).
Fellow, American Board of Family Practice.

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

Attn: Public Affairs, Priorities Comment

Dear Hon. Saris:

I have been personally involved most of my life in the treatment of drug addiction, and with treating issues that come up from abuse/addiction.

I am concerned that our current policies not only don't work to curb use, but destroys the lives of all involved.

I urge the U.S. Sentencing Commission to make improving the drug guidelines a priority for the 2013 amendment cycle. In particular, I want to see all drug guidelines lowered by two levels, as was done with crack cocaine in 2007. I care about this issue because of seeing first-hand the harm done to individuals and their families when they suffer such severe punishment for drug related crimes. I see hardened violent criminals getting off easy, while pot smokers get horrible sentences. I know of a man who got 12 years for selling some pot. This just isn't fair to the victims (drug users that get improper treatment) and to those of us that pay the bills to keep such people in jail, by paying our taxes.

This is especially wrong when severe penalties are put on users of mild drugs, like pot. They aren't harming anyone else, but get much too stiff sentences.

Let's correct this error, by reducing the drug guidelines to something sensible. I would especially like it to be retro-active, getting non-violent criminals (especially those in for pot) out of jail, making room for the murderers, rapists, violent burglars, and pedophiles. We need room to keep them away from society.

Thanks for your consideration.

Sincerely,

Thomas Burnison, M.D.
Hello, from God's Country (Colorado),
Tom

From: Wanda Gordon [REDACTED]
To: "pubaffairs@ussc.gov" <pubaffairs@ussc.gov>
Date: 7/14/2012 12:05 PM
Subject: Sentencing Guidelines

Hon. Patti B. Saris, Chair,
United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002
Attn: Public Affairs, Priorities Comment.

I urge the U.S. Sentencing Commission to make improving the drug guidelines a priority for the 2013 amendment cycle. In particular, I want to see all drug guidelines lowered by two levels, as was done with crack cocaine in 2007.

This issue is of particular importance because of the severe disparity in the guidelines for loss of life vs. selling drugs.

I fail to understand how a person can receive 3 years for charges of hit-and-run, which resulted in killing a man changing his tire, and a person selling marijuana receives 10 years. This was in the news last week and the driver took days before turning herself in to law enforcement.

The message is "kill a person because life means little and do less time than selling marijuana to make money".

What a sad commentary! Not to mention that pharmaceutical drugs and alcohol statically show to be the highest harm to life. Many states approve the use of marijuana for medical purpose.

This example alone, and believe me there are many like this one, should beg for rational thinking from smart people that sit on this committee to change the sentencing guidelines. Because so many have been impacted by the current guidelines, the change should be retroactive.

My message is short and simple, people who kill others should not receive less time than a person selling marijuana. Change the guidelines and stop distorting the lives of so many young people.

Best Regards,

Wanda

July 9, 2012

Hon. Pati B. Saris,

I urge the U.S. Sentencing Commission to make improving the drug guidelines a priority for the 2013 amendment cycle. In the particular, I want to see all drug guidelines lowered by 2 levels as was done with the crack cocaine in 2007. I care about this because I currently [REDACTED] [REDACTED] serving a ten year sentence for having a meth addiction. These guidelines are unfair! Due to the fact that [REDACTED] has a previous from when he was 18, and now he is 37 and paying again for the same crime. He is no danger to anyone. The only person he was hurting was himself. He was allowed to go to rehab and then to a halfway house. He was working, going to all of his classes and doing great. His dad and I were so thrilled....we had [REDACTED] back. Until his court date came up and he was sentenced to 10 years purely because of the guidelines not the circumstance. This is so wrong and unfair!

I hope you or any of your family members are never in this situation. It is heart wrenching! He was so frightened that he signed a plea bargain admitting to things he didn't do, just to get 10 years! He is a good man who just got addicted to a horrible drug. There was no evidence against him and he had four different lawyers because they were all involved with other people from our area! He never had an investigator! He is currently serving at Ashland, Kentucky BOP which is an 8 hour drive from home. We are not wealthy people, but we visit every three months. It cost us at least 500 dollars every time we go. This is for gas, food, and housing. We are going to see [REDACTED] even if we have to sell our belongings to do so!

What is so sad is that the person in prison is not the only one being punished! It creates a window, a fatherless child, grieving parents and siblings. We are not young people and I pray

July 9, 2012

that we live long enough to see [REDACTED] released and free again. Please help us! How can a 10 year sentence help anyone? If our Federal Government is in such financial stress this would be one way to help with that problem! If you murder someone you get less time than if you have a drug charge! What is wrong with this picture?

I appreciate anything you can do to help me and many other families in the same situation. I am a Christian woman, and I will pray to god each day for strength. I pray that he will come into your heart and see that this sentencing guideline is unfair! Not only the time but he is in a place where there is no air conditioning and 105 degree temperatures. We even bring our pets in out of the heat but I guess its ok to treat humans like that because they had a meth addiction. I could go on and on. I really wonder if you will even read this letter. We send him monies every month so he can have soap, toiletries, and food. Please send the sons, daughters, fathers, brothers, and grandchildren home to their families! This will not cost so much for you and for me.

