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SCHOOL OF LAW

August 10, 1989 FACULTY

United States Sentencing Commission
1331 Pennsylvania Avenue, NW
Suite 1400
Washington, DC 20004

Dear Commissioners:

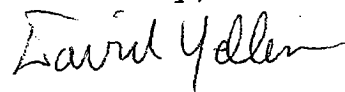
I would like to address a concern I have regarding the Commission's proposed policy on public access to sentencing documents and data.

My concern relates to judges' statement of reasons for departing from the guidelines. Departures are one of the most critical aspects of the guideline system. As such, it is important that there be sound analysis done of departures. I know that the Commission is monitoring this and other aspects of sentencing practice. I believe, however, that a useful role can also be played by independent researchers and scholars. For example, a useful project would be a detailed examination of the factors courts are relying on to depart from the guidelines. The results could be informative for judges and practitioners, and could assist the Commission in refining and amending the guidelines.

As it stands now, however, it would be hard, if not impossible, to do such research in a systematic manner. In those departure cases where there is no reported decision and no appeal, the only real source of information is the judge's statement of reasons required by 18 U.S.C. 3553(c). Further, the only meaningful way to get access to a large sample of such statements would be through the Commission.

I understand the Commission's concern with confidentiality and administrative burden. However, I do not believe that the statements of reasons for departing raise confidentiality problems and I hope that some meaningful form of public access that is not overly burdensome to the Commission can be worked out. I believe that the Commission's goals and responsibilities, including furthering the interest of justice and knowledge of the sentencing process, would be advanced by such a policy.

Sincerely,



David Yellen
Assistant Professor