

William M. Nickerson
District of Maryland

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*Regretfully, I have to conclude that there simply are no factors either that would warrant legally speaking for factually under the law my departing from the guidelines.*²

Appointed by: President George H.W. Bush, 1990.

Military Experience: U.S. Coast Guard, Ltd. 1955-59.

Law School: University of Maryland Law School, LL.B., 1962.

Prior Legal Experience: Whiteford, Taylor & Preston, 1962-85.

Prior Judicial Experience: Associate Judge, Circuit Court of Baltimore County, 1985-90.

Background and Reputation in the Legal Community

Judge Nickerson served in the United States Coast Guard after college as an officer aboard Coast Guard cutters from 1955 to 1959. He attended law school at night at the University of Maryland and obtained his LL.B. in 1962. Judge Nickerson then spent twenty-three years practicing law with Whiteford, Taylor & Preston in Baltimore. As a lawyer, Judge Nickerson participated in local bar associations and organizations, including the International Association of Insurance Counsel, the Christian Legal Society, the Attorney Grievance Commission of Maryland and the Christian Businessmen's Committee.

In 1985, he was appointed an Associate Judge for the Circuit Court of Baltimore County. After five years as a state judge, President George H.W. Bush appointed him to the federal bench. He remained on active status for twelve years before becoming a senior judge in 2002. As a federal judge, Judge Nickerson gets strong reviews from attorneys. Comments included things like "practical," "honest," "fair-minded," "experienced," and "hard-working." More than one attorney expressed that it was a "pleasure" to try a case in front of him because he will listen and "let you try your case." Lawyers on all sides of the aisle seem to agree that Judge Nickerson is "fair" and shows no bias in criminal or civil cases, with one stating that "He has a sense of fairness that controls everything he does."

On sentencing issues, defense lawyers say that Judge Nickerson is very fair and "as fair and decent as he can be." "He will do what he believes is right – assuming the law allows him to do it." However, lawyers also say that "he is tough on defendants whom he should be tough on. That would be true in white-collar cases, as well as drug or violent crime cases."

Paul Winestock & Derrick Curry

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Sentencing Transcript at 48, *United States v. Paul Winestock, Jr.*, Cr. WN-90-0454 (D. Md. October 5, 1993) (Sent. Tr. I).

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United States v. Curry, 103 F.3d 121, 1996 WL 694441(4th Cir. 1996)(unpublished decision).

Paul Winestock

Charge: Distribution of Crack Cocaine; Possession with Intent to District Cocaine and Crack Cocaine.
Sentence: Life without Parole (later modified by Sentencing Guideline Amendment to 360 months).
Projected Release Date: January 22, 2017.

Beginning in the fall of 1988, a loosely knit organization dubbed the “Woodridge Group” (named for the area of Northeast Washington, D.C. where many of the members lived) was the focus of an undercover investigation that spanned nearly two years. The government alleged that Paul Winestock and Norman Brown ran two interlocking groups that distributed over two hundred pounds of illegal narcotics, mostly crack cocaine, in the greater Washington, D.C. area from the fall of 1988 until December 1990. The investigation resulted in the indictment of thirty individuals, including Paul and Derrick Curry, whose cases are also profiled here.³



The investigation of the Woodridge Group was aided in large part by Paul’s and Norman Brown’s infatuation with cell phones. By claiming to be able to provide untraceable and untappable cell phones, undercover agents supplied some of the participants with phones that were actually being recorded by the government pursuant to wiretap authorizations.⁴ As a result, the police had advance knowledge of their plans which allowed them to audio and videotape some of the transactions and make seizures of drugs.

Accused of being one of the two ringleaders, Paul was charged with substantive drug offenses, conspiracy, and with running a continuing criminal enterprise (“CCE”). Along with seventeen others, Paul went to trial in November 1991. Sixty-nine days later, the jury outright acquitted six defendants of all charges. Paul and his co-defendants were also acquitted of conspiracy count and Paul was acquitted of the CCE charge. However, he and the remaining defendants were convicted of distribution and possession with intent to distribute.⁵

When it came time for sentencing, the key issue was the quantity of crack cocaine that would be attributed to Paul. The two counts on which he was convicted included about seven

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The PSI reveals that a major supplier of the group, Brian Benjamin, remained a Trinidadian fugitive and was not prosecuted in this case.

