CHANGING ORGANIZATIONAL BEHAVIOR — THE FEDERAL SENTENCING GUIDELINES EXPERIMENT BEGINS TO BEAR FRUIT

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Introduction

The United States Sentencing Commission is an independent agency in the Judicial Branch of the Federal Government created by Congress through the Sentencing Reform title of the Comprehensive Crime Control Act of 1984.[1] Under Congress's continued direction and oversight, the Commission regulates sentencing policy within the federal court system through a regime of presumptively mandatory sentencing guidelines applicable to convicted individual and organizational defendants. In addition to its rulemaking function that focuses and limits the sentencing discretion of federal district court judges, the Commission also has continuing research and educational missions related to explicating, monitoring, evaluating, and revising the sentencing guidelines.

This paper spotlights the system of sentencing guidelines for organizational defendants, including corporations, partnerships, labor unions, cooperatives, trusts, trade associations, other non-profit entities, and governmental units – each of which, under certain circumstances, can be convicted of

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* Member and Vice Chair, United States Sentencing Commission. The views expressed herein are those of the author and do not necessarily represent the official position of the U.S. Sentencing Commission. Please cite this paper as follows: John R. Steer, Changing Organizational Behavior—The Federal Sentencing Guidelines Experiment Begins to Bear Fruit (unpublished paper presented at the Twenty-Ninth Annual Conference on Value Inquiry, Tulsa, Oklahoma (Apr. 26, 2001)).

1 Pub.L. No. 98-473, 98 Stat. 1838, 1987 (1984) (codified at 18 U.S.C. § 3551 *et seq*.; 28 U.S.C. § 991 *et. seq*.).

federal crimes and, as a consequence, subjected to the sentencing policies embodied in these organizational guidelines.[2] Through their actual application to convicted organizations, as well as their threatened application to other potential law breakers, these guidelines provide a novel and ambitious approach to punishment. This approach combines the threat of heavy criminal fines for law violators and the likelihood of court-supervised probation (the "sticks"), with the opportunity for very substantial fine mitigation (and perhaps no probation) (the "carrots") for those convicted entities who either have instituted an "effective program to prevent and detect violations of law," or who promptly report their wrongdoing and fully cooperate with law enforcement.

Part I. — Philosophy and Goals of the Organizational Guidelines

Before promulgating these particular guidelines in 1991, the Sentencing Commission engaged in an intense, extended debate about the philosophical sentencing purposes a set of organizational guidelines should further and the manner in which those purposes might best be achieved. As it approached its complicated task, the Commission was cognizant of the ongoing, sometimes vigorous debate about whether corporations, and other legally recognized entities that

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[2] These guidelines may be found in Chapter Eight - Sentencing of Organizations, U.S. Sentencing Commission, *Guidelines Manual* (2000) (available through West Group Publishing or on the Commission's website @ www.ussc.gov).

are not natural persons, should be held accountable under the criminal law.[3] Though aware of this debate, the Commission accepted as a given that organizational beings could be held criminally liable and sentenced. Indeed, the Commission's organic statute directed it to develop guidelines "for use of a sentencing court in determining the sentence to be imposed in a criminal case" without regard to whether the "criminal case" involved an individual or an organizational defendant.[4] Further, the guidelines necessarily were to be "consistent with all pertinent provisions"[5] of the Sentencing Reform Act, including those provisions establishing the basic, authorized sentences for organizations.[6]

Accepting the reality that organizations can be convicted of crimes, the Commission initially explored two competing, if not diametrically-opposed, philosophical approaches to punishing convicted organizations. One approach followed a just punishment philosophy closely linked to the Commission's

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[3] For a sampling of writings illustrative of this ongoing debate, see, e.g., Lawrence Friedman, *In Defense of Corporate Criminal Liability*, 23 Harv. J.L. & Pub. Pol'y 833 (2000); Celia Wells, *Corporations and Criminal Responsibility*, Ch. 5 (Clarendon Press 1993); John C. Coffee, Jr., From Tort to Crime: *Some Reflections on the Criminalization of Fiduciary Breaches and the Problematic Line Between Law and Ethics*, 19 Am. Crim. L.Rev. 117 (1981).

[4] 28 U.S.C. § 994(a).

