

Public Affairs

From: [REDACTED]
Sent: Wednesday, March 11, 2015 2:57 PM
To: Public Comment
Subject: Guideline Amendment-White Collar Financial

Dear United States Sentencing Commission,

First, I would like to thank the United States Sentencing Commission for making public comment available. We appreciate your consideration in amending the sentencing guidelines to reflect a reduction in sentencing affecting white-collar financial crimes.

I have spent the last couple of years further educating myself in the ideology of criminal law and would like to express what I believe the similar ideas of others and myself share. There are a couple of key points that are essential in this discussion and I feel would be beneficial while consideration is being made. Please take the time to review the following information. It will sum up the main key points of why a reduction in sentencing is essential. **Please do not be discouraged in reading this in its entirety, due to the length. I am positive this will review many key points and is more potent than anything you may review on this subject.**

Lets begin with the largest issue at hand. Overcrowding in prisons have sky rocketed an all time high. The numbers of federal inmates has boomed from 25,000 in 1980 to 219,000 in 2012. At this rate federal prisons will be at 50-55% overcapacity in the next 20 years. You can say this is in result to the stricter policy, such as the elimination of parole or the increase mandatory sentencing min, either way, this is a huge problem that in now attracting mass media and public attention. If we don't begin a change today, this issue will grow and cause great economic and financial issues in the future. With the implementation of the recent reduction of non-violent drug offender, we will see the tremendous benefits of prison spacing and reducing in overcrowding. But, this is not enough to offset the tremendous increase. We need to begin phase two, by reducing the sentencing minimums of other non-violent financial inmates to further make an impact of this number.

On an economic standpoint, lets look at how incarceration effect federal and state government. With 74 billion spent annually, 10 billion just in California, or \$45,000 annually per federal inmate, its no wonder we are at such a deficit economically.

CNN reported, the cost of education an elementary school child in California cost \$9000 a year, compared to cost of housing an inmate in federal prison of \$45,000 annually. Since 2010, these numbers have jumped 34% (BOP Figures). If this sentencing reduction is implemented, foresee the capital we would be saving and could use to apply other federal and state programs. Each state would be reducing their budget deficit, which as a result will reduce the deficit as a nation. All it takes is a small step forward.

These statistics speak for themselves. Housing a non-violent white-collar inmate for 5-10 years in a min camp, how is this beneficial in any way? If you asked any inmate, they would tell you, "it only takes one day in prison to make you want to change your entire life." All of these inmates were involved in some type of financial misrepresentation and should deal with the consequences of their actions. However, what if we looked at a different approach on consequence. Inmates should be required to do their incarceration, (within a reasonable time) and then using the reduction in time to enter the work force and or enroll in educational programs to change their lives for the better. We need them to contribute to stimulating economy instead of just being housed in a dormitory costing taxpayer dollars. What benefit are they too us if they are housed in a min security prison for years? These camps are like a college dormitories, where they are able to do the many things

they can do out of custody other than the fact that is costing as much as college tuition. Some of these federal cases take months to years to conclude and these inmates do not have the opportunities to move forward in life

What if there were programs that were required as part of supervised release to help inmate's future educate them and get the help they need. Required employment and or education as part of their release, (which they would need to fund themselves and no longer be a responsibility of the government). After all positive reinforcement more powerful than negative reinforcement, a principle taught to us as early on in life. Inmates already have the challenges of finding employment (felony background) why make it so difficult to get them back into society and move forward on the right path in life by keeping them housed for years from society. They are just if not more capable to making a positive change in society. Most of these inmates are well qualified educated and some of the most intelligent people and do not benefit the economy by being isolated. "Everyone makes mistakes in life, but that doesn't mean they need to pay for them the rest of their life. Sometimes good people make bad choices; It doesn't mean they are bad. It means they are human."

We have already see the benefits of the programs such as Half Way House and early Release and this is the just the beginning of changing incarceration. Even the Half Way houses are overcapacity and now are housing inmates on home confinement while having inmates pay 25% of income to a space that another inmate sleeps on. Sometimes each bed is double and triple paid for while on home confinement. We need to get this issue under control and in a timely manner.

On a lifestyle standpoint, imagine the families that have been devastated by the incarceration of family members. The families that drive hours and fly across the country at the chance to see there loved ones. The children who grow up without a mother and father and deal with the long term repercussions of devastation that will affect their rest of their lives. Statistics show, incarceration of to loved one are as effective as the abuse of a parent of child in the home. Wives and husbands who already have the difficult challenge of maintaining a marriage of joint life, now may not continue to do so (increasing divorce rates) and separation. Who's going to wait 5-10 years for a person to share their life again? Lets keep families together; children raised with positivity, love in their life and both parents. Do we need to add additional social issues such as depression, divorce, negative child development and mental issues (to say a few)? What about the cost of welfare, food stamps and housing as a result of single mothers and fathers who work two jobs to make sure there family survives the years of one working parent. The families of inmates are affected greatly, most of time greater than that of the inmate, which has led to many negative aspects on a society and increase of cost of economic programs.

You could argue that allowing inmates an early release may send the message that they can get a "break" on there sentencing. However, a sentencing of 4 years instead of 5 does one of two things. First, it still provides the message that there is consequence for your actions and you will still do your years of time. Second, this is just a small amount of hope to change your life and get back on your feet earlier than expected. This small revolution will make a huge impact on the government and economy. Economically, savings of \$45,000 per inmate and beneficial to the tax dollars provided as a result of the extra one year the inmate can enter the work force and provide taxes.

I ask that you take this opportunity to consider these points and implement this amendment that would positively change so many things. Imagine the lives that can be changed and how the economy as a whole would benefit for this. No matter how many angles you look at this, there is mainly benefit to society and no loss. I am optimistic my words will impact your consideration.

Regards,
F Noory

Public Affairs

From: [REDACTED]
Sent: Tuesday, March 17, 2015 10:33 PM
To: Public Comment
Subject: United States Sentencing Commission Notice of proposed amendments to sentencing guidelines

Dear Chairman Saris and Members of the Commission:

I am writing to express deep concern over some of the proposed amendments to the sentencing guidelines.

I appreciate this opportunity to provide written commentary/testimony to the Commission in response to the proposed amendments to address the economic impact on victims under the victim's table portion in 2B1.1 in the United Sentencing Guidelines.

"Under the proposed amendment, the court is directed to use gain, rather than loss, for purposes of subsection (b)(1) if the offense involved (i) the fraudulent inflation or deflation in the value of a publicly traded security or commodity and (ii) the submission of false information in a public filing with the Securities and Exchange Commission or similar regulator. However, the enhancement under subsection (b)(1) shall be not less than [14]-[22] levels." -

I am the sole individual that delivered the Victim Impact Statement on behalf of Worldcom employees, stockholders, and individual investors in the trial of United States v Bernard J. Ebbers. On that day almost (10) years ago . . . I detailed an account of how the actions of Bernard Ebbers, Scott Sullivan and his co-conspirators caused me personally to experience catastrophic "Life Altering" financial, emotional, and psychological trauma as a result of this fraud. My testimony, at sentencing, to the court was an attempt to describe some of the "untold human carnage" experienced by myself and countless others like me, since these groups were not heard from during the course of the trial.

As T. Michael Andrews, Chairman of The Victims Advisory Group (VAG) points out in his submission dated March 3, 2015. "The President's Task Force on Victims of Crime concluded that "[a] judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim." It is precisely for this reason that the American Bar Association has endorsed victim impact statements, explaining that "good decisions require good-and complete-information. . . . [I]t is axiomatic that just punishment cannot be meted out unless the scope and nature of the deed to be punished is before the decision-maker."

This new proposed amendment which shifts the emphasis from loss by the victims, to how much the defendant has gained financially to gage the severity of the crime is wholly misplaced and goes against the spirit of the law if not the letter of the law. It is bad enough that in "fraud on the market" offenses the individual investor has little or no recourse to be made whole financially, this proposed amendment seeks to mitigate those losses when it comes to punishment.

I agree with the VAG and urge the Commission to adopt changes to the victim's table portion in 2B1.1 that focus on the victims of these offenses which reflect the hardship on victims based on their economic condition at the time of the crime. (See details as set forth in VAG submission dated March 3, 2015).

I furthermore support the following VAG proposed Option 3:

The Commission Should Select New VAG Drafted Option 3 of the Amendments to § 2B1.1

Reflecting the reality that a crime can have different impacts on victims depending on their individual circumstances, the VAG urges the Commission to adopt a change to the Guidelines table that reflects this fact. The Commission has suggested two options – Option 1 and Option 2 – for making such a change to § 2B1.1. We would encourage the Commission to consider a third option – “Option 3.” This option recognizes that economic crimes can cause a broad range of hardships or harms to victims, which should be reflected in a broad range of punishments (consistent, of course, with the “25% percent rule” mandated by the Commission’s governing statute).

Our proposed Option 3 would be inserted in the Sentencing Guidelines at the same point where the Commission is proposing to insert either Option 1 or Option 2. Our proposed guideline would read as follows:

VAG Recommendation - Option 3

(A) If the offense resulted in life-altering financial or other hardship to one or more victims, or a group of victims collectively, increase by 6 levels.

(B) If the offense resulted in substantial financial or other hardship to one or more victims, or a group of victims collectively, increase by 4 levels.

(C) If the offense resulted in significant financial or other hardship to one or more victims, or a group of victims collectively, increased by 2 levels.

If the degree of hardship is between that specified in subdivisions (A) and (B), add 5 levels.

If the degree of hardship is between that specified in subdivisions (B) and (C), add 3 levels.

For commentary purposes “Significant” hardship means noteworthy or important hardship above and beyond what would ordinarily be found in a financial offense. “Substantial” hardship means very noteworthy or very important hardship above and beyond what would ordinarily be found in a financial offense -- i.e., hardship above and beyond significant hardship such as defrauding the bank account or home of an individual. “Life Altering” hardship means defrauding the retirement income of an individual who has no other means to work and support themselves or their family.

One issue that the commission asked for assistance in considering is whether hardship should be limited to a purely financial character. I firmly believe that hardship should be assessed along other dimensions such as psychological or physical harm. As the Commission is aware, and my personal testimony in the Ebbers case indicate, some components of financial crimes might lack in financial significance, but have tremendous psychological, emotional, and physical significance to the victim. These factors should simply be included in the guidelines as obviously serious losses that ought to be considered at sentencing, regardless of whether they have a financial character to them or not.

I believe that the advantage of this type of approach is that it does take into account a wide range of effects that “fraud on the market” crime can have on victims. Also, I believe that there is a factor involved in this approach that takes into consideration the lasting harmful effects that “fraud on the market” crime may have on the victim and attribute that to the defendant at sentencing. Indeed, a crime causing life-altering hardship is so serious it ought to be punished by a 6 level increase in the base offense level.

