

#24

MAYER, BROWN & PLATT

CHICAGO
LONDON
NEW YORK
HOUSTON
LOS ANGELES
TOKYO
BRUSSELS

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

202-463-2000
TELEX 892603
FACSIMILE:
202-861-0473

LLOYD S. GUERCI
202-778-0637

March 2, 1992

By Hand Delivery

United States Sentencing Commission
Attn: Guideline Comment
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Re: Proposed Amendments to the Sentencing Guidelines for
Offenses Involving the Environment (Section 2Q)

Dear Sir or Madam:

These comments are submitted in response to the notice of proposed amendments to sentencing guidelines published by the Commission in the Federal Register on January 2, 1992, 57 Fed. Reg. 90, 97. The comments are submitted on behalf of Chevron USA Inc. and its employees, and other persons who have asked not to be identified.

The Federal Register notice proposed an amendment to Section 2Q1.2 (Mishandling of Hazardous Substances) to eliminate double counting where the offense involves a permit violation. The notice also presented two additional issues: 1) whether to increase the offense levels of Section 2Q1.2(b)(1), and 2) if Section 2Q1.2 is amended, whether a comparable amendment should be made to the parallel guideline Section 2Q1.3 (Mishandling of Environmental Pollutants). Our comments follow.

1. Proposed Amendment to Section 2Q1.2

The Commission proposed to amend Section 2Q1.2(b)(4), "Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering and Falsification" to clarify that this specific offense characteristic should not be applied if an adjustment under Section 2Q1.2(b)(1) applies. 57 Fed. Reg. at 97. The reason for this proposed amendment is to eliminate "double counting." Double counting has occurred when some courts have increased the offense level under Section 2Q1.2(b)(1) based

United States Sentencing Commission

Page 2

March 2, 1992

upon a "discharge, release, or emission" without a permit or in violation of a permit and also increased the offense level under Section 2Q1.2(b)(4) where the discharge occurred "without a permit or in violation of a permit." The notice recognizes that in many cases the "discharge, release, or emission" is not a violation of law unless it occurs without or in violation of a permit.

We support the Commission's proposal. The proposal would correct improper and unintended interpretations of the guidelines. The Commission should also assure that double counting does not arise through an application of 2Q1.2(b)(4) and the base offense. Many criminal cases are brought under environmental statutes that require permits, as is evidenced by reports and statistics issued periodically by the Government. The base offense in such cases includes a discharge, release, emission or other activity involving the management of hazardous wastes without a permit or in violation of a permit. Double counting would be avoided if Section 2Q1.2(b)(4) were not applied where the base offense involves a permit violation.

2. Increase in Offense Levels

The Federal Register notice stated that the Commission is reconsidering the appropriate adjustment for offenses involving a release of a pollutant. The notice did not set forth any basis for an increase in the offense level. An increase in the offense levels under Section 2Q1.2(b)(1) is not justified. The record on sentences imposed to date is very limited. To increase the level, there would have to be a finding that the guidelines underpenalize criminal behavior. There is no basis for such a conclusion.

3. Possible Parallel Amendment to Section 2Q1.3

If Section 2Q1.2(b)(4) is amended to eliminate double counting, we believe that a comparable amendment to the parallel guideline, 2Q1.3, is necessary. Section 2Q1.3 is similar to Section 2Q1.2 except the former applies to offenses involving conventional pollutants. The two guidelines are parallel except

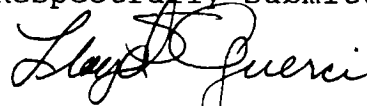
United States Sentencing Commission
Page 3
March 2, 1992

for the lower offense levels in 2Q1.3. The reasoning set forth in point 1 above applies to 2Q1.3 as well.

Conclusion

We support the amendment of Sections 2Q1.2 and 2Q1.3 to eliminate double counting in imposing sanctions for offenses done without a permit or in violation of a permit. We oppose increasing offense levels under Section 2Q1.2(b)(1).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lloyd S. Guerci".

