

U.S. Sentencing Commission
1 Columbus Circle NE
Suite 2-500 South Lobby
Washington, D.C.
March 3, 1998

Commissioners:

April 30, 1997, Ginny Fleming, Age 69
July 13, 1997, John Mahaffey, Age 16
August 8, 1997, Emory Greysinger, Age 14
August 8, 1997, Alvina Mitchell, Age 19
September 27, 1997, Meredith Watts, Age 22
October 18, 1997, Kenneth Black, Age 23
October 18, 1997, Christopher Lopez, Age 22
October 29, 1997, Rosita Olibia Melrose, Age 32
November 14, 1997, Randy Baker, Age 22
November 14, 1997, Rick Baker, Age 19
November 14, 1997, Clayton Baker, Age 17
November 14, 1997, Ben Velasquez, Age 19

During an eight month period, in La Plata County, a small community in Southwest Colorado, twelve lives were lost in traffic crashes. Of these twelve, eight lives, more than 66%, were lost as a direct result of drivers' operating a vehicle while under the influence of alcohol.

The number of traffic deaths within a small community in such a small period of time is staggering in its own right, the number of traffic deaths related to the abuse/misuse of alcohol is more than difficult to comprehend.

In our attempt to address this national epidemic, experts, professionals, lay people, and survivors seek for clues and answers in a variety of areas: socio-economics, employment status, availability of alcohol, lack of education and boredom. While some of the findings may point to the basis of the dilemma, these findings do not give one the license to kill by getting behind the wheel of a lethal weapon and wielding it while under the influence of alcohol. It does not justify the all too lenient federal sentences available at the present time. There is a profound lack of social conscience in regards to drinking and driving. There is a complete lack of personal responsibility. We, as a people, have closed our eyes and donned blinders to this national crisis. We exchange the rights of the innocent, the rights of those now dead, for the rights of others to act with total disregard for the sanctity of human life.

Coming before this commission presented a daunting challenge. How does one impart to you the breadth and depth of the effect such tragedies has on

the survivors and the community? What can I possibly have to say that would effect change in the Federal Sentencing Guidelines? Perhaps in testimony based in emotions rather than facts, figures, and results of study, after study, after study. Facts and figures that grow in alarming numbers with each passing day but seem to do little to effect real change.

On April 30, 1997, while returning home from a motorcycle ride with her husband of 48 years, Ginny Fleming was hit head on by a drunk driver at approximately 2:00 pm. She was killed instantly, every bone in her body broken, very major organ lacerated. Her new Harley Davidson motorcycle demolished. Her husband left with a haunting vision of senseless destruction for the remainder of his life.

Ginny's family and friends would soon suffer additional heartache when the knowledge of the inadequate charges and sentences available to the prosecutor came to light. Ginny was killed on a stretch of roadway that falls within the Southern Ute Indian Reservation. An overwhelming sense of injustice enveloped the community and remains ever present to this day.

I choose to share with you some of the words and thoughts submitted as impact statements, from the community, family, and friends in response to the death of my mother, Ginny Fleming.

"No words can explain the loss that occurred when a truck crossed the double yellow line; took dead aim on my wife and killed her. In that moment, I lost more than a wife; I lost my buddy, my lover, my best friend."

"As my mother she taught me many things but one of the most important, if not the most important of these lessons is that each person is responsible for the choices he or she makes. Good or bad, we must answer for our choices and subsequent actions. Again and again she advised me to make conscious decisions, to rejoice in the good ones and be prepared to answer for the bad ones."

"I hope what emerges from our tragedy is justice reflective of the crime thus evidence of the courts regard for what human life means whether it be Virginia, Ginny, Fleming or another innocent human being."

"Her brutal death was a tremendous loss to us. How can we live in peace knowing that at her last second she knew she was going to die? She tried to avoid the incoming, completely uncontrolled vehicle. What pain, a woman that has spent so much time educating people about motorcycle safety and the dangers of drunk driving."

"I'm angry that our family has lost a wife, a mother, a sister, a sister in law, an aunt, a cousin...all because a drunk woman chose to get behind the wheel of her motor vehicle and turn it into a murder weapon. Virginia Fleming will not be forgotten by those who love her."

