

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

CHAMBERS OF
JON O. NEWMAN
U. S. CIRCUIT JUDGE
450 MAIN STREET
HARTFORD, CONN. 06103

March 12, 1993

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

Dear Commissioners:

This letter concerns Proposed Amendment 1, included in the Guideline amendments proposed for public comment by the Commission on December 31, 1992. The amendment would prohibit conduct of which the defendant has been acquitted from being considered as relevant conduct; an application note suggests that such "acquitted conduct" may, in an exceptional case, provide a basis for an upward departure.

I strongly urge the adoption of this amendment. It would eliminate one of the most indefensible features of the current guideline system, a feature that has yielded bizarre results and brought the guideline system into disrepute.

For purposes of determining conduct that counts as "relevant conduct," the Guidelines currently make no distinction between uncharged conduct and conduct for which the defendant has been charged, tried, and acquitted. Both categories of conduct are not only included as "relevant conduct," but they both are priced at the same level of severity.

An extraordinary example of the effect of the current practice is contained in a case recently decided by the Court of Appeals for the Second Circuit, United States v. Concepcion, ___ F.2d ___ (2d Cir. Dec. 28, 1992). One defendant, Nelson Frias, was charged with two weapons offenses and a narcotics conspiracy offense. A jury convicted him of the weapons offenses and acquitted him of the drug conspiracy offense. His guideline range based solely on the conduct of which he was convicted was 12 to 18 months. Because the acquitted conduct was considered relevant conduct, his guideline range was increased to a range of from 210 to 262 months, exactly the same range that would have applied if he had been convicted of the narcotics conspiracy. He was sentenced to 20 years, the maximum statutory sentence available for the two weapons offenses. His sentence is thirteen times higher than the sentence he would have received had he been sentenced in the guideline range applicable to the conduct of which he was convicted.

The Second Circuit felt compelled, by the Guidelines and existing case law, to rule the guideline calculation lawful. However, the Court also ruled that the circumstances permitted consideration of

March 12, 1993

a downward departure from the enhanced guideline range that resulted from the inclusion of acquitted conduct as relevant conduct.

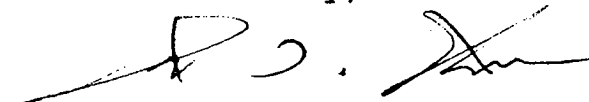
Use of acquitted conduct to achieve the same guideline range that would result if a defendant were convicted is a serious flaw in a guideline system that endeavors to promote confidence in a rational system of sentencing. The Second Circuit's permission for a departure downward from the guideline range enhanced by the acquitted conduct is not an adequate substitute for the proposal in amendment 1 to eliminate acquitted conduct from relevant conduct while permitting, in exceptional cases, an upward departure from the guideline calculated without regard to the acquitted conduct.

Acquitted conduct was recognized as relevant to sentencing in the pre-Guidelines era on the theory that the jury's acquittal indicated only that the conduct had not been proven beyond a reasonable doubt, whereas the sentencing judge was entitled to find the conduct established by a preponderance of the evidence, the standard generally applicable to aggravating circumstances weighed at sentencing. But courts that had permitted such use of acquitted conduct did so only to permit a sentencing judge to "consider" acquitted conduct. See United States v. Sweig, 454 F.2d 181, 184 (2d Cir. 1972). They did not contemplate that, under a guidelines regime, an acquittal would subject a defendant to the same severity of punishment as a conviction. It is the current inclusion of acquitted conduct as relevant conduct, priced at the same severity as convicted conduct, that achieves the Kafkaesque result illustrated by the case of Nelson Frias.

Amendment 1 should be adopted and explicitly made available retroactively, see U.S.S.G. § 1B1.10. If the Commission is unwilling at this time to eliminate acquitted conduct from consideration as relevant conduct, as proposed in amendment 1, then the Commission should consider, as an alternate, permitting the sentencing judge to count the acquitted conduct at some reduced level of severity, perhaps between one-third and two-thirds (in the judge's discretion) of the level appropriate for convicted or uncharged conduct.

Amendment 1 probably will apply to only a small number of defendants. But its elimination will greatly enhance public confidence in the Commission.

