

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH, PENNSYLVANIA 15219

CHAMBERS OF
DONALD E. ZIEGLER
U.S. DISTRICT JUDGE
412-644-3333

March 10, 1993

Hon. William W. Wilkins, Jr.,
Chairman, U.S. Sentencing Commission
Suite 2-500, South Lobby
One Columbus Circle Northeast
Washington, D.C. 20002-8002

Dear Judge Wilkins:

Re: United States Sentencing Guidelines

I am responding to the invitation of the Sentencing Commission to comment on the proposed amendments to the Guidelines and the proposals of various groups. I have served as a state court trial judge for five years and a federal district court judge for 15 years in a metropolitan area. Hence, I bring to my work a fair understanding of the best and worst of both criminal justice systems in reviewing the Proposed Guideline Amendments. In my judgment, the federal sentencing guidelines are inferior to the state court guidelines in Pennsylvania, and therefore I have scanned the Proposed Amendments in an attempt to select the amendments that will improve the federal sentencing scheme.

Proposed Guideline Amendment No. 1, Pg. No. 1 should be adopted as urged by the Practitioners Advisory Group in Option 1 at Pg. 56. Most citizens and virtually every juror would be shocked to learn that a court is required to include conduct in the sentencing equation that their representatives have found not proven by the prosecution. In addition, any exception to a complete bar of such evidence strikes most informed observers as unfair and one-sided. Prior to the guidelines, federal trial judges did not consider acquitted conduct at the time of sentencing, and the supporters of the guidelines have failed to sustain their burden of proving that § 1B1.3, as constituted, has had any deterrent effect upon aberrant conduct, or has promoted uniformity in sentencing.

Proposed Guideline Amendment No. 10, Pg. 20 should be adopted to promote uniformity of law and introduce common sense in a difficult area of sentencing. The inclusion of uningestible mixtures in the weight of a controlled substance promotes public cynicism and contempt by the offender. It also leads to grossly disproportionate sentences in certain cases and therefore undermines the foundation on which the guidelines are bottomed.

Proposed Amendments 29 and 30 (Judicial Conference) are long overdue. The members of the Commission and staff are fond of stating at various Circuit Judicial Conferences and in other fora that departures are authorized in appropriate cases under the guidelines. The courts of appeals are often blamed by members of the Commission for being too rigid in interpreting the departure provisions. The Criminal Law Committee of the Judicial Conference has now provided the Sentencing Commission with the opportunity to stand up and be counted on this issue.

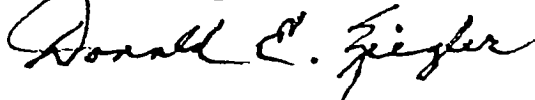
Proposed Amendments 31, 32 and 33 (American Bar Association) are progressive proposals that recognize that prisons are limited resources that should be reserved for the most serious offenders. They also recognize that for many non-violent offenders there are effective alternative sentences. For many years prior to the guidelines, I kept a record concerning the number of offenders that violated a probationary sentence. The number of violators totalled 15%. This means that 85% of the defendants did not violate probation and for these offenders a non-prison sentence was successful, effective and obviously less expensive.

* Proposed Amendments 37 and 38 (Practitioners Advisory Group) are sensible and deserve adoption. They advance uniformity of application and fairness for offenders who do not profit from an offense. This is especially important for non-violent offenders for whom alternatives to total confinement may be entirely appropriate.

Amendment No. 40 (Practitioners Advisory Group) correctly captures the disparate impact of the guidelines upon minorities. The 100 to 1 quantity ratio is irrational and leads to unfair sentences. Quantity based sentencing involving crack cocaine produces sentences, in many cases, that are harsh, have no deterrent impact and are grossly disproportionate. The same reasoning applies to Amendment No. 50 (Federal Offenders Legislative Subcommittee). Congress could not have intended such results.

Thank you for giving me the opportunity to comment on the matters pending before the Sentencing Commission.

Yours very truly,


Donald E. Ziegler

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

746 U.S. POST OFFICE
AND COURT HOUSE
5th AND MAIN STREET
CINCINNATI 45202-3980

February 23, 1993

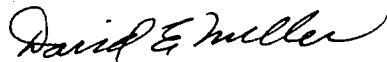
U. S. Sentencing Commission
One Columbus Circle, N. E., Suite 2-500
Washington, D. C. 20002-8002
Attention: Public Information

Dear Judge Wilkins

Attached hereto are personal comments regarding certain proposed guideline amendments. I have written a separate document for each of the issues on which I commented. Understand that the comments provided are only my own and are not representative of this agency or the Court for which I work.

Thank you for the opportunity to comment on the proposed amendments.

Sincerely



David E. Miller, Deputy Chief
U. S. Probation Officer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

746 U.S. POST OFFICE
AND COURT HOUSE
5th AND MAIN STREET
CINCINNATI 45202-3980

DATE: February 16, 1993

RE: 7. Issue for Comment.

FROM: David E. Miller, Deputy Chief
U. S. Probation Officer

TO: U. S. Sentencing Commission
Public Information

* The Commission should address the issue of whether 2B1.1, 2B1.2 and 2F1.1 fully capture the harmfulness and seriousness of the offense by commentary suggesting an upward departure if the Court thinks it is merited. If and when the Commission identifies, through its monitoring process, a trend of upward departures for this reason, it can address same through the adoption of a specific offense characteristic. This is consistent with the "heartland" approach adopted by the Commission, an approach that is valid, but has, in practice, diminished because of too many amendments during the first 5 years of implementation.

richard crane

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February 18, 1993

U.S. Sentencing Commission
1 Columbus Circle, N.E.
Suite 2500
Washington, D.C. 20002-8002

Re: Amendments 28(G), 37 and 38
Amendment 25

Gentlemen:

I am writing in support of proposed amendment 28 (G). Some of the problems with the loss definition under § 2B1.1 and § 2F1.1 have been resolved because of the 1992 amendment to the statutory index specifying that either of these guidelines could be appropriate for violation of 18 § 656.

But, the problem persists in other areas. For example, I had a client convicted this past year for conspiring to embezzle from an employee benefit plan. (18 § 371) The offense involved the use of a certificate of deposit from a union pension fund as collateral for a loan. The CD greatly exceeded the amount of the loan, so when the loan was defaulted on, only a portion of the CD was seized to cover the loss. Because the offense involved pension fund money, my client's sentence was calculated under § 2B1.1 using the full value of the CD, rather than the actual loss. Your proposed amendment 28(G) would, hopefully, resolve this problem.

I also very much favor amendment No. 25 regarding disclosure of information relative to guideline calculations. I practice around the country and there are great differences from one U.S. Attorney's Office to another in providing this information.

Additionally, I think that the amendment should include a requirement

that the government stipulate as often as possible in plea agreements to any facts which impact on guideline calculations. Again, as I practice in various states, some U.S. Attorney's offices are readily agreeable to incorporating stipulations or a separate statement of the offense, while other U.S. Attorney's offices have a "policy" of never stipulating to anything. This only increases the work for the probation officer and for the court, when these matters could easily be resolved during plea negotiations.

Sincerely,

A handwritten signature in dark ink, appearing to be 'R. Crane', followed by a long horizontal line extending to the right.

Richard Crane

RC/cm