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# Public Comment



## Proposed Amendments

**1994**  
**VOLUME II**

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United States  
Sentencing Commission

*Public Comment Received on  
Proposed Guideline Amendments*

March 1994

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U. S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 22, 1994

Honorable William W. Wilkins, Jr.  
Chairman  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Washington, D.C. 20002-8002

Dear Judge Wilkins:

The purpose of this letter is to reconfirm the Department of Justice's objections to three of the sentencing guidelines amendments adopted on April 14, 1994.

1. Career Offenders

Amendment 13(B) provides that a career offender should only be sentenced on the basis of the statutory maximum applicable in the absence of any prior criminal record, but not on the basis of a statutory maximum itself enhanced because of a prior conviction. This amendment is in our view inconsistent with the statutory requirement that the Commission establish a career offender imprisonment guideline "at or near the maximum term authorized" for a person 18 years old or older convicted of a felony crime of violence or drug-trafficking offense who has "previously been convicted of two or more prior [such] felonies...". 28 U.S.C. §994(h).

While some might argue that the statute is overly broad and may lead in some instances to sentences that are too severe, those arguments should be addressed to Congress. Significantly, all courts of appeals that have considered the issue have held that the statutory language requires imposition of a sentence at or near the maximum authorized by an enhancement resulting from a prior conviction. See, e.g., *United States v. Garrett*, 959 F.2d 1005, 1009-11 (D.C. Cir. 1992); *United States v. Amis*, 926 F.2d 328, 329-30 (3rd Cir. 1991); *United States v. Sanchez*, 988 F.2d 1384, 1395-96 (5th Cir. 1993); *United States v. Saunders*, 973 F.2d 1354, 1364 (7th Cir. 1992), cert. denied, 113 S. Ct. 1026 (1993); *United States v. Sanchez-Lopez*, 879 F.2d 541, 558-60 (9th Cir. 1989); *United States v. Smith*, 984 F.2d 1084, 1086-87 (10th Cir. 1993).

2. Departures in Extraordinary Circumstances and for Combinations of Characteristics

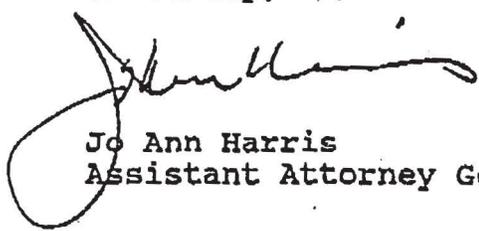
Amendment 14 adopted by the Commission would add new language to §5K2.0 (Grounds for Departure) intended to make explicit that the phrase "not ordinarily relevant" to a departure determination does not foreclose the possibility of departure in an extraordinary circumstance. While we do not object to clarification of the phrase "not ordinarily relevant", we strongly oppose inclusion in the amendment of the "combination of such characteristics and circumstances" language. This amendment has the potential to undermine the sentencing guidelines system and lead to inconsistency in sentencing. The sweeping language would permit courts to combine characteristics as the basis for departure which individually are discouraged factors for departure under the guidelines and which do not exist individually to a sufficient extent to justify departure. We share the Commission's desire to provide guidance and achieve consistency with respect to departures, but believe a much narrower amendment is preferable to the one adopted by the Commission.

3. Reduction of Drug Sentences Based on Quantity

Amendment 8 as adopted would change the drug-trafficking guideline, §2D1.1, to reduce the upper limit of the Drug Quantity Table from level 42 to 38. Although this amendment is intended to provide less harsh sentences for some first offenders, we are troubled by its potential overall effect in lowering sentences for the most serious offenders involved with the largest quantities of drugs. We believe any reduction of the Drug Quantity Table should be limited to first offenders who do not qualify for an enhancement based on a leadership role in a drug organization.

Thank you for your continued consideration of these matters.

Sincerely, . . .



Jo Ann Harris  
Assistant Attorney General

April 6, 1994

To: Peter B. Hoffman  
From: Ronnie M. Scotkin  
Subject: Public Comment and Testimony

Attached is a summary of public comment and testimony on each amendment. Numbers following a group or individual's name refer to the number assigned to the corresponding letter in the public comment file. Unnumbered groups or individuals are from the file containing testimony from the public hearing of March 24, 1994.

Please note that, due to time considerations, this document is in rough form and is meant only as a general guide. Reference should be made to the original documents for more detailed comment.

Amendment 1

**Federal Public Defenders**

Supports with changes

**NACDL**

Opposes - overbroad and unnecessary

**N.Y. Council of Defense Lawyers**

Opposes - many defendants are young, bright, individuals exploring computer's limits - in absence of financial benefit or malicious conduct causing substantial destruction of property, no departure is warranted

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

Endorses the responses of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**

Endorses the responses of the Practitioner's Advisory Group

**Practitioner's Advisory Group (039) (see letter for drafting issues)**

§2B1.1 Opposes as written; suggest modification

§2B1.3 Note 4. Does not oppose but thinks not enough experience with computer related crime to determine upward departures; Note 5 Should acknowledge downward departure for unforeseeable money damage. Quantifying cost of computer file damage is extremely difficult. Note 5 more appropriately placed in §2F1.1, note 7