Sincerely,



Jon O. Newman
United States Circuit Judge



School of Law

Campus Box 401
Boulder, Colorado 80309-0401
(303) 492-8047
FAX: (303) 492-1200

March 12, 1993

Michael Courlander
Public Information Specialist
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, DC 20002-8002

Re: Proposed Amendments 1 and 34

Dear Mr. Courlander:

I thank the Sentencing Commission for the opportunity to offer written comments on the Proposed Amendments to the Federal Sentencing Guidelines, dated January 12, 1993. My comments are directed exclusively to Proposed Amendments 1 and 34, both of which concern the "relevant conduct" provision of U.S.S.G. § 1B1.3.

For the past two years I have made a close study of the policy issues surrounding various practices of real-offense sentencing, not only within the federal system, but in states across the country. The results of that work have recently been published as *Sentencing Facts: Travesties of Real-Offense Sentencing*, 45 Stan. L. Rev. 523-73 (February 1993). (A reprint is enclosed.) Because the analysis of *Sentencing Facts* is pertinent to your present deliberations, I wanted to make it available to you.¹

Proposed Amendment 1. I applaud the Commission's proposed amendment to § 1B1.3(c) that "Conduct of which the defendant has been acquitted after trial shall not be considered under this section." A number of states bar the use of acquittal conduct at sentencing, even while retaining a real-offense orientation to sentencing in other respects. See *State v. Marley*, 364 S.E.2d 133, 138-39 (N.C. 1988); *State v. Cote*, 530 A.2d 775, 783-85 (N.H. 1987); *McNew v. State*, 391 N.E.2d 607, 612 (Ind. 1979). Still other states forbid the consideration of acquittal conduct as part of their general approach of conviction-offense sentencing. See *Sentencing Facts*, 45 Stan. L. Rev. at 535-41 (surveying the experience of three state guidelines systems). See also *id.* at 552 ("Among the recommendations in this article, the foremost is the restoration of the legal force of acquittals at sentencing through a prohibition of the consideration of facts embraced in charges for which the defendant has been acquitted").

¹ Also, since 1989 I have served with my father as Co-Reporter to the American Bar Association's effort to promulgate a third edition of its *Criminal Justice Standards for Sentencing Alternatives and Procedures*, which were adopted formally by the ABA on February 9, 1993. This letter, however, represents my own views and not necessarily those of the ABA.

Michael Courlander
March 12, 1993
Page 2

In conjunction with the proposed amendment to § 1B1.3(c), I suggest a parallel amendment within Part K ("Departures") -- perhaps in the policy statement of § 5K2.0, perhaps in a new policy statement -- providing that **"Conduct of which the defendant has been acquitted after trial shall not be considered as grounds for departure from the guidelines."** I recognize that this suggestion conflicts with Proposed Amendment 1 insofar as the Commission would amend § 1B1.3, comment (n. 11) to provide that acquittal conduct *may* provide basis for departure in an exceptional case. The Commission proposal, to this extent, would permit the result in *United States v. Juarez-Ortega*, 866 F.2d 747 (5th Cir. 1989) (*per curiam*), and similar cases. As outlined in *Sentencing Facts*, 45 Stan. L. Rev. at 531-33, 550-52, the policies supporting a bar on acquittal conduct at sentencing extend equally to departure and to guideline sentences. On this ground, I would delete the second sentence of proposed § 1B1.3 comment (n. 11).

Proposed Amendment 34. The Commission has invited comment on a further amendment to § 1B1.3 as submitted by the American Bar Association's Sentencing Guidelines Committee (the "SGC amendment"). The SGC amendment would **"restrict the court's consideration of conduct that is relevant to determining the applicable guideline range to (A) conduct that is admitted by the defendant in connection with a plea of guilty or nolo contendere and/or (B) conduct that constitutes the elements of the offense of which the defendant was convicted."** I wish to comment in favor of the SGC amendment, which should be adopted in addition to Proposed Amendment 1.

