

Honorable Vincent L. Broderick
C/O The Research Division
Federal Judicial Center
1520 H Street, N.W.
Washington, D.C. 20005

RE: Comments to Proposed
Amendments to the
Sentencing Guidelines

Dear Sir:

The following are my comments to the proposed amendments to the Sentencing Guidelines as outlined in the "Synopsis of Proposed 1992 Amendments to the Federal Sentencing Guidelines".

AMENDMENT 29.

1. Do the proposals "compromise the structure of the guidelines as originally drafted?"

Yes, I believe the proposals do compromise the structure of the guidelines as originally drafted. The guidelines were meant to eliminate or reduce the disparity of sentencings throughout the country. The guidelines as they currently stand do not allow for a considerable amount of disparity as they limit the options available. If the range for probation is expanded and the "split-sentence" options are enhanced thereby eliminating the service of at least one-half of the minimum guideline range in prison will cause an increase in sentencing disparities nationwide. A district which believes white-collar offenses, for example are serious and harmful to the community may sentence an offender to a term of imprisonment while another district may sentence that offender to a term of probation.

Additionally, the proposals compromise the structure of the guidelines as originally drafted as the proposals do not adhere to the sentencing objectives of deterrence, just punishment, incapacitation and rehabilitation. By allowing for an increase in the sentencing disparities, the philosophies of deterrence and just punishment become obsolete.

2. Should the Commission adopt an "offense-by-offense" approach under which certain types of offenders within the alternative-eligible guideline cells (e.g. white-collar offenders) would be excluded from eligibility?

No, I do not believe the adoption of an "offense-by-offense" approach would be a viable option to the expansion of the range of probation or the "split-sentence" options. Again, this type of proposal does not adhere to the sentencing objectives of deterrence, just punishment, incapacitation and rehabilitation. By having an "offense-by-offense" approach it appears at least on the

surface as being an unfair practice. Who shall decide which offenses shall be excludable when they fall within the same guideline categories and have comparable offense levels and criminal history categories. Shall each district decide which offenses are excludable? If an offense shall be excluded from straight probation or the "split-sentencing" options then the offense level for that offense should be increased.

3. Should the available sentencing options be expanded to include additional alternative programs such as intensive supervision, public service, shock incarceration (boot camps), day reporting centers, or other programs?

No. Although alternative programs such as boot camps, day reporting centers, etc are good sentencing alternatives in theory, they are extremely difficult to monitor, as well as impossible to finance. The Probation Offices are expected to run or monitor these programs while not being provided additional personnel or financial backing to provide for the increased workload. The existing personnel is expected to take on the extra work without monetary compensation for the overtime hours needed.

Alternative sentencing programs are for the offender who will not be a recidivist and learns from his/her mistake. However, when the offender does not comply with the conditions imposed with the alternative sentence, it is necessary for the Probation Officer to have the backing of the court in enforcing the ordered sanctions. When the courts fail to reprimand the non-compliant probationer, the alternative sentencing program loses the intended purpose of punishment and general deterrence.

AMENDMENT 33

Part (A). No comment.

Part (B). "Age may be a reason to impose a sentence below the applicable guideline range if combined with another factor (e.g., young and naive or elderly and infirm.)"

I do not agree with the reasons for downward departure being "young and naive" or "elderly and infirm". How does one determine whether an individual is young and naive? Even though offenders may be of a young age does not in itself mean the individual is in any way naive. Naivety is an ambiguous term at best and should not be open to anyone and everyone's interpretation.

Additionally, because someone may be young and naive or elderly and infirm does not lessen the fact that a crime has been committed. Should a young person or an elderly individual be rewarded because they decided to begin their life of crime at an early age or because they happen to become physically infirm after commission of the offense?

Part (C). "Should the court consider "a defendant's lack of

youthful guidance, history of family violence, or a similar factor as a ground for departure from the guidelines?"

NO! This kind of reasoning is a regression to pre-guideline thinking. The large portion of today's society is a product of a broken home, exposed to substance abuse and violence, or are not afforded the same moral guidance which was abundant during the "June Cleaver days". However, the majority of these children do grow up to be law-abiding citizens. Again, should we reward those who wish to make excuses for their abhorrent behavior rather than take responsibility for their actions. This would be the message given to society should the court use these reasons for downward departures.

Part (D). Downward departure based on advanced age (60 or older). No, I do not believe a downward departure based on age should be a consideration.