"The penalty in this case does not fit the crime. I think about a victim killed by gunfire, the bullet enters and exits the body, usually striking a major organ or blood vessel and resulting in death. Ginny's death was not nearly so simple. Every major organ was lacerated and every bone was fractured. She did not go easily into the night. The shooter intends to kill when he discharges his weapon. Likewise, the defendant's decision to operate a motor vehicle while drunk showed her disregard for Ginny's life and the lives of others. Her motor vehicle was an instrument of death just as certainly as a firearm. There is no excuse. There is just senseless loss."

"As a child and adult Ginny was always there to guide me through everything from the basics of swimming to the toughest lessons in life. For all my 52 years she was not only my sister but my friend. I'm sure she would still be here for me now if she could. But Ginny can not be here for me because her life was taken by a drunk driver. Nothing can bring back my sister but perhaps justice that fits the crime could be served, maybe stricter punishment would deter another fatal act. Don't you think it may be worth a try, even if it only saved one life?"

"I have not only lost my mother, she was also my teacher, student, soul mate, guide, favorite travel partner, my heart and full inspiration. You see, I owe my life to this woman, because she was a survivor of a family of alcoholism. She inspired me to remove alcoholism from my life. Too many times she was the one who pulled me up when I was slipping away. She gave me life and then gave it back to me again. Then she showed me how to help others. In a way she saved me and then showed me how to be of some real use. I know that for my mom it is very important to take full advantage of this tragedy and put the message out that to be careless as to drink and drive a motor vehicle and to cause bodily harm and death is not acceptable. And that the law makers and also the people have to change their view on acceptable drinking behavior in our communities. and so in the future this will never happen again."

"After almost 40 years in Law Enforcement I can not believe that a driver with a blood alcohol reading of .21 and a prior conviction would only receive a year or so in jail. And in this case, it is the death of my sister. I pray that, in Ginny's, name you prevent the next tragedy."

"Ginny saw how alcohol could damage, her father was an alcoholic. She worked hard to raise her five children armed about the dangers of alcohol. She might have turned to it her self in trying times but rose above it, and taught us to rise above the temptation. How ironic that a drunk driver would cause her death. She lived by the rules, a quiet woman doing what she knew to be right, asking no recognition for herself."

"When I first learned of Ginny's death I was at a loss for words and feelings, like someone stripped them from me! As time passed I began to heal and I realized that this senseless hurt and killing must stop! We as individuals, families, communities, towns, cities, states and this country must say enough! We must be held responsible for our own actions and suffer the consequences. Our judicial system must also assist us in correcting the problem of alcoholism and drinking and driving. We have the knowledge, we have the technology, but we lack the "tough love" to do what we know is correct."

"Ginny was a constant advocate of the cause of prevention of individuals who disregard the laws of driving under the influence of alcohol. Her free spirit personality led her to believe that there should be justice for all under the law. Ginny had always expressed her concerns for those individuals who were lapsed in their responsibility in their use of alcohol. She was always disturbed when reading or hearing about innocent individuals who suffered as the result of a drunk driver. I sincerely believe that if another member of our family had died under the same circumstances as she did, Ginny would be the first person to take a stand, and become the family's supporter for seeking justice for their unruly death."

"I will never quite forget her image and hear her voice. I know Ginny is looking over all of us. She lives in my heart everyday. I constantly ask myself one thing -- why?"

"Hearing the news of Ginny's death in such a tragic, senseless and avoidable manner made me angry knowing what an impact she had in my life and I am sure in the lives of countless others she had become involved with throughout her active life. I then became more angry thinking of how the drink drivers in cases like these often 'get off easy', not only adding further grief to the victim's families and friends, but also soon back out there on the roads, possibly heading-on for their next victim."

"Yes, it is true. It takes an act of will and the first act of will for all of us that is required is an act of faith. One must believe in the potentiality of the law before it can be changed. Ginny Fleming had a vision to

create a safe passage for drivers and to educate the public with her message not to drink and drive. Rise to the higher and wiser state of being and always, please, stop to think before you act. It is our duty to complete Ginny's vision. We must not surrender to this careless behavior. Because surrendering is a negative virtue, only to taken as an act of defeat. Ginny would not be defeated had she still been with us to fight...let her lessons live on."

