

1 CR-791

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PRETRIAL SERVICES AGENCY

PROBATION OFFICE

September 27, 1990

ROBERT M. LATTA
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U. S. Sentencing Commission
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Attn: Mr. Paul Martin
Communications Director

Commissioners:

We are responding to the memorandum dated August 9, 1990, requesting comment on guideline issues and potential amendments:

Problem Areas in Guideline Application

Keeping track of our circuit case law, particularly when it comes to departure issues. The new ASSYST should be a big help.

It would probably reduce a lot of confusion if guideline 4A1.2(k)(1) made it clear that the sentence upon revocation of probation, supervised release, etc., is added to the original sentence only when the original sentence, standing alone, falls within the applicable time period.

Specific Suggestions for Amendments

Applying guideline 2F1.1 for convictions involving possession of false documents does not capture elements of the offense behavior: Neither the number of documents nor the frequency of possession is considered. A guideline for possessing false documents with an enhancement for possessing devices to produce the false documents, in addition to the guideline for trafficking in evidence of citizenship (2L2.1), would avoid this problem. Although the commentary to 2F1.1 addresses this issue, a departure is the only way to account for the behavior. Also, if the offense of conviction conduct is trafficking in false documents other than evidence of citizenship or a passport, the same problem arises; because 2F1.1 is the only applicable guideline.

Once the Sentencing Commission has sufficient data, guideline 2L1.1 needs specific offense characteristics for number of aliens and inhumane treatment.

Training Programs

We need to develop a conceptual structure by which probation officers can more readily determine departure issues. For those districts that provide specific recommendations to the court, we also need to train officers how to construct their justification section of a departure recommendation, as the court may wish to use this section of the probation officer's recommendation as the statement of reasons for the record. This is obviously a joint training issue for both the Sentencing Commission and the Probation Division.

Staff Working Groups

Prison capacity should be on the top of the list for the second set of working groups to parallel Commissioner Corrothers's study on alternative sentences.

As for the groups already approved, departures appear to be the most burning issue right now. The difficult aspects appear to be the determination of whether there should be a departure after an aggravating or mitigating factor not considered by the guidelines is identified, and secondly to what extent. Although developing case law is providing some structure, a working group might discuss whether the guidelines should address the issue of departure more comprehensively, in order to avoid a mechanistic approach to departures without regard for the purposes of sentencing.

Very truly yours,



Nancy Reims, Deputy Chief
U.S. Probation Officer

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October 4, 1990

Ms. Nancy Reims
Deputy Chief Probation Officer
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Dear Nancy:

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 dark ink, appearing to be "PK" or "P. K.", written in a cursive style.

Paul K. Martin
Communications Director

P.S. I hope those killer goldfish in your cement pond are thriving.