

TESTIMONY BY PAUL D. BORMAN, CHIEF FEDERAL DEFENDER, LEGAL AID AND DEFENDER ASSOCIATION OF DETROIT, ON BEHALF OF THE FEDERAL DEFENDERS, TO THE U.S. SENTENCING COMMISSION, MARCH 15, 1990, RE PROPOSED GUIDELINE AMENDMENTS (THE POSITION PAPER IN FINAL FORM WILL BE SUBMITTED BY MARCH 30, 1990).

#27, Page 34 -- §2J1.6

We object the this change that equates failure to report for service of a sentence with escape, a totally disparate and potentially violent offense.

There is no equivalence, and there should not be an amendment.

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March 21, 1990

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

Attention: Communications Director

Re: Proposed Amendment to the Guidelines #27

Dear Communications Director:

I write regarding proposed Amendment #27 which is an amendment to Section 2J1.6. Since I was the defense lawyer in United States v. Sharon Lee, 887 F.2d 888 (8th Cir. 1989), to which this proposed amendment is an obvious response, I hope my comments will be given some attention.

The proposal given here for a method of dealing with failures to report for service of sentence will result in a longer sentence, for example, for failure to report to serve a three month sentence than for a person who fails to appear for trial or sentencing facing 5 to 14 years in prison. This can be readily seen by examining 2P1.1, base offense 13, and the current 2J1.6(b)(2)--6+6=12.

The proposed amendment has the merit of simplicity, but to me appears to be a hasty response to the decision of the Eighth Circuit. I suggest the following is more consistent with the apparent underlying concept behind Section 2J1.6.

Section 2J1.6 commendably tries to follow the congressional intent of increased punishment for failure to appear relating to the severity of the offense. It would be simple, consistent, and appropriate to add a specific offense characteristic (c) which would state that if the failure to appear was for service of sentence for a person given voluntary surrender or a stayed surrender date, that the specific offense characteristic in (b) applicable to the sentence actually imposed is the one used.

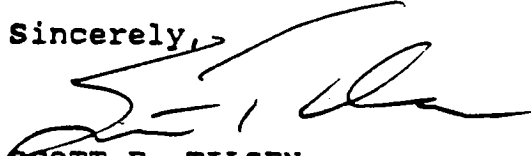
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Such a method would appear to me, under most examples, to impose harsh but appropriate punishment to the range of offenses under this category.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Tilsen", written over the word "Sincerely,".

SCOTT F. TILSEN
Assistant Federal Defender

SFT/sa

STATEMENT OF
BENSON WEINTRAUB
ON BEHALF OF THE
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

27. NACDL opposes the proposed amendment of USSG §2J1.6.