

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

PROBATION OFFICE

January 16, 1990
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Mr. Paul Martin
U. S. Sentencing Commission
1331 Pennsylvania Avenue, N.W.
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Washington, D. C. 20004

Re: Guideline Amendments

Dear Paul,

I am writing in response to the Commission's request for input from the field. I attempt to read all the presentence reports completed here in the District of South Carolina before the case gets to the sentencing hearing. The amendments that became effective November 1, 1989, cleared a lot of things up. It is surprising how the change of one or two words can make such a big difference. The application note amendments were particularly helpful. As far as any further changes are concerned, I would like for the Commission to consider several of the following items with which we continue to have difficulty.

First, in Chapter IV, I feel that it would be to everyone's benefit to have the applicable time periods noted under 4A1.2(e) included under appropriate subsections of 4A1.1, Criminal History Category. This would make an easier reference for the probation officer in computing the guidelines and would also make it easier to find the proper authority for prior sentences. Also in Chapter IV, many people are having difficulty with the definition of "conduct not part of the instant offense," which is found under 4A1.2(a)(1). Our position is that if any previous conduct for which the defendant was sentenced is related in any way to the instant offense, we do not count that previous sentence. Others have taken the view that the previous conduct has to be the same harm or at least punished in some way under the relevant conduct considerations in the instant federal case. I think an application note may be helpful to clear up some of the differences.

Paul Martin
January 16, 1990
Re: Guideline Amendments

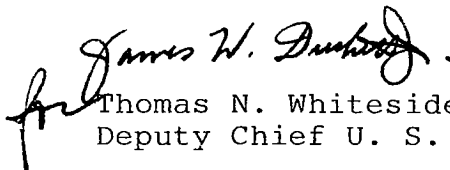
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Probably the most problems we have experienced for the past year have been in the area of supervised release and fines. I really don't think any additional changes should be made in the supervised release guidelines unless others around the country are having an unusual amount of difficulty. At this point, our people have a knowledge of them, particularly the application of those guidelines in Title 21 drug cases.

However, the area of fine computation is another story. We continue to have errors where restitution is involved and the amount of restitution is greater than the minimum of the fine range. More specifically, under 5El.2(c)(2)(C), many probation officers have had difficulty understanding the pecuniary gain to all participants. Many feel that once restitution has been made, there is no gain, and, therefore, an enhancement should not be made to raise the top of the fine range. An application note clearing this up would be helpful.

The Commission's consideration of these items will be very much appreciated by all of us here in the District of South Carolina. I wish you continued success in Law School, as well as in any other pursuits that you may be undertaking at this time.

Sincerely,


Thomas N. Whiteside
Deputy Chief U. S. Probation Officer

TNW/bw