§2F1.1 Opposes as unnecessary

Statutory Index Supports

**Other**

Sanford Sherizen, Data Security Systems, inc. (049)

Supports

Amendment 2(A)

**American Bar Association (Committee on Sentencing Guidelines)**

Does not object - needs to distinguish between wilful and non-intentional

**Federal Public Defenders**

Supports consolidation but opposes cross-references - opposes move to real offense system

**NACDL**

Favors elimination of SOC in §2C1.3; Commission should defer consolidation pending review of 18 U.S.C. § 216

**N.Y. Council of Defense Lawyers**

Opposes consolidation - two very different offenses; cross reference dilutes distinction between vastly different statutory crimes; supports elimination of §2C1.3 (b)(1)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

Endorses the responses of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**

Endorses the responses of the Practitioner's Advisory Group

**Practitioner's Advisory Group (Letter 039)**

Does not oppose

Amendment 2(B)

**American Bar Association (Committee on Sentencing Guidelines)**

Does not object to consolidation; opposes increase for more than one gratuity and 8 level increase if gratuity was given to high level official

**NACDL**

No objection to consolidation; opposes increase for more than one gratuity; concern over 8 levels for high-level official, better addressed by departure

**N.Y. Council of Defense Lawyers**

Opposes

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

Endorses the responses of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**

Endorses the responses of the Practitioner's Advisory Group

**Practitioner's Advisory Group (039)**

Does not oppose

Amendment 2(A)

**American Bar Association (Committee on Sentencing Guidelines)**

Does not object - needs to distinguish between wilful and non-intentional

**Federal Public Defenders**

Supports consolidation but opposes cross-references - opposes move to real offense system

**NACDL**

Favors elimination of SOC in §2C1.3; Commission should defer consolidation pending review of 18 U.S.C. § 216

**N.Y. Council of Defense Lawyers**

Opposes consolidation - two very different offenses; cross reference dilutes distinction between vastly different statutory crimes; supports elimination of §2C1.3 (b)(1)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

Endorses the responses of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**

Endorses the responses of the Practitioner's Advisory Group

**Practitioner's Advisory Group (Letter 039)**

Does not oppose

Amendment 2(B)

**American Bar Association (Committee on Sentencing Guidelines)**

Does not object to consolidation; opposes increase for more than one gratuity and 8 level increase if gratuity was given to high level official

**NACDL**

No objection to consolidation; opposes increase for more than one gratuity; concern over 8 levels for high-level official, better addressed by departure

**N.Y. Council of Defense Lawyers**

Opposes

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

Endorses the responses of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**

Endorses the responses of the Practitioner's Advisory Group

**Practitioner's Advisory Group (039)**

Does not oppose

Amendment 2(C)

**American Bar Association (Committee on Sentencing Guidelines)**  
Opposes

**Federal Public Defenders**  
Opposes

**NACDL**  
Opposes

**N.Y. Council of Defense Lawyers**  
Opposes

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
Endorses the response of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**  
Endorses the response of the Practitioner's Advisory Group

**Practitioner's Advisory Group (039)**  
Opposes

Amendment 3

**American Bar Association (Committee on Sentencing Guidelines)**

Opposes without further study (in general, favors distinction between non-public corruption and public corruption; favors distinction between public and non-public officials; favors harmonization of bribery offenses; favors harmonization of gratuity offenses)

**Federal Public Defenders**

Opposes

**NACDL**

Supports non-public corruption cases being lower than public corruption; opposes increases for §§2C1.1, 2, and 7; favors lowering corruption gratuity from 7 to 5.

**N.Y. Council of Defense Lawyers**

Current guidelines more than adequately reflect seriousness - no increase necessary; §2C1.1(b)(2)(B) unfair and inappropriately harsh

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

Endorses the response of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**

Endorses the response of the Practitioner's Advisory Group

**Practitioner's Advisory Group (039)**

Favors modification so that non-public corruption is lower than public corruption; favors strong distinction between bribery and gratuity; opposes increase to base offense level to §2C1.1; §2C1.1(c)(1) should distinguish between accidental and deliberate facilitation of other offenses

Amendment 4(A)

**American Bar Association** (Committee on Sentencing Guidelines)  
Favors Option 2

**Federal Public Defenders**  
Supports Option 2

**NACDL**  
Supports Option 2

**N.Y. Council of Defense Lawyers**  
Supports Option 2

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)  
Endorses the response of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council** (053)  
Endorses the response of the Practitioner's Advisory Group

**Practitioner's Advisory Group** (039) Practitioner's Advisory Group)  
Supports Option 2

Amendment 4(B)

**American Bar Association (Committee on Sentencing Guidelines)**  
Adjustments for multiple payments should be eliminated

**Federal Public Defenders**  
Adjustments for multiple payments should be eliminated

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
Endorses the response of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**  
Endorses the response of the Practitioner's Advisory Group

**Practitioner's Advisory Group (039)**  
Adjustments for multiple payments should be eliminated

Amendment 5(A)

**American Bar Association (Committee on Sentencing Guidelines)**

Opposes making adjustments cumulative; problems with high-level official adjustment

**Federal Public Defenders**

Opposes - suggests deletion of SOC for high-level public official

**NACDL**

Opposes making adjustments cumulative; opposes 8 level increase for high level officials (max. 2 if any)

