



**EDISON ELECTRIC
INSTITUTE**

PETER B. KELSEY
Vice President,
Law and Corporate Secretary

March 15, 1993

The Honorable William W. Wilkins, Jr., Chairman
Members of the U.S. Sentencing Commission
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Chairman Wilkins and Members of the Commission:

The Edison Electric Institute ("EEI") is grateful for the opportunity to present comments to the Commission on the proposed amendments to the sentencing guidelines.¹ EEI is the association of electric companies. Its members serve 99 percent of all customers served by the investor-owned segment of the industry. They generate approximately 78 percent of all the electricity in the country and service 76 percent of all ultimate customers in the nation. Its members are pervasively regulated at the federal and state level in all aspects of their business. These electric utilities range in size from ones employing less than 100 employees to ones employing more than 10,000 employees. Our member companies have a real and direct interest in the content of the proposed amendments to the individual guidelines given enforcement trends toward the prosecution of corporate managers and supervisors.

I. Amendment No. 23, Abuse of Position of Trust

The Commission invites comment on a proposed amendment to § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).² The proposed amendment attempts to reformulate the definition of what constitutes a "special trust."

¹ Sentencing Guidelines for United States Courts; Notice, 57 Fed. Reg. 62,832 (December 31, 1992)(hereinafter "Notice").

² Amendment No. 23, Notice at 62,842.

from the guidelines.⁴ EEI supports the suggestion made by the Committee on Criminal Law of the Judicial Conference of the United States that the language contained in Part A4(b) should be changed to the extent that it discourages departures by encouraging courts of appeals to find that sentences that depart from the guidelines are "unreasonable."⁵

While the language of Part A4(b) concedes that the initial guidelines will be the subject of refinement over time, and that the departure policy was adopted because "it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision[.]" the language that follows nevertheless suggests that departures from the guidelines are improper.⁶ The courts must be allowed to exercise reasonable judgment with respect to application of the guidelines, and must not be required to adhere inflexibly to specified types of departures and departure levels. At a minimum, EEI recommends that Part A4(b) be amended to strike the last sentence of the fourth paragraph and the last sentence of the fifth paragraph.

* IV. Issue For Comment No. 32, First Time Offenders

The Commission has requested comment as to whether it should promulgate an amendment that would allow a court to impose a sentence other than imprisonment in the case of a first offender convicted of a non-violent or otherwise non-serious offense.⁷ EEI believes that there should be a specific provision for departures in the sentencing of first offenders of non-violent offenses. Judges need this departure to prevent the possibility of offenders receiving punishment that does not fit the crime. This departure should be accomplished through providing an additional ground for departure in Chapter Five, Part K.

⁴ Issue For Comment No. 30, Notice at 62,848.

⁵ Letter of Vincent L. Broderick, Chairman, Committee on Criminal Law of the Judicial Conference of the United States, to the Honorable William W. Wilkins, Jr., dated November 30, 1992.

⁶ Federal Sentencing Guidelines Manual (1992 Ed.) at 6.

⁷ Issue For Comment No. 32, Notice at 62,848.



FIRST NATIONAL BANK

CAPITAL CITY GROUP

P.O. Box 900, Tallahassee, Florida 32302-0900
(904) 224-1171

March 10, 1993

Attn: Public Information
U. S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D. C. 20002-8002

Dear Members:

We support proposed amendments to reduce drug sentences as endorsed by Families Against Mandatory Minimums. Please give their representatives every consideration. They know the problems we families face.

Our 39 year old son was convicted in a drug conspiracy case because a government-arranged "sting" group discussed locations at his homesite. He received a 10 year sentence! He is a non-violent first time offender. The real victim is his son, our totally blameless 3 1/2 year old grandson. We are helping our daughter-in-law raise this innocent child. We hope for relief on appeal. We have NOT received the justice in which we were raised to believe. PLEASE help our family and others like us help ourselves.

Thank you for your attention.

Sincerely yours,

Newell M. and Richard M. Lee
413 East Park Avenue
Tallahassee, Florida 32301
(904) 222-1155

cc: Families Against Mandatory Minimums (202) 457-5790, Julie Stewart
Bill Clinton, United States President
Bob Graham, Florida Senator
Connie Mack, Florida Senator
Pete Peterson, Florida Representative
Clyde Taylor and Judge Griffin Bell, Attorneys

Re: George Martin Croy - 09645-017

Case No. 92-00300405 LAC
U. S. District Court for the Northern District of Florida, Pensacola Division

Main Office • 217 North Monroe Street
Capitol Center Branch • 116 East Jefferson Street
South Monroe Street Branch • 3404 South Monroe Street
Thomasville Road Branch • 3501 Thomasville Road

BROWN & MOREHART

ATTORNEYS AT LAW

Suite 222

133 West Fourth Street

Cincinnati, Ohio 45202

Patrick L. Brown
Douglas M. Morehart*

(513) 651-9630
Fax (513) 381-1770

*Also Admitted in Kentucky

March 8, 1993

Mr. Mike Courlander
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

RE: Proposed Amendments to Sentencing Guidelines

Dear Mr. Courlander,

This letter is to provide my input on several of the proposed changes and amendments to the sentencing guidelines. I hope that these are of some use to you as these changes are contemplated. I am limiting my comments to three proposals, but on a broader scale would suggest that the Commission give favorable consideration to all changes which result in a more equitable situation.