AMENDMENT 26

Part (A). I agree with Option 2. Most offenders who exceed Category VI usually do so with many more points than would come within the limits of a Category VII. I believe the court should be able to depart upward to the point to adequately reflect the seriousness of the offender's past criminal conduct.

Part (B). I do not agree with departures due to inadequacy of the Criminal History Category based on the degree of risk or type of risk. Whether the degree of risk is financial or physical, both provide for their own degree of harm to the community.

Part (C). I agree with this provision.

AMENDMENT 23

I propose an Option 5 which is similar to Option 3. However, I believe a one point reduction should be awarded to the offender who pleads guilty and an additional two level reduction be given to the offender who provided substantial assistance to authorities, admits to relevant conduct, voluntary payment of restitution etc. This provides for more incentive for the offender to be cooperative with authorities etc. More can be earned by this offender than just by pleading guilty.

I disagree with allowing for a three level reduction to an offender who has a high offense level. This individual should not be rewarded more than someone who commits a less serious offense. For offenders who have higher offense levels, there is a greater chance that this individual can provide more information to assistance authorities. Therefore, they may be able to be considered for a 5K1.1 departure.

AMENDMENT 1

Relevant Conduct. I agree with the provisions provided for this section. Relevant conduct continues to plague presentence writers. Any and all definitions and clarifications are greatly appreciated.

AMENDMENTS 16, 17 and 18

1. Whether mitigating role adjustments should apply in cases in which the defendant is less culpable... individuals who typically participate in similar criminal conduct.

I do believe mitigating role adjustments should only apply in cases in which the defendant is less culpable than other participants in the same case. When you try to group all offenders into one neat package none will be identical. Therefore, the term "individuals who typically participate" in similar criminal conduct" is ambiguous and will open the door for all kinds of interpretation for "individuals who typically participate".

2. Whether defendants performing certain functions in a drug activity should be eligible or ineligible for a mitigating role adjustment by virtue of the function performed.

I do not believe a person should be excluded from receiving or not receiving a mitigating role adjustment by virtue of the function performed. The guidelines adequately defines who should receive an adjustment for mitigating roles. The guidelines should not incorporate a specific function for defining who receives the adjustment. For instance, one may say a "mule" function warrants an adjustment for mitigating role. This is fine if the "mule" only carries or unloads one shipment of drugs. However, if the "mule" carts several separate shipments involving hundreds of kilos of drugs should he also be eligible for the same reduction based on the function performed?

3. Factors to be considered for a mitigating role reduction.

The definition for application of a mitigating role reduction is adequately addressed in the guidelines and should not be changed.

4. Should a mitigating role reduction apply to someone who has not been held responsible for the full amount to the crime?

No. The offender who is not held responsible for the full extent of the criminal activity is already in receipt of a role reduction by the fact he is not being held accountable for the entire conspiracy. The offender would not have a mitigating role in an offense he fully completed and was aware of.

5. If a defendant does not merit a mitigating role but has been held responsible for the full amount, should he be considered for a mitigating role?

This question could only be answered by reviewing the facts surrounding the case. Depending on what his role is in the overall activity compared to the relative culpability of the other defendants.

AMENDMENT 19

A. I do not agree with setting caps for minimal or minor participants in drug cases. The role adjustments available in chapter 3 of the guidelines adequately addresses the number of levels the base offense level should be reduced. By placing a cap on the guideline level, the mitigating role adjustments in Chapter 3 are of no value. If an adjustment is made for mitigating role after the cap is in place then the offender is being rewarded twice for mitigating role when the spirit of the guidelines is for a one time reduction for a single offense characteristic.

B. "To what extent do mandatory minimum sentencing statutes, on which the Commission has set its base offense levels for drug offenses, further influence the Commission's consideration of these possible amendments?"

I do not believe the guideline offense levels should be below the minimum sentencing statutes. Congress has determined the penalties of offenses based upon the overall harm it does to society as a whole as well as to individuals. In setting a mandatory minimum sentence, Congress is addressing the serious nature of the offense as well as the harm it inflicts on society. Therefore, allowing an individual to be sentenced below the mandatory minimum penalty is sending a message that these offenses are not as serious or harmful as Congress or the public deem them to be.

AMENDMENT 27

Part (A). I agree with Option 2.

Part (B) and (C). No comment.

Part (D). The Commission should not address certain categories of crimes of violence that would be considered "lesser" crimes of violence and thereby not counted. By amending the penalty for a felony from one year to two years, the Commission addresses offenses which could be considered "lesser" crimes of violence. Additionally, by stating certain crimes of violence are less serious opens the door for defense attorneys to argue crimes of violence involving spousal abuse should be considered lesser crimes of violence based on the victim.