**N.Y. Council of Defense Lawyers**

Opposes making adjustments cumulative; opposes adjustment for high-level official; if cumulative adopted, high-level should have a max of 2 levels

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

Endorses the response of the Practitioner's Advisory Group

**North Carolina Bar Association, Executive Council (053)**

Endorses the response of the Practitioner's Advisory Group

**Practitioner's Advisory Group (039)**

Opposes making adjustments cumulative; opposes 8 level increase for high level officials (max. 2 if any)

**Probation Officer's Advisory Group (045)**

Supports

Amendment 5(B)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Advocates a sliding scale approach with max under 8 levels*

**Federal Public Defenders**  
*Present definition is overly broad; more objective definition of official needed, perhaps salary as a criteria*

**NACDL**  
*Supports elimination of enhancement for high-level official; if sliding scale, 2-6 levels with clearly defined, objective criteria stated*

**N.Y. Council of Defense Lawyers**  
*Supports elimination of enhancement for high-level official*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports elimination of enhancement for high-level official (if necessary limit it to 2 levels); supports downward adjustment of 2 -6 levels in §2C1.2; supports downward departure for low-level elected officials*

Amendment 6(A)

**American Bar Association (Committee on Sentencing Guidelines)**  
*Supports*

**NACDL**  
*Supports*

**N.Y. Council of Defense Lawyers**  
*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Does not oppose*

Amendment 6(B)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Duty of Supreme Court to resolve circuit conflicts, not  
Commission*

**Federal Public Defenders**  
*Wait to do anything*

**NACDL**  
*Favors definition of "benefit received" discussed in U.S.  
v.Narvaez, 995 F.2d 759,763 (7th Cir.1993)*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)  
*Supports definition in Narvaez*

Amendment 6(C)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Opposes*

**Federal Public Defenders**

*Oppose believe amount of payment is best measure; unnecessary because of language in §2C1.1, appl. note 5 and §5K2.7, p.s.*

**NACDL**

*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Opposes - vague and subject to dissimilar interpretations; already covered by §5K2.7*

Amendment 7

**C.U.R.E.**

*Supports departures for cultural characteristics and collateral consequences (such as those suffered by INS detainees held beyond their termination date while awaiting deportation)*

**Dept. of Justice**

*Opposes (see p.234-235 of their testimony)*

*Collateral consequences - does not alter nature of crime or offender - would appear to discriminate based on prohibited factors such as education and occupation; some things, such as future civil action, impossible to determine*

*Cultural factors - discriminates on prohibited factors such as race, religion...; fear argument could be used in the future to justify gang members, organized crime members, racially motivated individuals (conduct accepted in their community)*

**Federal Public Defenders**

*Opposes*

**NACDL**

*Opposes - wait and see what the courts do*

**N.Y. Council of Defense Lawyers**

*Supports departures for collateral consequences*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Opposes additional departures at this time*

Amendment 8(A)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports*

**C.U.R.E.**  
*Supports*

**Dept. of Justice**  
*Opposes - amendment erodes seriousness with which Commission views narcotic offenses and would discourage guilty pleas because of interaction with mandatory minimums and acceptance of responsibility*

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**N.Y. Council of Defense Lawyers**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

**Private Attorneys**  
003 David S. Marshall; Price, Kelley, Marshall &  
Bassingthwaight  
*Supports*

**Other:**

006 U.S. Probation SUSPO Mike Santella

*25% reduction in drug amount used in calculating  
guidelines for certain low level defendants.*

Amendment 8(B)

**American Bar Association (Committee on Sentencing Guidelines)**

*Opposes - Feds can charge if they want; signifies shift to real offense sentencing*

**C.U.R.E.**

*8(B) Opposes - no enhancement for unconvicted conduct*

**Dept. of Justice**

*Supports Option 1*

**Federal Public Defenders**

*Opposes both options - no evidence of any problem with gun enhancement and drug trafficking guideline as now stands*

**NACDL**

*Opposes*

**N.Y. Council of Defense Lawyers**

*Opposes both options*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports option 2 slightly over option 1 (unanimously opposes 2 level increase in option 1 for serious bodily injury)*

**Probation Officer's Advisory Group (045)**

*Supports Option 1 over Option 2 but not sure they want either (not addressed in survey) "However, during last year's amendment cycle, probation officers were not enthusiastic about adding additional specific offense characteristics and in fact, changes in this area of the drug guidelines were not proposed by the probation officers. Therefore, if the Commission is inclined to place less emphasis on weight of drugs in guideline calculations, probation officers support by a wide margin the addition of specific offense characteristics involving weapon use and bodily injury."*

Amendment 8(C)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports - no comment on actual cap*

**C.U.R.E.**

*8(C) Supports ceiling - also supports greater departures*

**Dept. of Justice** (044)

*Flawed - Supports with listed changes (p. 234)*

**Federal Public Defenders**

*Supports - level 30*

**NACDL**

*Supports - level 30 cap*

**N.Y. Council of Defense Lawyers**

*Supports - cap should be lower*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Supports but prefers a an additional cap of 24 for certain specified controlled substances*

Amendment 8(D)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports less emphasis on weight*

**C.U.R.E.**

*8(D) Supports deemphasis on quantity and support emphasis on associated violence. Instead of broader ranges, levels should be lowered*