Prior to expressing my views I wanted to give some background on myself. I am an attorney in Cincinnati, Ohio. The majority of my practice involves federal criminal sentencings and post-conviction motions related to sentencing. I handle cases in federal court across the country. Because of my work I have become familiar with the contents of the guidelines. It is with this understanding that I provide the following comments.

The proposal that would permit a District Court Judge to make a downward departure, without the United States Attorney making the request, if the Judge believes the Defendant has provided substantial assistance is one which should be approved. The current scenario permits the United States Attorney to plea bargain with the Defendant and decide after the Defendant provides information whether to make a request for a downward departure. Absent unconstitutional motivation on the part of the U.S. Attorney, there is nothing a Defendant or Judge can do, if the U.S. Attorney does not request a downward departure. This system smacks of unfairness. The U.S. Attorney, gains the information and then can decide not to give the Defendant any credit for it. The Defendant may have already put himself at grave personal risk and additionally is not able to retrieve what he has provided to the U.S. Attorney. Permitting the Judge to have control on this situation would level the playing field and result in a more just situation.

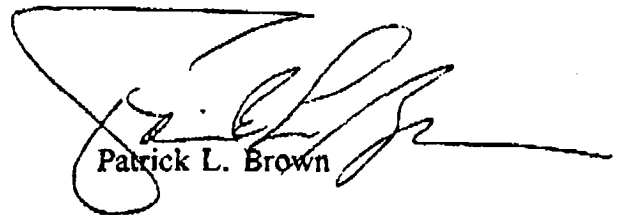
The proposal reducing the top guideline from 43 to 32 is another one which should be approved. The length of sentences in drug cases has simply gotten out of hand. As a society we can not continue to pay the costs of warehousing individuals for twenty and thirty years, especially when they are first time offenders. The comparison is made repeatedly

between violent offenders and drug offenders and the relative disparity in sentences received. The proposed amendment would help alleviate this disparity and more importantly result in sentences, especially for first time drug offenders, which are more in keeping with a system of fairness and justice.

The third proposal I am writing about relates to eliminating the weight of the carrier in LSD cases when calculating the weight of the drugs involved. It is difficult for me to understand the rationale behind adding to the weight of the actual drug the weight of the carrier paper. This would easily result in a situation of a supplier or manufacturer who has not separated the drug into doses and thereby not placed it on carrier paper being treated the same as the street seller because of the added weight of the paper the drug is placed on. Simply, a person should be held accountable for the drugs involved, not the material it is carried on.

I thank you for the opportunity to comment on these specific proposed amendments, and the amendments in general. I hope that the amendments will receive favorable consideration. Additionally, I would welcome the opportunity to provide testimony or additional information at any scheduled hearings on these proposed amendments. If I can be of further assistance please do not hesitate to contact me at (513) 651-9636.

Very Truly Yours,



Patrick L. Brown

PLB\wpf
cc: Congressman David S. Mann

Richard D. Besser

13 Arrowhead Way
Clinton, NY 13323

TEL (315) 853-4370

FAX (315) 853-4371

March 4, 1993

Attn: Public Information
U.S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Gentlemen:

I am writing to voice my opinion on the amendments to the sentencing guidelines that are currently under consideration by your Commission.

While I believe that the entire concept of mandatory minimums is abhorrent and unconstitutional, there are three amendments that I believe rise above the others in importance:

1. Eliminate the carrier in determining sentencing in LSD cases.

2. Reduction in the top guideline level from 43-32.

3. Allow Federal Judges to depart from guidelines if he believes the defendant has provided substantial assistance without the approval of the prosecutor.

I am sure you are aware of the inequities in sentencing that result from application of the current guidelines in LSD cases. If not I would offer the following:

One gram of pure LSD (no carrier)=63-78 months, guideline level 26

One gram of LSD on 100 grams of paper=188-235 months, guideline level 36

* Reduction of the highest sentence for a first time offender to 121-151 months is a modest reduction at best. Where else in our legal system does a first time offender for a nonviolent crime receive a 10

Richard D. Besser

13 Arrowhead Way
Clinton, NY 13323

TEL (315) 853-4370

FAX (315) 853-4371

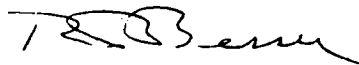
year plus sentence, without parole? People who commit armed robbery are let off with less severe sentences. Should the Federal Courts apply sentences that are more severe for nonviolent crimes than the state courts do for violent crimes? I think not.

As to allowing judges to have latitude in sentencing, I would postulate that the justice system was designed to have prosecutors prosecute and judges and juries determine guilt and impose sentences. In Federal drug cases discretion is taken from the judges and given to the prosecutor who's motives are typically self-serving. It appears that in their zealously to apply justice even-handedly they created a system that recognizes no extenuating circumstances and have denied judges the ability to perform their judicial responsibilities.

