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April 9, 1986

Hon. William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
Washington, D.C. 20530

Re: Council of Criminal Justice
Subcommittee on United States
Sentencing Commission Guidelines

Dear Chairman Wilkins:

On behalf of the Association of the Bar of the City of New York, I would like to thank you very much for the opportunity to give our views and to assist the Commission in ranking crimes. Your letter and the accompanying questionnaire were reviewed by the Subcommittee of our Association's Council on Criminal Justice. At the outset, I would like to note that this is not a formal opinion of the Association itself, but rather an effort by the Council to directly assist the Commission in its work.

In reviewing the questionnaire, we did not attempt to derive or settle upon any particular philosophical basis for ranking crimes or for sentencing, although there was obviously a considerable amount of discussion which bore on this.

In arriving at the rankings which are listed below, some of the Commissions's examples yielded a consensus virtually from the outset, while others generated a considerable, initial spread as to the appropriate placement. Despite the diversity of membership on the Subcommittee, we found we could agree on placements by permitting a two-point

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variation in the placement. Obviously, at some points, this generated an overlap.

A brief word about our methodology. We evaluated the crime list individually, then meeting together, struck the highest and lowest ratings given a particular crime (by outliers), and then discussed the range to see whether participants could come to an agreement.

The list which follows gives the rankings in descending order of severity.

1-2	A	RICO
1-3	H	Espionage
2-4	C	Murder
3-5	I	Drugs
4-5	E	Bribery
7-8	F	Bank Robbery
7-9	P	Perjury
8-10	O	Firearms Offense
10-11	K	Commercial Fraud (odometers)
10-12	L	Fraud (college president)
10-12	G	Embezzlement
11	B	Toxic Substances
13-15	D	Draft Evasion
15-16	N	Forgery
15-16	M	Camping, Forest Fire
-----	J	Shooting at Ranger

When we had completed the ranking of crimes, we turned our attention to the questions posed by you in your letter of March 19, 1986. Responding to the question of whether the manner of carrying an offense should affect ranking, our members felt it obvious that it should, in general. The robbery committed with a gun was believed clearly more serious than that committed without a weapon. On the question of forgery versus counterfeiting, however, we were evenly divided, with much attention given to possible differences among the participants in the crime.

As to the appropriateness of certain sanctions to particular crimes, there was a clear consensus among us that there should be no per se rule which would impose an inviolate linkage of crime and sanction. Subcommittee members expressed the belief that such a rule would be very dangerous and would have the effect of substantially limiting the flexibility a judge might require to respond appropriately in a particular case.

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We look forward to attempting to answer your questions before the Commission next week, and would be happy to assist the Commission further in any way you think appropriate.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Peter J. Walsh".

Peter J. Walsh
Member of Subcommittee on
Sentencing Guidelines