Part (E). The convictions should continue to be counted as two convictions.

Part (F). I believe the definitions contained in Section 4B1.2(3) adequately define "two prior felony convictions" and an amendment specifying an offender who engages in a single short-lived crime spree is unnecessary and unwarranted.

AMENDMENT 35

Part (B). The Commission should amend its guidelines to provide that conduct described in a count dismissed pursuant to a plea agreement may be considered in determining whether or not to depart from the applicable guideline range.

Part (C). If a defendant has been acquitted of an offense, he should not be held accountable for that offense conduct even though the court holds there is a preponderance of the evidence.

AMENDMENT 36

Part (X). The guidelines should be based on the real offense conduct and not just limited to the offense contained in the plea agreement. Judicial discretion has become prosecutorial discretion as a result of plea agreements which limits the defendant's offense behavior, the actual charge for which the defendant can be convicted and even the guideline in which the defendant can be sentenced within.

AMENDMENT 20

I agree with Option 3.

AMENDMENT 4

I agree with the proposed amendment to Section 2A3.1, 2 and 4.

AMENDMENT 9

I agree with Option 2.

CHAPTER 2 GUIDELINES AND COMMENTARY

AMENDMENT 5

I agree with the four level increase as proposed in Amendment 6 and with the deletion of "more than minimal planning".

AMENDMENT 7

I agree with an increase of offense levels on the drug tables at 2D1.1 for distribution of large amounts of Schedule III, IV, and V controlled substances, anabolic steroids, and schedule I and II depressants.

AMENDMENT 8

I agree with an increase in the offense level from one to five levels for the number of aliens smuggled. I believe an enhancement for death or bodily injury should be incorporated into this guideline. However, I do not agree with the stipulation it should be conditional on the defendant's state of mind. If an alien or someone who smuggles aliens causes death or bodily injury to anyone, he should receive an upward adjustment regardless of the circumstance. An enhancement should be given for the possession of

a firearm. An increase of 2 levels for possession of a firearm would be an adequate adjustment as that is the level assessed in drug cases.

AMENDMENT 10

The specific characteristics contained in Section 2Q1.2 should be increased by 4 levels. Environmental crimes are life-threatening to society as a whole and should be penalized accordingly. Section 2Q1.3 should be similarly amended.

AMENDMENT 11

I agree with the proposed amendment to guideline 2Q2.1. I believe an adjustment should be added for more than minimal planning and an upward adjustment should be increased from a two to four for pecuniary gain.

CHAPTER THREE GUIDELINES AND COMMENTARY

AMENDMENT 21

The commentary to Section 3C1.2 is innocuous in defining Reckless Endangerment during Flight. The range of behavior is not adequately covered in this section. A floor offense with additional levels for degree of risk would be beneficial to the presentence writer in calculating the guideline enhancement.

AMENDMENT 22

Section 3D1.4 is clear in defining the multiple count rules. However, when an offender is convicted of several offenses which can not be grouped together and the offense levels are too low to be given any units, he does not receive any additional levels for those offenses. Thereby not receiving any guideline penalty. This section needs modification so multiple counts result in an increase in the guideline range.

CHAPTER FOUR GUIDELINES AND COMMENTARY

AMENDMENT 25

Part (A). I agree with the proposed amendment.

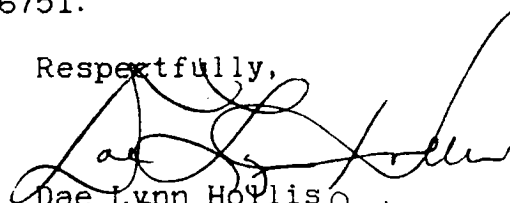
AMENDMENT 28

Part (A). I agree with the establishment of a Category 0 for first time offenders. However, I do not believe the criminal history category should be used to measure likelihood of recidivism. Also, I do not agree with Category 0 offenders being eligible for reduced sentences. A Category 0 could make it possible for a higher offense level to be eligible for straight probation or the "split-sentence" options.

Part (B). I agree with adding a Criminal History Category VII. Option 3 adequately addresses how Category VI and VII should be structured. Therefore offenders who have criminal history points above 18 would be considered for an upward departure based on the inadequacy of their criminal history.

I hope my comments to the proposed amendments are helpful. Should you have any questions or if I may be of assistance to you, please contact me at FTS 331-6751 or (317) 226-6751.

Respectfully,


Dae Lynn Hollis
U.S. Probation Officer