

United States Court of Appeals

Ninth Circuit

Joseph T. Sneed
United States Circuit Judge
Post Office Box 547
San Francisco, California 94101-0547

October 16, 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 begin by disclaiming being an "experienced" judge when it comes to sentencing guidelines, having participated only in a modest number of appeals from sentences imposed by district judges. For this reason you may find my comments worthless.

I hasten to point out that I'm not particularly disturbed by the technical nature of the guidelines because, having once been a tax lawyer, I know that the guidelines are years away from the degree of complexity the tax law presently reflects. Nonetheless, their start in this direction is impressive.

What does disturb me, however, is the possibility that the "discretion," meticulously taken from the Article III district judges, now belongs to prosecutors, probation officers, and, in a more visible form, to appellate Article III judges. Some say that is precisely what has happened. Thoughtlessly I have even said so myself at times. Is it true? Is "discretion" like a river which when blocked from its normal channel makes another?

I admire the thoroughness of your work, and best wishes for the future.

Sincerely,


Joseph T. Sneed