**Federal Public Defenders**

*Does not support broad redrafting at this time*

**N.Y. Council of Defense Lawyers**

*Supports deemphasizing quantity; opposed to enhancements not proven beyond a reasonable doubt for weapons and violence*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Supports - less emphasis on weight but enough study already*

Amendment 9

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports*

**C.U.R.E.** (letter 008)

*Opposed to wording change in §3B1.1(a) and (b) [Note: it appears they misread this section]; opposed to counting law enforcement agents as participants; opposes to counting people supervised indirectly (how can you supervise indirectly? - intent should be criteria for management and supervision)*

**Federal Public Defenders**

*Supports (b) and (c); supports (a) and suggests modification by removing "otherwise extensive"; supports new note 4; opposes redefinition of participant - should not include law enforcement personnel.*

**NACDL**

*Opposes counting law enforcement personnel; supports removing otherwise extensive*

**N.Y. Council of Defense Lawyers**

*Opposes - it would lower number of participants [misread?]; opposes counting of those not criminally responsible; supports note 4; opposes eliminating three level decrease in §3B1.2; opposes eliminating old notes 1 - 3; proposed notes (2) (A) and (B) make sense but they question necessity; opposes 2(C); opposes (D) and think it contradicts note 4 to §3B1.1; opposes notes 4 and 5; notes 6 and 7 unnecessary if original notes 1-3 are maintained; note 8 is redundant*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Opposes counting law enforcement personnel; supports removing "otherwise extensive"*

Amendment 10

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports*

**C.U.R.E.** (letter 008)

*Opposes both options - firearm has nothing to do with role,  
firearms punished elsewhere*

**Federal Public Defenders**

*Supports revised intro. commentary to 3B; supports revised  
version of appl. note 1; supports note 3; supports background  
note; no objection to new note 9 but finds it somewhat  
insulting to federal judges; opposes revised appl. notes 2, 6,  
and 7 - inconsistent with 3B intro and note 1; opposes  
revised note 4 and new note 5*

**NACDL**

*Supports intro. commentary changes; supports notes to §3B1.2  
except for paragraph 4 (too inflexible); mules should be in  
context of specific fact pattern involved; opposes either  
option in paragraph 5; opposes "\$1,000 or less"*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Supports strongly changes to introductory commentary which  
parallel the recent amendments to §1B1.3; supports other  
commentary changes with revisions:*

*App. Note 1(c) - \$1,000 is too limiting*

*App. Note 4 - opposes - mules should be treated in  
context of entire conspiracy*

*App. Note 5 - opposes - firearms not related to role and  
should not be tied into role*

Amendment 11

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports but use underlying offense level for all cases*

**C.U.R.E.** (letter 008)  
*Opposes only because "sophisticated" not defined - should be defined as an activity which is extraordinarily difficult to detect*

**Dept. of Justice** (044)  
*Opposes*

**Federal Bar Association, Criminal Law Committee,**  
Phila. Chapter (050)  
*Supports change §2S1.1 (a) (3) to read "6 plus the number of offense levels"*

**Federal Public Defenders**  
*Supports*

**IRS** (048)  
*Very concerned over this amendment [whatever that means]*

**NACDL**  
*Doesn't go far enough*

**N.Y. Council of Defense Lawyers**  
*Supports simplification and lower base offense levels; opposes offense levels higher than those of underlying offense*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)  
*Supports - see pp. 116 -119 of their letter*

**Probation Officer's Advisory Group** (045)  
*Supports*

**Private Attorneys**  
007 Whitney Adams; Rogers and Wells  
*Supports with modifications:*  
1. Use offense level from underlying conduct in all cases in which it can be determined and then increase by specific offense characteristics in (b) (2)  
2. Make base offense level in (a) (3) the same as the offense level for fraud (6 plus number of levels from table)

- 009 Earl Silbert; Schwalb, Donnenfield, Bray, and Silbert  
*See Adams above*  
See letter for supporting info
- 011 Amy G. Rudnick; Milbank, Tweed, Hadley and McCloy  
Co-Chair, ABA Money Laundering Subcommittee  
*See Adams above*
- 014 Martin R. Raskin; Raskin and Raskin  
Former - Chief of Criminal Division of U.S. Attorney's  
Office for Southern District of Florida; Special Attorney  
with DOJ organized Crime and Racketeering Section; AUSA  
in New Jersey  
*See Adams above*
- 015 Shirley Baccus-Lobel  
Former DOJ  
*See Adams above*
- 020 Michael S. Pisano; Zuckerman, Spaeder, Taylor and Evans  
Chair and vice chair of various ABA committees  
*See Adams above*
- 031 McDonough & Associates  
*See Adams above*
- 034 Thomas W. Tanner; Chairman Louisiana Sentencing  
Commission; retired judge, private attorney  
*See Adams above*
- 035 Julian J. Rodrigue, Rodrigue and Rodrigue  
*See Adams above*
- 040 Michael R. McCarty; Cozen and O'Connor  
*See Adams above*
- 041 Gibson, Dunn & Crutcher (Business Crimes Practice Group)  
*See Adams above*

