

U.S. Department of Justice

Executive Office for United States Attorneys

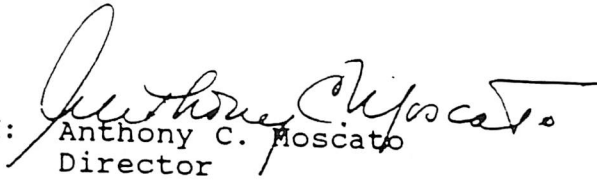
cc:
DAAGs
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Office of the Director

Washington, D.C. 20530

October 13, 1993

MEMORANDUM TO: ALL UNITED STATES ATTORNEYS

FROM: 
Anthony C. Moscato
Director

SUBJECT: Principles of Federal Prosecution

On October 12, the Attorney General signed the attached bluesheet to further clarify the Department's policy concerning the principles that should guide Federal prosecutors in their charging decisions and plea negotiations. Please bring this to the immediate attention of your Assistant United States Attorneys.

Attachment

cc: Chief of Criminal Division
Chief of Civil Division



Office of the Attorney General
Washington, D. C. 20530

October 12, 1993

MEMORANDUM

TO: Holders of the United States Attorneys' Manual,
Title 9

FROM: Office of the Attorney General
Janet Reno
Attorney General

RE: Principles of Federal Prosecution

NOTE: 1. This is issued pursuant to USAM 1-1.550
2. Distribute to Holders of Title 9
3. Insert in front of affected section

AFFECTS: 9-27.000

PURPOSE: The purpose of this bluesheet is to clarify the Department's policy concerning the principles that should guide federal prosecutors in their charging decisions and plea negotiations.

As first stated in the preface to the original 1980 edition of the Principles of Federal Prosecution, "they have been cast in general terms with a view to providing guidance rather than to mandating results. The intent is to assure regularity without regimentation, to prevent unwarranted disparity without sacrificing flexibility."

It should be emphasized that charging decisions and plea agreements should reflect adherence to the Sentencing Guidelines. However, a faithful and honest application of the Sentencing Guidelines is not incompatible with selecting charges or entering into plea agreements on the basis of an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the federal criminal code,

and maximize the impact of federal resources on crime. Thus, for example, in determining "the most serious offense that is consistent with the nature of the defendant's conduct, that is likely to result in a sustainable conviction," [as set forth in 9-27.310], it is appropriate that the attorney for the government consider, inter alia, such factors as the sentencing guideline range yielded by the charge, whether the penalty yielded by such sentencing range (or potential mandatory minimum charge, if applicable) is proportional to the seriousness of the defendant's conduct, and whether the charge achieves such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation. Note that these factors may also be considered by the attorney for the government when entering into plea agreements [9-27.400].

To ensure consistency and accountability, charging and plea agreement decisions must be made at an appropriate level of responsibility and documented with an appropriate record of the factors applied.

This bluesheet is intended to provide interpretative guidance with respect to 9-27.130; 9-27.140; 9-27.300; and 9-27.400, Principles of Federal Prosecution, dated January 14, 1993, in your United States Attorneys' Manual.



cc:
DAAGs
Zipperstein

FACSIMILE COVER SHEET

U.S. ATTORNEY'S OFFICE, SDNY
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NEW YORK, NY 10007

From: MARY JO WHITE, UNITED STATES ATTORNEY

Office Phone No.: (212) 791-0056

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No. pages (including cover sheet): 2

Date sent: October 15, 1993

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To: **JOANN HARRIS**

Office Phone No.: (202) 514-2601

Fax Number: (202) 514-9412

Remarks: _____

Date: Friday, October 15, 1993 11:05 am
From: AILN01(MSHEPARD)
Subject: AGAC -Reply -Reply -Forwarded

Mary Jo:

Comments from the field are beginning to come in on the new bluesheet on prosecution principles. Some of the US Attorneys seem a bit concerned that the bluesheet was adopted before they had a chance to comment on it. (This may be in part my fault: I sent them the draft and encouraged comments, but it was my understanding that the Attorney General was going to give them all time to comment before she adopted the bluesheet). Attached are some comments sent to me by e-mail.

Date: Friday, October 15, 1993 10:53 am
From: AIAN01(BTEIG)
Subject: AGAC -Reply -Reply

Here are some thoughts and questions on the new bluesheet:

-What is the impact on Thornburgh I and II which were clarified in a bluesheet dated February 7, 1992, affecting 9-27.451, and incorporated into 9-27.000 on January 14, 1993?

-Does this bluesheet allow for disparity in the sentencing process which the Guidelines were designed to ameliorate? Does this add further fuel to the fire fed by critics of the Guidelines who claim disparity has been shifted from the province of the Court to that of the prosecutor? Will this signal the eventual demise of the Guidelines?

-Is there an intimation in the bluesheet that guideline ranges determined by the Commission are not appropriate in some areas and this provides a way to deal with that concern? If so, would justice better be served by articulating specific approaches to deal with the particular areas of concern or by seeking revisions to the Guidelines?

-This new bluesheet is likely to lead to more inconsistent and disparate charging decisions and sentences around the country. It also increases the potential for litigation challenging our "good faith" and prosecutorial decisions.

These matters may have already been taken into consideration, but we thought it best to pass them along. Thanks.