One other issue that the Commission has asked for assistance in considering is whether there should be retroactive application of any of the proposed amendments. I personally do not see a need for retroactive application in regards to the Sentencing Guidelines as it relates to the victim table and it's enhancements. Retroactive application of new stanards based on what we know today is a way of retrying elements of the case, by a standard that did not exist at the time of the crime. This is not fair to the victims of that time which did not have the assurances and protections afforded by Sarbanes-Oxley, or the Dodd-Frank Wall Street Reform and Consumer Protection Act.

In closing I appreciate this opportunity to address the victim related issues in relation to the impact of economic loss to victims.

It is my hope that my perspective will assist the Commission in its deliberations on these important matters of public policy.

Should you have any further questions or require any clarification regarding the suggestions, please feel free to contact me.

Respectfully,

Henry J. Bruen Jr.



Public Affairs

From: [REDACTED]
Sent: Tuesday, March 17, 2015 11:41 PM
To: Public Comment
Subject: Public Comment for Amendments to Federal Sentencing Guidelines

Dear Commissioners:

Thank you for providing the opportunity for public comment regarding proposed changes to federal sentencing guidelines.

First, I would like to comment on adjusting the monetary tables in the guidelines for inflation. These tables should be adjusted for inflation in the 2014-2015 amendment cycle, and periodically through a mechanism for automatic adjustment. Use of the Consumer Price Index would be a reasonable method, as it is widely accepted. Since sentences for economic crime are based on these monetary tables, a lack of adjustment for inflation over long periods of time results in a misrepresentation of damages.

Secondly, the definition of intended loss should be revised. Intended loss is widely interpreted and there should be guidelines that make the determination clearer and more consistent. To include (Option 1) "the defendant purposely sought to inflict" would be an improvement, but does not support some kind of reasonability in the calculation of loss.

For example, in Section 2 B1.1, Application Note 3(f), there is a special rule for determining intended loss for defendants convicted of a federal health care offense involving a Government health care program. It provides "the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss, i.e. is evidence sufficient to establish the amount of the intended loss, if not rebutted." Government programs such as Medicare have specific payment tables and they do not pay more than allowable – regardless of amount billed. This rule is unreasonable and defies common sense. It would be impossible to collect more than a government program pays. If you believe a person is knowledgeable enough to commit fraud, how could they expect to collect the entire amount billed to such a program?

In those regards, "the defendant purposely sought to inflict" the amount obtainable from the payment tables of the program. The guideline should not include "pecuniary harm that would be impossible or unlikely to occur" as language such as this dismisses the defendant's rebuttal before it is made because the guidelines allow for harm that is impossible. It simply makes a circular argument. As in "Yes, I agree that you knew it was impossible to collect the full amount billed, but the guidelines include harm that would be impossible".

My husband is currently incarcerated for health care fraud. He was sentenced based on the billed amount to Medicare and a private insurance company. His intended amount was more than 3 times the actual amount. The amount billed to the private insurance company was a "roll over" – the bill is sent in entirety to the insurance company from Medicare and they deduct the amount of payment from Medicare and the adjustment from Medicare, then adjust their own payment for contracts and pay a very small amount. Every dollar considered for the private insurance company was a duplicate of the Medicare billing. And those dollars

were included in the intended loss as billed regardless of the fact that it was not a Government program, but a private insurance company.

If a person is guilty of health care fraud, then one would assume they have knowledge of billing practices. They absolutely have no intention or reasonable expectation of collecting more than the program pays. In my husband's case, rebuttal was made and not considered. Cases like these not only defy common sense, but explain some of those "outliers" often found in sentencing statistics. Removing the clause on "harm that would be impossible" would allow for rebuttal and argument as to true intention.

Finally, any Reduction in Term of Imprisonment as a Result of Amended Guideline Range should be applied retroactively to previously sentenced defendants. If these defendants were sentenced under outdated monetary tables and guidelines requiring amendments or clarification, they should be subject to the benefit of the corrections.

I sincerely appreciate your willingness to consider my comments and your commitment to improve and define the guidelines.

Kind Regards,

Sandra Louthian

Public Affairs

From: [REDACTED]
Sent: Wednesday, March 04, 2015 12:20 PM
To: Public Comment
Subject: U.S. Sentencing Commission public comment

Dear Members of the U.S. Sentencing Commission:

I am writing concerning the Commission's 2015 Guideline amendments. I support all of the proposed changes to the sentencing for economic crimes. When first-time, non-violent financial offenders receive markedly longer sentences than the average sentence for such heinous crimes as manslaughter, arson, and kidnapping, then it is time to reconsider our sentencing practices and I applaud your doing so.

I am especially supportive of the proposed amendment concerning the "sophisticated means" enhancement. It is imperative that when determining a crime's level of sophistication that it be compared with similar crimes. The basis for comparison should be the type of economic crime and the amount of financial loss. To determine if an offense is uniquely sophisticated, financial crimes with high-dollar losses should only be compared with similar financial crimes that also have high-dollar losses. Crimes with losses exceeding \$1 million, for instance, are by their very magnitude usually more complex than ones with only \$100,000 loss. Only a comparison of like crimes with like losses is fair and objective. Otherwise, the punishment resulting from financial loss alone will continue to be unfairly compounded above that prescribed in the loss tables because of the high correlation between financial loss and the sophistication of the crime.

Finally, I urge the Commission to designate each of these amendments for retroactive application. There are thousands of federal inmates affected, many of whom are first-time offenders serving inordinately long sentences and who have an exceptionally low likelihood of ever re-offending.

Brandon Forbes [REDACTED]

- BF

January 26, 2015

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

Dear Commissioner,

Recently DOJ reported that they expect to prison population to fall below 200,000 inmates over the next few years. In spite of this, DOJ states that the budget for the Bureau of Prisons will continue to increase. At \$7 billion, the BOP's budget represents approximately 30% of DOJ's overall budget, which is hampering the ability for DOJ to properly fund many of its other law enforcement activities.

Your commission has the ability to provide immediate and significant relief by making broad changes to the white collar guidelines during the 2015 reform cycle. The American Bar Association's proposal presented far reaching reforms which would address the overweighting of dollars used by the current guideline for fraud crimes, not just securities related fraud.

White collar offenders suffer long sentences based on the dollar amount of the case, with no regard for criminal history or other factors, similar to the sentences for drug offenders based on the amount of drug involved. I urge you to reconsider your proposal and include all fraud retroactively, this will result in significant impact on the unsustainable BOP budget and the lives of those affected.

Please act during this session, your actions on drugs has begun to stem the costs of a system gone out of control, so to would action to address all fraud help in addressing overdue reforms to the harsh white collar sentences and attendant costs. Many of these incarcerated individuals are older inmates, who are least likely to commit another crime and represent little threat to their communities. The cost of incarcerating older inmates is estimated at \$58,000 or more than twice the cost for younger felons. Those with restitution would be able to pay more of their debt upon release.

There is a strong case for the addressing all fraud now. I urge you and your commission to act compassionately and with financial resolve, continuing to attack the every escalating BOP related costs. Thank you for your consideration of this much needed reform.

Sincerely,



Albert J. Cipoletti

January 23, 2015

U.S. Sentencing Commission
One Columbus Circle NE 2-500 S.Lobby
Washington, DC 20002-8002

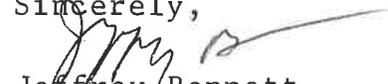
Re: Response to Recent Commission Recommendations

Dear Sentencing Commission:

The purpose of my letter is to voice my disappointment in the recent Commission recommendation. To say I was shocked on how minimal the potential relief given to white-collar crimes is an understatement. I continue to be baffled as to how the more violent type crimes seem to be getting adjustments or relief from your department. Studies have shown that white-collar criminals are the "Least Likely to Repeat Offend" category. For some reason more violent type crimes or criminals such as drug dealers and now potentially the Armed Career Criminals may benefit from the recent recommendations. I was sentenced to 95 months for a mail fraud conviction of which my sentence almost doubled due to numerous enhancements after going to trial. In essence, I was penalized for exercising my right to trial. The qualifications for being an organizer and the sophisticated means enhancements are very vague and what I feel to be prejudicial. What ever happened to being convicted of the crime and thats it? Another reason for the antiquated sentences that ridiculously to lengthy are due to these enhancements that need to be rewritten or removed.

I am asking your department to please consider reducing the prison population by focusing on the non-violent type crimes and least likely to ricidivate or repeat offend such as fraud, tax evasion, etc. I appreciate your time and consideration.

Sincerely,


Jeffrey Bennett


January 14, 2014

The Honorable Patti B. Saris
Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Proposed Changes to Guidelines Governing White Collar Crimes

Dear Chair Saris:

I have been following the proposed changes to the guidelines governing white collar crimes. The most important change that would eliminate sentences with greater disparity, similar to the Amendment 782 changes, would be to reduce the § 2B1.1 loss table. I would like to recommend for consideration the following:

<u>Loss (Apply the Greatest)</u>	<u>Increase in Level</u>
(A) Less than \$1,000,000	no increase
(B) More than \$1,000,000	add 2
(C) More than \$2,500,000	add 4
(D) More than \$7,000,000	add 6
(E) More than \$20,000,000	add 8
(F) More than \$50,000,000	add 10
(G) More than \$100,000,000	add 12
(H) More than \$200,000,000	add 14
(I) More than \$400,000,000	add 16

The proposed other changes that are under consideration, should be considered in addition to these changes. The white collar amendment must be retroactive to be fair to all current and future individuals affected. (See Attached)

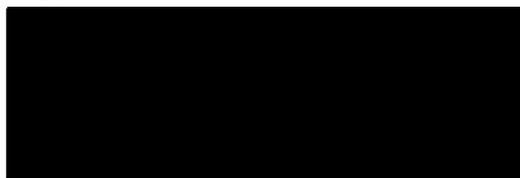
I am the Lead Law Clerk at this institution, and the greatest disparities in white collar sentencing that we experience, are through the § 2B1.1, intended and/or actual loss calculations, based upon the additions for the amounts.

Your strong support and recommendations for the above requested changes would be greatly appreciated. I am sure that your staff can provide you with the data for the last 5 to 10 years as to sentences effected by the § 2B1.1 calculations, and what the disparities are, e.g., in relation to criminal history.

Thanking you in advance for your support!

Sincerely,


Clovis L. Prince


Law Library Lead Clerk

cc:

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News

Sentencing

Sentencing Commission Proposes Changes To Guidelines Governing White Collar Crimes

The U.S. Sentencing Commission Jan. 9 published and requested comment on several proposals that would significantly modify the U.S. Sentencing Guidelines governing fraud and other “economic offenses” in U.S.S.G. § 2B1.1.

The commissioners decided not to change the way the guidelines operate for most economic offenses, but they do propose overhauling the calculation of the punishment for a “fraud on the market.”

The proposed amendments grow out of the commission’s “multi-year study” prompted by Congress’s command in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act that the commissioners review the guidelines on securities fraud cases. The proposals integrate some of the feedback that the commission received at its symposium on economic crime in September 2013, Judge Patti B. Saris—the commission’s chair—said in public comments accompanying the release of the proposed amendments.

