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October 30, 2001

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
South Lobby
Washington, D.C. 200062-8002

Attention: Public Affairs

VIA FAX : (202) 502-4699

re: Federal Register notice
September 19, 2001
Request for Comment

Ladies and Gentlemen:

You have asked for comment on the desirability of creating an ad hoc advisory group on the subject of the Organizational Sentencing Guidelines.

It certainly makes sense to revisit the Organizational Guidelines in light of extensive experience with legal compliance programs – both successful and unsuccessful – since the Guidelines were adopted in 1991. It also makes sense to consider the academic, practitioner, and expert commentary that has emerged from this experience. Most of all, it makes sense for the academics, practitioners, and experts who have a strong interest in and experience with the Sentencing Guidelines to have regular and sustained – yet informal – contact with the Sentencing Commission staff. This kind of ongoing exchange has certainly proven to be useful at the Securities and Exchange Commission. Dialog of this sort makes all parties more aware of the problems involved in administering the Guidelines as written, can accelerate the transmission of useful information, and can dispense quickly with ideas that have no practical utility.

Page 2 of 2

Scope, Duration and Membership

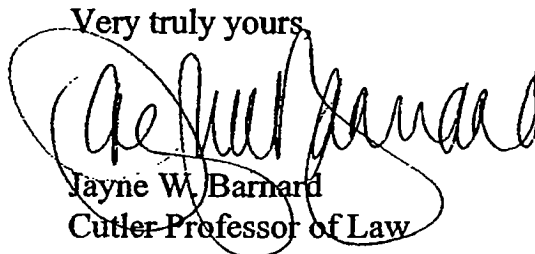
I would think that any advisory committee should be encouraged (subject to some agenda control) to provide comment on any aspect of the Organizational Sentencing Guidelines. The committee should function for a minimum of three years. Membership should be by invitation, with an opportunity to expand the group as expertise and interest manifest themselves. The advisory committee should be kept to a workable size (25 participants?), with the understanding that non-members with specific expertise should be invited to participate in the advisory committee's discussions. Certainly, the committee should include representatives of the Justice Department and the corporate defense bar, as well as those who make their living in the "compliance business."

Specific Agenda Items

I have my doubts about extending the protections of the existing Guidelines to include programs aimed generally at "ethical" behavior. A lot of these programs are self-congratulatory without having any real impact or substance.

I think a serious discussion of a "safe harbor" provision is in order — the practices of various divisions of the Justice Department on this issue appear to be all over the place.

Very truly yours,



Jayne W. Barnard
Cutler Professor of Law