Amendment 12 (A)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports*

**Federal Bar Association, Criminal Law Committee,**  
Phila. Chapter (050)  
*Supports*

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**N.Y. Council of Defense Lawyers**  
*Supports with reservation because of definition of sophisticated planning - enhancement should take place only where the increased level of planning is intended to, and does pose, a materially greater threat or danger or does reflect a materially higher level of culpability under the circumstances*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)  
*Supports - "more than minimal planning" is currently overused*

**U. S. Postal Service**  
*Opposes - don't want to lose repeated acts*

Amendment 12(B)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Opposes*

**C.U.R.E.** (letter 008)  
*Opposes (opposes increasing any guideline)*

**Federal Public Defenders**  
*Doesn't oppose equalizing but why not equalize to 4 instead of 6*

**NACDL**  
*Opposes*

**N.Y. Council of Defense Lawyers**  
*Opposes - would support if fraud lowered to 4*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)  
*Opposes - sufficient differences exist amongst larceny and theft and fraud and deceit cases (especially at low end) to justify differences*

**Probation Officer's Advisory Group** (045)  
*Supports*

**U.S. Postal Service**  
*Supports bringing loss table in line with §2F1.1; opposes elimination of §2B1.1 (b) (4)*

Amendment 12 (C)

**C.U.R.E.** (letter 008)

*opposes (opposes increasing any guideline)*

**Dept. of Justice** (044)

*Opposes - too soon after last changes*

**Federal Public Defenders**

*Opposes - no evidence it is necessary or appropriate*

**IRS** (048)

*Opposes - too many changes - IRS agreed last year's changes would be last advocated for several years - no justification; see letter pp.245 - 251 for disagreement on curve*

**NACDL**

*Opposes*

**N.Y. Council of Defense Lawyers**

*Opposes*

Amendment 13(A)

**NACDL**

*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Opposes*

Amendment 13(B)

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

Amendment 13(C)

**C.U.R.E.** (letter 008)

*Needs to go further*

**Federal Public Defenders**

*Supports option 1 as a first step*

**NACDL**

*Supports Option 1*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports option 1*

Amendment 13(D)

**C.U.R.E.** (letter 008)

*Opposes - burglary is not a crime of violence; opposes language "the conduct of which the defendant is convicted" should be "the focus of the inquiry" as in new 13(E) [ seems they missed that it is already in this section]; opposes controlled substance offense as an equivalent of "crime of violence"*

**Federal Public Defenders**

*Supports*

**NACDL**

*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports*

Amendment 13(E)

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

Amendment 14

**C.U.R.E.** (letter 008)  
*Supports*

**Dept. of Justice** (044)

*Opposes sweeping language - may result in departures based on prohibited factors. DOJ has previously asked for guidance regarding offender characteristics not ordinarily relevant and this amendment broadens, rather than clarifies, language*

**Federal Public Defenders**

*Opposes revision to commentary to §5K2.0 - does not believe it is appropriate for Commission to tell federal courts how to analyze a case to decide if departure is warranted; supports revisions to intro. commentary and text because of Seventh Circuit holding that not ordinarily really means never*

**Judicial Conference** (Committee on Criminal Law) (letter 028)

*Supports including bracketed language (See page 59 of their letter, section titled Departure as Feedback on Guideline Refinement)*

**NACDL**

*Supports including bracketed language in §5K2.0*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Supports including bracketed language in §5K2.0; opposes language from Riveria - only one circuit's formulation*

Amendment 15

**Federal Public Defenders**

*Opposes 15 (A), (C), (E), (F), (G) because it is more than a consolidation - it is a move towards real offense sentencing; supports others*

**NACDL**

*Opposes*

**N.Y. Council of Defense Lawyers**

*Opposes (G) insofar as it increases base offense level*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports*

**Probation Officer's Advisory Group (045)**

*Generally supports consolidation although not in poll this year*

**U.S. Postal Service**

*Supports consolidation of §2B1.3 and §2B1.1; supports consolidation of §2H3.3 and §2B1.1*

Amendment 16

**C.U.R.E. (008)**

*Supports Commission looking into problems of the aged and terminally ill in prisons and early release for such people - present procedures inadequate to address problems*

**F.A.M.M.**

*Supports using age and infirmity as extraordinary and compelling reason to depart*

**Federal Public Defenders**

*Commission should exercise its authority to provide more flexibility at the initial sentencing so factors such as age and deteriorating health which is present or foreseeable at sentencing can be taken into account. Commission should encourage BOP to adjust sentences*

**International Association of Residential and Community Alternatives (051)**

*Supports hearings and policy statements*

**NACDL**

*Supports interagency working group*

**N.Y. Council of Defense Lawyers**

*Supports changes to statute to give BOP and courts more authority*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports interagency working group*

**Private Attorneys**

012 Mel S. Black

*Supports further use of alternatives for elderly and infirm*

Amendment 17(A)

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**N.Y. Council of Defense Lawyers**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

**Private Attorneys**  
003 David S. Marshall; Price, Kelley, Marshall &  
Bassingthwaight  
*Supports*

Amendment 17(C)

**Federal Public Defenders**  
*Supports*

Amendment 17(D)

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

Amendment 17(E)

**Federal Public Defenders**

*Opposes in light of amendment last term to §1B1.1*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Does not oppose*