Wide Range of Proposals Submitted. The commission sorted its proposals for changes to the guidelines for economic offenses into four groups:

- Part A proposes revisions to the definition of “intended loss”;

- Part B addresses the victims table in Section 2B1.1(b)(2) and proposes establishing a new enhancement for cases where one or more victims suffered substantial financial hardship and to reduce the levels of enhancement that apply based solely on the number of victims;

- Part C proposes several revisions to the enhancement for using “sophisticated means,” Section 2B1.1(b)(10)(C), in several ways;

- Part D addresses offenses involving fraud on the market and related offenses.

The four parts also set out a number of specific “issues for comment” on which the commission is seeking input.

Frauds on the Market. Under one of the various proposed amendments in Part D, a sentencing judge would use “gain” rather than “loss” as the fundamental measure of the gravity of an offense in certain circumstances.

The circumstances that would trigger this proposed sentencing test are when the offense involves “(i) the fraudulent inflation or deflation in the value of a publicly traded security or commodity and (ii) the submission of false information in a public filing with the Securities and Exchange Commission or similar regulator.”

Proposals in Part A respond to the debate in the courts over whether an assessment of the intended loss is fundamentally objective or subjective in nature. For example, one proposal would follow the Tenth Circuit’s decision in *United States v. Manatau*, 647 F.3d 1048, 89 CrL 718 (10th Cir. 2011), under which sentencing judges may go beyond a purely objective inquiry and consider the “loss the defendant purposely sought to inflict.”

Victim Impact. One of the more fundamental sets of changes suggested by the commission relates to the way the guidelines take into account victims of economic offenses.

These comprehensive changes would shift away from measuring the gravity of an offense by the number of victims and graduate the enhancements for offenses in which a victim suffers a substantial loss. The proposal includes two alternative changes and a number of issues for comment.

Adjusting for Inflation. The commission also is considering adopting the approach Congress has mandated for civil penalties, which would adjust criminal fines for inflation as measured by the Bureau of Labor Statistics’ Consumer Price Index.

The commission said it will make publicly available an analysis of the impact of this proposed amendment.

Career Offenders. Another proposed amendment would adopt an interpretation of the career offender guidelines and “single sentence rule” advocated by the government and adopted in *United States v. Williams*, 753 F.3d 62695 CrL 359 (6th Cir. 2014) over a more lenient approach taken by the Eighth Circuit.

Jointly Undertaken Activity. The commission proposed another change that addresses the limits on when activity jointly undertaken by a co-defendant comes within the “relevant conduct” of a defendant’s offense.

The commission said its proposal “restructures” the relevant conduct guideline, Section 1B1.3, and its commentary “to set out more clearly the three-step analysis the court applies to hold the defendant accountable for acts of others in the jointly undertaken criminal activity:

- (1) identify the scope of the criminal activity the defendant agreed to jointly undertake;

- (2) determine whether the conduct of others in the jointly undertaken criminal activity was in furtherance of that criminal activity; and

- (3) determine whether the conduct of others was reasonably foreseeable in connection with that criminal activity.

The comment period for the proposed amendments and other issues on which the commission is seeking input closes March 18. A public hearing is scheduled for March 12 in Washington.

By HUGH B. KAPLAN

Reader-friendly version of proposed amendments at <http://pub.bna.com/cl/2015USSGProposed.pdf>.

Detailed submissions from the U.S. Sentencing Commission's 2013 Symposium on Economic Crime are available on the commission's web site at <http://www.uscc.gov/research-and-publications/research-projects-and-surveys/economic-crimes/united-states-sentencing-commissionsymposium-economic-crime>.

Justice Department

White House Calls on New Senate To Confirm Lynch Before Presidents' Day

The White House is calling on the Senate to hold a hearing this month on Loretta Lynch, the president's pick to be the next attorney general, and for the Senate to confirm Lynch by the mid-February end of this congressional work period.

"It's been almost two months now since the president nominated U.S. Attorney Loretta Lynch to succeed Eric Holder as the next attorney general of the U.S.," White House press secretary Josh Earnest said.

The Senate is scheduled to be in recess the week of Feb. 16 for the Presidents' Day holiday.

Obama publicly announced on Nov. 8 that he had chosen Lynch as his nominee for attorney general. Lynch is in her second stint as U.S. Attorney for the Eastern District of New York.

The White House initially sought to confirm Lynch during the lame-duck session in November. Her nomination, however, was put on the back burner so that then-Senate Majority Leader Harry Reid (D-Nev.) could focus on judges and other executive branch nominees instead.

On Jan. 7, the White House resubmitted a long list of nominations to the Senate that had died when the 113th Congress adjourned in December. Lynch was included in that list of nominations.

Raising Awareness. Earnest brought up the issue while speaking to reporters traveling with the president to Arizona. Despite being nominated two months ago, a date for her confirmation hearing has not yet been set, he said.

At the time Lynch was nominated, there was discussion about the clear precedent for national security nominees to be considered and confirmed promptly by the Senate, even in a lame-duck session, Earnest said.

"But because of the president's desire to work with the incoming Republican majority, we held off on insisting that she be confirmed in the lame duck, and said that we would allow her to be considered by the incoming Congress," Earnest said.

This is an important job and Lynch is someone who was previously confirmed unanimously by the Senate for the federal prosecutor job that she currently holds, Earnest said. "I guess the point is, she deserves a lot better treatment than she's currently receiving," he said.

So, the White House is now calling on the Senate to set a date for her hearing as soon as possible in the month of January, certainly no later than the end of January, Earnest said.

"Because we believe it's important for the Senate to act promptly on her nomination, and we would like to see her confirmed before the Congress goes on their February recess," he said.

The White House believes that Lynch's nomination can and should be considered during this work period, Earnest said. "We believe firmly that she deserves careful consideration and strong bipartisan support," he said.

By CHERYL BOLEN

Cybercrime

Sony Hack Prompts U.S. to Review Government Role in Company Security

The hack of Sony Pictures Entertainment has U.S. officials reassessing when and how the government should help private companies defend against digital assaults, National Security Agency Director Michael Rogers said.

National security officials are discussing whether new standards should be set for government action in response, such as if a certain level of monetary damage is caused or if values such as free speech are trampled, Rogers said in an interview with Bloomberg News in New York.

The attack on Sony was "a game changer," Rogers said.

"We did not designate the entertainment sector as critical to the nation's security that would, therefore, warrant additional use of government capability," Rogers said. "We need to set an expectation for the private sector."

Such a debate may be difficult in the current political environment, he acknowledged, when Congress has been unable to pass a cybersecurity law that would allow companies and the government to share information on attacks. In addition, he said, cybersecurity "doesn't recognize" the traditional boundaries between nations, the public and private sectors, or espionage, warfare and crime.

U.S. policy is governed by a 2013 directive from President Barack Obama defining the government's role to help prevent damaging hacking attacks on 16 critical sectors of the economy, such as power grids, financial services and food production.

The Sony attack has prompted discussion about what the U.S. and private entities can do to deter hacking attacks and what they should do—if anything—to retaliate.

Action and Reaction. The attack, which the U.S. says was carried out by the North Korean government, initially caused Sony to cancel the release of a comedy movie and crippled thousands of computers. The Obama administration responded by tightening economic sanctions on North Korean officials and organizations while pledging other actions that may never be made public.

"Right now there is very little deterrence in cyberspace," Rogers said. He said he's arguing for a policy discussion about developing new thresholds for the U.S. to respond to hacking attacks in order to give private companies better clarity about public and private roles.

Prosecutors challenge leniency for Madoff staffers

Sentences, penalties much lower than recommendations

Kevin McCoy
USA TODAY

NEW YORK Federal prosecutors are challenging the unexpectedly light prison terms for five former Bernard Madoff employees who were found guilty of aiding the Ponzi scheme mastermind's massive fraud.

The challenge, docketed by a federal appeals court Monday, ups the legal ante following an unusually pointed courtroom exchange between a prosecutor and the sentencing judge as the penalties were imposed during hearings in December.

The notices of appeal filed by prosecutors confirm the government will challenge sentences that ranged from 2½ years to 10 years for the five former co-workers. They were convicted last March for participating in and profiting from the plot that stole as much as \$20 billion from thousands of average investors, charities, celebrities and financial funds.

The five include Daniel Bonventre, Madoff's former operations manager; Annette Bongiorno, the fraud architect's longtime assistant; JoAnn Crupi, who oversaw the company's main bank account; and former Madoff computer programmers Jerome O'Hara and George Perez.

The sentences U.S. District Court Judge Laura Taylor Swain imposed fell well below the maximum 78-year to 220-year maximum terms that varied for each defendant under federal sentencing guidelines.

The penalties also were lower than the punishment recommended by prosecutors and federal probation officials.



MARK LENNIHAN, AP
Daniel Bonventre received a six-year term.



SETH WENIG, AP
Annette Bongiorno also will serve six years.

In an unusual outcome, the six-year sentence Taylor Swain ordered for Bonventre was also two years lower than the term recommended by her defense lawyer, Roland Riopelle. He emotionally thanked the judge at the conclusion of the proceeding.

But prosecutors signaled decidedly less satisfaction.

Having witnessed the relatively light sentences received by three of the former Madoff employees, Assistant U.S. Attorney argued on that a two- to three-year term for Perez "would not be reasonable, would not be just."

"Your honor has shown extraordinary mercy," added Schwartz. "But we ask, on behalf of the victims of this fraud, for justice."

Taylor Swain noted the sentences also ordered the former co-workers to forfeit millions of dollars in assets traced to the fraud.

She also pointed out that several of the defendants had spent months under house arrest or electronic monitoring.

The judge said she had closely weighed all evidence, sentencing guidelines and punishment recommendations, as well as the relative guilt of each defendant in comparison with scam architect himself.

Madoff is serving a 150-year prison sentence after pleading guilty without standing trial following the scheme's collapse in December 2008.

Joann Lassus



February 20, 2015

The United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, DC 20002-8002
Attn.: Public Affairs – Priorities Comment

Dear Judge Saris and Commissioners,

Thank you for considering changes that will reduce the guidelines in certain white collar offenses. I understand that the proposed Guideline Amendments can affect those offenders convicted of financial crimes by significantly raising the loss amounts for most fraud, tax, bribery and insider trading cases. It is my hope that these changes will be made retroactive, to have the most impact. I am writing in support of those changes, and also hoping that more will be made down the road.

I understand the original intent of sentencing guidelines was to make sentencing more fair, but it seems to me that the opposite has happened. The idea of the punishment fitting the crime seems to have been lost, and it is often prosecutors choosing the charges and thereby choosing the sentences. By refusing to accept a plea, defendants are often subjected to what has come to be known as the “trial penalty”, which triggers stacking of charges and mandatory minimums that would otherwise not have been considered. If guidelines are lowered and mandatory minimums are eliminated, there will be less chance of that continuing to happen.

In a quote from Families Against Mandatory Minimums: “Two decades ago, the director of the Federal Bureau of Prisons was asked at a congressional hearing how much time a nonviolent offender needed to get the message. Her reply was 12-18 months and anything beyond that was merely punitive.”

