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September 13, 1990

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Communications Director
U.S. Sentencing Commission
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Dear Sir:

I am an attorney practicing in Indianapolis, Marion County, Indiana. I have represented defendants in the federal court system, both before and after the advent of the federal sentencing guidelines, and am familiar with those guidelines, at least as much as one can possibly be familiar with them. I am also familiar with some of the problems they are causing and, since you have invited comments concerning these guidelines, thought it appropriate that I should write you in this regard.

A mighty leap was taken when we went to the sentencing guidelines; it not only vastly increased the periods of incarceration for all defendants but it took from the federal court what little discretion it had in sentencing. I participated in one matter appealed to the Seventh Circuit Court of Appeals by the government, resulting in a decision reversing one of our local federal judges because she had taken into consideration certain factors apparent at the time of the sentencing hearing, which factors they said she had no right to consider because such factors had previously been considered in the sentencing guidelines. It is one thing to pass general rules and regulations applying to all defendants and yet it is an entirely different thing when someone stands before a judge whose circumstances are peculiar and which require special attention, especially when the power of the judge to give that particular case special attention has been taken away by the guidelines.

I am both amused and amazed that one of the basic purposes of the guidelines was to reduce prison overpopulation; it has had just the opposite effect. As nearly as I can gather, if a person is sentenced to ten years, he/she will serve right at 85% of that time. Of course, this has resulted in longer sentences as opposed to prior sentencing and, with longer sentences, prison population increases. To think otherwise would be to ignore the obvious

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effect of such longer sentences and so one of the basic premises of the federal sentencing guidelines was, even at the time it was stated, contrary to what had to be once they were put into full force and effect. We are building new prisons because of the federal sentencing guidelines; all of our prisons are severely overpopulated, we're adding staff, we're building new prisons, and we have completely forgotten the concept of rehabilitation. We are now warehousing people and where we once had limited space for one inmate, that inmate is now sharing that same space with two or three other people. As we continue to dehumanize these prisoners, as we forget about rehabilitation and look only to punishment, acknowledging that this is no deterrent to others, we may expect to come out of the prison system at the end of their long term prisoners who have no regard for themselves or for others, an inevitable result of the shortsighted thinking that has permeated the U.S. Sentencing Commission.

I received a letter from a prison the other day who said to me that when we are sending these drug people to prison for long terms what we are doing is creating a community of drug people who are, by virtue of their acquaintanceship, establishing nationwide networks so that even while they are incarcerated, or upon their release, when they return to their drug dealing habits, they will do so much better informed and with much larger networks than were ever contemplated prior to their incarceration. That, too, is an inevitable result of putting these people together, letting them swap ideas, and letting them set up these networks. Believe me, this is not a figment of anyone's imagination. Unlike the hypothetical situation envisioned by the Sentencing Commission, I am talking about real life.

Another adjunct of the long sentences and the prison overpopulation is the fact that many prisoners have nothing to do; they have nothing but time on their hands. No consideration is given to their incarceration in areas close to their home and loved ones and often they are sent so far away that they cannot have any visitors, excepting on random occasions. Lack of continuity of family relations, whether it be a son, a daughter, a mother, a father, an aunt or an uncle, merely alienates the prisoner and, when he returns to society, he does so without any substantial support group. This is brought about because we send these prisoners to wherever there is a bed to send them; we do not give any consideration to their needs because they are "criminals". It is this kind of callous disregard for the individual that makes us almost as bad as them. It is one thing for them to ignore the rights of their fellow citizens; it makes us equally bad when we ignore their rights.

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Another person who I recently represented in the federal system accompanied a person into a bank and he, along with the other person, robbed the bank. Since the other person had the gun, in addition to the bank robbery charge, my client had to do five additional years because there was a gun involved in the robbery, regardless of whether or not he is the one who had the weapon. He had cooperated fully with the Federal Bureau of Investigation from the word go, had offered to testify against the other man, showed remorse, and had no previous criminal history, but he's doing nine years and must serve approximately 85% of that time. He left behind him a young wife, pregnant, with a two year old son. We, as taxpayers, are now supporting his family as well as supporting him and that is so true about so many prisoners and their families within both the federal and the state systems.

I could go on and on about the inequity of the systems, but really I don't think you are too interested in hearing from me in this regard. It is much easier to sit around a large table in a large room and talk about hypothetical situations and come to hypothetical conclusions. And, it is much easier to treat everyone the same, regardless of the particular circumstances of the case, and it is much easier to dictate what the judges must do as opposed to letting them use their individual judgment and to tailor their sentences to the individual before them than it is to say "So and so did this crime, here's what it is all about, fashion a sentence that will punish but at the same time not overly punish, and rehabilitate this person so that one day the odds are good that this person will become a valuable member of society." I realize that is an extreme position and would require a great deal of thought and a great deal of compassion on the part of this Commission and I do not expect them to be receptive to some of the thoughts I have addressed in this letter but, whether it comes from me, some other attorney, a federal judge, a U.S. attorney, or from any other source, still these are valid considerations to be given by the Sentencing Commission. Until such time as these issues are addressed, the road ahead will be expensive, long and vindictive and will impact on all of us.

I assume this letter will be filed away; however, I think I've gotten some good out of it whether the Commission does or not because I have given you my views on these matters.

Sincerely,

BUTLER, BROWN & ELLIOTT

Duge Butler, Jr.

dbj/kb

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September 21, 1990

Mr. Duge Butler, Jr.
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155 East Market Street
Indianapolis, IN 46204

Dear Mr. Butler:

I am in receipt of your recent letter to the Commission and thank you for taking the time to express your views on the sentencing guidelines. Your submission has been copied and distributed to the Chairman, Commissioners, and members of the legal and drafting staffs.

Several points that you raised in your letter require a response. First, it is incorrect to state that the purpose of guideline sentencing was to reduce the federal prison population. This was never the intent of Congress in passing the Sentencing Reform Act in 1984. Uniformity in sentencing and reduction of disparity were two of the more important goals identified in the legislation creating the Commission.

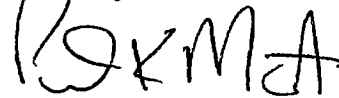
Studies conducted by the federal Bureau of Prisons and the Commission project that the guidelines will result in a 6 to 10 percent increase in the federal prison population during the next 10 years. However, the number of inmates will increase much more dramatically during this period due primarily to mandatory minimum sentences. These Congressional directives establish harsh minimum sentences for many drug and firearm offenses and dictate to the Commission the guideline level it must set. It is important, then, to distinguish the causes of the increase in federal prison population.

The Sentencing Reform Act that established the Commission recognized that the "medical model" concept of parole rehabilitation had failed. Therefore, the act abolished parole and gave clear instructions to the Commission that rehabilitation was not to be considered by the court in imposing a sentence of incarceration.

Finally, you mention a client of yours who received a nine-year sentence for bank robbery that included a five-year enhancement for use of a firearm. Based on the facts that you have related, it appears to me that the prosecutor charged and secured a conviction under 18 U.S.C. § 924(c), a statute that requires a mandatory five year consecutive sentence. Like mandatory minimums, this sentencing enhancement trumps the guidelines.

I can assure you that the Commission takes the comment it receives from the public seriously and I encourage you to identify substantive areas in the guidelines where you feel changes need to be made. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "PKM A", written over the word "Sincerely,".

Paul K. Martin
Communications Director