

PKJ-49/91

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

MICHIGAN-OHIO-KENTUCKY-TENNESSEE

CHAMBERS OF

ALBERT J. ENGEL

October 5, 1990

GERALD R. FORD FEDERAL BUILDING

GRAND RAPIDS, MICHIGAN 49503

Mr. William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Dear Chairman Wilkins:

Your good letter of September 12 was not received by me until September 28, while I was in court in Cincinnati.

First, I very much agree with your letter to Congressmen Brooks and Fish concerning the 1990 Crime Bill and particularly the increase in the number of mandatory sentences. It is my observation that your suggestion conforms with at least a substantial majority of the federal judiciary.

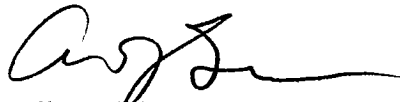
I do not have specific recommendations at this time concerning the efficacy of the existing guidelines. While my position at the time was that there were better and less cumbersome ways to achieve sentence reform than through the complicated sentence guideline procedure, I was and remain very much very anxious to give them every opportunity to prove their merit and effectiveness and it seems to me, to some extent at least, generalized opposition to them is diminishing with the exception to opposition to excessive use of mandatory sentences.

Without going excessively into my own philosophy, let me say that I believe that the careful use of computers in the collection and analysis of sentencing data throughout the country can be a highly useful tool in understanding the collective judgment of federal judges concerning the appropriateness of sentences under varying circumstances. Of course this is largely frustrated by mandatory sentences which really cannot give the Commission or other persons studying the subject any intelligent feedback. It is also my opinion that as a group, trial judges generally are best equipped to determine the general appropriateness of sentences under the circumstances of the case before them. Although I am an appellate judge, I would be very reluctant to pass judgment on the basis of my much more limited recent experience. I do not feel anywhere as competent of my own expertise as I did when I was actually a state and federal trial judge. In fact, many years ago now I participated in a joint meeting of trial judges and probation officers in which each was given a series of pre-sentence reports and asked to make an independent evaluation of an appropriate sentence. The probation officers, in Michigan at least, are highly qualified and most of them possess Master's Degrees, usually in sociology, psychology, or penology of some form. Nevertheless, to the surprise of all of us, the trial judges had much greater uniformity in sentencing than did the probation officers. Another surprising circumstance which was shown to be true not only with me but with my predecessor on the federal district court was that very often judges who have a conservative record or who have a

reputation as "hanging" judges in fact are shown statistically to be just the opposite in practice. The reason had some logic in it. Armed with such a reputation, a judge can afford to take the risk of placing a defendant on probation because his reputation as a tough judge was more likely to discourage violations. As a trial judge, I found that running a more formal, punctual court with appropriate attention to the details of constitutional requirement actually left me with more room to be imaginative and effective in the sentencing process. Most defendants have little sense of self-discipline and even less respect for social institutions. A proper sentencing procedure can be of immense value in turning them around and starting the great majority of them on the affirmative road toward rehabilitation.

Again, I am sorry I cannot give you more specific language for amendment of the guidelines but express the hope that you will listen very carefully to the views of the trial bench which is considerably more knowledgeable than I in such matters.

Sincerely,

A handwritten signature in dark ink, appearing to read 'A. Engel', with a long horizontal flourish extending to the right.

Albert J. Engel
Senior Circuit Judge

AJE/ymc