

100-2671

UNITED STATES DISTRICT COURT

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September 29, 1990

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

Dear Phyllis,

Attached you will find comments from U.S.P.O. Leslie Cory, written in response to your memo of August 9th in which you request feedback from the field regarding guideline sentencing.

The only other concern I would like to add relates to Guideline 2Q2.1, which deals with wildlife violations.

I do not believe that people in Washington are aware of the magnitude of the poaching problem in the national parks. Furthermore, most endangered species not in the national parks are at great risk and must have the government's protection to survive.

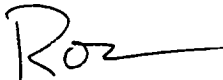
The base level of 6 in Guideline 2Q2.1 cannot even begin to act as a deterrence to those who hunt for sport and profit. Most of these defendants wind up with probation sentences or merely fines. To the U.S. Attorney's Offices, these cases simply do not have the sex appeal of a drug, fraud, or bank robbery case, and the defendants usually are allowed to plead to reduced charges and thus rarely get jail.

And if the Commission is contemplating changing the lower offense severity levels to allow even more probation sentences, these defendants will never be jailed.

Furthermore, the 2F1.1 fraud and deceit table used in Guideline 2Q2.1 (3)(A) requires many killings for the monetary "value" of the animals destroyed to add up to any real punishment. Perhaps a different table could be developed that did not rely on such enormous amounts of monetary loss to increase the levels.

On a final note, I would like to thank you for again requesting concerns from the field. The Commission's obvious receptiveness to feedback means alot to those of us "in the trenches".

Sincerely,

A handwritten signature in black ink, appearing to read "Roz" with a long horizontal stroke extending to the right.

Rosalind Andrews, Chief
U.S. Probation Officer

RECEIVED

Chattanooga, TN
September 12, 1990

SEP 13 1990

U.S. PROBATION OFFICE
CHATTANOOGA, TN

MEMORANDUM TO:

Rosalind Andrews
Chief U.S. Probation Officer

FROM:

Leslie A. Cory *LAC*
U.S. Probation Officer

RE:

Comments Solicited by Phyllis Newton,
Sentencing Commission, August 9, 1990

In response to Ms. Newton's Memo I have the following comments:

Problem Areas in Guideline Application: USSG 1B1.8, Use of Certain Information, is apparently subject to serious misinterpretation. Application Note 1 might be revised in order to explain more clearly that the information provided by the defendant under a cooperation agreement is not to be used by anyone, including Judges and Probation Officers, in calculating the guideline range.

Issues Identified by the Commission for Staff Working Groups: The need for direction from the Sentencing Commission on probation and supervised release revocation is critical. Disparate sentences upon revocation are already resulting from the lack of direction.

Additional Issues for Commission Study: I believe that the Sentencing Commission should consider expanding the situations in which the courts are advised to consider the possible relevance of specific offender characteristics. The policy statements in 5H are extremely restrictive, and can be interpreted as prohibiting courts from even considering departures based upon the defendant's particular personal circumstances.

Specific Suggestions for Guideline Amendments: The four level increase provided in 3B1.1(a) covers an extremely wide range of organizational structure and leadership sophistication. How and when the increase is applied probably varies significantly, depending upon the location of the sentencing court. I would recommend the use of more precise language in the guideline and the limiting of 3B1.1(a) to networks involving ten or more individuals. I would recommend allowing 3B1.1(c) to cover the bulk of leadership role situations. This would greatly facilitate the courts' job in assigning offense levels for leadership and would decrease the volume of courtroom disputes over an issue that is frequently very difficult to resolve.

Adequacy of Current Training Programs: Guideline sentencing is largely an academic discipline. The Sentencing Commission has established a distinct vocabulary and set of assumptions, the grasp of which is essential to the proper application of the guidelines. Training, especially attorney training, should focus on the necessity of learning and applying these basic assumptions of guideline sentencing. Repeated errors are made on the part of attorneys who continue to attempt to force individual guidelines into the legal framework with which they are already familiar, rather than into the guideline framework designed for them by the Sentencing Commission.

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October 4, 1990

Ms. Rosalind Andrews
Chief U.S. Probation Officer
530 Gay Street S/W
First TN Bank Bldg.
Knoxville, TN 37902

Dear Roz:

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 read "PKM", written over a horizontal line.

Paul K. Martin
Communications Director