Amendment 17(F)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Does not oppose*

**Probation Officer's Advisory Group (46)**

*Supports with clarification (see pages 244-245)*

Amendment 17(G)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Does not oppose*

Amendment 17(H)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Does not oppose*

Amendment 17(I)

**Federal Public Defenders**

*Opposes*

**NACDL**

*Opposes any attempt at clarification of subsection (c); favors position in U.S. v. Concepcion*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Does not oppose portion that would substitute a single, revised addition of firearms listed under 26 U.S.C. § 5845(A)*

Amendment 17(J)

**Federal Public Defenders**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

Amendment 17(K)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Does not oppose*

Amendment 17(L)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Does not oppose*

Amendment 17(M)

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

Amendment 17(N)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Does not oppose*

Amendment 17(0)

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

Amendment 17(P)

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Does not oppose*

Amendment 17(Q)

**Federal Public Defenders**  
*Supports Option 1*

**NACDL**  
*Supports Option 1*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports Option 1*

Amendment 18

**American Bar Association (Committee on Sentencing Guidelines)**  
*Supports*

**Dept. of Justice (044)**

*Opposes - would constitute a dramatic departure from constitutional standards; would lead to increase in litigation; would lead to unwarranted charging and sentencing disparity*

**Federal Public Defenders**

*Supports exclusion of acquitted conduct from the relevant conduct rule; opposes acquitted conduct as a basis for upper departure*

**NACDL**

*Supports*

**N.Y. Council of Defense Lawyers**

*Supports exclusion of acquitted conduct; opposes acquitted conduct as a basis for upper departure*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports*

**Other**

021 and 022 Carol M. Biechlin

*Supports*

Amendment 19

**Federal Public Defenders**

*Supports changes to (a) and deletion of (c); revisions to (b) flawed - supports revised (b) as in amendment 31*

**NACDL**

*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports*

**Probation Officer's Advisory Group (47)**

*Opposes - wants cap to remain otherwise, will increase disparity; must have been reason for old cap; not convinced there is a problem*

Amendment 20(A)

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Needs working group to study loss*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

Amendment 20(B)

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Needs working group to study loss*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports (1) and (2)*

Amendment 20(C)

**Federal Public Defenders**

*Supports reemphasis of policy*

**NACDL**

*Needs working group to study loss*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports clarifying interest is not to counted*

Amendment 21

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports*

Amendment 22

**Federal Public Defenders**

*Supports 1; opposes 2*

**NACDL**

*Supports Option 1*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Supports Option 1*

Amendment 23

**American Bar Association (Committee on Sentencing Guidelines)**  
*Opposes*

**Federal Public Defenders**  
*Opposes*

**NACDL**  
*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Opposes*

**Probation Officer's Advisory Group (045)**  
*Supports but wants all references to grouping rules in note 3 eliminated (see p.240 for text)*

Amendment 24

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports*

**C.U.R.E.** (letter 008)  
*Supports*

**Federal Public Defenders**  
*Supports*

**NACDL**  
*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)  
*Supports*

Amendment 25

**Federal Public Defenders**  
*Supports Option 1*

**NACDL**  
*Supports Option 1*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports Option 1*

Amendment 26

**Dept. of Justice (044)**

*Supports - DOJ amendment*

**NACDL**

*Does not oppose distinction being made but opposes offense level of 12 as compared to 10 for bribery, a more serious offense*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Does not oppose*

**Probation Officer's Advisory Group (045)**

*Supports*

Amendment 27

**C.U.R.E.** (letter 008)

*Opposes because 1) "gang" is poorly defined 2) membership in a gang should not enhance sentence of a person committing a crime independently of a gang, and 3) controlled substance offense levels high enough without increasing them for so-called gang members because of their social associations*

**Dept. of Justice** (044)

*Supports - DOJ amendment*

**Federal Public Defenders**

*Opposes*

**NACDL**

*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Opposes - Too expansive; due process and overbreadth problems; no requirement of convictions for other gang members; no definition of "continuing series of crimes"; double or triple counting*

Amendment 28

**C.U.R.E.** (letter 008)

*Opposes because 1) needs tight definition of federal facility  
2) should hinge on defendant having requisite knowledge he was  
in federal facility\school zone*

**Dept. of Justice** (044)

*Supports - DOJ amendment*

**Federal Public Defenders**

*Opposes - no evidence for change*

**NACDL**

*Opposes - no demonstrated need*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Opposes - loaded gun would seem to be heartland  
no evidence for additional enhancements*

**Probation Officer's Advisory Group** (045)

*Supports raising base offense level to 14*

Amendment 29

**Dept. of Justice (044)**  
*Supports - DOJ amendment*

**Federal Public Defenders**  
*Opposes*

**NACDL**  
*Opposes - no demonstrated need*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Opposes - no evidence*

Amendment 30

**C.U.R.E.** (letter 008)

*Conditionally supports - supports additional categories only if makes overall reductions in sentences; supports additional distinctions for type of offense and clean records but withholds comment until specific proposal set forth*

**Dept. of Justice** (044)

*Supports - DOJ amendment*

**Federal Public Defenders**

*Opposes*

**NACDL**

*Opposes - no demonstrated need*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Based on past commission study and discussion, see no need to re-open issue*

