

PCRI-43-91

United States District Court
District of Connecticut
United States Courthouse
450 Main Street
Hartford, Connecticut 06103

Chambers of
Peter C. Dorsey
U.S. District Judge

September 26, 1990

(203) 240-3224
(FTS 244-3224)

Hon. William W. Wilkins, Jr.
Chairman, U.S. Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

In response to yours of September 12, 1990, I would make the general observation that the difficulty that I have found in sentencing has been a perceived need for greater flexibility in a relatively small number of cases.

I do not disagree with the figures quoted in your letter of September 12th that the great bulk of sentencing has seemingly and appropriately been accommodated by the guidelines. If I had a sense of higher sentences being generally imposed by me, it would perhaps suggest that, in the overall question of disparity, I might have been on the low side and, of course, sentencing disparity is an inappropriate characteristic in the entire system.

What has been troublesome, however, has been the situation in which deviation from the guidelines has seemed appropriate but not, in reality, permitted. It is interesting to note that in the number of cases in which I have departed, without really being able to point to particular factors not considered by the Commission, the government has not appealed. For example, a wife involved in drug distribution came before me on a plea to a charge of use of a telephone in relation to drug distribution, whereas the husband had pleaded to a conspiracy to possess for the purposes of distribution. Her guideline range was 10 to 16 months and his minimum was something in the range of 8 years. In reality there was very little difference in their respective criminal conduct. A different offense charged was the sole distinguishing factor which resulted in the guideline range difference.

Unfortunately, I have not kept track of the individual cases in which I have deviated, perhaps without justification in strict compliance with the guidelines. I am not sure that this can be rectified by either specific guideline section or policy statement amendments. What would perhaps be worthwhile would be to

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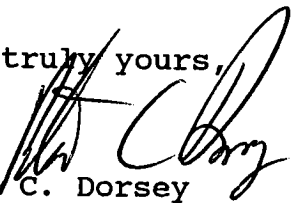
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accumulate reports flagging specific cases in which sentencing judges found factors appropriate to warrant departure which was not apparently permitted by the guidelines. As part of the gathering of data, the Commission perhaps could use such reports to educate judges as to how incorrect interpretations of the guidelines would in some of the reported cases provide the kind of flexibility for which the sentencing judge might seek but not have found. Secondly, it might produce specific fact-patterns that could then be utilized to make the kind of adjustments in the guidelines that would prove constructive.

At the present time, the reporting system requires sentencing judges to report on the reasons why they do things and what I am suggesting would produce reports as to why they did not feel authorized to do certain things.

I am sorry that I am unable to cite specific instances, but I simply have not kept track of the cases in which I have felt obliged by the guidelines, usually at a higher level of sentencing, but being convinced that there were factors that ought to be considered. One thought does come to mind and that is of a woman who probably became pregnant in order to be so at the time of sentencing, or at least I believe such was likely to be the case. However, she had no real family available to take care of the child whose birth was imminent. We are all aware that child nurturing over the first year is extremely important in the development of the infant. Family dependence is not usually to be considered in imposing incarceration. § 5H1.6. My suggestion would perhaps permit development of some greater flexibility to be built particularly into § 5H.

Very truly yours,



Peter C. Dorsey
United States District Judge

PCD/pj