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WESTERN DISTRICT OF TEXAS
PROBATION OFFICE

#28

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March 2, 1992

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U.S. Sentencing Commission
1331 Pennsylvania Avenue, NW
Suite 1400
Washington, D.C. 20004

RE: PROPOSED AMENDMENTS TO
SENTENCING GUIDELINES

Dear U.S. Sentencing Commission:

The following are comments regarding the Proposed Amendments to the Sentencing Guidelines memo distributed by Mr. Chamlee on January 29, 1992:

1. Expanding the availability of non-prison sentencing options is encouraged. Option 1 on page 3, which eliminates the requirement that defendants must serve at least one-half of the minimum guideline range in prison under the "split sentence" provision is believed to be an appropriate adjustment to the guidelines.
2. Acceptance of Responsibility as it now stands is actually an acknowledgement of guilt. It is believed that this acknowledgement should include an admission of involvement in the offense of conviction and relevant conduct as noted in Amendment 23, Option 1 on page 5. In addition, a one level reduction for demonstrations of acceptance is also believed appropriate because some defendants take affirmative steps to demonstrate acceptance of responsibility and do not just acknowledge their guilt. Option 2 on page 6 is also believed an appropriate adjustment to the sentencing guidelines. An increased reduction for acceptance of responsibility for an offense level higher than 30 appears very reasonable.
3. A redefinition of a career offender appears appropriate. A concern in this office involves younger defendants who are arrested, convicted, and sentenced to periods of imprisonment for drug distribution offenses involving very small quantities of controlled substances. A third conviction in federal court results in a career offender guideline which results in a

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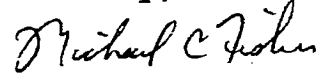
seemingly excessive period of imprisonment of 17 years plus. Can this be what Congress intended? Street dealers are a menace to society, but their careers in crime are many times a result of drug addiction and a poor socio-economic upbringing. Career offender guidelines would seem more appropriate for the violent offender or the upper echelon drug distributor whose "successful" career has been the result of large scale drug distribution.

4. In response to Amendment 5 on page 14, it is believed that the removal of the "more than minimal planning" adjustment would be a disservice to probation officers. This is a practical and realistic specific offense characteristic. Increasing the offense levels based on the loss tables is likewise recommended. Recently, the president of a non-profit agency was convicted of accepting bribes totaling over \$150,000, was given a lesser sentence (18 months) than a street dealer who was sentenced to 24 months for sales totaling less than two ounces of heroin.
5. Amendment 8 on page 14 is supported in its entirety. However, the increase for previous convictions need not be deleted. An enhancement for possession of firearms is believed especially appropriate due to the increased danger of violence when alien traffickers possess weapons.
6. Amendment 28, (Part A) on page 16, which discusses the establishment of a new category zero criminal history is again encouraged. A Chapter 4 two level reduction for a Category 0 criminal history level could provide for a more lenient guideline imprisonment range for an offender who has no previous arrests or convictions, i.e., no prior involvement in the criminal justice system.
7. Finally, it is believed that Judicial Conference Recommendation Number 5 on page 5 of Appendix A is unnecessarily re-opening the door to disparity in sentencing.

Thank you for your time in reviewing these comments. They are brief but to the point. Sentencing guidelines, when not circumvented by the defense attorney, the U.S. Attorney, and/or the court, appear to be generally satisfying the purposes of sentencing as outlined in 18 U.S.C. § 3553.

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Sincerely,



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Senior U.S. Probation Officer
Guideline Specialist

MCF/vsg

cc: Honorable Vincent L. Broderick
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