Thank you for all that you are doing to re-inform our criminal justice system and set us back on the right path, with lowered sentencing guidelines and less opportunity for miscarriages of justice.

Sincerely,

Joann Lassus



A blue ink handwritten signature, likely of Joann Lassus, written over the redacted area.

2/14/2015

①

TO: Whom it may concern,

Re: Changes in white collar crime. Enhancements

My name is Karen Kazarpan, inmate number [REDACTED] I am currently serving a 5 year (60 mo.) sentence for Aggravated Identity Theft (1028 A) and Unauthorized Access to a Protected Computer (1030(a)(c)). This is my first conviction and I am 29 years old currently. What I did was 4 years ago. I would like to ask the Sentencing Commission to please consider making these changes retroactive and furthermore reforming some of the draconian laws for computer crimes, and remove these frivolous enhancements. Two of the proposed changes would affect my situation so I would like to give you my story and how those changes would apply. I will also give you a real, first person perspective of what these enhancements do and how judges don't even care about guidelines. I was first indicted with 15 counts of 1028 A and 1030(a)(c), which the vs Attorney told the media would

(2)

gave me a conting (100+ years) in jail. As you can imagine, it gave my family a heart attack, and me as well. I was forced to take a plea deal because if I fought the case I could really get that long of a sentence. I took one count of each with a jailtime range of 2-7 years. The sentencing commission guidelines for me was at 24-32 months. The government wanted to add a one year upward departure. They argued for sophisticated means enhancement due to the fact that I used a computer in my crime and the internet. I had no special software or tools nor am I a computer expert. What I did on the computer any 6th grader can and probably have done. All it required was a computer and the internet and websites that everyone has access to, like Yahoo and Facebook and Skype. My initial 8 points now got enhanced into 10, because the judge, who most are seniors and not well educated on technology, accepted their sophistication argument based

③

on the fact that I used a computer. Excuse my sarcasm, but what next? Maybe one day they will argue sophistication based on the use of a cell phone, or sign language. I feel there was nothing sophisticated about my crime, yet this enhancement is so broad that they easily gave it to me, as well as 90% ~~of~~ of all the people I've met in Federal Prison. My second enhancement was for 6 points and was for 250+ victims. A victims enhancement was applied because the US Attorney counted each email account and facebook account and skype account as separate victims. ~~For~~ For example, one person, a human being, has an email account and one facebook account and one skype account and if I access all 3 that counted as 3 victims on my case. Furthermore, only 10 actual people experienced "significant hardship" and 240+ victims just had their passwords changed and had to change them back. ~~In~~ In fact, they had no idea they were victims of anything until the FBI told them. Only 10 victims spoke to the FBI. The 240+

(4)

Others never came forward and in fact there was only 1 victim that wrote an impact statement. I still got the 250+ victim enhancement for 6 points, which with the sophisticated means was 8 points. My original case had 8 points and now another 8 points in enhancements were added which took my sentencing guidelines to 37-42 months. My total points were now 16, and furthermore the judge added more in the form of "upward departures" and increased my sentence by about 2 years to 5 years or 60 months all because of the enhancements. My Pre-sentence Report was at 48 months, including an upward departure. I got enhancements and also an upward departure, which is another enhancement. I feel they manipulated and used the enhancements to justify doubling my sentence ~~and~~ with such a big deviation from the guidelines. Please stop this abuse of power and manipulation and make these laws retroactive and I will keep you updated on what happens. Please force the judges to rethink these prejudiced and long prison sentences. My current release date is Jan. 2018. Thank you.

Back
→
side

very respectfully submitted,

Karen Kazanjan



February 5, 2015

Dear Members of the U.S. Sentencing Commission:

I support the work that Prisology does, and am writing concerning the Commission's proposed 2015 Guideline amendments.

1. I support the Commission's proposed amendment to U.S.S.G. 1B1.3. Currently, relevant conduct is too easily attributed to individuals involved with jointly undertaken criminal activity. The Commission's proposed amendment would allow relevant conduct to be attributed only if it is "within the scope of the criminal activity that the defendant agreed to jointly undertake." This is a common sense, practical change that will more properly gauge the culpability of defendants. This change should be adopted.

2. I also support Option Two of the Commission's proposal to tie the loss tables across all economic offense guidelines to inflation. This proposed change will allow the Guidelines to better reflect the true seriousness and harm caused by economic offenses.

3. I similarly support Option One of the Commission's proposal concerning "intended loss." The Commission's proposed amendment would define "intended loss" as loss "that the defendant purposely sought to inflict." This change should be adopted because it focuses the loss inquiry on what the defendant truly "intended," as opposed to other tests.

4. I also support the Commission's proposed amendment concerning the "sophisticated means" enhancement. As the Commission noted in its request for public comment, some courts have found "sophisticated means" even when the defendant's conduct itself was not "sophisticated." That does not make sense. The proposal makes clear that "conduct that is common to offenses of the same kind ordinarily does not constitute sophisticated means," and requires that "the defendant engaged in or caused the conduct constituting sophisticated means" for the enhancement to apply. These changes should be adopted. Only offense conduct that is truly "sophisticated" should merit the enhancement.

5. I likewise support the Commission's proposed amendment to the "mitigating role" adjustment. This proposal will allow district courts to better consider the true role of low-level criminal participants.

Finally, I respectfully urge the Commission to designate each of these amendments for retroactive application, if approved. The legislative history of 28 U.S.C. 994(u) indicates that amendments should be denied retroactive effect only when the "guidelines are simply refined in a way that might cause isolated instances of existing sentences falling above the old guidelines or when there is only a minor downward adjustment in the guidelines." S. Rep. 98-225, 98th Cong., 1st Sess. 180 (1983).

These proposed amendments, if adopted, would affect thousands of federal prisoners. Moreover, the potential sentence reductions flowing from these amendments would be more than "minor." Accordingly, consistent with the legislative history of 994(u), and the Commission's statutory duty to "minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons," 28 U.S.C. 994(g), the Commission should designate these amendments for retroactive application, if approved.

Thank you for taking the time to consider my comments.

Nicole B. Drakeford

Name

Register Number

Address Line 1

Address Line 2

City/State/Zip

26 January 2015

United States Sentencing Commission
ATTENTION: Public Affairs
One Columbus Circle, N.E., Suite 2-500
Washington, D. C.

Dear Commissioners:

This year the Commission has recommended changes to the sentencing guideline reduction for "white collar" crimes. I have not been able to access your recommendations, but there have been news reports that the changes will be limited to those inmates convicted of Securities Fraud.

It is my request that your proposal be expanded to include all "white collar" inmates and not be limited to a certain population in that category. As the Commission is aware, sentences vary for many of these crimes and often the crimes involved no victims.

Be assured that I do not feel that crime should go unpunished. However, in light of the growing financial costs of incarceration and the burden that it puts upon the federal budget, amendments to the sentencing guidelines for economic crimes needs to be broadened beyond the current proposals.

The following suggestions have been put forth, and are common sense solutions to the current problems associated with increasing costs:

- "1. Expand the proposed sentencing guideline amendments to include ALL ECONOMIC CRIMES, such as general fraud, bribery, money laundering, tax crimes, theft, embezzlement, etc..., especially to those inmates whose crimes the federal government, itself, indicated involved NO victims. Victimless crimes should not be punishable with expensive institutional incarceration. Instead home confinement, supervised probation, and/or electronic monitoring technology should be implemented along with economic penalties to punish such offenders.
2. Any amendments to the sentencing guidelines should be made RETROACTIVE to provide sentencing relief to those convicted of any economic crime prior to the passage of any such amendments.
3. Any amendments to the sentencing guidelines should address enhancements so that there is NO OVERLAPPING OF SENTENCING ENHANCEMENTS within a person's sentence. Overlapping enhancements are like punishing a person twice and serves no purpose other than extending a person's sentence and increasing incarceration costs. Again, punishment for economic crimes should be based on economic penalties rather than incarceration, especially when the individual poses no safety threat to the general citizen population, and the offense involved no victims.
4. In calculating the financial impact of an economic crime conviction, the guidelines should be based on an ACTUAL, PROVABLE, and DOCUMENTED LOSS AMOUNT, rather than a purely, subjective 'intended loss' amount. In many cases, there is a \$0.00 (zero) loss amount, yet, individuals are sentenced as if an economic loss occurred. It makes little sense to imply, infer, or project an economic loss, especially when no loss actually occurred.
- >
5. Any amendments to the sentencing guidelines for economic crimes should be made EFFECTIVE IMMEDIATELY upon passage by the United States Sentencing Commission, unless challenged by Congress. Justice delayed is justice denied."

I respectfully request that the Commission consider the stated suggestions. Thank you for your consideration.

Sincerely,


Madeline McMillan

TO: United States Sentencing Commission
ATTN: Public Affairs Office
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

DATE: February 12, 2015

SUBJECT: THE SOPHISTICATED MEANS ADJUSTMENT FOR 2015.

Dear Members of the U.S. Sentencing Commission:

I am writing concerning the Commission's proposals for the 2015 cycle for consideration of amendments to the sentencing guidelines. The Commission is seeking comments on whether §2B1.1(b)(10)(C) should be amended.

The answer is Yes.

In particular, the Commission seeks what guidance, if any, should there be beyond the proposed amendment at page 113. The Commission's Chairperson, Judge Saris has stated that "[w]e believe our proposed amendment will help make the guideline clearer, more reflective of practical and legal realities and more useful;" (See; News Release, dated 1/9/2015).

The proposed amendment, as written, meets that goal. It is clear, concise, and would allow the Courts adequate latitude. The proposal makes clear that "[c]onduct that is common to offenses of the same kind ordinarily does not constitute sophisticated means;" These changes should be adopted and offense conduct that is truly sophisticated should merit the enhancement.

I fully support the amendment to revise §2B1.1(b)(10)(C), as written and pray that the Commission will vote accordingly.

The Commission is also seeking comments on whether any amendments should be made retroactive, if adopted.

The answer is Yes.

Thank you for your time and consideration, it is greatly appreciated.

Robert Green
Name

[REDACTED]
Address

[REDACTED]
City, State, Zip Code

TO: United States Sentencing Commission
ATTN: Public Affairs Office
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

DATE: February 12, 2015

SUBJECT: THE INFLATIONARY ADJUSTMENTS FOR 2015.

Dear Members of the U.S. Sentencing Commission:

I am writing concerning the Commission's proposals for the 2015 cycle for consideration of amendments to the sentencing guidelines. The Commission is seeking comments on whether the monetary tables in the guidelines should be adjusted for inflation; **The answer is YES.**

The Commission is also seeking whether it should provide automatic periodic inflationary adjustment; **The answer is YES, as well.**

The Commission is seeking comments on whether any amendments should be made retroactive if adopted; **The answer is YES.**

Further, the Commission is seeking comments on how best to achieve those adjustments in the guidelines and under the Commission's proposals, i.e., Inflationary Adjustments, section Synopsis of Proposed Amendment (page 50 at 4), the Commission stated several principles of thought for consideration:

- 1). "[W]hile some of the monetary values in Chapter Two offense guidelines have been [revised] since they were originally established in 1987 (e.g., the loss table in §2B1.1 was substantially [amended] in 2001);
- 2). they have never been [revised] specifically to account for inflation; and
- 3). Other monetary values in the Chapter Two offense guidelines, as well as monetary values in the fine tables for individual defendants and for organizational defendants, have never been [revised];" (See; page 51).

