



U.S. Department of Justice
Office of the Associate Attorney General

Deputy Associate Attorney General

Washington, D.C. 20530

March 31, 1987

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

Dear Judge Wilkins:

I am writing you and, by copy, the other Commissioners in the absence of Steve Trott, but at his request, to express our grave concern over the tentative decision of the Sentencing Commission to delete the specific adjustments provided in sections Y221-228 of Chapter 2 in the January draft for certain frequently applicable general offense characteristics. As you know from our meeting on this subject last January and prior Department testimony, we believe that the current list of specific adjustments is a bare minimum list and that, if anything, the list should be expanded to include many of the characteristics listed as departures in sections Y211-218 of Chapter 2, like Y216 and Y218.

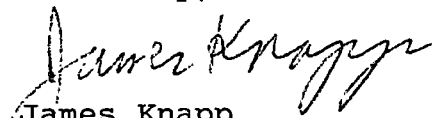
Apparently, the Commission's change in position has not been the result of any adverse public comment. The existence of specific adjustments for frequently used, and readily definable, general offense characteristics creates a degree of certainty, as well as equality, in sentencing that is to the advantage of a defendant as well as the government and the overall administration of justice. The objection voiced within the Commission, as near as we can ascertain it, is that at the upper end of the base offense scale an enhancement for a factor like the intentional use of a weapon or infliction of an injury would cause an undue or disproportionate increase in the sentence.

I believe that this concern can be addressed by simply limiting an increase to a fixed period of time. For example, instead of increasing a sentence by six levels for the infliction of permanent bodily injury, Y225 might state that the court should increase the sentence by the lesser of six levels or six years. Instead of increasing a sentence by five levels for discharging a weapon, Y226 might state that the court should increase the sentence by the lesser of five levels or five years. Note, in this

regard, that 18 U.S.C. 924(c) provides for a minimum five year increase for the use of a firearm in crimes of violence or drug offenses so the resulting sentence would not be viewed as disproportionate by the Congress.

We hope the Commission will give serious attention to this proposed solution and reconsider its tentative decision of last week on this subject. The offense characteristics listed in sections Y221-228 are ones which currently play an influential role in determining sentences. While current methods for collecting data may not capture this fact, it can be said without hesitation that these factors are given great weight in practice and there is no need to be concerned about justifying their inclusion to the Congress. On the other hand, failure to provide specific criteria for the use of such frequently applicable offense characteristics would serve to frustrate the goal of the determinate sentencing law to insure equality in sentencing.

Sincerely,



James Knapp
Deputy Associate Attorney General

cc: Commissioner Block
Commissioner Breyer
Commissioner Corrothers
Commissioner MacKinnon
Commissioner Nagel
Commissioner Robinson
Commissioner Baer
Commissioner Gainer

Preliminary Research
Papers
November 25, 1985

Commissioner Ilene H. Nagel
U.S. Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D. C. 20004

BY HAND

RECEIVED APR 1 1987