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DONALD L. CHAMLEE
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April 11, 1988

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 write at the request of Judge Edward R. Becker to follow up his testimony before the U.S. Sentencing Commission on March 22, 1988, and his letter of April 4, 1988, regarding amendments to the guidelines. As Chairman of the Committee on Criminal Law and Probation Administration of the Judicial Conference, Judge Becker identified problem areas in guideline application experienced by probation officers. The Judge made recommendations to the Commission and concluded that the clarification of certain guidelines as well as implementation of his other suggestions would assist the field in improving the efficiency of guideline application.

Two of Judge Becker's proposals are important to the Probation System not only in principle, but because of workload considerations as well. I refer to the exemption of all petty offenses from guideline application and the abolition of the second fine calculation for the cost of imprisonment and supervision (Section 5E4.2(i)). As you are aware, the guidelines have increased the workload of the Federal probation officer. Unfortunately, the U.S. Probation System is facing the possibility of substantial understaffing through fiscal year 1989.

As pointed out in Judge Becker's testimony, a full presentence report is required to reasonably apply the guidelines. In the case of a petty offense, a guideline within the maximum statutory range is not very meaningful. Since probation in some form is available to any minimum range sentence of 6 months or less, probation will always be available in a petty offense because the maximum statutory penalty (range)

cannot exceed 6 months. Supervised release cannot apply according to statute. Thus, for a guideline promulgated within the maximum penalty range, the court will always have the choices of custody, probation, or a fine; with or without a guideline. Under the present construction of the guidelines, the only possible restriction on the court would be community confinement in a probation case. Given this situation, as the Judge has pointed out, the courts can be relied upon to impose an appropriate sentence and it is unduly burdensome to the probation system to be required to apply guideline procedures to petty offenses.

It is with the same goal to reduce superfluous tasks that we ask the Commission consider abolition of the fine for the cost of imprisonment and supervision. This fine that is imposed after the guideline fine, has little relevance in most cases since many defendants do not have the ability to pay it initially or cannot pay it in addition to the guideline fine. This guideline also complicates the sentencing hearing since the prison sentence and term of supervised release must be imposed before the final costs can be fixed. There are also concerns regarding the status of this cost related assessment if a defendant's supervised release should be modified (extended or shortened) in the future. The spirit of this guideline could be met by a departure above the guideline fine range in those few cases in which the defendant could pay costs as well as the required guideline fine. We thereby request that the Commission seriously consider the burdens placed upon probation and court personnel by this second fine calculation.

In the current fiscal year, the Probation System is in need of funding for 453 additional positions to meet the current workload. In order to meet the extra workload caused by the sentencing guidelines, we have submitted a supplemental budget request to Congress for an additional 180 positions. These positions were requested based upon a new workload formula that was developed by the Probation and Systems Services Divisions of the Administrative Office.

The budget request for fiscal year 1989 contains a request for 199 positions to meet the projected increase in the volume of work unrelated to the guidelines, plus 253 positions to meet the increasing number of cases being sentenced under the guidelines (based upon projections from the Commission). Thus, to do the work that is anticipated in the next 18 months, we need to increase the current authorized strength of the probation system by 1085 positions from the current staff of 3988 (officers, clerical and administrative), a 27 percent increase. All these requests have been approved by the Budget Committee of the

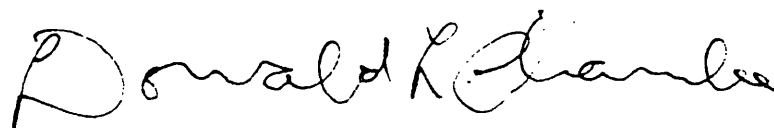
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Judicial Conference and are included in the judiciary's appropriation submission. Unfortunately, the feedback from Congress on our budgetary requests is extremely negative and we may have no increase in staff.

Clearly, the Probation System is going to have a difficult time providing its current level of support to the courts and Parole Commission, and supervise offenders. I ask the members of the Sentencing Commission to review Judge Becker's proposals and weigh the staffing impact of maintaining the guidelines as they now exist. I have also recently asked the U.S. Parole Commission to carefully measure the impact of each change to their parole and supervision policies against the ability of our staff to carry out the change. Many new tasks do not have a dramatic impact in and of themselves; however, collectively they are substantial.

The U.S. Probation System is committed to work with the Sentencing Commission in carrying out the spirit and mandate of the Sentencing Reform Act. In your deliberations regarding guideline amendments we urge you to consider the recommendations of Judge Becker who reflects the concerns of the field so well in his communications with you.

Sincerely,

A handwritten signature in cursive script, reading "Donald L. Chamlee". The signature is written in dark ink and is positioned above the printed name.

Donald L. Chamlee

cc: Honorable Edward R. Becker