It is true in 2001, for an example, §2B1.1's Loss Table was [amended] as shown in Table One below;

§2B1.1 Loss Table		
Loss Amount	2000 Levels	2001 Levels
\$5,000	4	2
\$70,000	8	8

Table One

§2B1.1 Loss Table - cont.		
Loss Amount	2000 Levels	2001 Levels
2,500,000	15	18
20,000,000	18	22

Table One

The Loss Table was shuffled and in the process left the four noted offense levels cited above. In addition, the initial threshold was changed from \$100 to \$5,000. The table's resulting offense levels were paired (e.g., 2-4-6-8, etc) instead of each offense level having a single number (e.g., 1-2-3-4, etc). The overall number of offense levels were reduced; but, two new levels were included (i.e., 200 million and 400 million, respectfully). Table One also demonstrates that beyond a \$70,000 loss amount, the offense levels increased sharply.

The monetary tables certainly have been [amended] over the years to reflect a defendant's culpability and as the Commission has wisely pointed out; but, the tables also have never been [revised] for inflation. Because the tables have not been [revised] based on inflation since their inception, it would be appropriate to adjust all the tables accordingly without basing the adjustment on [IF] the tables were only [amended] in some fashion over the years.

The other words, the Commission has stated, for example, that overall the Consumer Price Index ("CPI") has risen \$1.94 since 1989 (See; page 51). Another gauge that could be used is the Cost of Living Adjustment ("COLA") used by the Social Security Administration (See; <http://www.ssa.gov/OACT/STATS/CPIW.html>). The COLA has risen \$2.26 since 1987.

Chairperson Judge Saris stated it best: The goal is to "[m]ake the guidelines clearer, more reflective of practical and legal realities, and more useful..."

The Commission should use either the "CPI" or the "COLA" to [revise] all tables for inflation from 1978 and every years beyond 2015.

Finally, the amendments need to be retroactive. The Commission made the Amendment 782 in 2014 retroactive for "non-violent" drug offenses. Most, if not all, fraud offense involve "non-violent" offenders and therefore, retroactive application would be appropriate by listing the amendments in §1B1.10(c).

I fully support the comments contained in this letter to the Commission and pray that the Commission will seriously consideration them and respond accordingly. Thank you for your time and consideration, it is greatly appreciated.

Robert Green
Name

[REDACTED]
Address

[REDACTED]
City, State, Zip Code

TO: United States Sentencing Commission
ATTN: Public Affairs Office
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

DATE: February 12, 2015

SUBJECT: THE VICTIMS TABLE ADJUSTMENT FOR 2015.

I am writing concerning the Commission's proposal for the 2015 cycle for consideration of amendments to the sentencing guidelines. The Commission is seeking comments on the Victims Table under §2B1.1(b)(2) and if it should be amended: **The answer is Yes.**

First, the proposed amendment would reduce the offense levels corresponding to the number of victims from 2, 4, 6, levels to 1, 2, and 3 levels. **I fully support this revision.** As the Chairperson, Judge Saris stated, "[w]e believe our proposed amendment will help make the guidelines clearer, more reflective of practical and legal realities and more useful;" (See; News Release, dated 1/9/2015). The revision moves in that direction.

However, a new amendment is also being considered (i.e., §2B1.1(b)(3) - Financial Harm). In other words, an amendment to add even more complexity for the Court's to consider. As the Commission is fully aware, a large and growing number of Federal District Courts have all but abandoned the fraud guidelines of §2B1.1 because of the resulting "draconian-type" sentence the guidelines invoke; (See; United States Vs. Adelson, 441 F. Supp. 506, 515 (2nd Cir. 2006)(after Booker); United States Vs. Peppel, 707 F. 3d 627, 647 (6th Cir. 2012)(most recent); and U.S. Sentencing Comm'n Fifteen Years of Guidelines Sentencing (November 2004).

As the Commission pointed out in its request for comment, there are a number of enhancements in the guidelines that already address various degrees of culpability and this does not include those outside of §2B1.1; (e.g., §3A1.1(b)(1)-(2)).

The proposed §2B1.1(b)(3) amendment, as written, requires the Court to reivev eight (8) factors, among others, to determine **[IF]** "[s]ubstantial financial hardship to a victim occurred;" (See; Page 108). The area of greatest concern are found in subsection C, D, E of those factors where it states:

- (C) suffering substantial loss of a retirement, education, or other savings or investment fund;
- (D) making substantial changes to his or her employment, such as postponing his or her retirement plan; and
- (E) making substantial changes to his or her living arrangements, such as relocating to a less expensive home;

In summary, the new amendment would apply **[IF]** **one** in ten victims fell into any "**one**" of those factors. Because of this, there is great concern. The Courts allow victim impact statements. These statements **can not** be challenged for their accuracy or are they provided under the penalty or pains of perjury.

The concern is: If a victim states that he "might" have to delay retirement plans (whether his age is 40 or 65) - this alone could cause the application of the enhancement. And again, if a victim states that he lost all his funds (which would be a substantial loss), even if, the loss was \$1,000 in a \$100 million dollar fraud, the enhancement would apply as written.

Under the current guideline scheme, for example, a fraud could have forty-four victims (resulting in an offense level of 2), under the new amendment, the resulting offense level would be reduced to 1. However, if twenty-five of those victims merely stated that they lost all their funds (even that of \$1,000), or that they "might" have to delay retirement, or move back home with their parents, the total offense level would then be 4 ($\$2b1.1(b)(2) = \underline{1} = \$2B1.1(b)(3) = \underline{3}$) - [or] actually doubling the overall enhancements - without the defendant being able to offer an evidentiary rebuttal in objection to the PSR's assumptions.

Although the other five (5) factors could be clearly proven or rebutted at an evidentiary hearing contesting their application - like the filing of bankruptcy or anerroneously arrested, and assuming an identity of someone else, section C, D, E, allow for unchallengeable abuse which could result in the District Courts to continue to abandon the guidelines in fraud-type cases because of the "piling-on" affects of the enhancments.

The Commission should revise §2B1.1(B)(2) as written, and continue to study the "substantial financial harm" application, seeking additional input, research, comments, and evaluations in order to effectively revise the victim table as a whole in the 2016 cycle.

I fully support the reduction of §2B1.1(b)(2); but would oppose the new §2B1.1(b)(3) amendment, at this time, under the current styled proposal. I pray that the Commission will consider the concerns expressed herein and act accordingly.

The Commission is also seeking comments on whether any amendments should be made retroactive, if adopted. **The answer is Yes.**

Thank you for your time and consideration, it is greatly appreciated.

Robert Green
Name

[Redacted]
Address

Street

[Redacted]
City, State, Zip Code

Shelveen Singh

February 19, 2015

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

I am writing to the United States Sentencing Commission in regards to the Proposed Amendment to the Sentencing Guidelines public for public comment on January 16, 2015. The publication requested comments and suggestions from the general public and I am writing with my vote for the options in the amendment, as well as comment on the proposed changes and answer a few of the questions asked in the publication.

For Proposed Amendment 2, for Section 4A1.2, in the Commentary for Application Note 2- Sentence of Imprisonment- I believe this part should be clarified a little further, currently judges are confused on when a stipulation to home confinement is made on the sentence, if this is a sentence of incarceration. For example, a defendant is sentenced to 6 months in a state case, and the sentencing judge wrote on the paperwork, as well as the plea worked out with the prosecutor, that the defendant is to service the 6 months on home confinement, the federal judges recognize this as a term of imprisonment, but it is clearly NOT a term of imprisonment because a term of home defention is not a term of confinement. I believe this matter should be made clear and applied retroactive for the defendants that have been sentenced in error by federal courts.

For Proposed Amendment 4- Inflationary Adjustments, I am glad the Commission is finally adjusting the Loss Table under 2B1.1. Although the new Loss Table will not help current federal inmates, it is a step in the right direction. My suggestion would have been to simply leave the table as is and reduce the number of points attached to each level. Nevertheless, I vote for option 1 on, but I also would like to see the Commission make the amendment retroactive for inmates sentenced since 2001, which was the last time the Loss Table was modified. I believe that using the Consumer Index was a genius idea, and commend the person who thought about it.

For Proposed Amendment 5- Mitigating Role- The new definition for the Mitigating Role is perfect. The new definition makes it much clear on who can apply for the downward departure for a lower role in the crime. Since the new definition is much clear, I would really like to see this amendment be retroactive as well for the benefit of current federal inmates.

For Proposed Amendment 8, Part B- Victim Table- The new decreased levels for the Victim Table is one of the greatest amendments to the "white collar" section of this amendment. Reducing the Victim Table to levels 1, 2, 3 respectively will align much better with the sentences given to these crimes and avoid sentencing disparities in cases. The new addition to the section is also a good enhancement, and I vote for Option 2, which is the tiered level increase. As far as the Victim Table, this should definitely be made retroactive so current federal inmates can apply to the court to reduce their sentences.

For Proposed Amendment 8, Part C- Sophisticated Means- This new modification to the sophisticated means is a much better clarification of when the enhancement can be applied and I agree to the new definition and vote for this amendment modification.

The United States Sentencing Commission has made a great effort to modify the white collar section of this year amendments. This amendments are something that federal inmates look forward to each year and the white collar section was long overdue. There are a lot of white collar defendants that are in federal prison with tremendously long sentences due to the enhancements based on the Loss Table and Victim Table, and most of these defendants do not deserve tremendously long sentences. Most white collar offenders are first time offenders and some of them are getting an average sentence of about 8 to 9 years, which is obviously too long for a white collar crime. I believe white collar sentences should be lowered to allow the defendant to go back out in the world and start working again and pay back the fines and restitutions that they still owe. Federal prison population is already over-crowded and these long sentences will make the federal prisons even more crowded and I believe tax payer funds can be better used elsewhere. The Department of Justice spends about 30 percent of their budget on the prison system. Federal prison is mean for serious, and violent offenders not minor white collar defendants.

I vote for make these amendments retroactive under section 3582(c)(2), which will allow current federal inmates to submit a motion to the court to ask for a sentencing reduction, and it will up to the courts discretion if the defendant will qualify for the new guidelines. The drug defendants receive a 2-level reduction last amendment, and I vote to let the white collar defendants have the same type of reduction.

I hope my input makes a difference with the 2015 amendments.