From one lady to another please feel how heartbreaking it is to know you may never see [REDACTED] as a free man again due to the mandatory minimums and not the circumstances. Please help me and many other families. I know you can do this. I just pray that you will! I would love to speak personally to you but I'm sure that will never happen. Thank you for your time and may god bless and keep you.

Sincerely,

Mitzi G. Tucker

[REDACTED]

[REDACTED]

July 16, 2012

Hon. Patti B. Saris, Chair,
United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002
Attn: Public Affairs, Priorities Comment

RE: Lowering the Drug Guidelines for the 2013 Amendment Cycle by two levels

Dear Honorable Patti B. Saris,

This letter is a formal request to the United States Sentencing Commission to **make drug guidelines reform a priority for this year** and to lower the drug guidelines for the 2013 amendment cycle by two levels. We are requesting the Sentencing Commission to adopt a reform called "all drugs minus two." This allows the drug sentencing table to be shifted down two guideline levels.

Please **make drug guidelines reform a priority for this year**. We believe that the current drug sentencing is extremely harsh and is discriminatory towards minorities. In addition many of the current offenders are from low income families and minority groups who did not receive opportunities to succeed and thrive due to poor quality education and lack of economic opportunities. As a result many of these offenders have no money for a private attorney and proper representation when facing court sentencing. They are thrown into the public defenders long list and are not offered proper defense. This was the experience our [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] who was arrested in March 2006 and convicted in May 2009 to a life sentence. I feel that this is an injustice to [REDACTED], if he didn't have 2 state priors he would've gotten the mandatory minimum which is 10 years. Due to his priors they gave him the maximum. However he had already served his time on his priors and had paid his dues to society. He is also a low level drug offender with no violent crimes against him. This situation has put an extreme stress emotionally and economically on our family. Furthermore due to the current harsh sentencing guidelines his life sentence has denied him the opportunity to attend his grandmothers and younger brother's funeral. Many of these inmates face similar circumstances and are unable to see their own children grow up and many of their families face economic conditions that make it difficult or even unrealistic to visit them in prison.

It is for these reasons that I urge the U.S. Sentencing Commission to make major improvements for drug guidelines a priority for the 2013 amendment cycle. In particular,

I want to see all drug guidelines lowered by two levels, as was done with crack cocaine in 2007. Please **make drug guidelines reform a priority for this year.**

Respectfully,

Arturo Ruvalcaba Jr.

Arturo Ruvalcaba Jr

[REDACTED]
[REDACTED]
[REDACTED]

Cc: The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

United States Senator Dianne Feinstein
331 Hart Senate Office Bldg
Washington, D.C. 20510

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002
Attn: Public Affairs, Priorities Comment



Dear Judge Saris,

I strongly urge the U.S. Sentencing Commission to make improving the drug guidelines a priority for the 2013 amendment cycle.

The calls for "fairness in sentencing" continue to echo throughout all segments of america's society, but nowhere are these calls more persistent or vital to survival than the nation's minorities communities.

Over the past three decades the calls for sentencing reform have been based on factual findings that demonstrate among other factors that: a) crack cocaine sentencing laws stem from what are today known to be factual errors and are therefore unreasonable; b) they target minority communities, c) they have sentenced poor, vulnerable, low-level offenders who technically, but not reasonably are sentenced to exceptionally harsh terms of imprisonment, d) those sentencing laws have not nor can they ever alleviate the nation's fetish for drugs and violence, e) they have caused the warehousing of undeserving people in inhumanely over crowded prisons, and f) the sentencing laws have perpetuated wasteful spending. Please see the U.S.S.C's 1995 and 2007-08 reports to congress.

Acknowledging the harm and the wrong associated with the crack cocaine sentencing laws, the U.S. Congress, the high court and this honorable Commission took steps that; declare parts of the Sentencing Guidelines unconstitutional, lowered some crack sentences by two levels and passed the Fairness in Sentencing Act.

However, because (although wholly inadequate versions of needed fixes) these changes have reached so few of the ones who have been the most unjustly impacted over the decades by unfair sentencing laws and other questionable sentencing practices that are not limited to race and excessive sentences, the changes are perceived in the black community as disingenuous where they: 1) actually create barriers that prevent those wrongfully sentenced from receiving any benefits offered by the changes. Barriers such as retroactive dates that intentionally do not extend back far enough to include the majority of unfair sentencing's victims and the exclusion of offenders under career offender status. 2) Likewise, the Fair Sentencing Act merely legalizes a jim crow style justice system. Here, 18 to 1 is the new 100 to 1 which means a new way of saying second class for blacks. The question in the black community is: what's fair about the fair sentencing act?

Too much work remains to simply put aside amendments such as the fix called "all drugs minus two", which must include all drug offenders, no matter date of offense or prior convictions. After all, an unjust law is an unjust law.

Thank you for your understanding in this pressing matter,

A handwritten signature in black ink, appearing to be "F. R. C.", written over a horizontal line.