Lloyd S. Guerci

#35

CARROLL, GERMAIN, TOBBE & MINIARD

Attorneys at Law

THOMAS E. CARROLL
GORDON T. GERMAIN
L. LEE TOBBE
VERNON MINIARD, JR.

POST OFFICE BOX 727
LOCUST STREET
MONTICELLO, KY 42633

(606) 348-9767
(606) 348-9394
FAX (606) 348-6884

January 13, 1992

Mr. Mike Corlander
United States Sentencing Guidelines Commission
Suite 1400
331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mr. Corlander:

I am a practicing attorney in Monticello, Kentucky. As such, I have had numerous opportunities to appear in State and Federal Courts regarding a variety of matters. It was not until recently that I have had occasions to deal with the sentencing guideline as it pertains to the growing and cultivation of marijuana. Before I voice my opinion, let me give you a little of my background.

I am 44 years of age, married and have a 13 year old daughter. My wife is a school teacher as were my parents and as were her parents. I have served as the Wayne County Attorney and Assistant Commonwealth Attorney for the 40th Judicial District. I have prosecuted many felony and misdemeanor cases involving drugs, alcohol and firearms. I am not a user of illegal drugs nor an abuser of alcohol. For the past several years, my law practice has been primarily plaintiffs civil litigation with 10 to 20 per cent of my practice being criminal defense work.

I recently defended a case in the United States District Court for the Eastern District of Kentucky at London, Kentucky, styled United States of America versus Robert Kenneth Gregory, Jr. and Ralph Beckman. Mr. Gregory and Mr. Beckman were convicted of cultivation of approximately 120 plants of marijuana. Of these marijuana plants, a lesser number were actually plants of marketable size. The officers described it as approximately 40 good plants during the course of their investigation. Mr. Beckman and Mr. Gregory received sentences of approximately eight years without any probation or parole. These sentences were imposed at the bottom end of the guidelines.

Mr. Beckman was a member of the Somerset Country Club, a father of five children, a husband to a very fine young lady, and was active in his community. He was an employed college graduate and had no previous criminal record of any sort.

#39

WILLIAM F. BYRNE
ATTORNEY AT LAW
221 WILLEY STREET
MORGANTOWN, WEST VIRGINIA 26505

TELEPHONE
AREA CODE 304
296-2577
296-2571

March 2, 1992

United States Sentencing Commission
1331 Pennsylvania Avenue, NW
Suite 1400
Washington, D.C. 20004

The Honorable Vincent Broderick
c/o Research Division
Federal Judicial Center
1520 H Street, NW
Washington, D.C. 20005

Gentlemen:

I have had an opportunity to review the "Synopsis of Proposed 1992 Amendments to the Federal Sentencing Guidelines", and offer the following comments and suggestions regarding two of the issues which have been raised.

The Commission has requested comment on whether the proposals regarding expanded availability of non-prison sentencing options "compromise the structure of the Guidelines as originally drafted?". As I understand it, the Guidelines were implemented to bring about uniformity in sentencing. Unfortunately, from my experience it appears that the Guidelines have created a type of "cookbook" justice which seriously deprives the Court from tailoring a sentence to meet the facts of a particular case. I believe Option 6 is well advised and would provide the Court with needed flexibility in dealing with non-prison sentencing options as well as creating more opportunities to consider such under the framework of the Guidelines. Furthermore, I agree that available sentencing options should be expanded to include additional alternative programs listed on Page 4 of the synopsis. My experience practicing in state court indicates that the more options available to a sentencing judge the more likely it is that the court can fashion an appropriate penalty that is geared to have a specific impact on the particular defendant.

