

Teresa E. Storch
P.O. Box 449
Albuquerque, NM 87103

March 15, 1993

United States Sentencing Commission
Attn.: Public Information
One Columbia Circle, N.E.
Suite 2-500. South Lobby
Washington, DC 20002-8002

Dear Sentencing Commission,

I am writing with the following comments to the proposed amendments to the Sentencing Guidelines. I will refer to the guideline section for which the amendment is being proposed, and I will be following in the order in which the amendments are discussed in the Federal Register, Vol. 57, No. 252.

1. Support the amendment to Sec. 1B1.3 (not using acquitted counts for relevant conduct).
2. No comment on the amendment to Sec. 1B1.11 (use of version of guidelines).
3. Support the policy statement amendment to Sec. 1B1.12 (Juvenile Delinquency Act).
4. No comment on amendment to Sec 2A4.2 (demanding ransom).
5. No comment on amendments to fraud, theft, tax guidelines.
6. Support amendment to Sec. 2D1.1(a)(3), establishing a mitigation ceiling; a mitigation ceiling of level 32 is still too high, however.
7. Support amendment to Sec. 3B1.2, Option 1 (upper limit of drug quantity table at 36).
8. Support amendment to Sec. 2D1.1 concerning "mixture or substance" not including waste.
9. Support amendment to Sec. 2D1.1 (a)(3), Option 1 (offense level limited by amount involved...at any one time).
10. Support future amendment to Sec. 2D1.1 which would take into account "sentencing entrapment" issue in reverse sting operation, and would suggest that amount be based on market rate and what defendant could reasonably purchase at market rate.
11. No comment to amendment to Sec. 2K1.3 (using Career Offender definition of prior convictions instead of Criminal History definitions).

12. No comment to amendment to Sec. 2K2.1 (definition of firearms).
13. Oppose amendment to Sec. 2K2.1 (knowledge that firearms stolen).
14. No comment to amendments listed at paras. 17 and 18 of Fed. Reg.
15. Levels 6 and 8 for violations of 18 USC 922 and 930 appropriate.
16. Amendment to Sec. 2S1.1 (a)(1) concerning "if defendant committed the underlying offense" and "level for that offense can be determined" is vague. Otherwise, no comment.
17. No comment on amendments to the tax section.
18. No comment to amendment to Sec. 2X1.1.
19. Support amendment to Sec. 3B1.3.
20. Support an amendment to the guidelines which would allow a judge to depart for substantial assistance without government motion for non-violent first offenders.
21. Support amendment to Sec. 6B1.2 (requiring government to disclose information to guideline application).
22. No comment on car-theft guideline.
23. Support consolidation guidelines as outlined at Para. 27 of Fed. Reg.
24. Support the additional language to Introductory Commentary at Ch. 5, Part H, as proposed by the Judicial Conference.
25. Support the Bar Association amendment to 5K1.1, over the Commission's amendment commented on above at Para. 20; should not be limited to first offenders. Support Option A in providing an additional ground for departure rather than B.
26. Supports expanding Zones A and B in general (Para. 33, Fed. Reg.).
27. Supports restricting sentencing court's consideration of conduct that includes the elements of the offense to which Defendant pleads guilty (Para. 34 Fed. Reg.).
28. Support proposed amendments as outlined by Practitioner's Advisory Group, Paras. 35, 36, 37, 38, 39, 40, Fed. Reg.
29. No comment on amendment proposed by IRS and US Postal Service (Paras. 41-46, Fed. Reg.).
30. Support proposed amendments as outlined by Federal Defenders (Paras. 47-56, Fed. Reg.).

31. Oppose amendments proposed by the Department of Justice (Paras. 57, and 60-66, Fed. Reg.).

32. No comment on amendments proposed by the Department of Justice, Paras. 58 and 59, Fed. Reg.

Sincerely,

Teresa E. Storch

Post-It * brand fax transmittal memo 7671		# of pages * 1
To	PUBLIC OPINIONS	
From	V. CONROY	
Co.	U.S. SENTENCING COMM.	
Dept.		
Phone #	314-781-8160	
Fax #	202-213-4529	

March 12, 1992

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

Dear Commissioners:

This letter concerns the series of proposed amendments to the sentencing guidelines. I am writing to advocate the passage of proposed Amendment 50, which will eliminate the weight of the carrier in LSD cases, allowing the actual weight of the drug, not the carrier weight, in determining the offenders sentence.

