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VIA FEDERAL EXPRESS

Advisory Group on Organizational Guidelines  
c/o Office of Public Affairs  
United States Sentencing Commission  
Suite 2-500 South Lobby  
One Columbus Circle, NE  
Washington, D.C. 2002

To the Advisory Group on Organizational Guidelines:

I am the General Counsel of Johnson & Johnson, and submit this letter in response to the Advisory Group's Request for Public Comment dated March 19, 2002.

I understand that the Advisory Group has already received a number of comments urging changes to Application Note 3(k) to Section 8A1.2 of the Organizational Sentencing Guidelines, describing the criteria for an "effective program to prevent and detect violations of law." In particular, I understand that the Advisory Group has been urged to state that a program cannot be considered "effective" unless it deals with *ethical* violations, not just *legal* violations; and that a program cannot be considered "effective" unless it includes an ethics officer and/or a neutral ombudsman. I understand that at least one comment has suggested that a program cannot be considered "effective" unless it includes an ethics officer who completed at least three university courses in ethics.

I write in opposition to these suggestions. But first a word of background. Johnson & Johnson is an organization that takes ethics seriously. At the heart of our corporate culture is our statement of ethics, the Credo, which clearly sets out the responsibilities of each and every employee of the Company. Many companies have statements of ethics, I know. But it is hard for me to convey to you the overarching influence the Credo exerts on everything we do in the Johnson & Johnson family of companies, and the extent to which it is woven into the fabric of everyday life here – through constant education, discussion, and leadership by example. We understand that sometimes the law is just the floor, not the ceiling. We know that the Credo often demands more than the law requires. We struggle with tough moral issues. We use

the Credo as our guide. We strive to behave fairly, ethically, honorably. And when we fall short, we step forward to pay for our mistakes, and we do what we can to make things right.

So it should be no surprise that we have extensive programs at Johnson & Johnson designed to inculcate the Credo's values into our employees around the world. Put another way, we do ethical compliance, not just legal compliance.

But it would be profoundly wrong for the Advisory Group to *require* that every organization include ethics as a part of its compliance program, or risk having its program considered "ineffective" under the Sentencing Guidelines. The Organizational Sentencing Guidelines are simply not the place for the government to start down the slippery slope of mandating "ethical" behavior – or even to try to define what "ethical" may mean.

The Advisory Group is not considering the general, theoretical question of whether it's a good idea for ethics to be part of a compliance program. These are *sentencing* guidelines we are talking about, for which there are *criminal* consequences. The Advisory Group's focus should be on criminal conduct, and on programs designed to detect and prevent that criminal conduct.


Johnson & Johnson has *chosen* to include ethics in its compliance activities. We have *chosen* to hold our employees to standards higher than the law requires. But the government has no authority to define those higher standards or to require adherence to them. It is not the government's place to mandate that we be virtuous or moral or high-minded – or to define what virtue, morality, or high-mindedness is. It is the government's place to require that we obey the law. The Organizational Sentencing Guidelines is no place for a back-door requirement that organizations behave "ethically" or punish those employees who do not.

Similarly, it would be a mistake for the Advisory Group to require a chief ethics officer or ombudsman (and certainly a mistake to require particular educational requirements for such a position). Such a requirement would elevate form over substance: it is possible to have an ethics officer on the organizational chart, but a poor ethics program in fact, and it is also possible to have a strong ethics program with no single officially-designated ethics officer. At Johnson & Johnson, for example, we have consciously considered and rejected having a chief ethics officer or ombudsman. That is because we have worked so hard to create an organization in which each person is an ethics officer – in which each person is obligated to wrestle with ethical dilemmas and share them with co-workers and supervisors, rather than defer the question to the judgment of some office at corporate headquarters. In our case, putting in place a chief ethics officer or ombudsman would actually degrade our ethical climate. It would be a shame if we were forced to choose between maintaining the most ethical organization

we can, and complying with a one-size-fits-all approach enshrined in the Organizational Guidelines.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Roger S. Fine". The signature is written in a cursive style with a large, sweeping initial "R" and a distinct "S" and "F".

Roger S. Fine