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March 12, 1987

United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D. C. 20004

Re: Response to Second Draft

Dear Commissioners:

First of all, I wish to express my deepest appreciation for the monumental task that you have undertaken as well as the monumental amount of work that you have accomplished.

I would like to offer the following thoughts as the Commission winds down prior to its submission of its final report and recommendations to Congress. I would like to comment on the fact that there are still many more questions than there are answers, as I hear from those who comment to the Commission in efforts to assist. As I understand it, two of the major purposes behind the Commission's efforts are to reduce disparity and respond appropriately to various severity levels of crime, and do so with the recognition that prisons are scarce resources. If I am anywhere near accurate, I would like to propose the following consideration.

Referring to the Sentencing Table on Guideline Range and Months of Imprisonment (as contained on Page 10 of the Revised Draft of January, 1987) and in light of what I have perceived to be the goals of the Commission as stated in the previous paragraph, I would suggest that the Commission seriously consider revising the expected guideline range in months from Level 15 (Criminal History Category I) to Level 8 (Criminal History Category VI). I suggest broadening the base of judicial discretion in sentencing from the 18-24 months to 0-24 months, as an example.

My rationale is that disparity has occurred mostly in terms of individuals receiving sentences of, for instance, probation for one individual whereas another receives 10 years for the same offense.

Expanding judicial discretion at the suggested offense level, or even higher if the Commission saw fit, would (1) insure that maximum discretion of the court on lesser offenses would be available to include probation, community service, etc., (2) insure that prisons would be better utilized as scarce resources and (3) insure that disparity in sentencing would be reasonably reduced over present circumstances.

In essence, due to the nature of offenses (perhaps from Level 15 down) we would be giving the court options to use a considerably large number of community alternatives for non-violent, non-serious offenses, while recognizing at the same time that (for instance) a person in Criminal History Category VI should overall receive up to 24 months on a non-violent offense. To date, there appears to be little emphasis on these alternatives by the Commission.

From Level 15 upwards to Level 43, for the most part we are considering offenses that are "more serious" and perhaps more dangerous to the community. In that case, minimum guidelines might (for instance) begin at 8-27 for Level 16, 10-30 for Level 30, 12-33 for Level 18, etc., until they finally meet at the guidelines presently proposed by the Commission at the upper offense levels.

Although broadening the discretionary powers of the courts would appear to introduce somewhat more disparity in one view, at the same time it would allow for a minimum certainty of punishment for the range of individuals who would be committing these offenses and not "oversentence" them. This would reflect heavily on the concept of using prisons as scarce resources and the stark economic realities we appear to be facing with the present guidelines.

In short, I am suggesting far more latitude at the lower and middle levels and a maintenance of present guideline ranges at the upper levels.

I see this approach as responding very appropriately to the most serious offenses with more latitude allowed for middle and lower level offenses.

It is my studied opinion that the citizens of the United States have considerable understanding when they themselves can relate to the possibilities of themselves committing certain crimes. The lesser the crimes that people commit, the more likely people are to see themselves as possibly having made the same errors or mistakes. Therefore, they are more likely to accept community service/probation alternatives for those than they would for very serious offenses such as kidnapping, where they have no identifiable potential with the offense.

It is suggested that the Commission can send to Congress and eventually to the American people the message that those people who commit lesser crimes can be afforded opportunities to repay the "community" without need of incarceration. In so doing, positive reparation/retribution occurs as well as, quite frankly, punishment for those who receive such type sentences. Such an approach may be considerably less costly, more productive and perhaps viewed much more in line with the concept of justice and fairness than would mandatory prison terms for these "lesser" offenses. I would also suggest that this type of approach would be politically palatable from a human concern issue and a justice fairness issue, as well as from an eco-

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conomic issue. Finally, this concept would not seem to require a wholesale revision of the developing "scoring techniques."

Sincerely,

A handwritten signature in black ink, appearing to read "Paul E. Panther", written over a horizontal line.

Paul E. Panther
Chief U. S. Probation Officer

PEP/pg