It appears to me that your Commission could do a lot to correct these and other inequities in sentencing, to say nothing of what you would do for prison overcrowding and the drain on the Country's resources, both financial and human, by passing these amendments.

As someone who has been personally impacted by these guidelines I would be more than happy to offer additional testimony.

Sincerely,



R.D. Besser

cc: Families Against Mandatory Minimums

LAW OFFICES OF
RITCHIE, FELS & DILLARD, P.C.
SUITE 300, MAIN PLACE
606 W. MAIN STREET
P. O. BOX 1126
KNOXVILLE, TENNESSEE 37901-1126

ROBERT W. RITCHIE
CHARLES W. B. FELS
W. THOMAS DILLARD
DAVID M. ELDRIDGE

WAYNE A. RITCHIE II
KENNETH F. IRVINE, JR.

TELEPHONE
615-637-0661

FAX
615 524-4623

February 25, 1993

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002

Dear Sentencing Commission:

I have reviewed with great interest your 1993 Proposed Amendments to the Sentencing Guidelines. The opportunity to express my concerns, on a few of the proposed amendments, is greatly appreciated. This particular group of amendments addresses several important areas:

A. Relevant Conduct: Amendments #1 and 35 propose two different ways to deal with acquitted conduct. Amendment #35, option 1, proposes a total ban on the use of acquitted conduct. I personally favor this approach. In addition to my personal preference, this is an area that I have discussed with numerous people. Lawyers and non-lawyers alike are often shocked when they learn that conduct, for which a defendant is acquitted, can still be used as relevant conduct. It is fundamental to our system of justice that persons acquitted of criminal charges are not directly or indirectly punished for that conduct.

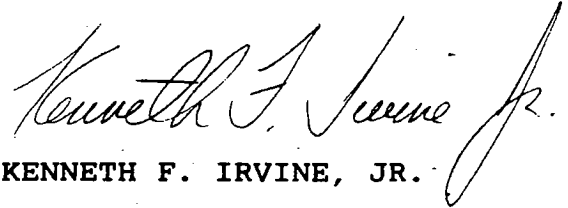
B. Substantial Assistance: Amendments #24, 31, and 47 suggest several ways to change the current system for determining when substantial assistance has been rendered. This is an area which should be decided by the sentencing court after the government has had an opportunity to state its position. Without question the government's position should be given careful consideration but the ultimate decision should be the court's. It has been my experience that "substantial assistance" varies from one U.S. Attorney's Office to the next and even from one AUSA to the next. Also based on my experiences the decision not to move for a downward departure, based on substantial assistance, has occasionally been arbitrary.

C. Specific Offender Characteristics: Amendment # 29 would give the sentencing courts some flexibility in fashioning an appropriate sentence. While uniformity is an important objective, it should not be the only consideration.

* D. Sentencing Options; Non-violent, first offenders: Amendment # 32 would also give sentencing courts more flexibility. Of the two options suggested in this amendment, it seems that an additional ground for departure would be the most effective way to reach this type of offender.

While many other proposed amendments are equally deserving of comment, I am going to limit myself to the four listed above. If the Commission wishes for any additional input from me I am available at your convenience.

Sincerely yours,

A handwritten signature in cursive script, reading "Kenneth F. Irvine Jr.", written in dark ink.

KENNETH F. IRVINE, JR.

Laurence Moss
3921 Pemberly Ct.
Ann Arbor Mich. 4810.
Phone & Fax #
(313) 668-0716
(call first for fax)

U.S. Sentencing Commission
One Columbus Circle, NE.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Commissioners,

I am writing to urge you to please consider the proposed amendments to the sentencing guidelines that would reduce sentences for first-time, non-violent offenders in drug *cases. My husband, Robert Moss, is serving a 25-year sentence for conspiracy to import & distribute marijuana. As a first time, non-violent offender, he does not deserve to receive this harsh treatment by our courts. My family, which consists of two girls, ages 1 & 2 and a twelve year old ^{boy} and myself, desperately need Robert to keep us going - as we have been emotionally and financially devastated by the federal courts decisions. Please give those like my husband

and their families a second chance at becoming productive members of this society which prides itself in giving fair & just treatment to its citizens who break the law.

In addition, I would like to remind you, as distinguished members of the sentencing commission, that the guidelines, which were intended to be used as a tool against drug use and abuse, has had no effect in this area. Abuse of drugs has remained the same or even risen in some cases, in spite of these stiff sentences. This leads me to believe that we should not use our courtrooms to rectify a social problem - rather it is a health problem. The money spent on prisons would be put to more effective use in education and prevention. This opinion is shared by many judges, and others

Page 3
Laurianne Moss

throughout this country. Government officials such as yourselves, need to get out of the business of destroying lives like ours by the thousands, and instead restore fair treatment to these offenders, which gives them a second chance in life.

Respectfully Yours,
Laurianne M. Moss