[5] *Id.*

[6] 18 U.S.C. § 3551(c) provides as follows:

> "(c) Organizations. - An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to-
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> (1) a term of probation as authorized by subchapter B; or
>
> (2) a fine as authorized by subchapter C.
>
> A sentence to pay a fine may be imposed in addition to the sentence required by this subsection."

guidelines for individual defendants (then under development). This approach suggested consideration of certain indicia of greater or lesser organizational culpability, a principle that turned out to be central in the proposal ultimately adopted by the Commission some four years later. Among these indicia were "whether the crime resulted from a conscious plan of top management or by the independent actions of lower echelon employees" and "whether the organization took steps to discipline responsible employees prior to indictment."[7] A contrasting scheme explored a "harm-based deterrence and compensation approach" drawn from the realm of economics and its theory of optimal penalties. Under this theory, social costs of organizational crime and attendant law enforcement would be minimized by basing financial penalties on the following formula: financial penalty (fine) = quantified social costs/harm resulting from the offense divided by the probability of offense detection. This formulaic approach, so it was argued, would optimize crime deterrence because the punitive consequences facing potential organizational offenders would precisely equal the harm potentially caused by the offense.

After a process of studied consideration, public airing of the issues, and debate, the Commission found neither of these approaches entirely satisfactory. Both ultimately foundered on the hard shoals of practicality. The conceptual just punishment approach that had been envisioned, but never fully developed, collapsed when the underlying system of guidelines for individuals on which it

[7] Nolan Ezra Clark, Jr., *Corporate Sentencing Guidelines: Drafting History §2:04, in* Compliance Programs and the Corporate Sentencing Guidelines (Kaplan, *et al.*, eds.) (West Group 2000).

was to have been based was rejected by the Commission as unworkable. The more fully developed, optimal penalty/deterrence approach faced difficulties in easily quantifying all social harm and lacked reliable data on the probability of detecting offenses of various types; hence, the formula that was its key proved to be little more than guesswork. Additionally, as commissioners further investigated the complicated terrain of determining appropriate corporate punishment, several expressed interest in alternative approaches that would account more fully for important variations in organizational culpability and use the sentencing tool of court-supervised probation to force changes in organizational behavior.

Over the better part of the 1989-1991 period, the Commission explored variations of these initial models, as well as some rather different proposals. A group of experienced "white-collar" attorney-practitioners, organized by the Commission to provide advice on the issue, recommended a very flexible set of non-binding "policy statements" that called for substantial fine reductions if the organization had instituted an effective compliance program to prevent law violations and otherwise acted responsibly. The Department of Justice developed a set of draft organizational guidelines that used the extant guidelines for individual defendants (which had been completed and put into effect in 1987) as a means of determining a fine range. While the Department of Justice proposal focused more on aggravating factors that would enhance the nominal fine, it also provided modest discounts for an effective compliance program and for certain indicia of post-offense cooperation. Finally, Commission staff developed a draft proposal that attempted to meld useful concepts from several approaches. The theoretical heart of the staff proposal was a belief that organizations could be induced to behave legally and responsibly by, in effect, “offering” them the promise of substantial fine reductions if the entity had instituted effective measures to prevent and detect violations (i.e., the violation occurred in spite of reasonable preventive efforts and was promptly reported and addressed). On the other hand, if the organization acted “negligently” with regard to its legal risks, its punishment upon conviction would be much greater.[8]

This staff proposal subsequently was refined under the leadership of the Commission’s then Chairman, Judge William W. Wilkins, Jr, and subjected to an open, intense process of public participation in which influential business and bar organizations directly contributed. The Commission’s ultimately adopted scheme of guidelines used the concept of a base fine amount, determined as the greater of the loss from the offense, the defendant’s gain, and a “fall-back” fine amount calculated from the guidelines for individual defendants who committed like offenses. This base fine would then be subject to “culpability” adjustments, with the prospect of substantial increases for such aggravating factors as prior wrongdoing and direct involvement of management in the offense. On the other side of the scale, the base fine could be substantially reduced by mitigating factors, chief among which were (1) having an effective compliance program designed and conducted to prevent and detect law violations, and (2) full post-offense cooperation. Further, organizational offenders who did not have an effective compliance program would be sentenced additionally to a term of probation and ordered to develop such a program during their period of court-supervised probation.

[8] *See* Clark, *supra* note 7, *at* §2.14.