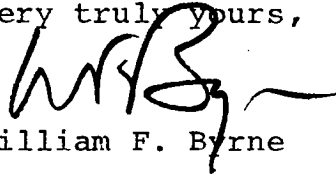
With respect to departures based on offender characteristics, I endorse the amendment to consider age as an important reason to impose a sentence below the applicable guideline range, if combined with another factor. Furthermore, I agree that the courts should be able to consider a defendant's "lack of youthful guidance, history of family violence or similar factor as a ground for departure" from the Guidelines.

Page Two

Although these limited comments deal with two specific issues, I would hope that generally the Guidelines would provide more opportunities for flexibility, depending upon individual situations. The Guidelines have provided a structure which encourages uniformity in sentencing. What they have failed to do is provide opportunities for judges, prosecutors and defense attorneys come to appropriate dispositions in certain cases.

Thank you for your consideration of these matters.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'WFB', with a long horizontal flourish extending to the right.

William F. Byrne

WFB/drg

x.c. The Honorable Robert E. Maxwell

Wilson, Frame & Metheney
Attorneys and Counsellors At Law
151 Walnut Street, Morgantown, West Virginia 26505

Judge Minter L. Wilson (1891-1968)

Clark B. Frame

William L. Frame

Wesley W. Metheney

Mark E. Gaydos

J. Michael Benninger

Telephone
304-292-9429

February 17, 1992

Telefax
304-292-9427

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

Attention: Guideline Comments

Dear Sir/Madam:

I have reviewed the Synopsis Of Proposed 1992 Amendments to the Federal Sentencing Guidelines. As a general premise, I believe that the District Court should be provided greater flexibility in sentencing. Amendment 29 seems to further that end. The use of "shock" incarceration is extremely valuable where a "split sentence" scenario is utilized. Most lower level, first time offenders would benefit greatly by experiencing a brief period of incarceration. The use of "boot camp" punishment is also an option which has merit and should be expanded in split sentence or lower guideline cases.

However, the Bureau of Prisons is working under a different set of procedures and guidelines for purposes of designating to "boot camp" under the present ICC program. For example, just recently the District Court departed and sentenced my client to twenty-four (24) months and made a strong recommendation that the Defendant be assigned to ICC at FCI Lewisburg. The Bureau of Prisons rejected the recommendation out of hand and said that he was ineligible because of internal criteria (which was not published and was unknown to the Court, probation officer and counsel). Thus, it is imperative that the Commission be aware that the Bureau of Prisons is acting in a totally autonomous manner and with little consideration being given to the District Court's sentencing recommendations.

Moreover, I take this opportunity to recommend that the "scope of conduct" used to determine acceptance of

responsibility be limited and narrowed to a great extent. To require the offender to accept responsibility for all "related conduct" is unmanageable. The uncertainty of the scope of related conduct is by itself a problematic issue. It has been the routine practice that the United States Attorney's office has the unilateral power to ascertain whether or not the offender has accepted responsibility for the "related conduct". The options under Amendment 23 seem to further that end by limiting the scope of conduct for which the offender must accept responsibility. On the other hand, it is my belief that the present two-level reduction for accepted responsibility is appropriate and should be maintained for across-the-board offenses. There does not seem to be a rational justification for increasing the levels of reduction for accepted responsibility simply because the offense severity is extremely low or extremely high. In this regard, I recommend that consistency be maintained throughout all guideline levels and offender categories.

My only comment with regard to Amendment 1 is that further clarification of "relevant conduct", "common scheme or plan" and "same course of conduct" would be beneficial to the Courts, the probation officers and counsel.

I have no comments with regard to Amendment 16, 17, 18, and 27.

With regard to Amendment 35, I believe that any conduct which is dismissed pursuant to a plea agreement, should not be later considered by the Court in determining the applicable guideline range. To do so, circumvents the very nature of the plea bargaining process. By no means do I suggest that information should not be provided to the Court, rather all information is known to the United States Attorney and the counsel prior to entry of the plea agreement and evaluated in considering the relative strengths and weaknesses of each case. Such conduct may or may not be deemed provable.