Sincerely,

Shelveen Singh

March 4, 2015

Via U.S. Mail and E-mail to Public_Comment@ussc.gov

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

Dear U.S. States Sentencing Commission:

I am writing in regard to the upcoming "Proposed Amendments to the Sentencing Guidelines". I have a loved one who committed a white collar crime, was sentenced to serve ten years and was incarcerated in a Federal prison. He has served four years of the ten year sentence. Until he committed this crime, he was a model citizen who had never had a traffic citation.

I would appreciate the Commission taking into consideration the fact that white collar crimes are non-violent and long sentences for white collar crimes are not beneficial to the American public. I believe the sentences should be reduced because most offenders could better serve the public by being reintroduced into society as rehabilitated, law abiding, tax-paying citizens.

I am hoping the Guidelines can be amended to decrease the sentences because in my opinion, many of these men/women would be more beneficial to society "out" of prison than "in". It makes more sense to have someone contribute to society by having a job and taking care of their family rather than being incarcerated at the cost of the taxpayers. Many of the families of incarcerated men/women are living on one income and are at the mercy of family members or government assistance to help contribute to their financial stability. I believe amending the Guidelines to reduce sentences for white collar crimes and reintroducing these persons into society would be beneficial to many.

Thank you for your time and consideration.

Very truly yours,

Tracy J. Dorsey

March 4, 2015

United States Sentencing Commission

Attention: Public Affairs

One Columbus circle, N.E., Suite 2-500

Washington, D.C. 20002-8002

To Whom It May Concern:

This letter is in regard to the Proposed Amendments to the Sentencing Guidelines. My brother is one who committed a white collar crime, was sentenced to ten years and has been incarcerated in a Federal prison for four years to date.

I would appreciate the Commission to consider the fact that white collar crimes are not violent.

They still can be assets to their community and their families.

Thank you

Terry Hendrix

Clarkeville, Georgia

Date: 2/5/2015

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

Dear Commissioner:

Re: Public Comments on Amendment to Guidelines for Economic Crimes

We thank you for your efforts in modifying the Guidelines for Economic Crimes, this is moral, humane issue and long over due. Our Country is wasting too much money on incarceration and leaving less funds for education, health, infrastructure, etc.

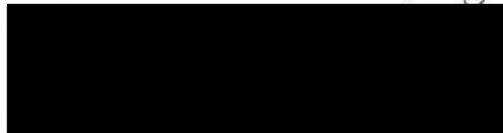
Please consider the following suggestions:

- i. Reconsider the proposal from American Bar Association (ABA) and expanding your proposed amendment to include other economic crimes. This will support DOJ's goal of reducing the unjustifiable budget, which is now \$7 Billion.
- ii. Please ensure that any Amendments you make are made RETROACTIVE to help those who were sentenced prior to the Amendments.
- iii. Please inform Courts, Probation Officers, Prison Officials to be prepared to meet the additional demands of processing for relief based on current proposal, this will ensure timely relief and avoid delays to release inmate – reducing the costs.
- iv. With reference to proposed amendment for Sophisticated Means, the Commission should repeal this enhancement where other enhancements have been applied. Repealing "Sophisticated Means" will ensure that there is NO OVERLAPPING of the enhancements.
- v. Consider releasing inmates in Out-Custody, Community Custody to be directly released to Home Confinement, this will allow Half-Way houses to be less crowded to accommodate for other category of white collar inmates.
- vi. Points associated with Intended Loss should be at a reduced level compared to Actual Loss based on the subjective nature of the offense.
- vii. While considering Fraud On Market, Amendments to the Sentencing Guidelines should also be made to impact other Economic Crimes such as general fraud, Bribery, Embezzlement, Money Laundering, Tax Crimes, etc.

We urge you do more to provide immediate relief to White Collar Inmates, this will reduce the Jail population and the seemingly ever escalating costs.

Thank you.

Sign: *Amanda L. Gallagher*
Name: *Amanda L. Gallagher*



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

Date:

Dear Commissioner:

Re: Public Comments on Amendment to Guidelines for Economic Crimes

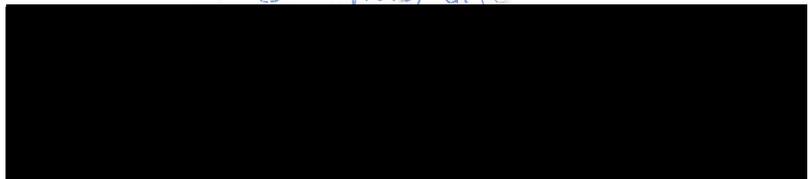
We thank you for your efforts in modifying the Guidelines for Economic Crimes, this is moral, humane issue and long over due. Our Country is wasting too much money on incarceration and leaving less funds for education, health, infrastructure, etc. Please consider the following suggestions:

- i. **Retroactive:** Please ensure that Amendments are made to United States Sentencing Guidelines to ensure it is RETROACTIVE to help those who were sentenced prior to the Amendments.
- ii. **Inflation:** Adjust loss amounts for inflation by basing it on a fixed number such as 3.5, 4 or 4.5 to improve ease of calculation and difficulty of determining numbers based on a particular financial statistic. This will allow factors in addition to inflation to be considered in loss calculation.
- iii. **Sophisticated Means:** Should be based on Defendant's conduct and compared to similar frauds. In addition, Sophisticated Means should be repealed where other enhancements such as Abuse of Trust, Aggravated Role, etc., have been applied or where such enhancements have already increased the sentence. This will ensure that there is NO OVERLAPPING of the enhancements. Over-Lapping enhancements in many cases have multiplied the basic sentence (based on loss-amounts) and such reduction will be in the interest of Justice.
- iv. Consider reducing sentencing computation by 2points to those cases where enhancements have substantially increased sentences and in some cases by 100%. This is because enhancement are not Jury-Found, are inconsistent, create non-uniformity and vary widely based on the Court, Prosecutors.
- v. Reconsider the proposal from American Bar Association (ABA). Consider to reduce 2-points for all Economic Crimes as was done recently for Drug cases. This will support DOJ's goal of reducing the unjustifiable budget, which is now \$7 Billion.
- vi. **Victim Impact:** In cases where the victim is U.S.A, restitution and forfeiture both are collected by USA – which essentially gives USA a 100% premium. To compensate for this economic burden, Commission should consider giving a 2point reduction where the victim is USA.
- vii. Please inform Courts, Probation Officers, Prison Officials to be prepared to ensure timely relief and avoid delays to release inmate – reducing the costs.
- viii. Consider releasing inmates in Out-Custody, Community Custody to be directly released to Home Confinement, this will allow Half-Way houses to accommodate other white collar inmates.
- ix. Cases where Courts have not identified Actual Loss and Intended Loss should be compensated by giving a 2point reduction.
- x. While considering Fraud On Market, Amendments to the Sentencing Guidelines should also be made to impact other Economic Crimes such as general fraud, Bribery, Embezzlement, Money Laundering, Wire Fraud, Mail Fraud, Bank Fraud, Identity Thefts, Tax Crimes, etc and all offenses where sentences were based on USSG 2B1.1.

We urge you do more to provide immediate relief to White Collar Inmates, this will reduce the Jail population and the seemingly ever escalating costs.

Thank you.

Sign: _____
Name: Thomas Thorne



The Honorable Patti B. Saris, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Members of the U.S. Sentencing Commission:

I support the work that the USSC does, and am writing concerning the Commission's proposed 2015 Guideline amendments.

1. I support the Commission's proposed amendment to U.S.S.G. § 1B1.3. Currently, relevant conduct is too easily attributed to individuals involved with jointly undertaken criminal activity. The Commission's proposed amendment would allow relevant conduct to be attributed only if it is "within the scope of the criminal activity that the defendant agreed to jointly undertake." This is a common sense, practical change that will more properly gauge the culpability of defendants. This change should be adopted.

2. I also support Option Two of the Commission's proposal to tie the loss tables across all economic offense guidelines to inflation. This proposed change will allow the Guidelines to better reflect the true seriousness and harm caused by economic offenses.

3. I similarly support Option One of the Commission's proposal concerning "intended loss." The Commission's proposed amendment would define "intended loss" as loss "that the defendant purposely sought to inflict." This change should be adopted because it focuses the loss inquiry on what the defendant truly "intended," as opposed to other tests.

4. I also support the Commission's proposed amendment concerning the "sophisticated means" enhancement. As the Commission noted in its request for public comment, some courts have found "sophisticated means" even when the defendant's conduct itself was not "sophisticated." That does not make sense. The proposal makes clear that "conduct that is common to offenses of the same kind ordinarily does not constitute sophisticated means," and requires that "the defendant engaged in or caused the conduct constituting sophisticated means" for the enhancement to apply. These changes should be adopted. Only offense conduct that is truly "sophisticated" should merit the enhancement.

5. I likewise support the Commission's proposed amendment to the "mitigating role" adjustment. This proposal will allow district courts to better consider the true role of low-level criminal participants.

Finally, I respectfully urge the Commission to designate each of these amendments for retroactive application, if approved. The legislative history of 28 U.S.C. § 994(u) indicates that amendments should be denied retroactive effect only when the "guidelines are simply refined in a way that might cause isolated instances of existing sentences falling above the old guidelines or when there is only a minor

downward adjustment in the guidelines." S. Rep. 98-225, 98th Cong., 1st Sess. 180 (1983).

These proposed amendments, if adopted, would affect thousands of federal prisoners. Moreover, the potential sentence reductions flowing from these amendments would be more than "minor." Accordingly, consistent with the legislative history of § 994(u), and the Commission's statutory duty to "minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons," 28 U.S.C. § 994(g), the Commission should designate these amendments for retroactive application, if approved.

Thank you for taking the time to consider my comments.

ENYMORE BASSO

enymore BASSO

Public Affairs

From: [REDACTED]
Sent: Friday, February 27, 2015 11:18 PM
To: Public Comment
Subject: Guideline amendments

Dear Members of the U.S. Sentencing Commission:

I am writing in support of the Guideline amendments the Commission is considering for economic offenses. I support all of the proposed amendments and applaud the Commission for addressing the disparity in sentencing of such crimes. When a first-time, non-violent financial offender can be sentenced to a markedly longer time than the average sentence for manslaughter, arson, and kidnapping then it is high time to assess the manner in which we punish offenders. We should be incarcerating those offenders who society is afraid of, not merely mad at.

I especially support the proposed amendment concerning the "sophisticated means" enhancement. The existing enhancement states simply "if the crime otherwise involved "sophisticated means." It does not allow for a comparison with other similar crimes to determine if the offense is comparatively more sophisticated than similar crimes and warranting enhanced punishment. The proposed amendment properly addresses that issue.

For determining if enhancement is warranted the offenses must be compared by type of crime and also by dollar amount. To determine if an offense is uniquely sophisticated, financial crimes with high-dollar losses should only be compared to other high-dollar crimes of the same type. Financial crimes with losses in excess of \$1 million are inherently more complex than ones with much smaller losses. This increased complexity is often more a function of the large financial loss, which is already accounted for in the loss tables, than it is a measure of the crime's sophistication. To enhance such a crime for sophisticated means is tantamount to simply, and unfairly, compounding the penalties of the loss table. This sentencing bias can be corrected by comparing crimes by type and financial loss.

