

Judge's Chambers
United States District Court
For the Southern District of Ohio
838 Potter Stewart U. S. Courthouse
Cincinnati, Ohio 45202

S. Arthur Spiegel
Senior Judge

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July 31, 2003

United States Sentencing Commission
One Columbus Circle, NE, Suite 2-500
Washington, DC 20002-8002

Attention: Public Affairs-Public Comment

Re: Response to Request for Comment

To Whom It May Concern:

Section 401(m) of the PROTECT Act of 2003 demonstrates Congress' significant distrust of United States judges in sentencing criminal defendants. Not only does Section 401(m) increase the level of scrutiny on appeal for district court departures from the Sentencing Guidelines, the Act also calls for a "substantial reduction" in the incidence of downward departures from the Guidelines. This letter responds to the Commission's request for comment regarding changes to the availability of downward departures in the Sentencing Guidelines. Specifically, this letter addresses the Commission's general policy statement regarding departures set forth in § 5k2.0.

There is much to oppose in the PROTECT Act's attempt to limit judicial discretion in determining sentences. First, standardizing sentencing procedures limits a court's ability to issue an appropriate and individualized sentence. Second, eliminating downward departures in sentencing hinders judicial efficiency by discouraging plea bargaining.

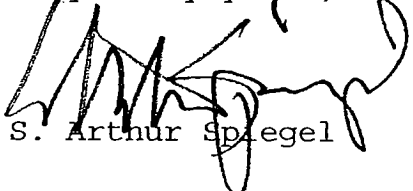
First, without the opportunity for judicial accounting for the various mitigating or aggravating circumstances that accompany each unique case, judges will not have the required discretion to issue an appropriate sentence. The Supreme Court of the United States has acknowledged the "wisdom, even the necessity, of sentencing procedures that take into account individual circumstances." Koon v. United States, 518 U.S. 81, 92 (1996). Trial courts must be left with sentencing discretion, to "make a refined assessment of

the many facts bearing on the [sentence], informed by its vantage point and day to day experience." Id.

Second, permitting judges downward departures in determining criminal sentences serves judicial efficiency by encouraging plea bargaining. Under the current guidelines, the court may accept an agreed sentence that departs from the applicable guideline range "for justifiable reasons." U.S. Sentencing Guidelines Manual § 6B1.2 (2002). Whatever changes result from the enactment of the PROTECT Act, judges must be permitted to depart from the guidelines in approving sentencing plea agreements.

While it has been the province of the legislature to prescribe conduct deemed criminal and to establish a range of penalties for punishment of that conduct, judges have historically had a role in setting the specific sentence responsive not only to the crime committed but also to the background of the defendant. The federal judiciary consists of individuals appointed by the President and Congress through the confirmation process. Individuals appointed to the bench are generally recognized for their scholarship, wisdom and experience. Discretion traditionally exercised by the judge in sentencing should not be further proscribed.

Very truly yours,



S. Arthur Spiegel