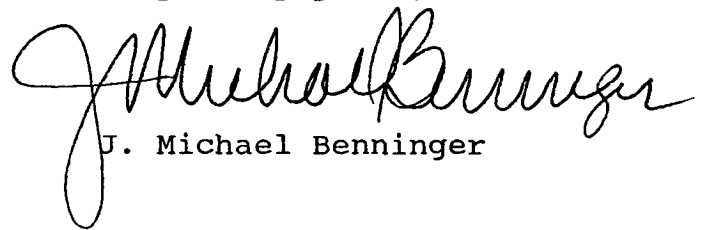
With regard to Part (C) of Amendment 35, it is my opinion, based on past experiences in several cases, that the conduct of which the offender is acquitted, should not be later used to select the applicable guideline range. It has always been my impression that this practice flies in

the face of our long-standing constitutional protections.
It simply seems grossly unfair.

Further, I wish to state that I agree with regard to
Amendment 2, Parts (A) and (B), Part III of the List Of
Additional Proposed Amendments.

I have no further comments with regard to the other
Amendments set forth in the synopsis. I thank you for your
considering my comments.

Very truly yours,

A handwritten signature in cursive script, reading "J. Michael Benninger". The signature is written in dark ink and is positioned above the printed name.

J. Michael Benninger

JMB/klp

xc: The Honorable Robert E. Maxwell, Chief Judge

CHARLES A. ASHER
ATTORNEY AT LAW
205 FIRST BANK BUILDING
205 WEST JEFFERSON BOULEVARD
SOUTH BEND, INDIANA 46601
TELEPHONE (219) 233-9341
FACSIMILE (219) 233-9342

April 15, 1992

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

Attention: Public Information Office

Dear Members:

I am a sole practitioner with about 25 percent of my work concentrated in federal criminal defense. I am writing regarding what I see as an emergency presented by the Sentencing Guidelines. Although I draw on experiences and comments of judges, probation officers, prosecuting attorneys, and other defense attorneys, these opinions are mine alone.

I offer these thoughts with high regard for what obviously has been a tremendous commitment of time and energy on your part.

As you probably know, it was with considerable uneasiness that practitioners received the first draft of the Sentencing Guidelines that went into effect on November 1, 1987. It is with horror, however, that we are left to receive the dizzying number of amendments to the Guidelines, now totalling 434. Many of these separate amendments carry on for paragraphs and even pages of small print. Some of the amendments actually include separate amendments to dozens of separate Guidelines.

These amendments have been spread out over six separate effective dates. The 1987 West edition of the Guidelines was in about 300 pages. The 1991 edition covers over 800 pages. With each new edition, the West publisher now routinely, and correctly, warns that all prior editions of the Federal Sentencing Guidelines Manual "should be retained . . . in the event there is a need to refer to the text of a specific Guideline, Commentary, or Policy Statement at a particular point in time."

For our further direction, you suggest a doctrine of "selective retroactivity" for usually, but not always, applying the Guidelines in effect on the date of sentencing, not the date of the offense. (Even more mind-stimulating is the place where that doctrine is announced. It seems to be found in the answer to Question Number 71 of your list of "One Hundred Questions Most Frequently Asked

CHARLES A. ASHER

United States Sentencing Commission
April 15, 1992
Page 2

About the Sentencing Guidelines." With all due respect, this looks like a David Letterman Top Ten List run riot.)

Most of the separate Guidelines by this time have been amended. The most important of them seem to have been amended at least twice, often three or four times.

I wish to put aside for the moment substantive objections to the entire concept of the Guidelines. Surely you have heard them all, and obviously they are not a deterrent to this large-scale experiment in reflex penology.

I have a more limited suggestion, but one that I think is absolutely critical.

Stop. You must stop.

I am not recommending that you do anything or that you undo anything. You must simply stop.

