

PCRT-1219-1

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS
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September 25, 1990

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U.S. Sentencing Commission
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ATTN: Paul Martin

RE: ACCEPTANCE OF RESPONSIBILITY

Dear Mr. Martin:

We met briefly during my recent 30 day tenure at the Sentencing Commission where I was a visiting Probation Officer for the "Hotline". I am writing you at the suggestion of one of the permanent staff with whom I recently conversed regarding the new amendments to U.S.S.G. § 3E1.1. I make these comments as a field officer who has written several guideline presentence reports and who has had to struggle at various times with the AOR issue.

It appears that the original intent of the Sentencing Commission in formulating U.S.S.G. § 3E1.1 was to enable the Court to show mercy and be lenient with those individuals who truly regretted their involvement in their criminal actions. This "truly regretful" attitude was described in the Commentary Notes as having "sincere contrition" and/or "sincere remorse". Recognizing the almost impossible task of determining the depth of a defendant's attitude, the Commission required tangible proof of an individual's regret. Various actions were listed in Commentary Note #1 suggesting how a defendant might demonstrate/manifest this hard to determine attitude. Citing these actions and others and noting their timeliness, the presentence report officer could then justify recommending that a defendant receive a reduction of two levels when "sincere contrition" and "sincere remorse" were present.

Under the aforementioned explanation, acceptance of responsibility, by at least this officer, was viewed as a unique attempt by the Commission to give the guidelines an altruistic side to their promulgation. The guidelines are an evolving attempt to quantify justice, an effort to make gray issues black and white. Although an attitude cannot be quantified, U.S.S.G. § 3E1.1 seemed to be a clear provision for showing leniency to a person with true regret

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for his criminal actions and not merely regret for being arrested and convicted. It was apparent that, at least originally, actions taken in a timely fashion were necessary to demonstrate sincere remorse or manifest sincere contrition. An expression of sorrow, whether written or vocalized, was not sufficient to verify one's attitude, just as a cross around the neck or the Bible in one's hand was not sufficient.

In preparing for an upcoming presentence report for a career offender, I became surprised, disappointed, and disturbed over the pending changes regarding U.S.S.G. § 3E1.1. Commentary Notes have been amended to delete any reference to "sincere contrition" and "sincere remorse". How is acceptance of responsibility now defined? The only hint of a definition involving regret, i.e., "expresses remorse", is found in the Commentary Note which addresses the situation when a defendant goes to trial. Instead of requiring a defendant to readily acknowledge his guilt, truly regret his criminal conduct, and possibly make an attempt to rectify the situation created by his wrongdoing, the defendant now need only enter a plea of guilty, truthfully admit his involvement in the offense and related conduct, and express remorse (at least after going to trial). All defendants express remorse, at least when asked, and most defendants who enter pleas of guilty admit their involvement in the offense and related conduct. It appears that U.S.S.G. § 3E1.1 is now simply a reward for those defendants who save the Government time, energy, and money by not going to trial. Is this what is meant, by "legitimate societal interest"?

I believe that saving the Government time, energy, and money is a legitimate societal interest, but not the societal interest as originally conceived by the Commission and defined in U.S.S.G. § 3E1.1. With the new definition of acceptance of responsibility being entering a plea of guilty and truthfully admitting involvement in the offense and related conduct, expressing remorse is no longer really necessary for AOR. The "hint" should, therefore, be expunged to keep intact the new definition. U.S.S.G. § 3E1.1 should also be retitled Acknowledgement of Guilt. It now truly becomes a black and white issue with no need of actions being taken in a timely fashion to substantiate its proper application. The actions which were previously considered to determine whether a defendant qualified for acceptance of responsibility can now simply be used in determining what point within the guideline range a defendant should be sentenced.

I believe that U.S.S.G. § 3E1.1 as originally conceived, although difficult to determine at times, was an exceptional and humane attempt to allow the sentencing judge to be merciful. Perhaps, in view of objections from the community, especially defense attorneys who always expected their clients to be credited with accepting

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responsibility, the attempt should not have been made in the first place. Perhaps, Acknowledgement of Guilt and Acceptance of Responsibility sections should both be included in the guidelines. The two ideas are not the same, however, and should not be used synonymously. If reducing a sentence due to a person's true regret is no longer an issue, then please call "a spade a spade", remove the title of Acceptance of Responsibility, and relabel U.S.S.G. § 3E1.1 Acknowledgement of Guilt.

Respectfully submitted:



Michael C. Fisher
U.S. Probation Officer

MCF/vsg

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October 4, 1990

Mr. Michael Fisher
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Dear Mr. Fisher:

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.

We appreciate you taking the time to write and share your insightful comments.

Regards,

A handwritten signature in black ink, appearing to be "PKM".

Paul K. Martin
Communications Director