I believe Amendment 50 will correct the current inequity in the sentencing of LSD offenders. I believe that LSD offenders are being and have been sentenced far in excess of what justice requires due to the inclusion of the carrier medium.

* I also advocate passage of proposed amendment 56, which would allow for the correction of the previous guidelines, which were enacted with good intent, but in practice have proven to be at odds with Congress's mandate to the Sentencing Commission to promote uniformity of sentencing.

Thank you for your consideration regarding this matter.

Sincerely,

Virginia L. Conroy
2187 Clifton
St. Louis, MO 63139

FEDERAL PUBLIC DEFENDER

ROOM 174, U.S. COURTHOUSE

MINNEAPOLIS, MN 55401

DANIEL M. SCOTT

FEDERAL PUBLIC DEFENDER -

SCOTT F. TILSEN

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March 10, 1993

United States Sentencing Commission
ATTN: PUBLIC INFORMATION
One Columbus Circle North East
Suite 2-500 - South Lobby
Washington, D.C. 20002-8002

Re: Comment on Proposed Amendments

To The Honorable United States Sentencing Commission:

I write to you, in as brief a form as possible, to express my comments on the proposed amendments in the sentencing guidelines. The fact that I am an assistant federal public defender for approximately 13 years makes me both a well informed and biased source, of which I am sure you are cognizant.

I applaud and encourage the thought and effort made to amend the loss tables and deal with the problem of more "than minimal planning" insofar as it has resulted in disparate treatments and a considerable amount of litigation. With respect to the additional issues for comment in this section, I definitely believe that the loss tables should have fewer and larger ranges in the lower ends. The loss tables at the higher ends are so large as to be beyond my experience and have no opinion as to whether they need adjustment.

Although more work would need to be done, I would encourage the Commission to modify the definition and approach to a more than minimal planning enhancement as opposed to building it into the loss table or, alternatively, building it into the loss table further from the bottom ranges, maintaining the lesser enhancement as long as possible and perhaps adding a third and additional level increase at the far end.

With respect to redefining more than minimal planning, I do have some suggestions:

1. Build in a two level decrease for spur of the moment or sudden temptation conduct;

2. Do not provide for multiple victim enhancement until the number of victims has reached an appreciably large level i.e. 15 or 20 and perhaps make this enhancement an additional one or two levels at an additionally large number such as 40 or 50;
3. Require, by example, truly more than the ordinary conduct to commit the offense before an enhancement is added. Few if any types of fraud or theft escape the current definition.

The proposal with respect to U.S.S.G. § 3B1.2 (role in the offense) is also an improvement. I would suggest option one is the most preferable of the options under Note 7 reading as follows: Option 1 is preferred because it affords the sentencing judge the most flexibility in determining whether or not to apply the two level adjustment for minor role and, unlike option 2, does not repeat the Application Note position contained in Note 8 concerning burden of persuasion.

The firearms amendments are mostly technical and it would be useful for the Commission to have a period where it does not amend the firearms guideline. I do believe that an appropriate differentiation can be made between different weapons including weapons that fall within 26 U.S.C. § 5845 and its various subdivisions. Whether the differentiation should be made by different offense levels, by placement of the sentence within a the guideline range, or by a Commission-guided departure, depends on the weapon involved. It would seem that a fully automatic machine gun is different from a sawed-off shotgun which is different from a sawed-off rifle which is different from other weapons such as tear gas "pen guns," all of which are prohibited in Title 26.

I have no great criticism of the proposed amendment § 3B1.3 abuse of position of special trust or use of special skill. However, perhaps the time has come to separate these two concepts into separate adjustment sections. It would seem to me be best to leave special trust as a Chapter 3 adjustment with appropriate illustrations in the application notes rather than adding it as a specific offense characteristic in a hit or miss fashion to various guidelines relating to fraud or embezzlement or in general to the embezzlement guideline. Certainly the proposed amendment is superior to the additional issue for comment, particularly as it relates to deleting the example regarding "ordinary bank tellers".

The proposal relating to 5K1.1 - issue 24 - will apply to very few cases if it is intended to exclude "crimes of violence" where that concept includes drug offenses. It also has limited usefulness because of the exclusion of anyone who is not a "first offender".

