

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT

COPY

MAX ROSENN
SENIOR CIRCUIT JUDGE

MAX ROSENN UNITED STATES COURTHOUSE
167 SOUTH MAIN STREET, ROOM 235
WILKES BARRE, PENNSYLVANIA 18701

July 31, 2003

Honorable Sim Lake, Chair
Committee On Criminal Law
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, DC 20002-8002

8/7/03
COPY TO JUDGE ROSENN
AND JUDGE WHARTON
WTF

Dear Judge Lake,

I am writing in response to your July 18, 2003 letter regarding implementation of § 401(m) of the PROTECT Act, Pub. L. 108-21. Thank you very much for soliciting judicial input.

The protection of children from exploitation and mistreatment is an important goal of law enforcement and the criminal justice system. I heartily agree that efforts must be undertaken to deter and punish offenders. However, I am concerned that § 401(m) may go about this the wrong way. For a long time, I have believed that we should increase rather than decrease the discretion of judges to sentence according to the individual facts before them. The PROTECT Act, that has the explicit purpose of "ensur[ing] that the incidence of downward departures are substantially reduced" implies that judges are incapable of competently evaluating mitigating factors as well as exacerbating factors in determining the appropriate sentence. Although I am an appellate judge, my experience in reviewing trial judge sentencing has been to the contrary. In my view, § 401(m), as drafted, runs the serious risk of undermining judicial autonomy and encouraging one-size-fits-all sentencing. A case-by-case approach to sentencing would be more effective in protecting children and in upholding the rights of criminal defendants and society as a whole.

Sincerely,

MAX ROSENN

MR:vkt

✓ cc: Hon. William T. Moore, Jr.