The Commission carefully considered the principles that would comprise an effective compliance program, knowing that they must be broad and flexible enough to be relevant across the spectrums of organizational forms and criminal offenses, but knowing also that they must be specific enough to provide useful guidance and ascertainable criteria to organizations, attorneys, and courts. With those objectives in mind, the guidelines stated several overarching requirements relating to compliance program structure and operation. The program must be "reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct." And, the "hallmark of an effective program . . . is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and agents."[9]

The Commission then proceeded to spell out what it meant by due diligence, namely that the organization must have taken the following seven types of steps (briefly paraphrased herein):

(1) established effective compliance standards and procedures,

(2) assigned specific, high-level person(s) to oversee compliance,

(3) used due care not to delegate important responsibilities to known high-risk persons,

(4) communicated its program effectively to all employees and agents,

(5) monitored and audited program operation and established a retribution-free means for

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[9] United States Sentencing Commission, *Guidelines Manual*, §8A1.2, comment. (n.3(k)) (2000).

employees to report possible violations to management,

(6) consistently disciplined employee violators, and

(7) responded promptly and appropriately to any offenses and remedied any program deficiencies.[10]

Finally, the Commission expressed its view that the size of an organization, the number and nature of business risks, and the prior history of the organization would have an important bearing on how an effective compliance program must be designed and operated.[11]

The obvious immediate goal of the effective compliance program and self reporting/cooperation discounts from otherwise high fine calculations was crime control through specific and general deterrence. It was hoped that organizations would come to view this guideline scheme as a powerful financial reason for instituting effective internal compliance programs that, in turn, would minimize the likelihood that the organization would run afoul of the law in the first instance. And, if and when a corporate crime was committed, perhaps through the actions of a rogue, lower level employee, the sentencing guideline incentives would drive the corporate actor toward swift and effective disclosure and other remedial actions. Although those immediate objectives were bold advances in their own right, the Commission's vision for its organizational guideline structure was even more ambitious and forwarding-looking. The Commission hoped this punishment scheme initiative would help contribute,

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[10] *Id.*

[11] *Id.*

over time, to a more healthy, values-based way of doing business in America. The next part of this paper describes a variety of developments that together arguably show at least modest progress toward fulfilling these lofty goals.

Part II — Indicia of Partial Success

Any discussion assessing the degree of success in attaining the ambitious Commission goals for its organizational sentencing guidelines must begin with a significant concession. With regard to the hoped for goal of deterrence/crime control, there apparently is no empirical data that comprehensively chart changes in organizational crime rates over time (similar to the Federal Bureau of Investigation's Uniform Crime Reports data for crimes committed by individuals). Consequently, for this and other reasons, it is not possible to assess directly the success, or lack thereof, of the organizational guidelines in altering the rates at which organizations commit crimes.[12]

This granted, it is possible to examine a variety of responses by organizations and their actors that are traceable at least in part to the organizational sentencing guidelines. Additionally, the guidelines have served as a foundation for regulatory actions by several influential federal agencies charged with administering and enforcing federal law.

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[12] Even if data showing changes in the absolute number of organizational crimes over time were available, a multitude of potentially confounding variables would necessarily have to be disentangled.

Responses by Organizations, Their Agents, and Employees

As indicated, an implicit goal of the organizational sentencing guidelines was to encourage the development of internal programs designed to prevent and detect violations of law. In that regard, a study by the Ethics Officer Association reported that 47 percent of responding corporate ethics officers cited the organizational guidelines as an influential determinant of their organization's commitment to ethics as evidenced by adoption of a compliance program.[13] This EOA study generally confirms earlier research conducted under the auspices of the Sentencing Commission and reported as part of the Commission's 1995 symposium on organizational sentencing guidelines.[14] Specifically, one of the several studies funded by the Commission reported that 44.5% of corporate survey respondents said their firm had made enhancements to an existing compliance program because of the guidelines, while another 20% stated that a compliance program had been put into place because of an awareness of the guidelines.[15]

The authors of the organizational guidelines fully recognized that their goal of influencing more law abiding and ethical organizational behavior would require far more than the development of

[13] *See Ethics Officer Association*, 1997 Member Survey 9 (2000), *available at* www.eoa.org.

[14] *See generally* United States Sentencing Commission, Corporate Crime in America: Strengthening the "Good Citizen" Corporation 123-91 (1995).

[15] *Id.* at 134.

corporate codes of conduct and on-paper compliance programs. Indeed, these programs would be "effective" only if fully supported by organizational management and implemented through substantive internal changes in personnel practices, organizational structure, and business operating practices. A variety of developments over the last decade suggest that numerous organizations have made good faith, substantial efforts in that direction.