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The agents asked for and received crack in exchange for the phones. Paul also provided heroin in several earlier transactions with the agents.

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In addition to audio and videotapes, the government relied on testimony of eight cooperating witnesses who had been part of the group.

kilograms of cocaine.⁶ The Guidelines' relevant conduct provision, however, required the court to assess the total quantity involved in the entire course of conduct and that was reasonably foreseeable to the defendant. Because the police had run a two year investigation and had physical evidence, audio and video tapes, and the testimony of multiple cooperators, the government was able to provide evidence that Paul should be held accountable for at least 15 kilograms of crack cocaine.⁷ Thus, the acquittal on the conspiracy count didn't result in a lower sentence for Paul.⁸

This quantity translated to an Offense Level of 42 under the Guidelines in force at the time.⁹ The PSI also recommended that Paul be given a four level increase for his supervisory role in a organization involving at least five individuals.¹⁰ After some argument, Judge Nickerson concluded that the Guidelines required this increase despite the fact that the jury had acquitted Paul of both conspiracy and of running a continuing criminal enterprise. With this increase, Paul's offense level was literally off the sentencing grid at Level 48 (the highest offense level on the chart is 43). At Level 43, even though Paul had no prior arrests or convictions, the Guidelines require a life sentence without parole, regardless of criminal history.

When given the opportunity to speak, Paul raised a number of legal issues about the high penalties for crack cocaine. He also criticized the government for what he saw as its effort to win at sentencing what they had lost at the trial.¹¹ However, he also remarked that he didn't

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The distribution count was for a 53 gram sale of crack. The possession with intent count was for a day when the government alleged that Paul had received two kilos in the morning and five kilos in the afternoon. These deliveries were made in powder but the government presented evidence that the Woodridge group converted it to crack for resale. On appeal, Paul's unsuccessfully argued that this count was duplicitous because it contained two separate transactions. See *United States v. Winestock*, 110 F.3d 62 (4th Cir. 1997) (unpublished opinion).

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Defense counsel also tried to mount a kind of sentencing entrapment case, referring to instances in which the undercover agents asked for narcotics which Paul didn't have and that the government refused Paul's offer to pay cash for cell phones or service they were offering. Sent. Tr. at 30-32. Given the ample evidence of Paul's involvement in narcotics trafficking and controlling precedent on this issue, the judge also rejected this efforts to reduce Paul's Offense Level. Sent. Tr. at 43.

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At an earlier hearing, the government proved that much of the conduct on which Paul had been acquitted met the preponderance of the evidence standard. Sent. Tr. at 14.

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Although a loaded pistol and \$6000 was found at Paul's residence during the search at the end of the investigation, Judge Nickerson ruled that there was insufficient evidence that the gun was connected to the drugs in the case. This saved Paul from another two point increase in his Offense Level.

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Defense counsel also unsuccessfully argued that some of the participants that the government alleged were part of the Woodridge Group were essentially "independent contractors" who should not be counted for purposes of determining the scope of the organization. Sent. Tr. at 9-21.

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To some extent, Paul's arguments anticipated the *Blakely* and *Booker* decisions which forbid mandatory increases in a sentence based solely on judicial fact-finding. Paul said, "I was found guilty of two counts which . . . together only carry a mandatory minimum of 10 years." Sent. Tr. I at 46. Paul has filed numerous appeals and post trial motions to address these issues but the courts have

“hold any animosity. I have learned a great deal from being around all the attorneys, both United States government and the defense, and all of the professional people I have come into contact with during the course of my trial. They have inspired me to educate myself and raise myself up to that degree of responsibility”¹²