First, the SGC amendment would alter the basic operation of § 1B1.3, changing it from a modified "real-offense" provision into a modified "conviction-offense" provision. The policy choices relevant to such a decision are complex. In *Sentencing Facts*, 45 Stan. L. Rev. at 547-65, I have argued that the conviction-offense program is far preferable to the real-offense alternative. I do not reproduce that argument here. I will note, however, that state guidelines jurisdictions have been uniform in their endorsement of conviction-offense sentencing. See Michael Tonry, *Salvaging the Sentencing Guidelines in Seven Easy Steps*, 4 Fed. Sent. Rptr. 355, 356-57 (June 1992) (recommending that the federal commission adopt a conviction-offense scheme); *Sentencing Facts*, 45 Stan. L. Rev. at 535-41.

Finally, the SGC amendment is consistent with the newly adopted ABA Criminal Justice Standards, *Sentencing Alternatives and Procedures* (3d ed., approved February 9, 1993). The applicable Standard, § 18-3.6, provides as follows:

Michael Courlander
March 12, 1993
Page 3

Standard 18-3.6. Offense of conviction as basis for sentence.

The legislature and the agency performing the intermediate function [e.g., the sentencing commission] should provide that the severity of sentences and the types of sanctions imposed are to be determined by sentencing courts with reference to the offense of conviction in light of defined aggravating and mitigating factors. The offense of conviction should be fixed by the charges proven at trial or established as the factual basis for a plea of guilty or nolo contendere. Sentence should not be based upon the so-called "real offense," where different from the offense of conviction.

* *

In conclusion, Proposed Amendment 1 represents a significant improvement upon existing law, although its reach should be extended to departure sentences. Proposed Amendment 34 is also an important advance, and should be adopted in addition to Proposed Amendment 1.

Sincerely,

Kevin R. Reitz
Associate Professor of Law

VIA FEDERAL EXPRESS

cc: Members of the United States Sentencing Commission



PACDL

POST OFFICE BOX 189
LIMA, PA 19037
(215) 566-8250
FAX (215) 566-8592

Pennsylvania Association of Criminal Defense Lawyers

NACDL Affiliate

Officers:

President
Joshua D. Look
President Elect
J. Richard Gray
Vice Presidents
Western District
Thomas Ceraso
Middle District
Charles P. Gelso
Eastern District
Robert J. Donatoni
Secretary
Joel P. Trigliani
Treasurer
Carol A. Shelly
Immediate Past President
Stanton D. Levenson
Past President
Arthur T. Donato, Jr.

Executive Director

Jeanne M. Ginsburg

Board of Directors:

Allegheny County
Stanton D. Levenson
Lester G. Nauhaus
Caroline M. Roberto
Gary B. Zimmerman
Berks County
David R. Eschelman
Bradford County
Gerald Kinchy
Bucks County
John J. Kerrigan
Carol A. Shelly
Sara Webster
Butler County
Richard E. Goldinger
Centre County
Roy K. Lisio
Chester County
Robert J. Donatoni
Joseph P. Green, Jr.
S. Lee Ruslander, II
Juan R. Sanchez
Cumberland County
Taylor P. Andrews
Dauphin County
Joshua D. Look
John B. Mancke
Robert N. Tarmann
Delaware County
Arthur T. Donato, Jr.
William A. Jacobs
Erie County
Leonard G. Ambrose, III
Lancaster County
J. Richard Gray
Vincent J. Guinn
Luzerne County
Charles P. Gelso
Lycoming County
Peter T. Campana
Montgomery County
William Honig
Philadelphia County
Dennis J. Cogan
Charles A. Cunningham
Anne M. Dixon
Marilyn J. Gelb
David M. McGlaughlin
John W. Morris
Robert B. Mosenter
John W. Peckel
A. Charles Perute
Maureen K. Rowley
Bernard L. Siegel
Joel P. Trigliani
Westmoreland County
Thomas Ceraso
York County
Richard K. Renn

Committees/Chairs:

Amicus
Robert J. Donatoni
Brief Bank
Carol A. Shelly
Continuing Legal Education
Sara Webster
Death Penalty
Lester Nauhaus
Bernard L. Siegel
Hotline Panel of Experts
Peter T. Campana
Lawyers Assistance Surtle Force
Arthur T. Donato, Jr.
Thomas Ceraso
Legislation
Robert N. Tarmann
Long Range Planning
Arthur T. Donato, Jr.
George H. Newman
Membership
Joseph P. Green, Jr.
Newsletter
Jeanne M. Ginsburg
Public Relations
David M. McGlaughlin
Sentencing Committee
Caroline M. Roberto
Strategic Litigation
S. Lee Ruslander, II
Women and Minorities
Marilyn J. Gelb