"I believe that no one allowed to drive is unaware of the impact driving while intoxicated and potentially loss as a result, and I believe that this knowledge makes the defendant guilty of the grossest sort of negligence and irresponsibility. Ginny's life will resonate in the live of the people she touched, as will her death. The positive impact she had on so many of us will remain but it is tainted by the violent and senseless way in which she was taken from us."

"In 1974 my own brother was killed by a drunk driver. Twenty three years later my family still suffers from his loss. Back in those days drunk driving was not a public issue and there was never a trial for my brother's killer. Twenty three years later it saddens me to see that we still have no effective deterrent for driving in a violently drunken state and killing another human being."

"I had the distinct pleasure of meeting Ginny Fleming once, I now have the distinctly sad requirement of driving by the place of her death daily."

"We feel like we're in a very powerful energy as the Harleys climb and sound their unique mufflers. We are truly free and feeling happy -- except Ginny isn't with us today. She was killed by a drunk as she rode her new Harley Fat Boy for the first time. You are the only hope we all have of effecting change in society. Criminals do what they do because they can so easily get away with it. Lenient penalties allow them to continue irresponsible behavior."

"At night when I close my eyes and I think of the condition your bike was in it takes every ounce of concentration and will power not to picture what you must have looked like. Your daughters had to see that and I know it will haunt them for the rest of their lives. I know in my heart that she will pay for what she has done and for her lack of remorse or concern for other spirits. All I ask is for some earthly protection for the next person who has the misfortune of being on the same road with her after she has chosen to drink herself into oblivion."

"There is a big void where her dignity, beauty, pride and power existed. Her death, her "killing", is a senseless loss. In a place where dire consequences are an absolute requirement, those same consequences cannot atone for the loss. The available consequences are insufficient. There are hundreds of victims in our community suffering the aftermath of Ginny's death."

"I could go on and on about my experiences with Ginny. But to me the most important thing is not what I had in the past with her, but what I will never have in the future. Ginny's passing must stand for something. The world is a better place because Ginny Fleming lived here. And now that she is gone...it is somehow incomplete."

"We ask that you reach a judgment that reflects not vengeance, but awareness of the "wreckage strewn" nature of this case. Not just the wreckage on the highway where Ginny Fleming met her death, but the emotional wreckage her death has left behind. The emotional wreckage of family and friends and relationships torn asunder in a deadly split second, people whose healing depends to a great extent on the recognition of the circumstances and severity of the loss and on the sending of a clear message that such tragedies will not be taken lightly and should not happen again."

"Anyone who drinks to excess, drives an automobile and consequently causes a fatal accident, is as guilty of that death as if they had taken a gun to the victim's head. Such a person obviously sees no worth in their own life and not, by inference, in the life of any other person."

Finally, from Robert T. Kennedy, Assistant U.S. Attorney; "It is indeed unfortunate that the sentencing guidelines as presently structured seem to focus upon the final acts of the defendant that constitute the crime of involuntary manslaughter where a defendant, under the influence of alcohol, may be in such a drunken stupor as to be unable to form what it is commonly called a specific or general intent to commit a crime. However, the defendant in this case had made at least several apparently conscious and deliberate decisions to drink and drive during the 24 hours immediately preceding the collision that took the life of another. The relatively lenient sentencing parameters within which the Court must sentence the defendant offer no genuine opportunity for societal justice."

And while I know some may argue the validity of testimony based primarily on emotion, should we not remember that what sets us, you and me, apart from the rest of the animal kingdom is our ability to recognize the difference between right and wrong, to make choices based on experience and knowledge, and, most importantly, to feel compassion. Perhaps the time is

now and the opportunity is ours today to acknowledge the emotions, the passions put forth by those I have quoted and the many other survivors who have not been heard.

I ask that you heed the quiet voice of a once private woman, Virginia 'Ginny' Fleming, in urging Congress to revise the Federal Sentencing Guidelines as regards to Involuntary Manslaughter, Voluntary Manslaughter and Vehicular Homicide resulting from drunk driving, to better fit the crime and to exact a more palatable and appropriate societal justice.

Thank you for your time and consideration.