Most fundamentally, however, Paul told Judge Nickerson that

Your Honor, I am here today to plead for my life. Indeed, this is a most important day, not only for myself, other lives, my family will be affected by the proceedings taking place here today. . . . Your Honor, through this whole ordeal I have tried to show the court that I am a responsible person. I was released on bond to a halfway house. I never missed any hearings or trial dates. . . . I did not try to run and hide. . . . I don’t hold any animosity.¹³

Your Honor, everyman deserves a second chance at life. Most murderers and rapists are given a second chance at life. I have never been in any trouble before. I have learned my lesson and ask for a second chance.¹⁴

Judge Nickerson told Paul and his attorney that “I don’t know many judges who don’t have lots and lots of personal concerns and anecdotes with regard to what is wrong with the guidelines. But, the judiciary did not promulgate the guidelines, congress did.”¹⁵ With regard to this case, he stated that “I have some personal difficulties with the fact that this sentencing table shows the same sentence whether it is a category I, or all the way through to a category VI. That Mr. Winestock is a first offender is a matter of concern to me.”¹⁶ Lastly, he stated

I am very concerned over the issue about disparity and proportion with regard to sentencings involving crack cocaine and young black males. Statistics speak for themselves in terms of what that means. These are all matters that have been dealt with on a legal basis by the higher courts and, accordingly, I am left with the rather mechanical job of imposing a sentence that appears on a table, a life sentence in the federal system, life without parole, some people may argue is a sentence more severe than death. And whether I believe that is the appropriate sentence, all things considered, is really not an issue.¹⁷

turned back his attempts largely because these landmark cases have been held not to apply to cases that were final before the Supreme Court recognized these principles. *See United States v. Winestock*, 340 F.2d 200 (4th Cir. 2003).

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Sent. Tr. at 47.

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Sent. Tr. I at 44, 46.

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Sent. Tr. I at 47.

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Id.

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Sent. Tr. at 48.

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Id.

Later, a retroactive amendment to the Guidelines reduced the maximum offense level for drug quantity to Level 38 which allowed Paul back into court.¹⁸ At the re-sentencing, Paul sought a downward departure for significant post-sentencing rehabilitation. Judge Nickerson held that he lacked the authority to do anything other than re-sentence Paul based upon the Guideline amendment.¹⁹ With his offense level reduced to 38 and a four point increase for his role in the offense, Paul was now at a Level 42 in Criminal History Category I with a sentencing range is 360 months to life. This allowed Judge Nickerson to impose something less than the life sentence previously required and he gave Paul the minimum thirty years in prison.

Unlike some other inner city drug rings, observers noted that many of the participants in the Woodridge Group came from good families, baffling many as to why they got involved in narcotics dealing when they had other opportunities. Paul was one of these. He was raised in a stable home in Baltimore and he reports that his parents have been supportive of him both before and after this case. He graduated from high school and had just enrolled in community college a month before his arrest.²⁰ When asked why he got involved, Paul states simply that it was “peer pressure.”²¹

Paul is much clearer about the future and writes that he is committed “to self rehabilitation,” including taking advantage of educational programs in prison. He also maintains a strong relationship with his son who is doing well in school and has received a basketball scholarship.²² Sadly, though, tragedy struck Paul’s family in May 2005. His sixty-nine year old father was shot while leaving a funeral. A young man started shooting at someone else and Paul’s father and a pregnant woman were killed and two other people were wounded.²³ His mother’s health subsequently declined and she had to retire from her job.

With regard to his conviction, while he takes responsibility for his conduct, after twelve years in prison, he thinks he has served enough time for his offense. Judge Nickerson’s largely concurs. When asked years later about how much time he would have preferred to have given to Paul, the Judge wrote that “had the guidelines not prevented it, I expect that I would have imposed a sentence of fifteen, to perhaps, twenty years, considering the absence of parole in the federal system.”²⁴

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See U.S.S.G. §1B1.10© (1994).

