

#44

UNITED STATES DISTRICT COURT

DISTRICT OF WYOMING

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CHEYENNE, WYOMING 82003-0985

CLARENCE A. BRIMMER
CHIEF JUDGE

TELEPHONE:
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March 13, 1992

United States Sentencing Commission
1331 Pennsylvania Avenue, N.W. - Suite 1400
Washington, D.C. 20004

Re: Proposed Amendments to Sentencing Guidelines

Gentlemen:

I have reviewed the Synopsis of Proposed 1992 Amendments to the Federal Sentencing Guidelines and offer the following comment.

Expanded Availability of Non-prison Sentencing Options:

I recommend adoption of Amendment 29 to include those combinations of options which provide the most sentencing discretion. Many defendants with a top guideline of 12 months or less are the type of defendants whom the Court would have placed on straight probation, or given the suggested term of "shock incarceration" prior to guideline implementation. Under the present system, the Court has wrestled with cases in which the guidelines required incarceration or sentencing options the Court would not otherwise impose. At the same time, these cases have not met the departure standard and a sentence outside the applicable guidelines has begrudgingly been avoided. Many of these offenders have some resources in place with some chance for reform under the guidance of the probation office. This Court is in agreement, under the theory of "shock incarceration" any term too distant from the clang of the cell door gives rise to diminishing returns.

Acceptance of Responsibility:

I recommend adoption of Amendment 23, Option 3, which provides for an additional 1 point reduction in the offense level, based on admission of relevant conduct beyond that required to form a factual basis for the offense of conviction. I oppose Option 4 which would require that a defendant forfeit eligibility for any offense level reduction by exercising a constitutional right to trial.

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Page 2 . . .

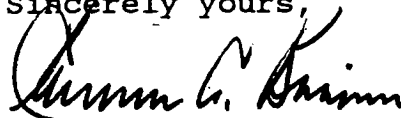
Role in the Offense:

I believe the entire Role guideline should be eliminated. In the case of a defendant acting alone, there is no opportunity for a role reduction in contrast to a similar defendant who happens to be involved in a similar offense with the prescribed number of codefendants. It is a certainty that any Role enhancement recommended in the presentence report will be challenged and assessing culpability within a hierarchical structure envisioned by the guidelines is not realistic. This Court believes that a defendant's role and relative culpability can be reflected in selecting an otherwise applicable guideline range.

Plea Bargaining Policies:

Amendment 35, Part (A), is highly recommended. Thorough plea agreements setting forth all guideline relevant facts would forestall many objections to the presentence report which remain in effect at the time of sentencing.

Sincerely yours,


CLARENCE A. BRIMMER,
Chief Judge

CAB:cjt