March 12, 1993

Honorable William Wilkins, Jr.
Federal Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
South Lobby
Washington, DC 20002-8002

**In Re: Proposed Amendments By The
Practitioners Advisory Group**

Dear Judge Wilkins:

The Board of Directors of the Pennsylvania Association of Criminal Defense Lawyers wishes to express our approval of the proposed amendments to the Federal Sentencing Guidelines as submitted by the Practitioners Advisory Group. As practitioners, we experience first-hand the impact of the Guidelines not only on our clients but on the entire judicial system.

In stating our support, we draw particular attention to the following:

* Proposed Amendment 35. Treatment of acquitted conduct under §1B1.3 Relevant Conduct. PACDL prefers Option 1 yet recognizes that the majority of conduct deemed relevant conduct for sentencing purposes is generally not included in acquitted counts but is most often "uncharged conduct". Further, we believe that any conduct used for sentencing should meet the beyond a reasonable doubt standard and should be submitted to the trier of fact during trial.

Proposed Amendment 36. Rule 11 procedure. PACDL supports the recommendation in this comments. It should also be noted that the Federal Court section of the Allegheny County Bar Association is recommending that the local rules for the Western District of Pennsylvania be amended to require a pretrial conference including the Government prosecutor, the defendant and the probation officer in order to disclose the facts and circumstances of the offense and the offender characteristics applicable to the Sentencing Guideline range.

Honorable Williams Wilkins, Jr.
March 12, 1993
Page Two

Proposed Amendment 39. Reduction of offense level for drug quantity. PACDL supports the overall scheme of this proposed amendment and believes that a maximum offense level of 36 achieves the purpose of the Sentencing Guidelines system.

The proposed amendments by the Practitioners Advisory Group are a definite improvement upon the Federal Sentencing Guidelines as they presently exist. The input of attorneys who work with the Guidelines on "the front line" must always be given high priority. PACDL supports the efforts of the Advisory Group.

Very sincerely,

A handwritten signature in cursive script, reading "Caroline M. Roberto". The signature is fluid and extends to the right with a long horizontal stroke.

Caroline M. Roberto
Board Member and Chair of the
Sentencing Committee

CMR:abs

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.

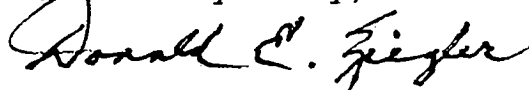
Proposed Amendments 31, 32 and 33 (American Bar Association) are progressive proposals that recognize that prisons are limited resources that should be reserved for the most serious offenders. They also recognize that for many non-violent offenders there are effective alternative sentences. For many 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

ef

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 1

§ 1B1.3 (c) should definitely be adopted.

*

Application Note 11 contains an unnecessary and undesirable second sentence. Absent direction about what constitutes an "exceptional case" for purposes of §1B1.3(c), this sentence about "basis for an upward departure" injects another uncertainty where, finally, something in these Guidelines can be declared certain.

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.

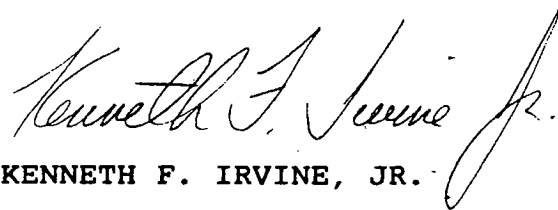
B. Substantial Assistance: Amendments #24, 31, and 47 suggest several ways to change the current system for determining when substantial assistance has been rendered. This is an area which should be decided by the sentencing court after the government has had an opportunity to state its position. Without 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.

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: Proposed Amendment #11

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

TO: U. S. Sentencing Commission
Public Information

* The synopsis of this proposed amendment indicates that a "snapshot" of the offender's involvement arguably provides a more reliable method of determining culpability. I strongly disagree with that theory and with the intent of this proposed amendment.

I contend that one adverse affect of this proposed amendment is to create an adaptation to the application and meaning of relevant conduct as defined in section 1B1.3. An exception to how 1B1.3 is applied is foreseen if this amendment is passed. This will create inconsistencies with the application of other guidelines, eg. 2B1.1 and 2F1.1 to name a few.