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The Fourth Circuit agreed that Judge Nickerson had no power to consider the downward departure motion at that hearing. *See United States v. Winestock*, 340 F.3d 200 (2003).

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Prior to this case, he had worked a few low wage jobs for short periods of time, but had otherwise not had a legitimate career

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August 16, 2005 letter to author at 1(copy on file with author).

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Id. Paul also provided copies of some of his BOP Progress Reports which state that he is making “excellent progress” and that he has “consistently received good work evaluations and requires little supervision.” (copies on file with author).

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Id. *See also* Allison Klein, *Slaying Surge in Pr. George’s*, Washington post, B7 (undated copy on file with author).

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Compiled from Sentencing Transcript, PSI, PACER docket sheet, appellate opinions, newspaper articles, inmate letters, correspondence with the judge.

Derrick Curry

Charge: Conspiracy to Distribute Cocaine & Crack Cocaine;
Distribution & Possession with Intent to Distribute Crack Cocaine.
Sentence: 235 months.
Release Date: January 20, 2001 (pursuant to presidential pardon).

On the surface, no participant in the Woodridge group was more unlikely than nineteen year-old Derrick Curry. Derrick is the son of Arthur Curry, PhD., a retired Maryland high school principal who had spent over thirty years helping African-American children stay in school and out of trouble. His siblings are college graduates with successful careers and he was raised in a middle class home with high expectations and strong familial support. At the time of his arrest, Derrick was in community college, working towards a degree in criminal justice with dreams of becoming a state trooper. His first love, however, was basketball, and by all accounts, he was quite talented.

Beneath the surface, however, Derrick was having some troubles that led to devastating consequences. Although physically mature, Derrick was slow to develop intellectually and socially. His IQ tested out in the low 80s and he had a significant thumb sucking problem which lasted into his young adulthood, causing a severe speech impediment. According to his own family, Derrick was immature, naive, and unable to express his feelings, a condition that worsened after his parents divorced.

Given these unresolved difficulties, Derrick's only real happiness revolved around the basketball court and the circle of friends he made there. Unfortunately, these friends included some people who were also involved with drugs, including Len Bias, the late NCAA basketball star whose cocaine overdose ironically led to the legislation that mandated Derrick's sentence.²⁵ Another individual who hung out with this group was Norman Brown, one of the leaders of the Woodridge Group. Norman was not an athlete, but rather was known for his "street attitude" which Derrick and his middle class friends sought to emulate. As Derrick's relationship with his father and other family members soured, Derrick moved in with Norman Brown just a few months before the take-down of the drug ring.

Although Derrick denied his involvement for a long time, the police obtained substantial evidence that Derrick assisted Norman Brown with his drug activities, twice videotaping Derrick exchanging crack for cellular phones with an undercover officer and otherwise serving as Norman's flunky.²⁶ The government also obtained physical evidence against

September 10, 2005 letter from Judge Nickerson to author at 1 (copy on file with author).

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Richard Leiby, *A Crack in the System*, Washington Post, February 20, 1994 at F1. Derrick was also friendly with Len Bias' brother, Jay, who was shot to death in 1990. *Id.*

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Cooperating witnesses also alleged that Derrick had delivered crack for Norman on several occasions and Derrick's voice was recorded on several calls with other members of the group.

Derrick. On October 17, 1990, Derrick was driving Norman's car when he became suspicious he was being followed. He parked and fled the area on foot and called Norman on a wiretapped cell phone. During the conversation, Norman asked, "Where the shit at?" Derrick responded, "In the car. I parked it in the rec center." When FBI agents looked inside the abandoned car they discovered Derrick's textbooks and a huge rock of crack cocaine which weighed about 1.10 pounds.²⁷

Nevertheless, there was no evidence that Derrick Curry's role was much more than that of a gofer for Norman Brown over a period of about six months.²⁸ When he was arrested, Derrick did not appear to be living the life of a drug dealer. His savings account held \$150. He drove his mother's car, was constantly asking his family for money, and he didn't use drugs himself. After his arrest, the government offered him a fifteen year sentence but only if he went undercover and tried to implicate other drug dealers in the D.C. area.

