



COMMONWEALTH OF PENNSYLVANIA
THE PENNSYLVANIA COMMISSION ON SENTENCING

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March 20, 1987

The Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1200-A
Washington, D.C. 20004

Dear Commissioner Wilkins:

Thank you for providing me a copy of the Revised Draft Sentencing Guidelines. As you will note in my comments that follow, I think that there are several issues that the Commission must yet address. I must also note that despite my expressions of concern, I am very impressed with the painstaking work that you have put into the guideline development.

My basic recommendation is that the current proposal still requires significant attention to several issues. I do not believe that these issues can be given adequate attention in the few short weeks available before the guidelines must be submitted to Congress. Therefore, I recommend that you request an extension from Congress to continue your work.

One major problem with the proposed guidelines is their failure to incorporate systematically the relative seriousness of the offense. Commissioner Robinson makes the point that "the Commission never systematically ranked offenses." This results in inconsistencies such that some clearly less serious offenses are treated more severely than their more serious counterparts and vice versa. I think that the Commission has evolved an implicit ranking based on sentence recommendations including enhancements. In ranking offenses in Pennsylvania we first ranked all offenses, and as a result of the ranking decisions we developed a sentence severity rationale. I think that this worked very well in Pennsylvania and think that such a process would be helpful to the Commission as it writes its guidelines. I understand that the ranking of federal offenses would be a more complex task than we confronted, but I am sure that you would find it enlightening and helpful. Moreover, it

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may help you in disseminating the guidelines. If you are able to explicitly demonstrate your rationale as to why one form of criminal behavior receives a harsher recommendation than another form of criminal behavior, the acceptance of the guidelines may be enhanced.

A second major difficulty with the Commission's work is the failure to specify the impact of the guidelines on prison populations. While I do not believe that prison population should be the driving force of the sentence recommendations, I do believe that the sentence recommendations should be grounded in the reality of capacity. It would at least inform the public of the potential costs involved in the proposal. Although it is politically acceptable to ignore such an important ingredient in the criminal justice equation, it is not good social policy. I am fearful that the report generated by the General Accounting Office may find the impact excessive and jeopardize the approval of the guidelines by Congress. This problem may well have arisen as the result of the Commission's attempting to meet deadlines which are next to impossible. If this is the case, I would recommend that the Commission not risk its hard work by prematurely submitting its work to Congress.

Another issue raised in the dissent, and with which I concur, is the inordinate amount of disparity that may result from the current proposal. Although my work with the Pennsylvania Commission on Sentencing has resulted in my general view that guidelines may become overly rigid and narrow, it is my view that the current proposal allows too much discretion. The ranges in the sentencing grid itself are fine. Where I have problems is the adding or subtracting of levels for various factors. Often the court is given a range of levels from which to select depending on its view of the appropriate increase or decrease. This often seems to give the judge an excessive degree of discretion. Obviously such discretion is also provided to the United States Attorney to bring such factors to the courts' attention. I would recommend the Commission explore ways that it might specify the appropriate level more clearly rather than leaving the choice totally to the court.

Based on my work in Pennsylvania, I think it is important to caution the Commission regarding its detail work. It is important that the Commission specify such issues as the definition of prior conviction, the add on for sale of drugs to a minor, and numerous other factors that are not now clearly defined in the proposed guidelines. I would recommend that draft guidelines be "experimented" with in several diverse jurisdictions prior to the

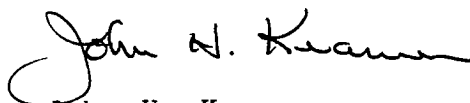
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final submission to Congress. Only through such testing will many of the difficulties arise that will require revision and clarification. I think that Congress would be amenable to such a testing so as to minimize any legal difficulties in the future.

Although my comments seem very negative, I want to say that in general I am pleased with the progress that the Commission made from September to this draft. I think that the shift of focus to offense of conviction rather than the previous standard of modified real offense sentencing is significant. Establishing the Sentencing Table is also an important step forward over the earlier proposal and the ranges in the table are appropriate. The explicit section dealing with plea agreements is similarly an advancement. I am amazed at the number of accomplishments over such a very short period of time. However, I think that the Commission needs more time. Time to assess the impact of the guidelines, time to develop a seriousness ranking of all offenses, and time to allow for field testing.

I commend the Commission for its hard work and its progress. It is clear that the Commission will never please everyone, and it should not. Having worked with the development of sentencing guidelines, I appreciate the difficulty and complexity of your task and respect the quality of your product.

Very truly yours,



John H. Kramer
Executive Director

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