Drug distribution, almost by definition, is a continuous, ongoing crime. The overall philosophy of the guidelines appears to be to sanction, without double counting, all harms to the victim or victims of the criminal activity. The approach suggested by this amendment compromises that philosophy deeply.

Additionally, the proposal will create difficulty for the Court and probation officer in application and dispute resolution. Another element of factual determination is required and another issue for potential dispute is raised.

Board of Directors

Lois A. Williamson, Philadelphia, PA
Chairperson
Zandarski, Warren, OH
person
John Bertram, Washington, DC
Secretary

Ken Anderson, Sioux Falls, SD
Jean Auldridge, Alexandria, VA
Jackie Austin, Madison, WI
Beth Aylor, Nashville, TN
Lisa Lee Boren, Salt Lake City, UT
Dorothy Briggs, Boston, MA
Wendell Brown, Jamaica Plain, MA
Louise Carcione, Boston, MA
Margaret L. Chaney, Baton Rouge, LA
Paula de la Forest, Albuquerque, NM
Rev. Charles Doyle, Beverly Shores, IN
Kevin Glackin-Coley, Tacoma, WA
Marilyn Grosshans, Las Vegas, NV
Jo Ann Hart, Wall, NJ
Antonia E. Hartman, Anchorage, AK
Mildred T. Holcomb, Lawton, OK
Eileen Loera, Portland, OR
Dr. William J. Manseau, Nashua, NH
Yvette R. Merritt, San Jose, CA
Jim Murphy, Scotia, NY
Mary Lou Novella, Deland, FL
Lucia H. Penland, Montgomery, AL
Kay D. Perry, Kalamazoo, MI
Loren B. Perry, Okemos, MI
David Peterson, Hassan, MN
Leslie Pipito, Mattoon, IL
Ken Robison, Burlington, TX
Lois A. Robison, Burlington, TX
Chala Sadiki, Baltimore, MD
D. Scott, Atlanta, GA
Edna L. Silvestri, St. Louis, MO
Anita Smith, Bettendorf, IA
Brenda Ternberg, Palatine, IL
Dianne Tramutola Lawson, Denver, CO
Kathleen Wasylow, Wilmington, DE
Ted West, Cleveland, OH

State Chapters

Alabama	Nevada
Alaska	New Hampshire
California	New Jersey
Colorado	New Mexico
D.C.	New York
Florida	Ohio
Georgia	Oklahoma
Illinois	Oregon
Indiana	Pennsylvania
Iowa	South Carolina
Louisiana	South Dakota
Maryland	Tennessee
Massachusetts	Texas
Michigan	Utah
Minnesota	Virginia
Missouri	Washington
	Wisconsin

Issue Chapters

CURE-ENOUGH (Ex-offenders Need Opportunities, Understanding, Guidance and Help)
CURE For Veterans
CURE-SORT (Sex Offenders Restored Through Treatment)
Federal Prison Chapter of CURE
HOPE (Help Our Prisoners Exist) of CURE
Life-Long/CURE

Affiliates

Creations (North Carolina)
Inside-Out: Citizens United for Prison Reform, Inc. (Connecticut)
Middle Ground (Arizona)
Justice Initiatives of Rhode Island

Public Official Sponsors

Sen. Daniel K. Akaka (D-HI)
Sen. Dave Durenberger (R-MN)
Sen. Tom Harkin (D-IA)
Sen. James M. Jeffords (R-VT)
Sen. Claiborne Pell (D-RI)
Cong. Howard L. Berman (D-CA)
Cong. John Bryant (D-TX)
Cong. William L. Clay (D-MO)
Cong. Bob Clement (D-TN)
Cong. Ronald D. Coleman (D-TX)
Cong. John Conyers, Jr. (D-MI)
Cong. Ronald V. Dellums (D-CA)
Cong. Lane Evans (D-IL)
Cong. Martin Frost (D-TX)
Cong. John Lewis (D-GA)
Cong. Norman Y. Mineta (D-CA)
James P. Moran, Jr. (D-VA)
Constance Morella (R-MD)
Cong. Charles B. Rangel (D-NY)
Cong. Bill Sarpalius (D-TX)
Cong. Louise M. Slaughter (D-NY)
Cong. Fortney (Pete) Stark (D-CA)
Cong. Louis Stokes (D-OH)
Cong. Craig A. Washington (D-TX)



