

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
PROBATION OFFICE

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REPLY TO: _____

September 14, 1990

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United States Sentencing Commission
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Attn: Communications Director

RE: Guideline Comments

Thank you for the correspondence from Staff Director Phyllis J. Newton requesting comment on certain guideline matters. I submit some items for consideration.

Guideline Application and Plea Bargain: We are observing that in some cases plea bargains appear to be circumventing the guideline application process. Although the U.S. Probation Officer continues to prepare the presentence investigation report in the prescribed manner, it subjects the U.S. Probation Officer to a lot of criticism, puts undue stress upon the officer and adds to the perception that the probation officer is the "bad guy" in the sentencing process. There are plea bargains where the U.S. Attorney's Office will stipulate that even though the actual loss in a monetary crime is a large amount, a lesser amount should be used in calculating the guidelines. For example, in a recent case involving fraud of more than \$70,000, the plea bargain was that the guideline figure for calculation purposes should be \$20,000. We have had cases in which firearms were discovered in the same room where drugs were found and the plea bargain stipulated that the firearm was not in any way connected with the drugs. We have seen favorable stipulations for Role in the Offense when information very clearly shows that enhancement should be awarded for role rather than ignoring or reducing levels for role. We have seen recommendations for acceptance of responsibility even though a defendant may be re-arrested or have a positive report for drug abuse while on bond.

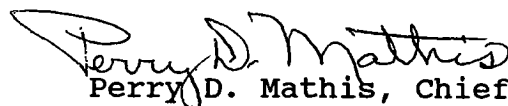
The examples cited above are not everyday occurrences but they do occur often enough that it should cause the Commission concern. We feel that the plea bargain issue should be addressed.

The issue of restitution continues to be a concern. It is difficult to understand how ability to pay should be an issue in

restitution matters but it has become an issue. In view of 18 U.S.C. 3663(h), it seems to me that a victim should be afforded the right to seek full restitution even after a defendant finishes any custody/supervision responsibility if it can be determined that a defendant later becomes able to pay. An order of restitution for the full amount would provide the victim with a better standing in civil court when efforts may be made to collect.

We feel that the Commission could strengthen the Acceptance of Responsibility issue through some incremental awarding of points. Some courts are automatically awarding two point reduction for a plea based on the stipulated plea agreement even though it may be very clear that a defendant has not affirmatively accepted responsibility. Perhaps one point for a plea and other points for other actions of affirmatively demonstrating acceptance should be considered.

Sincerely,


Perry D. Mathis, Chief
U. S. Probation Officer

PDM/jw

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September 21, 1990

Mr. Perry D. Mathis
Chief U.S. Probation Officer
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812 North 7th Street
Kansas City, KS 66101-3037

Dear Chief Mathis:

On behalf of the Commission, I thank you for your recent comments on proposed areas of study for the next guideline amendment cycle. Your submission has been copied and distributed to the Chairman, Commissioners, and members of the legal and drafting staffs.

The issue of manipulation of the guidelines through the plea bargaining process is of great concern to the Commission as well as the Department of Justice. I can assure you that both agencies will study this matter closely in the upcoming months.

The Commission appreciates your interest in our work and looks forward to your continued assistance as we seek to improve the guidelines.

Regards,

A handwritten signature in black ink, appearing to be "PKM", written over a large, stylized "P" and "K".

Paul K. Martin
Communications Director