**Probation Officer's Advisory Group** (045)

*Supports only leaving the counting of 3 point conviction as is*

Amendment 31

**C.U.R.E.** (letter 008)

*Supports "the modification of §1B1.1(b), so that the amendment designated retroactive is applied together with any other amendments that would reduce incarceration time for the Defendant"; makes no sense to apply retroactivity to provide relief if other changes result in no change to the original sentence or in a higher sentence.*

**Federal Public Defenders**

*Supports*

**Judicial Conference** (Committee on Criminal Law) ) (letter 028)

*Supports - one book rule too complicated, new information currently available will cause increased workload because of new fact-finding issues and new caselaw, and amendment will cause disparity (see letter beginning on page 62)*

**NACDL**

*Supports*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Supports*

**Probation Officer's Advisory Group** (047)

*Opposes*

Amendment 32

**C.U.R.E.** (letter 008)

*Supports if "undue burden on the government" is removed - otherwise, a non-cooperating defendant who is forced to go to trial because of nothing else to gain will always be opposes for this reduction by the AUSA.*

**Dept. of Justice** (044)

*Opposes*

**NACDL**

*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section** (054)

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council** (053)

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group** (039)

*Opposes - rewards those who engage in "slow guilty plea"*

**Other**

004 U.S. Attorney, Eastern District of Louisiana

*Against - proposal supports those who fight half-heartedly*

Amendment 33(A)

**American Bar Association** (Committee on Sentencing Guidelines)  
*Supports any amendments shown to be valid by crack report*

**ACLU**  
*Supports 1:1*

**C.U.R.E.** (letter 008)  
*Supports*

**Drug Policy Foundation**  
*Supports 1:1*

**Families Against Discriminative Crack Laws**  
*Supports 1:1*

**F.A.M.M.**  
*Supports 1:1 but at minimum, cocaine plus 2 levels similar to meth and ice*

**Federal Public Defenders**  
*Supports 1:1*

**NACDL**  
*Supports change*

**Neighborhood Families Against Unjust Crack Laws**  
*Supports 1:1*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**  
*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**  
*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**  
*Supports modifying or eliminating equivalency between crack cocaine*

**Rainbow Coalition**  
*Supports 1:1*

**Private Attorneys**  
033 Stephen H. Mackenzie  
*Supports change 1:1*

**Other:** as of 3/25 1,686 letters in support of changing crack equivalency  
023, 027, 032, Testimony at hearing  
*Many private citizens support changes to crack cocaine*

Amendment 33(B)

**Clergy for Enlightened Drug Policy**

*Supports 1 plant = 100 grams*

**C.U.R.E. (letter 008)**

*Supports 1 plant = 100 grams throughout the guidelines*

**Drug Policy Foundation**

*Supports 1 plant = 100 grams*

*Don't count male plants*

*Count 50% of seedlings*

**F.A.M.M.**

*Supports 1 plant = 100 grams*

*Don't count male plants*

**Federal Public Defenders**

*Supports 1 plant = 100 grams*

**NACDL**

*Supports change*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**NORML**

*Supports 1 plant = 100 grams*

*Don't count male plants*

*Count 50% of seedlings*

**Practitioner's Advisory Group (039)**

*Supports modification of 1 plant = 1 kilogram*

**Private Attorneys**

010 Norman Elliott Kent

*Supports*

016 David H. Reynolds

*Supports*

017 Robert F. Hellman; Hellman Cook and Alexander

*Supports*

029 Jennifer K. Anderson

*Supports*

030 Stephen A. Howe

*Supports less harsh treatment for marijuana possession, cultivation, and sale*

036 Waring R. Fincke, Dvorak and Fincke

*Supports*

037 P. David Wahlberg, Bender & Wahlberg

*Supports using actual weight*

038 Washington State Representative Jeanne Kohl, Majority

Whip; Sociology Professor, University of Washington  
*Supports not using 1 plant = 1 kilogram*

052 Kenneth Lerner

*Commission should make independent gradation for plants  
Small seedlings, clones, starts, or other barely  
established plants should not be treated the same as  
mature plants*

**Other:** as of 3/25 1,898 letters in support (probably most for  
1 plant = 100gm).

002, 005, 024, 025

*Many private citizens support changes to marijuana plant  
weight to 1 plant = 100 gm*

018 Ed Rosenthal

*Supports - long letter filled with lots of info*

Testimony of Peggy Edmunston (FAMM member)

*Supports 100 g = 1 plant*

Amendment 34(A)

**C.U.R.E.** (letter 008)

*Opposes any increase for multiple victims unless defendant knew and intended there was to be more than one victim*

**Federal Public Defenders**

*Opposes*

**NACDL**

*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Opposes*

Amendment 34(B)

**C.U.R.E.** (letter 008)

*Opposes any increase for multiple victims unless defendant knew and intended there was to be more than one victim*

**Federal Public Defenders**

*Opposes*

**NACDL**

*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Opposes victim table - favors use of SOC instead*