I harbor no harsh thought about the members of the Commission or any of their support staff. Quite the opposite. I am personally struck that this pace of amendments could only be indulged by well-intentioned persons whose humility over past mistakes has regrettably caused them to embark on an endless mission to fix what very possibly is not fixable.

I am sure that you are mindful of the concerns for settledness in the sentencing law, thus that you would not have enacted 434 amendments unless you thought they were of genuine substantial importance in correcting serious earlier errors.

There are those more judgmental souls (people genetically disqualified to be good criminal defense attorneys) who would accuse you of runaway hubris.

But whether motivated by extreme humility or extreme hubris, much is said about how fine an idea the original Guidelines were if they have required hundreds of amendments, in thousands of important distinct parts, covering hundreds of pages of small print in a bare four years.

Indeed, if achieving predictability and avoiding disparity are the chief goals, it is especially hard to understand this pace of change.

I am not here complaining about the fact that we have departed from a system where defendants and their lawyers (and often prosecutors) went into sentencing hearings armed with realistic and sincere

CHARLES A. ASHER

United States Sentencing Commission
April 15, 1992
Page 3

programs to turn a person's life around, only to have embarked on a system that sees defendants, their lawyers, and their prosecutors enter sentencing hearings armed only with pocket calculators and bromo seltzers. Perhaps those criticisms are mistaken. Perhaps the fact that modern-day federal sentencing has virtually nothing to do with 95 percent of the significant information about the person being sentenced is appropriate, or at least it's the way Congress may have wanted it.

What I am talking about here is a crisis in the day-to-day adjudicative process. I am reminded of David Mellinkoff's observation in The Language of the Law of an insurance policyholder trying to figure out where he stands.

By the time he has found his way to the end of an insurance policy, the alert and unusual householder (layman or attorney) cannot know what he is covered for--because there is more in his policy than he can read and retain even if he understood every word as he read it. The reading has left him--nay, made him--ignorant.

Your hard work has made us ignorant.

Not all of us practicing federal criminal law are brilliant. Approximately half of us graduated in the bottom half of our law school classes.

I would venture that the majority of us practice without large litigation budgets, much if any research assistance, regular access to legislative history, or even computerized research. Regardless of our resources, we are practicing under a flood of case law and amendments to the statutory law that are also burying us. (The Guidelines directly contribute to these explosions as well as evidenced by Appendix I to West's 1991 Guidelines edition showing over 5,000 case law treatments of the Guidelines since 1987.)

And for us, sentencing is not the only consideration. There is often the matter of defending the charge. The same penological aggressiveness that has brought about the Guidelines, endless mandatory minimum sentencing, bills to punish by death killers of federal egg inspectors, and what can fairly be called a federal infatuation with incarceration can, if unopposed, take innocent victims. Some of our clients are indeed innocent, and many are at the very least seriously over-charged.

We are called upon often to study thousands of pages of exhibits in a single case, wrestle with niggardly rules of discovery that were

CHARLES A. ASHER

United States Sentencing Commission
April 15, 1992
Page 4

written with witness-killing defendants in mind but which are applied indiscriminately against even the most non-violent defendants, study rapidly changing statutory and case law, and, yes, even actually try cases.

My most respected colleagues spend hours and hours getting to know their clients, including a sketch of their lives, their educational and vocational skills, their mental and physical conditions (including drug or alcohol dependence or abuse), employment history, family ties, community ties, and even the areas of their lives where they have shown strength and success in contributing to society such as military, civic, charitable, or public service. In other words, a good attorney expends a great deal of time and effort learning about the matters that the Commission has determined "are not ordinarily relevant in determining whether a sentence should be outside the applicable Guideline range."

That same attorney, even when there is no defense to the material elements of the charge, seeks to make his participation in the case an effective intervention against the parts of a client's life that are not working either for the client or for the community. He is part expert at client confrontation, part friend, part lay counselor, and part a referral source to experts who can interrupt a defendant's mismanagement (only part of which is normally criminal mismanagement) of his life.

