

FCR-109/91

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MARYLAND  
BALTIMORE, MARYLAND 21201

ALEXANDER HARVEY II  
CHIEF JUDGE

December 12, 1990

Honorable William W. Wilkins, Jr.  
Chairman  
Federal Sentencing Commission  
1331 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Re: Request for Comments on Guidelines

Dear Billy:

I am responding herewith to your letter of September 12, 1990, soliciting comments of the judiciary on the "top three guideline sections of policy statements [we] believe need review. . . ." The judges of this Court have asked me to send this letter to you as our joint response to your solicitation. My delay in responding has been caused by my undertaking to secure the views on this matter of each of the active and senior judges of the Court.

Although we are all of the opinion that the Guidelines are, on the whole, overly complex and difficult to apply, we recognize that it is not possible to solve this inherent problem by proposing specific amendatory language, as your letter requests. Thus, we have focused on the most troublesome aspect of the Guidelines for us in our daily business of imposing sentences and the one which has been the subject not only of comment by the Weiss Committee, but also by individual judges (such as Judge Irving, recently resigned) and by scholars. See, e.g., M. Miller & D. Freed, "Offender Characteristics and Victim Vulnerability: The Differences Between Policy Statements and Guidelines," 3 Fed. Sent. Rep. 3.

Specifically, the Policy Statements in §§ 5H1.1 through 5H1.6 currently reflect the view that offender characteristics should not "ordinarily" be considered relevant in fashioning the sentence or in departing. Courts have differed widely in their approaches to both the degree of deference to be accorded these policy statements and the breadth of what "ordinarily relevant" encompasses. Id. We suggest that the present policy statements of §§ 5H1.1 through 5H1.6 be replaced with the following policy statement:

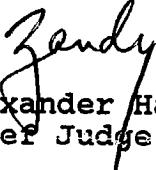
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Characteristics personal to the offender, such as: military record; employment history; age; physical, mental and emotional condition (including substance dependence and particular vulnerability); community service and humanitarian accomplishments; family situation; and other such matters are relevant in all cases to fixing the sentence within the calculated guideline range. Such characteristics are grounds for departure up or down from a calculated guideline range when they demonstrate significant past conduct that is inconsistent with the asocial or antisocial nature of the defendant's criminal conduct, or when they are present to a degree that makes the imposition of sentence within the guideline range inconsistent with the principles of sentencing as set forth in 18 U.S.C. § 3553.

We think the language quoted above will not only help judges achieve a proper exercise of their sentencing discretion, but will also promote the overall fairness of sentencing while preserving the concept that the Guidelines shape the "heartland" of sentencing.

With warm regards from the judges of this District, I  
am

Sincerely yours,

  
Alexander Harvey, II  
Chief Judge

cc: All Judges