At least it should include all category I offenders and perhaps all category I and category II offenders. The injustice which it is intended to address is not related or necessarily related to whether the defendant is category I or category VI, but the proposal is at least some improvement over the current requirement for a government motion.

I should add with respect to § 5K that I have, as have other attorneys, experienced cases in which this proposed amendment could well have made a difference.

With respect to the proposal number 25 relating to § 6B1.2 the idea is commendable. Perhaps a stronger word than "encourages" should be utilized. I would suggest a policy statement that requires the government to make such the disclosures at either option point and provides as a ground for downward departure the intentional failure of the government to do so. Experiences has taught that toothless platitudes rarely modify prosecutorial behavior in an adversary system.

The Commission should act on issue for comment number 40 relating to the mandatory minimum and distinction between cocaine and cocaine base. Significant support exists not only from the interjection of the Commissions expertise, but also other sectors of the criminal justice system for the elimination of this distinction.

* Proposed numbers 44, 45 and 46 are all poor ideas, poor policy, and should not result in favorable action. They would increase unwarranted disparities and would not further the purposes of sentencing indicated by Congress.

Proposal number 57 submitted by the Department of Justice should not be acted upon. It is an attempt to accomplish exactly the opposite of what it purports to do. The Department of Justice obviously intends to utilize its proposed amendment, if it becomes the guideline, as the Commission's position which ought to be followed by the Courts in prohibiting attacks on prior convictions. It is my understanding that the Commission wishes to take no position and allow the courts to develop their own procedures. If the Commission does intend to take a position on this procedural question, it should study the matter, invite additional comment, and it is hoped, ultimately recommended that the courts permit collateral attacks on prior convictions utilized to enhance sentences.

United States Sentencing Commission

March 10, 1993

Page 4

I had promised to make this letter brief. There are many other things I could or should say, but will not. I will say that the last two cycles of amendments have been encouraging insofar as they have addressed problems of harshness and not simply been "fixes" of guidelines which appear to be too low to some other components of the criminal justice system.

Sincerely,



SCOTT F. TILSEN
Assistant Federal Defender

SFT/tmw

United States District Court
Central District of California
751 West Santa Ana Boulevard
Santa Ana, California 92701

Chambers of
Alicemarie H. Stotler
United States District Judge

714 / 836-2055
JCS / 799-2055

March 03, 1993

Judge Billy W. Wilkins, Jr.
Chairman
U. S. Sentencing Commission
One Columbus Circle, N.E., Ste. 2-500
Washington, D.C. 20002-8002

Re: 1993 Proposed Amendments

Dear Chairman Wilkins:

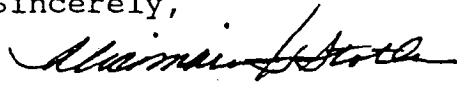
I wish you and the Commission and the Judicial Working Group a productive March 8th conference.

I submit herewith comments on the proposed amendments for the 1993 cycle. As always, silence is ambiguous and may signify one or more of the following: approval; no opinion; deference to others more knowledgeable; no experience; no clue. One almost overriding consideration governs my responses: everyone complains when changes occur and therefore only absolutely necessary changes should be made. Those, we recognize by the vague notion of "consensus," untoward appellate attention, and by the insights contained in comments by Sentencing Commission "consumers."

On separate pages, then, numbered to match with the number of the proposed amendment, I comment where (1) I cannot restrain myself; (2) where I feel certain that reasonable minds will differ and I want my vote recorded; (3) where I feel qualified to take issue with the need for any change at all; and, (4) where I disagree for reasons stated.

If any member of the Commission/staff reviewing these remarks wishes further explanation, please call.

Sincerely,


Alicemarie H. Stotler
United States District Judge

Amendment 3

1. Omit proposed § 1B1.12

* Unless the function of Policy Statements has been expanded to alert attorneys to a law that they should already know if they handling a juvenile case in federal court or to alert probation officers to the non-applicability of guideline sentencing to juveniles, this addition is an accurate but superfluous statement of prevailing law. § 1B1.12 is unnecessary inasmuch as the Supreme Court decision states the rule.

(I suppose it is ironic that in a recent juvenile homicide on my docket, neither counsel nor the probation officer appeared to know of U.S. v. R.L.C.)

2. Retain the Second Paragraph of § 5H1.1

We know that "Age" is discussed in Chapter 5 and I favor retention of § 5H1.1's second paragraph.