The reader of the excellent article by Judge Sally H. Gray and Dr. Timothy J. Kelly, Counseling the Alcoholic--An Opportunity to Make a Difference, "Res Gestae" (March, 1989), will find a rare blueprint for what the responsible attorney regularly spends enormous efforts trying to accomplish with his clients, and often with great success.

For all of the rhetorical flights in modern-day politics that would lead the public to believe that judges are spineless, prosecutors incompetent, and defendants versions of Willie Horton (whatever we are lead to believe Mr. Horton represents), as you know, most people succeed on probation and respond favorably to these efforts.

But back to the emergency. Because only about a quarter of my practice (or perhaps less) is devoted to federal criminal defense, I would normally anticipate that studying, interpreting, and advocating regarding the Sentencing Guidelines would be a very small part of my practice. About federal sentencing I now feel lost. No, I am lost. I experience my clients' sentencing hearings in federal court as something of a lottery where the result is announced to me by people who, although themselves professing to be lost, know a little bit more by attending seminars, retreats, and structured readings of manuals.

CHARLES A. ASHER

United States Sentencing Commission
April 15, 1992
Page 5

But among my fellow criminal defense lawyers, I am what is called an expert. My colleagues call me. They think that I know something and can tell them something to advocate for their clients, or failing that, at least more deftly observe for human rights violations.

More often than not, federal criminal defendants in our mid-sized city are represented by attorneys appointed under the Criminal Justice Act, attorneys who may have only one or two federal criminal cases a year. These attorneys, although well-intentioned, are heard to ask laughable questions like "But if they're only guidelines, why would the judge get reversed if he doesn't follow them?" Studying five versions in four years of what constitutes "more than minimal planning" or "relevant conduct" is never reached.

None of this is to detract from the incredible effort all of you have expended on your amendments. It is simply too great an effort for the mortal practitioner (by which I include judges, prosecutors, and probation officers who, in my experience, also cannot keep up) to handle.

In all sincerity, I pause from my work to tell you that your commitment to amendments is not working.

As you know, many responsible observers have doubted that this attempt to mathematize the criminal justice system is even possible. Can even the grinding of the teeth between the statutory wheels and the Guideline wheels ever cease? Just last month I had a sentencing in a criminal contempt case under 18 U.S.C. § 401. As you know, that statute authorizes a sentencing court to fine a defendant or imprison him, but not both. Under Guideline 5E1.2(a), the Court is required to impose a fine in all cases (except where a defendant establishes that he is not able to pay). Did you mean the Guidelines to require a fine and thus preclude consideration of any imprisonment? (Please promise me you won't enact an amendment to answer this.)

The people with whom I work (criminal defense colleagues and others) may not be geniuses but they are serious-minded people. I think that it is fair to say that the consensus among them is that there is more disparity and more inexplicable sentencing under the Guidelines than there ever was before, and that all the tinkering in the world is not going to change that. The disparate sentences often required by the mechanistic approach of the Guidelines very often leave us wondering, or muttering, whether we should believe "science" or our lying eyes.

CHARLES A. ASHER

United States Sentencing Commission
April 15, 1992
Page 6

Worst of all, there is no accountability. Defense lawyers tell their clients that the prosecutor names the charge that pretty much determines the penalty. Prosecutors say they are just bringing the charges and that the judges sentence. Judges say that their hands are tied by the Guidelines. No one even asks what the right sentence should be--or what a right sentence is.

We used to have people who asked just that, and we called them judges. Right or wrong, they had the courage and responsibility to look at the facts, hear the arguments, and actually decide that a particular sentence was the most allowable under the law.

I offer even that observation advisedly because it invites the opposite of what I am recommending. I recommend absolute, unqualified, exceptionless, aggressive inertia. The Guidelines should be left alone long enough so that reasonable people (yourselves included) can try to see what we have and what the effect is on the criminal justice system, crime, and the general respect for law in society.