For example, position(s) of organizational ethics officer/compliance officer, or assignment of those duties to in-house counsel, have become routine at mid-size and larger corporations. Professional organizations comprising persons in these positions, such as the Ethics Officer Association and the Healthcare Compliance Association, have witnessed phenomenal growth in their memberships since the advent of the organizational guidelines. These organizations, others like them, and Bar organizations of attorneys who specialize in "white collar" crime regularly sponsor and participate in a variety of continuing educational ventures. These programs are designed to broaden and deepen the understanding of effective compliance program criteria and the manner in which organizations can operate effectively in an increasingly regulated, highly competitive, and rapidly changing environment. U.S. Sentencing Commission representatives regularly participate in these programs as well.

Illustrative of such programs are: (1) a continuing partnership effort of the Ethics Officer Association and the U.S. Sentencing Commission to sponsor a series of regional workshops and compliance programs for ethics officers, corporate counsel, and others;[16] (2) regular programs on corporate compliance sponsored by the Practising Law Institute (at which Commission representatives frequently serve as faculty),[17] and (3) frequent bar association programs focusing on organizational compliance, such as the annual American Bar Association White Collar Crime Institutes.

In the same educational vein, but perhaps with a longer range focus, are changes in course curricula and course content at many of our nation's law and business schools. Today, business ethics courses regularly discuss the organizational guidelines, and law school courses on criminal law and sentencing do the same.[18]

Federal Regulatory and Enforcement Progeny

Inherently, the operational impact of the sentencing guidelines on organizations is indirect and limited. The Sentencing Commission has no "long arm" through which it directly regulates organizational conduct. Rather, its policy making function is implemented by the federal courts which

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[16] The sixth such regional forum, "Shaping Tomorrow's Debate – Ethics Compliance and the Organizational Sentencing Guidelines," is scheduled June 21, 2001 in Columbus, Ohio.

[17] For example, the Practising Law Institute is sponsoring three regional workshops entitled "Corporate Compliance 2001" during the Spring and Summer of this year in which the Commission will participate.

[18] For an example of business ethics curriculum, see Business Ethics 56-62, 188-95 (John Richardson, ed., 1995). For an example of a law school text on sentencing, see NICHOLAS N. KITTRIE, *ET. AL.*, SANCTIONS, SENTENCING, AND CORRECTIONS: LAW, POLICY AND PRACTICE (Foundation Press, forthcoming 2001).

apply the sentencing guidelines in a limited number of cases each year in which an organization is convicted of a federal crime. Consequently, the guidelines' ability to more generally deter corporate wrongdoing and promote desirable organizational behavior depends on (1) the awareness among organizational managers, agents, and employees of the guidelines' potential punitive impact, (2) the degree to which this awareness is convincing and subsequently translated into specific actions designed to change organizational behavior, and (3) the success of these specific actions in ensuring that day-to-day organizational operations and decisions are conducted in compliance with the law.

The impact of the organizational sentencing guidelines in each of these areas has been bolstered greatly by actions of several federal agencies that, unlike the Sentencing Commission, interact directly with and regulate segments of the business community. Specifically, the Environmental Protection Agency's Enforcement Division and the Office of Inspector General in the Department of Health and Human Services both have adopted regulatory and law enforcement approaches that build upon the principles in the organizational sentencing guidelines designed to encourage and appropriately take into account organizational efforts to obey applicable law. Additionally, the U.S. Department of Justice, which ultimately enforces through prosecution United States criminal laws, also has adopted a set of principles that build upon and reinforce core precepts in the organizational sentencing guidelines.

Effective in 1996, the Environmental Protection Agency implemented a new enforcement policy designed to encourage self regulation, prevention, voluntary reporting, and correction of environmental violations.[19] This policy statement was modeled after the Sentencing Commission's guidelines. Through the "carrot" of potential penalty abatement for timely reported violations, EPA hoped to enlist organizations in the overall enforcement effort. As of late last year, EPA reported that over 1,000 voluntary disclosures had occurred, 75 percent of which resulted in penalty waivers or substantial mitigation of civil penalties. EPA subsequently adopted a criminal enforcement policy that, under prescribed circumstances, would recommend against prosecution when organizations self-discovered and reported violations during the course of compliance audits and other due diligence efforts.[20]

Given today's emphasis on expanded health care, and the relative magnitude of the health care industry in the United States economy, the regulatory initiatives of the Department of Health and Human Services, Office of Inspector General, have had far-reaching significance in shaping desirable business practices in that important field, as envisioned by the organizational sentencing guidelines. Modeled after those guidelines and, in particular, the guidelines' seven minimum steps necessarily comprising an effective compliance program, HHS/OIG has issued a series of model compliance program guides for each major category of providers in the health care industry.[21] Under the protocols developed by

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[19] *See* Final Policy Statement on Incentives for Self-Policing, Discovery, Disclosure, Correction and Prevention of Violations, 60 Fed. Reg. 66706 (Dec. 22, 1995).

