

PCR-40/91

United States District Court

United States Courthouse

101 East Post Road

White Plains, NY 10601

Chambers of

Judge Gerard L. Goettel

September 25, 1990

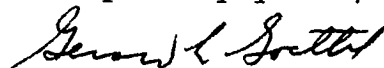
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W. - Suite 1400
Washington, D.C. 20004
Att: Communications Director

Dear Sir:

I have received the Chairman's letter asking that I give you my thoughts on the three top guideline sections or policy statements in need of review, etc. I do not believe those things are the significant problems we are encountering with the sentencing guidelines. Judge Wilkins says that in only 5.8% of cases is there a downward departure for substantial assistance to the government. In my experience, the number is many times that. Because of the inflexible harshness of many of the guidelines, the departure letter has become the most significant prosecutorial tool of modern times. It is no longer merely a question of admitting involvement in the indictment offense and offering to testify as a government witness. Many of these departure letters are written because of assistance given with respect to unrelated cases and even to making of new cases.

I do not necessarily believe that this development is contrary to the public interests. I am certain, however, that it was not the intention of the sentencing guidelines to produce this situation. The major purpose of the guidelines was to eliminate disparity in sentences. To do that, the judges' discretion in sentencing was severely reduced. Because of the importance of departure letters, a very substantial discretion has been vested in the prosecutor. This has, in effect, created in many cases a greater disparity than ever existed under the previous system. I have had cases recently where defendants received sentences of ten, twenty or even more years while equally guilty co-defendants received only a few years because they had been of such great assistance to the government in other prosecutions. Again, I note that this is not necessarily a bad development but it is certainly an unexpected one. There is little sense in worrying about fine-tuning guideline sections or policy statements when the system is functioning so differently from the manner in which it was intended.

Very truly yours,



Gerard L. Goettel
U.S. District Judge