The punishment-oriented model of the Sentencing Guidelines seems to be either far behind, or perhaps far ahead, of the learning curve elsewhere. I ask that you please each, if you have not already done so, find a copy of the Winter, 1992 issue of "Criminal Justice," the publication of the Section of Criminal Justice of the American Bar Association. The articles there, particularly Americans Behind Bars: Why More People are Locked Up Here Than in Any Other Nation, seem now to reflect not just the opinion of criminal defense lawyers but the opinion of prosecutors as well. More and more people seem now at least vaguely suspicious that imprisonment has no more helpful effect over crime than an attempt to make sentencing a science has over the justness of sentencing.

Instead of amending 250 Guidelines this year I suggest you study these questions and any connection you can see between them and the Guidelines.

Consider also that if this large-scale experiment called the Sentencing Guidelines is to be evaluated, some of the variables need to be isolated. There cannot be 100, or even ten, amendments a year. No responsible social scientist could stop laughing at the idea of a review of your work that never sits still and thus presents as a kind of man-made instance of the Heisenberg uncertainty principle. By the time you look at it, it's gone.

Perhaps if the Guidelines could be left alone for a reasonable period (which in my opinion would be a minimum of three years given all the necessary judicial construction), the entire idea would then be seen as brilliant. Perhaps each of the 434 amendments

CHARLES A. ASHER

United States Sentencing Commission

April 15, 1992

Page 7

would be regarded as having made the whole idea incrementally even more brilliant. Perhaps the punishment model of reacting with an intentionally reflexive sanction to a certain class of misconduct (however much it seems most of our clients were raised by such ego-dismantling models) would be shown to bear fruit.

My own suspicion is that we would find that successful crime control and successful drug control require abandoning the notion "more government is the answer"; that we have been asking all the wrong questions (e.g., Does a one-time small-time marijuana seller's "relevant conduct" include the quantities of marijuana sold by thrice-removed drug dealers he never met but whose larger dealings were objectively foreseeable, but not subjectively foreseen, by him? or, as the Eleventh Circuit actually addressed in a published opinion on March 20, 1992, does the Sentencing Commission's amendments to a Guideline commentary, as opposed to a Guideline itself, nullify earlier contrary judicial interpretations of the Guidelines?); that we have been asking virtually none of the right questions (e.g., Why are our children poisoning themselves?); and that the greatest service that the Commission could perform would be to report to the public that there never has been and never will be much of a penological solution to these problems, only a penological response.

Interestingly, a typical federal drug case in Indiana often involves dealing in "ditch weed"--marijuana plants descended from massive crops planted by the federal government a half century ago. With no disrespect for the good intentions that are driving all of today's "policy," it may also turn out to be much more problem than solution.

The most intoxicating, addictive, simple, and wrong notion of all may turn out to be that attempted federal regulation of drug supply is a substitute for teaching our children one-by-one to love and esteem themselves, and thus not to ingest poison. My personal opinion--based on hundreds of cases of clients who have abused drugs, many of whom today spread the contagion of recovery--is that the simplistic appeal to federal criminal regulation to solve this problem is ultimately a dangerous hoax that worsens the problem immeasurably.

But we can never know any of this--one way or the other--unless and until the blizzard of amendments stops. We can never know anything unless and until the Commission distinguishes itself as one of the rare examples of government regulation that paused long enough from its mad pace of internal workings to invite objective evaluation of its original purpose and its ensuing degree of success.

CHARLES A. ASHER

United States Sentencing Commission

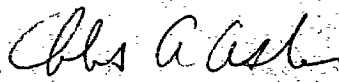
April 15, 1992

Page 8

Thank you for considering these thoughts.

And remember, please stop.

Sincerely,

A handwritten signature in cursive script that reads "Charles A. Asher".

Charles A. Asher

cd