

JOHN M. ECONOMIDY
ATTORNEY AT LAW
6100 BANDERA, SUITE 508
SAN ANTONIO, TEXAS 78238-1653

TELEPHONE
(210) 521-7843

Board Certified - Criminal Law
Texas Board of Legal Specialization

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

Re: Comment on USSG on Consideration of Acquittals

Gentlemen:

I am responding to the January 2, 1997 Federal Register proposal on considering in sentencing prior charges for which a defendant was acquitted.

I have recently had a client in this very position in a state capital murder case, and clearly relitigation of the acquitted offenses resulted in a grave misjudgment and immoral imposition of the death penalty.

Arnold was acquitted of a double murder in his mid-teens. The facts were simple. A former boyfriend of his mother entered their home three times after Arnold had gone to bed. Toxicology tests showed the boyfriend was legally intoxicated and heavy concentrations of cocaine were in his body. Arnold awoke when the boyfriend was robbing and beating up his mother. The unarmed 15-year-old stood up to this thug to protect his mother. The thug pulled a pistol on Arnold, who skidded across the room and grabbed a handgun from under the living room sofa. Both men exchanged shots. The intoxicated, coked-up thug failed in his aim. Arnold did not.

The family had no phone. They lived in a neighborhood where police were not trusted. The mother insisted that the body be removed. While Arnold went to dump the body on some railroad tracks, one of Arnold's homeboys drove up and killed the boyfriend's girlfriend, who was outside in a car. Arnold had no knowledge or involvement in the second shooting.

Arnold testified at trial. The jury quickly found him not guilty.

Several years later, the State charged Arnold on an accomplice theory in the capital murder of a drug dealer who had a long history of assaults. The State spent more time and argument on the prior case involving the acquittals than on the death of the drug dealer dirtbag. Arnold could not testify to raise the self-defense issue. The prior acquittals--totally justified--meant nothing. All jurors saw was that this kid killed three persons, and assessed the death penalty.

I am not at all impressed with the antiseptic reasoning and legal fictions of Dowling v. United States and United States v. Watts, in which the U.S. Supreme Court has approved use in court of matters where the accused was acquitted.

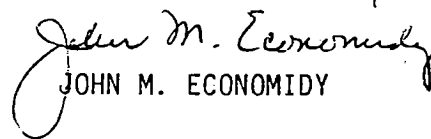
The use in sentencing of conduct where the defendant was acquitted is immoral. Such use detracts public respect for the law and for justice. It betrays the core values of our nation. It smacks of the quality of justice expected from Nazi Germany or a third world dictatorship, not in the pejorative sense, but in the actual ethical sense.

Reuse of conduct resulting in acquittals assumes that an accused will be on equal footing as the prosecution. Invariably, the accused will not. In my case and in others with which I have knowledge, witnesses for the defense are often dead, absent, in prison wanting a deal and thus hurting their credibility as a witness, or beset with memory problems over the years. You might suggest that there would be a record of trial from the acquittal to use. No so. Court reporters do not transcribe a record for a trial that resulted in an acquittal for obvious reasons. Court reporters do not save their notes after so many years (Texas: 3 years). Evidence is discarded.

On August 9, 1916, my grandfather as a county clerk in a rural Texas county tried vainly to stop a mob from lynching a Negro who killed the county sheriff. Without a trial, the accused was tarred and feathered, hung until death in the county square, and then his body was dragged behind a Model A Ford.

When I see proposals like yours to use acquittals for sentencing, it is clear that the lynch mob mentality of overpaid, bloated bureaucrats inside the Beltway still persists.

Sincerely,


JOHN M. ECONOMIDY