Finally, I urge the Commission to designate each of these amendments for retroactive application. There are thousands of federal offenders affected, many of whom are first-time offenders serving extraordinarily long sentences and who have an exceptionally low likelihood of ever re-offending.

Kind Regards,

Sheri Kastrava

[REDACTED]

HON. Judge Patti Saris,
The Commission's Chair
U S S C
2-500 , S Columbus CIR NE
Washington , DC 20002-8002
United States

RE : Economic Fraud sentencing amendments

Request to add a special rule about how to determine the "Actual Loss amount" and the sentence level for securities Fraud, Bank Fraud, Health Care Fraud, and Tax Fraud

Dear Hon. Sir,

I am glad the USSC met on Jan. 9th , 2015 and is willing to review and hear the public comments regarding Economic Fraud Sentencing guidelines this year.

In Health Care Fraud cases, the "Intended Loss and Actual Loss" calculation is erroneous and incorrect. Most of the time no legitimate "Actual Loss calculation" is done by prosecution, probation officers and the U. S. Dist. Court. Rather, a lump sum amount is used.

I am requesting to add a special rule about how to determine the "Actual Loss" and sentence level for health care fraud cases. The "Actual Loss calculation" can be done very easily and accurately because most of the electronic billing records are available in health care fraud cases. In health care fraud, most medical providers sign a contract with Medicare, Medicaid and many other private medical insurance companies such as BCBS, UHC, and Aetna. In the medical industry, providers know that whatever is charged to the patient for medical services on the given date of service is never paid in full, but always paid as per the agreed and signed contract rate.

For example, a new patient Mr. " X " comes to see a doctor on Jan. 1st, 2015. The doctor may charge this patient somewhere between \$ 150.00 to \$ 500.00 depending on the level and complexity of medical care given to that patient. The medical insurance company may pay the doctor between \$ 75.00 to \$ 250.00 depending on the different insurance company and depending on which state they are located in. The practice of varying rates among insurance providers from state to state creates confusion and is tragic.

Why does the Affordable Care Act of 2010 focus more on Intended loss, rather than Actual Loss? Intended loss will never be equal to Actual loss. Medical Providers should not be responsible and not be charged with intended loss for the purposes of federal sentencing guidelines.

Under the False claim Act 31 USC 3730, in civil matters, medical providers are allowed to offset any overpayments, for any reasonable wrong doing, with the insurance company. It is stated under our agreed and signed contract agreements.

Name

Joe D. Bando

February 20, 2015

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

I am writing in regards to the Proposed Amendment to the Sentencing Guidelines published for public comment on January 16, 2015.

-Proposed Amendment 2, Section 4A1.2

Under 4A1.2(b)- "Sentence of Imprisonment Defined"- it recommend that it should state a term of home detention is not a term of incarceration, and if at sentencing in the prior case, the judge writes on the paper a "stipulation" for home detention, it should not be counted as a sentence of imprisonment to calculate the Criminal History Points for federal sentencing. This action should be applied retroactively to individuals sentenced incorrectly.

-Proposed Amendment 4, Inflationary Adjustments

I would like to vote for Option 1 in the Loss table under 2B1.1; also I would recommend to leave the table as is, and re-adjust the levels of points assigned to each range, such as 2 point decrease. I would also like to vote to retroactivity of this Option 1 amendment under section 3582(c)(2), this retroactivity should apply to all inmates who were sentenced after 2001, when the chart was last modified. I would like to see the US Sentencing Commission make changes to this table yearly. In regards to the Commission "Issue for comment" question #4, I believe the commission should just lower the level points instead of re-adjusting the whole table for simplicity, and make the changes retroactive for inmates that are sentenced before the previous year amendments.

-Proposed Amendment 5: Mitigating Role

I vote to agree to the changes made in this section and I also vote to allow for retroactivity of this amendment under section 3582(c)(2).

-Proposed Amendment 8, Part B- Victim Table

Under section 2B1.1, the victim table is reduced to levels 1,2,3 respectively, I would like to vote for retroactivity for this amendment under 18 U.S.C. 3582(c)(2) (Reduction in Term of Imprisonment as a Result of Amended Guideline Range). In regards to section (b)(3), I would like to vote for option 2, with the tiered level increases of level 1, 2,3 respectively.

-Proposed Amendment 8, Part C- Sophisticated Means

I agree with the changes for the newer definition of "Sophisticated means" and vote for retroactivity of the amendment under 3582(c)(2).

The United States Sentencing Commission has taken a major step in re-adjusting the much needed "white collar" sections of the sentencing guidelines. This was long overdue. I would really like to see the United States Sentencing Commission make these changes retroactive to help current inmates take advantage of the law changes under 18 U.S.C 3582(c)(2) to reduce their sentences.

This will help with the sentencing disparities taking place in courts today, and also misunderstanding between the plaintiff and defendant. This would also reduce the overcrowding in Federal Prison population, save the tax-payers alot of money, save prison beds for more violent and serious offenders and also allow the defendant to go out into the world and get jobs to pay the restitution and fines incurred during the case. The Department of Justice is currently spending about 30% of their budget in the federal prison system, this will also help cut down the budget.

I hope my input will make a difference with the 2015 amendments.

Sincerely,

J. Bando

Your Name

Joe D. Bando

January 21, 2015

ATTENTION: PUBLIC AFFAIRS

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

Dear Commissioners:

Last year, the United States Sentencing Commission took a major step in reforming this nation's sentencing guidelines for certain drug offenses. You are to be commended for this action. Now, the Commission is considering proposed amendments to reform the sentencing guidelines for certain economic crimes. This action should be applauded, as well.

The Commission's proposal, however, stops woefully short in providing sentencing reform to many 'white collar' inmates who are incarcerated for economic crimes other than Securities Fraud. Providing sentencing relief for 'Wall Street' crimes only, appears to cater to one segment of the 'white collar' inmate population to the exclusion of others.

While the United States represents 5% of the world's population, it represents 25% of the world's incarcerated population. The Bureau of Prisons' budget currently consumes 25 - 30 % of the entire Department of Justice budget, and it continues to grow even though the federal inmate population is decreasing.

Therefore, I would respectfully request that the Commission strongly consider the following suggestions in an effort to address the federal government's growing and unsustainable financial costs of incarceration in this country:

- 1) Expand the proposed sentencing guideline amendments to include ALL ECONOMIC CRIMES, such as general fraud, bribery, money laundering, tax crimes, theft, embezzlement, etc..., especially to those inmates whose crimes the federal government, itself, indicated involved NO victims. Victimless crimes should not be punishable with expensive institutional incarceration. Instead home confinement, supervised probation, and/or electronic monitoring technology should be implemented along with economic penalties to punish such offenders.
- 2) Any amendments to the sentencing guidelines should be made RETROACTIVE to provide sentencing relief to those convicted of any economic crime prior to the passage of any such amendments.
- 3) Any amendments to the sentencing guidelines should address enhancements so that there is NO OVERLAPPING OF SENTENCING ENHANCEMENTS within a person's

sentence. Overlapping enhancements, are like punishing a person twice and serves no purpose other than extending a person's sentence and increasing incarceration costs. Again, punishment for economic crimes should be based on economic penalties rather than incarceration, especially when the individual poses no safety threat to the general citizen population, and the offense involved no victims.

4) In calculating the financial impact of an economic crime conviction, the guidelines should be based on an ACTUAL, PROVABLE, and DOCUMENTED LOSS AMOUNT, rather than a purely, subjective 'intended loss' amount. In many cases, there is a \$0.00 (zero) loss amount, yet, individuals are sentenced as if an economic loss occurred. It makes little sense to imply, infer, or project an economic loss, especially when no loss actually occurred.

5) Any amendments to the sentencing guidelines for economic crimes, should be made EFFECTIVE IMMEDIATELY upon passage by the United States Sentencing Commission, unless challenged by Congress. Justice delayed is justice denied.

Thank you for the opportunity to share my thoughts on sentencing guideline amendments for economic crimes. These suggestions provide common sense suggestions that would reduce rapidly increasing prison costs, convert current inmate 'tax consumers' into potential 'tax producers', and better align this nation's sentencing policies with other civilized, industrialized nations of the world.

Sincerely,

Dorene P. Wright

Dorene P. Wright





January 19, 2015

The U.S. Sentencing Commission
Attn: Patti Saris, Chairman
1 Columbus Circle, N.E., Ste. 2-500
South Lobby
Washington, DC 20002-8002

RE: Amendment 3B1.2;
Mitigating Role Adjustment

Dear Judge Saris:

To my understanding, on or about January 9, 2015, the U.S. Sentencing Commission proposed Amendment 3B1.2 to the 2015 Sentencing Guidelines.

With the current letter, it is my humble request that this, the aforementioned amendment, be made retroactive / retroactively applicable! In addition, please find enclosed a copy of the July 8, 2013 letter from retired Magistrate Judge and Counsel Dennis W. Dohnal in support of the current retroactive request; wherein both Judge Dohnal and Chief Judge Richard L. Williams (sentencing judge) made note of the following: "There were several mitigating factors that the sentencing judge wanted to take into consideration, but could not because of the mandatory, minimum sentencing provisions of the governing statute." (See

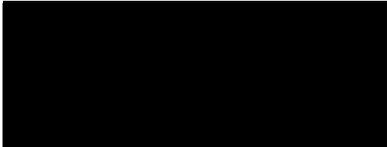
letter attached hereto). In addition, the letter makes light of *Alleyne v. U.S.*, which provided that, in essence, that before a mandatory minimum sentence can be imposed, the jury (not the judge) must find, beyond a reasonable doubt, not by preponderance of evidence, that an aider and abettor intentionally facilitated and/or encouraged the use of a firearm in the commission of the subject offense.

Given the aforementioned factors provided herein, again, I humbly request that Amendment 3B1.2 to the 2015 U.S. Sentencing Guidelines be made retroactive!

Sincerely,

Offenmain O. Sims
Termaine T. Sims





Post Conviction Assistance Project
University of Virginia Law School
580 Massey Road
Charlottesville, Virginia 22903

Re: Request for Post Conviction relief assistance for Mr. Jermaine J. Sims

Dear Sir/Madam,

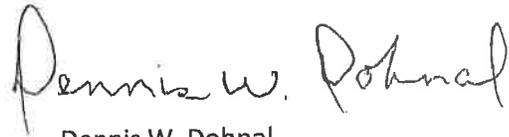
I am writing to request the Project's assistance on behalf of my client, Mr. Jermaine J. Sims. I am a retired federal Magistrate Judge (Eastern District of Virginia), and have been assisting and now, again, actively representing Mr. Sims who I represented in the 1998-99 timeframe at the trial stage before I was appointed to the federal bench in January of 2000.

I was appointed to represent Mr. Sims who was charged in federal court in the Eastern District of Virginia with aiding and abetting in armed bank robbery that resulted in the death of another (a bank teller) in violation of 18 U.S.C. Section 924(j); 924 (1); and 2113(a) and (e), punishable by a mandatory sentence of life in prison or death. Mr. Sims was convicted and sentenced to life in prison, the same sentence as the confirmed "shooter" received.