It is still accurate; R.L.C. merely put a cap on the sentence. Either the case citation, or one sentence, or both, could be inserted:

However, the sentence may not exceed the maximum of the guideline range applicable to an otherwise similarly situated adult. See United States v. R.L.C., 112 S.Ct.1329 (1992).

3. Fix the Index

No entry appears in the Index for "minors" or for "juveniles." The amendment could be downgraded as suggested above and enlarging the Index would be the simplest place to help practitioners and probation officers note this minor addition.

Amendment 56

As suggested on page 5 concerning "healing" amendments, retroactive applications will hopefully be kept minimal.

It seems that § 3582(c) contemplated primarily Offense Level changes as grounds to modify sentences. This Amendment would be the first, as best as I can tell, to inject Chapter 3 Adjustments into Chapter One's list in § 1B1.10(d)'s retroactive amendments.

It certainly is a policy call, of course, but my fairly recent research on this issue indicated that no Circuit was concluding that the amendment to § 3E1.1 was to be applied retroactively. There will be a great number of motions forthcoming, be assured.

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

MEMORANDUM

DATE: 2-23-93
RE: 26. Issue for Comment.
FROM: David E. Miller, Deputy Chief
U. S. Probation Officer
TO: U. S. Sentencing Commission
Public Information

* The appropriate guideline for carjacking is the robbery guideline found at 2B3.1. It has all the elements needed to calculate the offense level. Carjacking is a violent offense committed against a person and should comprise its own count group for each crime.

THOMAS P. JONES
ATTORNEY AT LAW
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P. O. DRAWER 0
BEATTYVILLE, KENTUCKY 41311
(606) 464-2648

February 22, 1993

U.S. Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, DC 20002-8002

To the U.S. Sentencing Commission:

I would like to express my support for the proposed amendments to the Sentencing Guidelines. I would especially like to voice my support for the following four amendments:

Proposal II, option 1: restructures 2D1.1 so that the offense level is based on the largest amount of a controlled substance in a single transaction.

Proposal 39: reduces the offense levels associated with higher drug quantities by two levels.

Proposal 50: bases the offense level in 2D1.1 on the amount of actual L.S.D. involved without including the weight of any carrier medium.

* Proposal 56: pertains to 1B1.10, expanding the court's ability to apply changes in the Sentencing Guidelines retroactively.

These proposals would all help to insure fairer judgment in dealing with small-time drug offenders. It is only fair and reasonable to make any changes retroactive, providing convicted offenders the same reduced sentences being granted to new offenders. Thank you for your efforts at making the guidelines more equitable, so that the punishment will truly reflect the crime.

Sincerely,

Thomas P. Jones
Thomas P. Jones
Attorney at Law

TPJ/bm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

CHAMBERS OF
HAROLD D. VIETOR
U. S. DISTRICT JUDGE
U. S. COURT HOUSE
DES MOINES, IOWA 50309

February 9, 1993

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

Attention: Public Information

This letter sets forth some comments I have concerning proposed guideline amendments. I may supplement these comments with a later letter after I have had an opportunity to examine the proposed guidelines amendments in greater detail.

By and large, the proposed amendments look good to me. I strongly favor proposed amendments 1, 9, 10, 11, 12, 23 and 25.

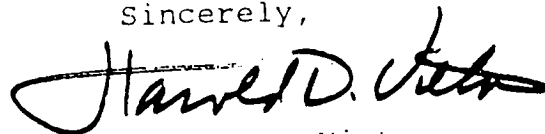
In respect to 13, issue for comment, I believe that section 2D1.1 should be amended to reduce the amount of drugs for which the defendant should be held responsible to the amount that the negotiated payment would fetch on the actual market.

In respect to 24, issue for comment, I believe that the court should have downward departure power for substantial assistance, without a government motion, when the defendant is a first offender and the offense involves no violence. Indeed, I would prefer an even broader power.

In respect to 40, issue for comment, I believe the Commission should ask Congress to eliminate the 100 to 1 ratio for powder and crack cocaine. The Draconian sentences required for crack offenders are unconscionable.

* In respect to 66, issue for comment, I strongly oppose a 4 level enhancement for felonies committed by a member of, on behalf of, or in association with a criminal gang because I believe that such a guideline would be difficult to apply, would border on guilt by association, and would tend to infringe on constitutional rights of free expression and association. It would work far more mischief than good, I fear.

Sincerely,


Harold D. Vietor