[20] *See* http://www.es.epa.gov.ocea/oceftlanditpolicy2.html (Oct. 1997 policy).

[21] *See generally* http://www.hhs.gov/oig/modcomp.

HHS/OIG, effective compliance programs can result in substantial penalty mitigation and may generate a recommendation that prosecutors forego criminal prosecution in favor of a civil fine resolution. On the other hand, the absence of an effective compliance program not only can exacerbate penalties, but likely will result in an insistence that such a plan be developed promptly.[22]

Because enforcement agencies such as EPA and HHS/OIG lack independent prosecution authority, they must involve, and defer to, the Department of Justice when a determination is made to proceed with criminal prosecution of an offending organization. To provide guidance to prosecutors in its various divisions and in its U.S. Attorney Offices for the various types of organizational offenses, the Department of Justice has issued a detailed advisory memorandum from the Deputy Attorney General.[23] In several important ways, this DOJ memorandum incorporates and promotes principles of the organizational sentencing guidelines. For example, as one of its fundamental principles guiding the decision of whether or not to prosecute, the DOJ memorandum states that, in limited circumstances, it may be appropriate to forego prosecution. For example, where a corporation has instituted an effective compliance program and, yet, despite that program, an isolated act of a low-level employee has resulted in a law violation, criminal prosecution may not be warranted. In other parts, the DOJ guidance replicates the sentencing guidelines' recognition of factors showing enhanced organizational culpability (such as the pervasiveness of wrongdoing or direct involvement of management in law

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[22] *Id.*

[23] *Federal Prosecution of Corporations*, Memorandum from Deputy Attorney General Eric Holder to Heads of DOJ Department Components and All United States Attorneys, U.S. Department of Justice (June 16, 1999).

violations). The memorandum also treats in considerable detail the ingredients of an effective compliance program and the importance of corporate responsiveness in fully cooperating with prosecutorial authorities. Over time, the DOJ prosecutorial policies certainly have the potential to promote the crime control and behavior modification goals underlying the organizational sentencing guidelines.

Role of the Courts

As explained *supra*, by their nature, the organizational guidelines have their direct, immediate, and ultimate impact when applied in court during the course of a sentencing proceeding involving a convicted organizational defendant. These guidelines were effective for organizations found to have committed crimes on or after November 1, 1991; hence, their use in sentencing proceedings was phased-in gradually.[24]

According to data collected by the Commission directly from the courts and supplemented from other available sources, through the close of FY1999, the organizational guidelines have been applied in some 1089 cases, with 255 being sentenced in that most recent year. Routinely, slightly more than 50 percent of the organizational defendants are given mitigating credit for post-offense cooperation with

[24] The applicability of the guidelines to antitrust offenses committed by organizations was an exception to this effective date. Fine guidelines for antitrust organizational offenses were issued as part of the initial guidelines for individual defendants effective November 1, 1987.

authorities. The data also reveal, quite interestingly, that only three such defendants sentenced during this entire period have been given credit for having an effective compliance program. At first blush, this minuscule number might be taken to indicate one of two extreme scenarios. On the one hand, it might be that the guidelines, despite their nominally substantial fine mitigation incentive for having an effective compliance program, have been an abysmal failure in prodding organizations to develop such programs. On the other hand, it might be that the guidelines have been such an exceptional success in deterring organizational wrongdoing that less than a handful of those motivated to develop effective programs have run afoul of the law.

Our analysis of the data and scrutiny of individual cases suggest that the reality is somewhere in between. The overwhelming majority of organizations ultimately criminally convicted and sentenced in federal court are small, closely-held companies. These small businesses are less likely to have become aware of the sentencing guidelines, or to have acted on any awareness they may have gained, by allocating resources to develop a sufficient compliance program. Moreover, because such organizational offenders often, by their nature, involve high level management participation in the offense, they are precluded under the terms of the guidelines from receiving sentencing credit for any compliance program that may have been developed.