Amendment 35

**NACDL**

*Opposes*

**North Carolina Academy of Trial Lawyers, Criminal Law Section (054)**

*Endorses the response of the Practitioner's Advisory Group*

**North Carolina Bar Association, Executive Council (053)**

*Endorses the response of the Practitioner's Advisory Group*

**Practitioner's Advisory Group (039)**

*Opposes - no definition of organized; no minimum amount of gain or loss*

## Other Issues

- 001 Probation - Deputy Chief, Western District of Tennessee  
§4A1.2 - *Judges are consolidating old convictions nunc pro tunc; consolidated offenses should cover only offenses consolidated at time of sentence*
- 008 C.U.R.E.  
*Counting of prior convictions does not take into account discretion AUSAs have to Rule 20 or not when there are two arrests in two different jurisdictions*
- 019 USPO Christopher Buckman  
*Further refine definition of crack*
- 026 Tom Gunn  
*No mandatory minimums for non-violent first offenders (seems to be geared to drug offenses)*
- 027 Helen Shipman  
*No mandatory minimums for non-violent first offenders; fine based incarceration*
- 042 Charles A. Asher , Attorney  
*Stop the amendments*
- 043 U.S. Postal Service  
*Wants 2-level enhancement in §2B1.1 for mail obstruction or destruction*
- Wants loss for stolen credit cards to credit limit to be more consistent with note 2 reference to checks and money orders. Claims judicial districts are inconsistent in how to apply loss to credit cards*
- Testimony of James Beresford  
Remove reference to Chapman in LSD application note



Office of the Deputy Attorney General

Washington, D.C. 20530

March 18, 1994

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

Dear Judge Wilkins:

The following sets forth comments of the Department of Justice regarding proposed sentencing guideline amendments which were published in December 1993.

AMENDMENTS PROPOSED BY THE DEPARTMENT OF JUSTICE (Amendments 26-30)

As the United States Sentencing Commission is aware, the Department of Justice proposed amendments addressing several important areas of concern to law enforcement. These proposals involve significant issues such as crimes of violence by organized crime members, firearms offenses by members of criminal gangs, obstructing an election or registration, possession or discharging of a firearm in a school zone, and criminal history scoring. We continue to believe that these proposals have merit and should receive favorable consideration.

LIMITATIONS ON THE IMPACT OF CONTROLLED SUBSTANCES QUANTITY ON OFFENSE LEVEL DETERMINATIONS (Amendment 8)

*Disagree*  
This amendment consists primarily of three specific proposals which are designed to: (1) reduce the impact of drug quantity on the determination of offense levels for offenses involving drugs and (2) increase the offense levels where weapons are possessed or used in drug crimes.

(A) Changes in the Drug Quantity Table The first proposal lowers the base offense levels by revising the Drug Quantity Table to reflect the 5- and 10-year mandatory minimum sentences at levels 30 (97-121 months) and 24 (51-63 months), rather than their present levels of 32 (121-151 months) and 26 (63-78 months). This is accomplished by: (1) reducing the upper limit of the Drug Quantity Table from level 42 to 38, (2) reducing the number of drug offense levels, and (3) assigning lower offense levels to specific drug quantities than in the present tables.

The Department strongly opposes this amendment. In our view the amendment represents an erosion of the seriousness with which

the Commission views narcotics offenses. We believe that even the upper limit of 38 proposed this year lessens the deterrent effect for drug traffickers who deal with the largest quantities of drugs, and the amendment creates problems with mandatory minimum provisions as well. By placing the guideline maximum at a level that barely accommodates the mandatory minimum sentence for certain drug quantities, this scheme effectively eliminates the range of sentences at certain offense levels from which the court should be able to choose an appropriate sentence. In addition, the court would be effectively precluded from recognizing guideline reductions in cases in which the mandatory minimum trumped the guideline sentence for offenders who played a minor or minimal role in the offense. Thus, the practical effect of the amendment would be to discourage guilty pleas because the mandatory minimum sentence would prevent reduction for role and for acceptance of responsibility for those defendants whose drug quantities are at or just above the mandatory minimum amounts. By contrast, the current offense levels are geared toward existing mandatory minimum sentences to a greater extent and in most cases allow for reduction for such characteristics as role in the offense and acceptance of responsibility. The amendment's stated concern for better sentencing at the high end of the drug quantity table simply transfers problems to the lower and middle levels, where many more defendants are sentenced.

Because the Commission had already decreased the impact of drug quantity on sentencing last year with its 1992 amendment of the relevant conduct guideline, which narrowed the conduct (*i.e.*, quantity of drugs) for which defendants would be responsible at sentencing, we urged it not to make further amendments last year until the effect of the relevant conduct amendment could be determined. We are not aware that the Commission has analyzed the extent to which this amendment cured any of the perceived problems.

(B) Weapons Enhancement Amendment 8 provides two approaches to increase the offense level for crimes involving drugs where weapons were used. Option 1 would add a 4-level enhancement in §2D1.1 for the use of a weapon, and a 2-level enhancement if the offense resulted in serious bodily injury. Option 2 would operate through a special instruction to apply the guidelines for assault with intent to commit murder or aggravated assault if the offense involved such conduct (in addition to the existing enhancement for possession of a dangerous weapon). The Commission also has invited comment on whether the weapons enhancement should be amended to differentiate by dangerousness certain weapons (*e.g.*, assault weapons, machine guns and sawed-off shotguns) and the number of weapons involved.

In view of the Administration's commitment to punish severely defendants who commit violent crimes, the Department