Derrick turned down that plea offer due to the danger involved and subsequently went to trial. He was found guilty on June 10, 1992.²⁹ At sentencing, he was held accountable for between 1.5 and 5 kilograms of crack cocaine, leading to an Offense Level of 38.³⁰ With no previous record, Derrick sentencing range was 235-293 months and Judge Nickerson gave him the minimum term while stating that, "Regretfully, I have to conclude that there simply are no factors either that would warrant legally speaking or factually under the law my departing from the guidelines."³¹

In comparison, one of Derrick's acquaintances, Brian Tribble, received only ten years and a month because he cooperated with the government. Tribble became infamous in 1987 when he was acquitted of charges that arose from the accusation that he had supplied the fatal dose of cocaine that killed Len Bias. Even after that incident, Tribble continued his drug activities and was implicated in the Woodridge investigation. He pled guilty and acknowledged that he and his associates had sold more than 110 pounds of cocaine in an eighteen month period, while collecting hundreds of thousands of dollars. However, because he had information the government could use, he was granted a substantial assistance departure which allowed Judge Nickerson to sentence Tribble to far less time than Derrick.³²

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Richard Leiby, *A Crack in the System*, Washington Post, February 20, 1994 at F1 (also quoting federal agents as laughing as they listened on cell phones they had provided to the participants, commenting that "These kids were clowns.").

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The government agreed that Derrick was essentially a flunky and that he had only been involved in the Woodridge Group's drug activities for a short period of time. *Id.*

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Unlike Paul's trial, Derrick's jury found him guilty of conspiracy as well as the substantive counts.

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The probation officer wanted to add an additional two points "obstruction of justice" for Derrick's testimony at trial that he was not involved in the offense but the judge apparently rejected this argument.

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United States v. Curry, 103 F.3d 121, 1996 WL 694441 at 4 (4th Cir. 1996)(unpublished decision).

32

Paul W. Valentine, *Tribble Sentenced to 10 Years for Dealing Cocaine*, Washington Post, October 16, 1993 (copy on file with author).

After his conviction, Derrick's father led a campaign to get his son out of prison. Many times, Dr. Curry expressed his frustration with the situation, "I don't understand it, I have saved from the judicial system literally hundreds of young men and young women. My own son, I could not save."³³ Testifying before the Sentencing Commission and Congress, Dr. Curry did not argue Derrick's innocence. Instead, he noted that if he had been charged with powder cocaine rather than crack, his sentence likely would have been no more than ten years (a state prosecution would have resulted in even less time).³⁴ Ultimately, Dr. Curry's efforts were successful. Eight years into his sentence, Derrick became a free man when he was included among the 176 individuals who received a presidential pardon or commutation from President Clinton before he left office. Interestingly, Derrick ended up serving the amount of time Judge Nickerson felt would have been appropriate absent the Guidelines.³⁵

When he first released, he was elated but also found freedom to be challenging. He remarked that the first time the phone rang, he just stared at it and that he mostly stayed in his father's house, "not entirely ready to face life on the outside," after eight years in prison."³⁶ However, he was able to adjust and Derrick now works with troubled teens.

Compiled from PSI, news articles, psychiatric evaluation, appellate opinion, Testimony of Dr. Curry before the United States Sentencing Commission, PACER docket sheet, inmate letters.

33

Richard Leiby, *A Crack in the System*, Wash. Post, February 20, 1994, at F1.

34

Undated Transcript of Dr. Curry's testimony before the United States Sentencing Commission (copy on file with author).

35

See September 10, 2005 letter from Judge Nickerson to author, at 2 (stating that "Derrick Curry probably would have wound up with a sentence in the eight to ten year range.").

36

Tracey A. Reeves, *From Parting President, a Gift of Freedom; Pardon Brings New Life to Man Given 20-Year Mandatory Drug Term*, Washington Post, January 27, 2001 at B1.