

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT
P. O. BOX 1288
CHEYENNE, WYOMING 82001

October 11, 1990

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

Dear Judge Wilkins:

I am grateful for your kind letter of September 78, 1990, wherein you requested my input on top Guideline sections or policy statements which I believe need review, amendment or clarification.

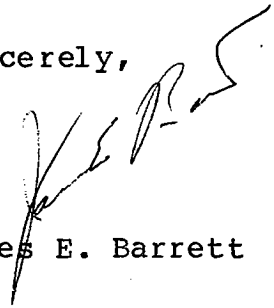
Under Chapter Four of the Guidelines, the Criminal History Category of a defendant ranges from Category I to Category VI. These categories do, of course, reflect Criminal History Points of "0 or 1" for Category I to "13 or more" for Category VI. The problem is that the criminal history category of two very different defendants weighs the same. Thus, the career or habitual offender is treated the same as the offender who barely makes it into Category VI for the first time. In my view, the criminal history categories should be expanded to at least Category X in order to reflect the seriousness of the criminal history of the career/habitual offender. I believe this would also be in sync with the Congressional objective of honesty, uniformity and proportionality.

A second problem, I believe, under Chapter Four involves the treatment of "related cases." U.S.S.G. § 4A1.2(a)(2) provides that "Prior sentences imposed in related cases are to be treated as one sentence for purposes of the criminal history." Related cases are broadly defined so as to include cases which "were consolidated for trial or sentencing." Thus, a defendant who has been tried and convicted on one count and who receives three criminal history points has the same criminal history under the Guidelines as the defendant tried and convicted on six counts in those instances where the counts are consolidated for trial or sentencing. In my view, conviction under each count should be considered and treated as a separate case. The "related case"

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definition does not permit convictions on separate counts in these cases "consolidated for trial or sentencing." Every conviction should be considered for purposes of determining a defendant's criminal history, irrespective of whether the cases were consolidated for trial or sentencing.

Sincerely,

A handwritten signature in black ink, appearing to read 'JEB', with a long, sweeping horizontal stroke extending to the right.

James E. Barrett

JEB/b