Respectfully,

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Comments for the United States Sentencing Commission Concerning Proposed Amendments for 1998

I want to thank the Commissioners for allowing the Internal Revenue Service, Criminal Investigation, to appear today. The prosecution and imprisonment of tax offenders is our primary reason for existence, and we are grateful for the opportunity to let you know why it is essential that the sentencing table for tax crimes be reformed as soon as possible. Every year that the Commission delays has the potential to further erode compliance with tax laws, thereby costing the government billions of dollars in lost revenue.

Federal criminal income tax prosecutions are complex, take a long time to investigate, and involve a substantial commitment of time and money from the Internal Revenue Service, the Department of Justice, and the Federal Judiciary. They are also quite rare. Convictions for tax offenses involving legal source income (income unrelated to illegal activities such as narcotics or organized crime) only number approximately 1,500 per year nationwide. Of these, less than 1,000 result in a sentence with true imprisonment.

When one considers that over 115,000,000 individual tax returns are filed per year, and there are millions of illegal non-filers, this situation is clearly intolerable. Tax evaders realize that their chances of being punished for their crimes are minuscule. As a result, honest taxpayers are being forced to pay an ever greater share of the burden. The estimated "tax gap" continues to grow to the point that it now exceeds \$100,000,000,000 (\$100 billion) per year. Without the effective deterrence of meaningful prison sentences for tax evaders this trend will continue, and the entire system of tax compliance will be in danger of collapse.

We are not asking for unduly harsh or severe sentences. We are asking for sentences that provide a reason for honest taxpayers to remain honest, and for dishonest taxpayers to fear detection. If tax criminals, most of whom are otherwise law-abiding businesspersons, knew that their chances of being prosecuted and imprisoned were greater, compliance would increase proportionately.

Since its inception, the Sentencing Commission has professed to believe that tax evasion is a serious matter. Adopting Option 2 would be a chance to deliver this message in a meaningful way.

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The Internal Revenue Service is in favor of any modification to the Federal Sentencing Guidelines which would increase the likelihood that convicted tax criminals would be imprisoned. The deterrent effect for each tax criminal sentenced to imprisonment ranges far beyond the individual sentenced. It extends to the entire surrounding community, the profession, industry, coworkers and business associates of the individual, and in notorious cases, to the entire nation. Conversely, news of tax criminals who are not imprisoned tend to undermine voluntary compliance and weaken enforcement efforts.

The current Sentencing Table does not require imprisonment for offenses in Zone A or B, which includes Offense Levels 1 through 10. Therefore, a minimum Offense Level of 11 must be attained to ensure some incarceration. Since the two level acceptance of responsibility reduction is virtually automatic in all guilty pleas, this means that a Tax Loss in the Offense Level 13 range (Over \$40,000 to \$70,000) is necessary to be assured of obtaining any imprisonment at all. This tends to exclude all but high income individuals from prosecution.

We must have a balanced enforcement program, which requires that tax evaders from most segments of the income spectrum be prosecuted. If only the wealthiest taxpayers face criminal sanctions, there is no real incentive for the overwhelming majority of the population to comply.

By way of illustration, 96% of all individual returns report adjusted gross incomes of less than \$100,000. The average tax on returns with adjusted gross incomes between \$75,000 and \$100,000 is \$12,625. Therefore, for these taxpayers even three years of evading all tax owed would not achieve the \$40,000 threshold for 96% of the public.

Therefore, we urge the Sentencing Commission to adopt Option 2 (for revising the Tax Loss Table) contained within Proposed Amendment Number 1, as listed in the January 6, 1998 Federal Register (Vol. 63, No. 3, Part II).

As for Proposed Amendment Number 5(C), concerning "sophisticated means," we agree with raising the base offense level to 12 which is contained in both options. We also are in favor of resolving the circuit conflict so that the element of sophistication is offense specific rather than offender specific, since this goes to the heart of deterrence.

However, we do not see any need to introduce the new terminology of "sophisticated concealment," nor do we approve of the dilution of language relating to the use of foreign bank accounts and financial transactions, and the use of corporate shells and fictitious entities. I believe that these changes will lead only to needless confusion and points of contention. I believe that the existing language is sufficiently clear, especially as it has been interpreted over the ten years that the guidelines have been in existence.

Thank you.