

1 CLK-2296

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

PROBATION OFFICE

ALBERT J. CHRISTY

CHIEF U.S. PROBATION OFFICER

9000 U.S. COURTHOUSE

601 MARKET STREET

PHILADELPHIA, PA 19106-1766

(215) 597-7950

597-7959

PHILADELPHIA

SUITE 1106

EAST SHORE BUILDING

45 S. FRONT STREET

READING, PA 19602

September 25, 1990

Phyllis J. Newton, Staff Director
U. S. Sentencing Commission
1331 Pennsylvania Avenue, NW
Suite 1400
Washington, D.C. 20004

Dear Ms. *Phyllis* Newton:

I am writing in response to your August 9, 1990, memorandum soliciting comment on Guideline issues and amendments.

- I. I have noticed on more than one occasion that there has been a great deal of confusion in Guideline Application resulting from the interplay of Sections 1B1.2 and 1B1.3. Generally, our officers have been able to resolve the problem of interpretation, and I believe that their ability to do so is a result of the formalized training which they have received from the Sentencing Commission. The problem arises from the fact that the two cited sections must be carefully read to begin Guideline application. On many instances, attorney's unfamiliar with the process do not see the sequential nature of these sections, occasionally bypass 1B1.2 and believe that Relevant Conduct allows for the use of any Guideline that appears to describe the overall offense behavior. I am of the opinion that these sections should be re-written in more specific language to guide new users through a step-by-step application process. Additional examples of commonly incorrect applications might prove an even greater clarification.
- II. The concept of double counting is of such great importance that it should deserve a specifically numbered section rather than being hidden in the commentary. While this may be a minor point, erroneous application resulting from this process is not uncommon, and to merely highlight it might bring it to greater attention.

- III. Probation Officers are almost routinely requested to amend Guideline Applications by Judges who have made decisions other than those reflected in the presentence report. While this matter is often later resolved by explaining to the Court the necessity of maintaining the integrity of the original report, such an explanation should be clearly set forth in Chapter Six to provide officers with a ready reference at the time of sentencing.
- IV. The entire issue of Role in the Offense should be reviewed. There exists an unanticipated sentencing disparity arising from conflicts, both in the definition itself and between role and the ability to take advantage of a 5K1.1 departure. Role is based on managerial position primarily. We have had difficulty in several cases, primarily narcotics cases, where the managerial role could be estimated, however, the Indictment also included major drug suppliers of the organization who had no other function or relationship to the organization. Similarly, there have been several instances of very active, but low level defendants who were charged with the entire scope of the conspiracy under the reasonably foreseeable test. Nonetheless, these individuals received similar or greater sentences than more highly placed defendants. It would seem that a truer test of culpability must be considered or a disparate process will only be continued.
- V. Acceptance of Responsibility: This section has evolved into pretty much of a given. Many officers tend to merely give credit for this section unless there is a definite commitment from the government that they will oppose the credit. I believe that it would be more honestly applied if it were specifically given for the plea alone with a possibly greater reduction for some concrete evidence of true acceptance such as those already delineated in the commentary.
- VI. The concept of related cases should be further defined. Lengthy criminal conspiracies in this district often involve arrests on a local level for activities that are part of the conspiracy. Occasionally, the behavior is clearly part of the same pattern of behavior, but the local cases predate the scope of the conspiracy. Often in drug cases, these prior cases may well expose a defendant to career criminal provisions. These are such important issues that they should be clearly identified.

- VII. The language concerning invalid (i.e. uncounseled) convictions for misdemeanors is totally confusing to probation staff. Specific language needs to be added to this section.
- VIII. The fine table is exceptionally obtuse. Most officers tend to immediately rely on the fine table without consideration of the other required alternatives. Subsection (c)(4) is not clearly defined and is an ongoing problem. The reality of the situation is that most defendants can ill afford to pay the most minimal of fines and the statutory maximums are unrealistic math problems that offer no guidance to the sentencing court. I would suggest that a simple and direct fine table such as currently exists, be used in all cases with an exclusionary section for departures.

It is my opinion that the role of the presentence writer has become of even greater importance to the Court since the implementation of the Sentencing Reform Act. My officers are routinely called to chambers to explain Guideline Application as well as to provide a sounding board to individual jurists who are wrestling with sentencing decisions. Similarly, they appear frequently in open Court to explain and defend their reports. With the bifurcation of duties that exist in this office, there is now a core of officers who have come to be the hallmark by which the office is judged as a result of this greater daily exposure. It is my position that these officers should receive indepth training in Guideline Application, and I have seen that these officers do take advantage of all training opportunities. I would like to see a formalized training program established for all of my newly appointed officers to receive indepth training, of about a week's duration, solely on Guideline Application. Similarly, my experienced officers would benefit from regularly scheduled training in advanced Guideline techniques and recent decisions. I must say, however, that I am particularly impressed with the Commission's current commitment to training and the accessibility and responsiveness of your entire staff.

Sincerely,


Albert J. Christy
Chief U. S. Probation Officer

AJC/fr

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)



October 4, 1990

Mr. Albert J. Christy
Chief U.S. Probation Officer
9000 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Chief Christy:

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 read "P. K. Martin".

Paul K. Martin
Communications Director