Executive Director
and Administrator
Charles and Pauline Sullivan

NATIONAL OFFICE:

PO Box 2310
National Capital Station
Washington, DC 20013-2310
202-842-1650, ex. 320

CITIZENS UNITED FOR REHABILITATION OF ERRANTS

"A National Effort to Reduce Crime Through Criminal Justice Reform"

PUBLIC COMMENT OF CHARLES SULLIVAN TO THE UNITED STATES SENTENCING COMMISSION

CURE very strongly opposes "in an exceptional case, however, such conduct may provide a basis for an upward departure" (amendment to Commentary to 1B1.3).

CURE is dedicated to reducing crime through rehabilitation. One of the first steps in this process is the perception by the person convicted that "the system" is fair.

When the potential is there in the Guidelines to use acquitted conduct to enhance a sentence, then I believe the system will be perceived as "rigged".

In fact, in my opinion, this proposed amendment goes against the very spirit of the confirmation hearings of the first commissioners that were conducted in 1985 by Sen. Charles Mathias, the Republican from Maryland.

I shall never forget Sen. Mathias asking the commission-appointees "to raise their hands" if they had ever spent time in jail. For those who had not, he encouraged them to visit the jails and prisons.

By this exercise, Sen. Mathias was encouraging a word that is almost non-existent today, "mercy". Sen. Mathias was indirectly telling the Commission that their attitude should be one of coming down of the side of reducing (not enhancing) the sentence whenever appropriate!

In the same way, I encourage you to support the 33 proposed amendments that would reduce drug sentences especially the one that would eliminate the weight of the carrier in LSD cases.

In this regard, I have attached a copy of a recent letter that we have received. I have removed the name since we are not certain if he wants his name to be known.

Dear **CHARLES+PAULINE**

.....Monday March 1st 1993

Greetings from F.C.I. Danbury. I am currently serving a 128 month sentence without parole, for conspiracy to distribute LSD. I have no history of violence what so ever, nor any prior felony convictions. I have taken responsibility for my crime. I continue to demonstrate, diligently, my whole-hearted conviction to reform my life. I am biding my time wisely, attending Marist College (I made high honors last semester,..intend to do so again), and the Comprehensive Chemical Abuse Program, among other programs. In 21 months, I've done *all* this--128 months are entirely unnecessary and unfathomable. I *am* an asset to our society, and to the world.

An interesting turn of events has unfolded, and it warrants your *immediate attention!* I have enclosed information that documents and explains the "quirk in the law" that justifies these absurd sentences for LSD offenses, by including the irrelevant weight of carrier mediums. You will also find an excerpt, from the Federal Register, containing 1993 amendments to the Federal Sentencing Guidelines, as proposed by the U.S. Sentencing Commission. See amendment #50--*synopsis of proposed amendment and proposed amendment*--which reads: "In determining the weight of LSD, use the actual weight of the LSD itself. The weight of any carrier medium (blotter paper, for example) is not to be counted." This amendment seeks to rectify a truly gross misappropriation of justice.

This means that prison stays (which are costly to the American taxpayers and public at large, as well as the individuals and their families, in both tangible and intangible ways) could be dutifully shortened, for myself and 2000 other human beings serving 10, 15, and 20 year sentences (with out parole), for the sheer weight of *irrelevant* carrier mediums....This would not be mocking the fact that LSD is illegal, it would simply serve to produce *just sentences*, in which the "time would fit the crime".

I earnestly request that you write the U.S. Sentencing Commission, and voice your support for crucial amendment #50! IT IS ESPECIALLY IMPORTANT FOR YOU TO URGE THAT IT BE RETROACTIVE!! This needs to be done by March 15th, since public hearings are scheduled in Washington D.C., on March 22nd. (See Federal Registrar excerpt).

I hope and pray that you will find the time and understanding to act on this issue,..it's not only for my benefit, but thousands just like me, encompassing all our families and loved ones, as well as all those that will continue to be federally prosecuted for LSD offenses. Please, justice and equity *must* transcend rhetoric!