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December 10, 1991

REPLY TO: Alexandria

VIA FACSIMILE

Hon. William W. Wilkins, Jr.
Chairman
U.S. Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Judge Wilkins:

As chair of a committee of the Practitioner's Advisory Group (PAG) which reviewed the efforts of the Staff Working Group on Alternatives, I am writing both to commend Paul Martin and the other members of the Working Group and to enthusiastically endorse the recommendations contained in his December 4, 1991 memorandum. I believe that Option #6 (which functionally incorporates Options #1, 4 and 5) should be included in the initial Federal Register publication for comment and should be adopted by the Commission as a formal amendment to the Guidelines.

Having said the above, permit me to note that I believe it important for the Commission to likewise include Option #2 and Option #3 in its initial Federal Register publication. As I suspect you will be hearing from other members of the PAG, I believe that the Commission should be as expansive as possible in its initial request for review and comments. Since these two items have already been reduced to option form, their inclusion would appear to easy to facilitate.

I believe that it is also important to include Option #7 in the Federal Register publication. In that regard, however, I believe that that general solicitation of comments must be expanded to secure input on a number of related issues.

In that regard, I direct your attention to the Working Group's October 23, 1991 Preliminary Report. Included therein was a discussion of the fact that the current sentencing options/alternatives demonstrated a "surprising degree of nonuse."

While this "nonuse" might be attributable to some confusion in the language of the guidelines or a lack of training or the fact that Presentence Reports (because of the guidance contained in the instruction manuals and monographs published to assist Probation Officers) might not fully spell out what alternatives are available, I believe that the Commission must share the statistics developed by the Working Group and must solicit comments about this matter. Even if the Commission eventually decided not to amend any of the related provisions, this "nonuse" must be addressed and the Commission should secure suggestions on how to remedy this problem.

Furthermore, that Preliminary Report makes reference both to the Alternatives to Imprisonment Project chaired by Commissioner Corrothers and to recommendations provided by the Judicial Conference of the United States. Each of those efforts included more dramatic recommendations regarding the availability of sentencing options at the low end of the guidelines and each included an expansion of the pool of offenders eligible for such alternatives. I believe that those recommendations should be captured in some way and comments as to their implementation should be solicited.

For instance, there are recommendations regarding the redrawing of Zone B and zone C on the current sentencing table to permit probation with confinement condition for sentencing ranges up to 18-24 months in Criminal History Categories I-III and split sentences at ranges up to 24-30 months. Also, there is a discussion of the creation of a new Zone D. And there has been discussion of what is called a "First Offender Adjustment." Even if the Commission were to decide not to reduce such matters to a formal option about which to secure comment, some reference to these matters should be shared with the public and general comment about them should be solicited.

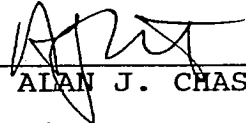
I thank you for this opportunity to review the drafts and to offer comments about how the Commission should respond to the Working Group's recommendations. And I trust that my remarks will be shared with the other Commissioners and staff prior to the December 12, 1991 meeting.

Finally, while this correspondence is being forwarded as part of my duties with the PAG, please understand that I wear a number of hats in my relationship with the Commission. As you know, I have been asked by the ABA's Sentencing Committee to serve as a liaison with this Working Group and, as Chairman of the National Association of Criminal Defense Lawyers's Post-Conviction

Committee, I have been asked to interact generally on all guideline revision efforts. Permit me to note that my comments herein should be additionally viewed as representing my opinions in both of those capacities.

Sincerely,
LAW OFFICES OF ALAN ELLIS, P.C.

By


ALAN J. CHASET

AJC/dmb

CC: Samuel J. Buffone, Esq.
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