In contrast to the manner in which cases involving small business typically are resolved, large, publicly-held corporations typically employ their considerable legal resources to negotiate civil settlements; or if there is a criminal indictment, they successfully bargain with the government to obtain a plea agreement that is presented to the court (and generally accepted) as a mutually satisfactory settlement of the criminal case. An examination of these plea agreements often will reveal that the organization's compliance efforts (or lack thereof) and the degree of its self-disclosure and post-offense cooperation, have figured prominently in the manner in which the case was resolved. In fact, there are a growing number of negotiated settlements in high visibility cases that together illustrate important facets of the organizational guidelines. Because these cases tend to be highly publicized within the business trade press and legal community, the general deterrent value of the prosecution and the organizational guidelines is heightened. Among these more prominent cases can be found some in which: (1) the organization avoided criminal prosecution by having an effective compliance program that promptly detected law violations, which were then self-reported and promptly addressed, or (2) the organization avoided prosecution by fully cooperating with the government, promptly recognizing improprieties in employee conduct, and agreeing to establish an effective compliance program, or in contrast, (3) the organization was severely fined, sentenced to probation, and ordered to develop a compliance program as a condition of probation.

In the context of civil litigation or administrative proceedings, including shareholder derivative suits, sexual harassment claims, and Securities and Exchange Commission enforcement actions, the value of effective ethics/compliance programs also has been addressed. In some of these cases an effective program has functioned as a shield against liability. In others, the lack of such a program has served as a sharp plaintiff's sword that may have cost the organization dearly. For example, in the now frequently cited *Caremark International* shareholder suit, the court observed that:

> The Guidelines offer powerful incentives for corporations today to have in place compliance programs to detect violations of law promptly and to report violations to appropriate public officials when discovered, and to take voluntary remedial efforts.

and further:

> Any rational, person [director or corporate executive] attempting in good faith to meet an organizational governance responsibility would be bound to take into account this development and the enhanced penalties and opportunities for reduced sanctions [offered by the organizational sentencing guidelines].[25]

[25] In re: *Caremark International Inc. Derivative Litigation*, 698 A. 2d 959 (1996).

Conclusion

The organizational sentencing guidelines establish a regime of restitution, fines, and potential court-supervised probation that can be very punitive if the organization commits serious unlawful conduct and that conduct was sanctioned by management or aggravated by other factors. On the other hand, the guidelines offer the potential for large financial penalty reductions, and no probation, to "good organizational citizens" who have instituted an effective compliance program to minimize, promptly detect, and report violations of law. These guidelines were instituted by the Sentencing Commission with the hope that, over time, they would lead to more law abiding and ethical organizational behavior.

Although hard empirical data to assess the attainment of these laudatory goals is lacking, a variety of developments indicate substantial success. The level of organizational awareness of the guidelines and their underlying goals has increased markedly over the decade of the guidelines' existence, and meaningful steps have been taken in many instances to turn that awareness into concrete changes in organizational structure and culture.

The Sentencing Commission, as one part of its varied duties, has an ongoing mission to monitor, evaluate, promote, and improve these organizational guidelines. Commission representatives regularly participate in a variety of educational fora designed to increase awareness of the guidelines and to more fully inform affected persons regarding how to apply the guidelines' criteria in the widely varying context of different types of business, industry, and other organizational activities. The Commission is trying to improve its existing functions of gathering and analyzing data related to the operation and effects of these guidelines. It is also working to improve its cooperative relationship with the Department of Justice, its prosecutors, and representatives of various enforcement agencies to ensure that the value of effective compliance programs is more fully recognized and that organizations are encouraged to regularly test and evaluate the effectiveness of their compliance structures without fear that deficient results will be used to punish them. The Commission also has an ongoing responsibility to consider possible amendment improvements in the guidelines, including possible extension of the fine guidelines to environmental and other offenses where these parts of the organizational guidelines do not now apply.

The past decade's experience with the organizational sentencing guidelines has provided positive evidence supporting the efficacy of this bold, novel means of influencing desirable organizational behavior. There is broad and growing appreciation, even internationally, of the guidelines' unique "carrot and stick" approach, and the Commission's thoughtful articulation of effective compliance program basic criteria. These laudatory initiatives continue to offer promising potential in the ongoing battle to control crime and promote ethical organizational conduct.