




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MEMORANDUM

TO: Advisory Group on Organizational Guidelines

FROM:  David P. Bancroft

DATE: May 23, 2002

RE: Comments re Change in Organizational Guidelines

I recommend one important aspect for your current consideration.

Presently, an organization can be held criminally liable for:

- a. An act of any agent, no matter how low-level, and even if contrary to corporate policy ("technical culpability");
- b. The composite of acts and knowledge by various agents, even though none of them acted contrary to law ("composite liability");
- c. The conduct of a high level manager in violation of law; and,
- d. An act by an agent which pursuant to what is actually an organizational policy in violation of law.

In sum, organizational liability attaches to a huge range of blameworthiness: from technical culpability to organizationally endorsed criminality. The sentencing guidelines for organizations should recognize this.

Accordingly, I urge that there be a downward departure for:

- a. Technical culpability; and,
- b. Composite liability.

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And, an upward departure for:

Liability based upon the execution of an organizational policy that is itself
a violation of law.

As long as the substantive law continues to punish for what is proposed here for
downward departure, it would be anomalous to prescribe the same punishment for that
as for leadership misconduct or conduct implementing of an organizational policy that is
itself a crime.

Hopefully, this concept can be implemented in your next efforts.