There were several mitigating factors that the sentencing judge wanted to take into consideration, but could not because of the mandatory, minimum sentencing provisions of the governing statute. Rather than be repetitive, I have taken the liberty of enclosing copies of various materials that have been provided in support of Mr. Sims' ongoing clemency effort, (copy of pending Petition enclosed), including what I hope is my self-explanatory letter of December 29, 2000, to the Pardon Attorney that hopefully outlines the basic facts and circumstances of the situation. I communicated with the Office of the Pardon Attorney when I was on the Bench in conjunction with the trial and sentencing judge and with his full support, the late Honorable Richard L. Williams, whose supporting correspondence I also enclose. I have also included evidence of Mr. Sims' extraordinary rehabilitation efforts while incarcerated these past fourteen-plus years. I also would like to note without, hopefully, being too presumptuous, recent developments including the Administration's investigation of the Office of Pardon Attorney resulting from the denial of Inmate Aaron's Clemency Petition and the recent Supreme Court decisions in Alleyne v. United States and Rosemond v. United States that hold, in essence, that before a mandatory minimum sentence can be imposed, the jury (not the judge) must find, beyond a reasonable doubt, not by a preponderance of the evidence, that an aider and abettor intentionally facilitated and/or encouraged the use of a firearm in the commission of the subject offense. I have also included internet summaries of both cases.

I realize that the timing of this request may not be the best, given the summer break, but I urgently request knowing if the Project can be of any assistance at any stage or time, and I would be pleased to provide, as would Mr. Sims (who has explicitly consented to this request), any additional information or input as may be requested.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Dennis W. Dohnal". The signature is written in black ink and is positioned above the printed name.

Dennis W. Dohnal

USSC
One Columbus Circle NE.,
Ste. 2-500
Washington, DC 20002-8002



January 16, 2015

RE: Public Comment, Federal Register Vol. 80, No.11 (Jan. 16, 2015)

This is a public comment to this Commission's January 16, 2015, notice in the Federal Register.

This Commentor has been in the Federal Prison system for 18 years, is college educated, and has litigated over 125 cases on behalf of others and is thoroughly familiar with the USC and USSG.

Comments:

#2. "Single Sentence" Rule (Page 2572)

First, before expanding the scope of the career offender (CO) guideline by allowing **more predicates** in as the proposed amendment would do, this Commission should:

1) redefine "controlled substance Offense" as used in § 4B1.1(a) and defined at § 4B1.2(b) ("controlled substance offense means an offense ... punishable by imprisonment for a term exceeding **one year**")(emphasis added)

I have seen many, many cases in which petty offenses were used to career out guys to 20, 30, or worse years for minor offenses. **See e.g., Ex.A** The Commission should retroactively adopt the "serious drug offense" definition in **18 U.S.C. § 924(e)(2)** ("serious drug offense" means "(i) an offense ... for which a maximum term of imprisonment of **ten years** or more is prescribed by law;")(emphasis added)

This would add uniformity to the Career Offender provision and the Armed Career Offender Act (§ 924(e)(1)) and limit the Career Offender provision to more serious drug crimes which was, after all, the purpose of § 4B1.1 in the first place. It makes little sense to have that big of variance (one year v. ten years) between the two enhancement provisions.

This would also have the practical effect of eliminating much of the King / Williams controversy for which comment is sought.

2) address the problem of the courts applying the §4B1.1 career offender provision to convicts who do not have **2** predicate **convictions**.

There is direct tension with §4A1.1(f) (Diversionary Dispositions) and §4B1.1 due to the ambiguity in §4A1.1(f) with the result of guys getting careered out with only one predicate drug conviction.¹

§ 4A1.2(f) Diversionary disposition states:

Diversion from the judicial process without a finding of guilt (e.g., deferred prosecution) is not counted. A diversionary disposition resulting from a finding or admission of guilt, or plea of nolo contendere, in a judicial proceeding is counted as a sentence under §4A1.1(c) **even if a conviction is not formally entered** (emphasis added and omitted)

Courts are using this provision, §4A1.2(f), to use non-conviction diversionary dispositions to enhance guys to career offender status under §4B1.1, contrary to this Commissions Amendment 568 which states:

2. Section 4B1.1 (career offender) expressly provides that the instant and prior offenses must be crimes of violence or controlled substance offenses of which the defendant was **convicted**. Therefore, in determining whether an offense is a crime of violence or controlled substance offense for purposes of §4B1.1 (career offender), the offense of **conviction** (i.e., the conduct of which the defendant was **convicted**) is the focus of the inquiry.

This Commission should fix this problem with a retroactive amendment clarifying that for the career offender provision to apply the defendant's diversionary disposition - **must have**

See e.g., Florang V. United States, No.C09-0058-LRR(N.D. IA.2009); United States V. Pritchett, 749 F.3d 417(6th Cir.2003); United States V. Hamad, 575 Fed. Appx. 660 (6th cir.2014); Thelen V. Cross, No.12-0080-DRH (S.D.Ill.2012) U.S. Dist. LEXIS 1482(Jan. 7,2014); United States V. Daniels, 588 f.3d 835,836-838(5th Cir.2009). All sentenced as career offenders with only one predicate conviction an violation of Amendment 568

ripened into an actual conviction. Many guys plead out to deferred adjudications under the premise that it will not come back on them if the deferred is later dismissed.

This does not happen in the federal system because the courts are reading § 4A1.2(f)'s "finding or admission of guilt" to count as a career offender predicate under § 4B1.2 application note 3 (2014) (the provisions of § 4A1.2 ... are applicable to the counting of convictions under § 4B1.1.¹

Again many guys are getting hammered as career offenders for petty offenses, say selling a little weed while in college or scoring drugs for friends when they were scoring for themselves.

This should be fixed to target true career offenders with **serious drug offenses** (punishable by ten years or more in prison) who actually made a career dealing significant quantities of drugs.

#6. Flavored Drugs (Page 2583)

This whole thing is just silly. I am 47 years old, been in prison for 18 years and have never saw or met anyone who ever thought of intentionally selling drugs to kids let alone marketing to them. Just because someone dyes their speed or cocaine pink or red with food coloring to distinguish their drug does not mean it was marketed to kids. Same with marijuana products being produced in Colorado. How are you going to prove "intent of appealing to children"? With packaging? Is that going to be interpreted by the courts as if it looks and smells like candy you most have intended it for children?

This whole concept is opening a pandora's box for abuse by the Government and the Courts to:

A) squeeze people into pleading guilty via enhancements; or, B) used as a weapon against citizens when the court disagrees with their politics, e.g., legal marijuana or medical marijuana.

I just cannot imagine this is that big of a problem. In fact it looks like a solution without a problem. In sum, the Commission should focus on real issues like overincarceration of its citizens via draconian sentences.

Respectfully,

Pat Sheb

EXHIBIT A

V. THE PARSIMONY PROVISION AND DEFENDANT'S SENTENCE

After properly calculating the range recommended by the advisory Guidelines, and considering the other pertinent § 3553(a) factors and arguments made by the parties, I turned to the parsimony provision. While it was important to recognize Ortiz's status as a career offender in determining his sentence, it was also important not to impose a sentence that was disproportionate with that given to his co-defendants with similar records and conduct. A disproportionate sentence would have been greater than necessary in this case, and would have been excessively harsh considering the nature of the second drug offense. Even a sentence at the bottom of the recommended advisory Guidelines range would have been almost twelve years greater than the 120 months Ortiz's co-defendant received. The predicate offense for the tremendous difference would be a \$ 20 heroin sale, and therein lies my {502 F. Supp. 2d 719} problem with automatically applying the advisory Guidelines range for the career offender enhancement: it is all or nothing. The "career offender" designation makes no differentiation between those with extensive criminal records (or those who are moving massive quantities of drugs) and a \$ 20 drug transaction, yet the difference in reality is obvious.

Public Affairs

From: [REDACTED]
Sent: Monday, March 16, 2015 8:22 PM
To: Public Comment
Subject: Proposed Amendments for 2015

The Honorable Patti B. Saris
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002
Attention: Public Affairs

Re: “Single Sentence” Rule:
-- Subsection (a)(2) of USSG §4A1.2 (Definitions and Instructions for Computing Criminal History)
-- Amendment 709

Dear Chair Saris:

Thank you for this opportunity to submit my comments and suggestions to the Sentencing Commission. I write today on behalf of my sister who has suffered a great injustice due to a minor change in the Sentencing Guidelines. In 2013, she was sentenced to 10 years in prison, the statutory mandatory minimum required under 21 U.S.C. §841(b)(1)(A)(viii). The district court determined that she satisfied four of the five requirements for safety valve relief, but the calculation of 2 criminal history points caused her to be ineligible. The judge made it clear that he didn't think she deserved such a harsh sentence. He reduced the sentence down as far as the law allowed, the statutory mandatory minimum of 10 years.

Through my subsequent research of the Sentencing Guidelines and Amendments, I found that USSG §4A1.2 had been amended in 2007. If my sister had been sentenced under the earlier versions of the guidelines, her two prior offenses would have been considered *related cases*, so would have been counted as a single sentence for the purposes of calculating criminal history points. She would have received only 1 criminal history point and therefore would have been safety valve eligible.

Here are the circumstances of the two prior offenses:

The first charge, *Purchasing Pseudoephedrine Over Limit*, stemmed from purchases made in Carroll County between Jan. 19 and Feb. 19, 2008. Sac County was notified of the purchases on Feb. 26, but there was no arrest made at this time. Instead, the purchases were used as probable cause to obtain a Sac Co. search warrant. When the warrant was executed on Feb. 27, officers found drug paraphernalia (indicating use of methamphetamine), so Sac Co. charged her with *Possession of Drug Paraphernalia*. On Feb. 29, she was sentenced to pay a \$50 fine for this offense. Four days later, on March 4, 2008, Carroll Co. charged her with *Purchasing Pseudoephedrine Over Limit*. She was sentenced for this offense on May 9, 2008 (2 yrs. probation, \$325 fine).

One of the reasons for Amendment 709 was to eliminate the use of the term “related cases” at §4A1.2(a)(2) and instead use the terms “single” and “separate” sentences. This change in terminology was made because some have misunderstood the term “related cases” to suggest a relationship between the prior sentences and the instant offense. §4A1.2(a)(2) now states, “If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument;

or (B) the sentences were imposed on the same day.” It seems to me that the Sentencing Commission did not intend for two prior sentences to be counted separately in a situation such as my sister’s. Therefore, I humbly suggest that you consider another revision to §4A1.2(a)(2), adding something like “(C) sentences resulted from a single investigation” or “(C) one offense was used to prove the other offense.” Furthermore, if any such changes are made to §4A1.2, I ask you to please consider making them retroactive so that my sister and others in her position can benefit.

Thank you for the work that you do in bringing fairness into sentencing.

Linda Isaacson

