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Honorable William W. Wilkins, Jr.
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Washington, D.C. 20530

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Dear Judge Wilkins;

I am responding to your letter of March 19 and enclose herewith my response ranking the seriousness of the crime scenarios on the Offense Seriousness Questionnaire. Rather than prepare comments on the questionnaire form, I will incorporate them by example as I address the questions contained in your letter. And because of the shortness of time and other pressing commitments, I would ask that this letter be considered the substance of my proposed testimony at the April 15 hearing. Your questions and my responses follow.

1. How should the Commission compare the relative seriousness of different kinds of crime?

Too often, there is a tendency to look narrowly at a particular crime as an event and then react instinctively to the event without examining a variety of elements. For example, I circulated the questionnaire to a dozen members of my staff and almost half rated the "estranged husband shooting his wife" as the most serious offense listed. In discussion with them it became clear that they reacted solely to the outrageousness of one person killing another without considering the range of elements or issues that I believe should guide the Commission in establishing degrees of offense severity.

One element is the number of persons actually or potentially injured by the offense. On this the wife shooting ranks very low while the organized crime head, the boat captain importing heroin and the fraudulent automobile dealer, as examples, rank high. For the former, it is the wife and her family who suffer while the acts of the latter three involve hundreds to thousands of victims.

Another issue is whether and to what degree personal gain was involved. Again, the estranged husband's act, the college president who makes false statements to obtain assistance for the college, the illegal camper and the person who provides a false alibi for a friend would rank very low. The organized crime figure, the polluting chemical corporation, the government officials accepting bribes or selling defense documents, the bank robber and the embezzler, etc., get high ranking here.

Certain offenses can be ranked differently because of other multiple elements. I would rank the bank teller's crime as more serious than the bank robber. They are both \$10,000 robbers but the bank embezzler also violated a trust placed in him by his employer.

There has been much debate in this country about the efficacy of achieving general deterrence by severely punishing those offenders who are apprehended. In light of our very low rate of reporting crime, our low apprehension rates and the resulting uncertainty of punishment, we cannot achieve general deterrence for most criminality with a policy of severe sanctions. There are, however, numerous studies in Western Europe which clearly find two exceptions to the "no general deterrence" result. One, drunk driving, has no applicability to the Commission's task. The other, economic or "white collar" crime, does. I believe it is acceptable justice policy to consider deterrence, where it is capable of being achieved, in determining offense severity.* Thus, the chemical corporation, the corrupt government officials, the embezzler, the car dealer and the bank president get high ranking. If a person contemplating an economic crime thinks there is a possibility of apprehension and the certainty of severe sanctions if caught, he will think twice. The so-called street criminal, like the bank robber or the ex-felon who illegally purchases a gun, and the aberrational actor who shoots his wife rank low. Persons who commit "crimes of passion", killing their spouses or lovers, do not stop to think about the possibility of punishment.

* I am offering my personal opinion here as ACLU policy on Criminal Sentences expressly opposes general deterrence as the basis for incarceration.

Another element is the likelihood of repeated criminality without a severe sanction, thereby placing society at risk. Again, the man who shot his wife ranks very low as this kind of person almost never repeats his crime and poses no threat to society at large; the organized crime figure is almost always a repeater and remains a constant danger to society.

Finally, there is the element of the degree to which a particular kind of criminality threatens the fabric of our democratic society. I do not believe that the common street criminal or the person who commits one illegal act motivated by a real or perceived need, emotional, financial or political, is a serious threat to society. The bank robber, the wife killer, the draft evader, the forest hiker, the camper and the elderly woman get low ranking here. On the other hand, I consider economic criminals, corporate lawlessness and official corruption to be most threatening to our society. The illegal activity of judges, legislators, government officials or police officers are serious violations of the law and of public trust and they beget lawlessness. Many so-called street criminals believe they are justified, or at least not wrong, in stealing because they see that prominent politicians and officials are stealing.

Although there is a great deal of surface anger and fear which results from street crime, there is a deeper feeling of hopelessness, distrust and immorality created by official lawlessness. Why bother to obey the rules of society when our leaders break them all the time!

2. Should the manner of carrying out an offense affect a ranking more or less serious than the harm caused by the offense?

The same elements, or most of them, set forth in answer to question 1 should be applied here. A bank robbery of \$10,000 committed with a gun is more serious than a bank robbery of \$100,000 without a gun because of the potential for serious injury with a weapon. Again, the senior defense official's acceptance of a \$10,000 bribe is far more serious than a \$1,000,000 bank robbery because of the official lawlessness involved and the potential for general deterrence.

Both factors, manner and harm, need to be measured against the various elements set forth above.

3. Are certain kinds of sanctions more appropriate for certain kinds of crimes?

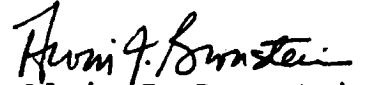
Deprivation of an individual's physical freedom is one of the most severe interferences with liberty that the state can impose. Imprisonment is harsh, frequently counterproductive, and costly. There should be, therefore, a heavy burden of justification on the imposition of a prison sentence.

Again, the elements set forth in answer to question 1 should be examined in answering this question. Imprisonment generally should be utilized only for those who injure large numbers of people, who constitute a real danger or whose lawlessness threatens the fabric of our society. For others, imprisonment should only be utilized as a last resort after all other possible sanctions have been attempted. Thus, for example, on the facts furnished in the scenarios, the corrupt government official should receive a prison term and the unarmed bank robber or the draft evader should not.

To summarize then, for the purpose of ranking offense by seriousness, the Commission should consider the following elements: the number of persons actually or potentially injured; the degree of personal gain involved; whether the illegal act also violated a specific trust; whether there is a possibility of achieving general deterrence; the likelihood of repeated criminality without a severe sanction thereby placing society at substantial risk; and whether the act contributes to a general perception of lawlessness thereby threatening the fabric of our society.

I continue to be willing to assist you in your important work.

Sincerely,


Alvin J. Bronstein

cc: Paul K. Martin, Communications Director

*Should only imprison the most serious & dangerous.
Don't imprison for punishment.*