

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CHAMBERS OF
HUGH H. BOWNES
JUDGE

FEDERAL BUILDING
85 PLEASANT STREET
CONCORD, N. H. 03301

June 30, 1986

Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, NW
Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

I am writing in reply to your letter of June 17.

Your probing questions deserve a lot more consideration and research than I have had the time to give them. With this caveat, I respond as follows.

Probation

I do not think a form of intensive supervised probation should be imposed on certain types of federal offenders. If a defendant is put on probation, I think that he ought to receive the type of supervision that is necessary based on his background, the type of crime, and the type of individual he is. I do not see how meaningful guidelines can be drafted to cover "intensive supervised probation." It seems to me that 18 U.S.C. § 3563(b) pretty well covers the entire gamut of probationary conditions. Instead of writing additional guidelines, I would suggest that more discretion be given to the sentencing judge.

Fines

I am sure there are certain crimes for which fines should be the preferred sanction, but I am not prepared to list them at this time. As a general rule, however, I think that fines should be restricted to corporate defendants. I do not consider a fine to be the same as restitution, which is an entirely different matter. My opinion is that, as far as deterrence and punishment is concerned, a fine is not nearly as effective as putting an individual behind bars.

June 30, 1986

Restitution

I think restitution should be seriously considered in crimes involving mail fraud, larceny, stock fraud, etc. - those types of crimes in which the victim has suffered an ascertainable loss of money. If the amount is ascertainable, then the amount of restitution can be determined without unduly complicating or prolonging sentence. Restitution could be effectively combined with imprisonment or community service if the defendant is wealthy enough to make the restitution. If he is not or the sum is so large that restitution is not possible, then I do not see how there can be any combination.

Community Service

I think the best approach to community service is to leave it largely to the discretion of the sentencing judge. I think that the type of offenders sentenced to community service should be restricted to those who act on firmly held beliefs of conscience. During the Vietnam War when I was sentencing draft evaders, if I felt that such a person had acted out of conscientiously held beliefs rather than an attempt to avoid serving in the Army, I gave him a choice of working in a hospital for two or three years or imprisonment. Most, of course, took the hospital service option. The types of offenders for whom community service will not serve the goals of such sentencing are those who have committed crimes of violence, greed, and passion - most of the criminal offenders.

House Arrest

This may in certain restricted cases be a viable alternative to incarceration. I think house arrest could well be combined with a community service sentence. This should be an option within the discretion of the district court.

Sincerely,



HUGH H. BOWNES

United States Circuit Judge