

1-CRI-46/91

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
UNITED STATES COURTHOUSE
1929 STOUT STREET
DENVER, COLORADO 80294

DAVID M. EBEL
JUDGE

FTS 564-3800
(303) 844-3800

October 1, 1990

Paul Martin, Communications Director
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, D.C. 20004

Dear Mr. Martin:

I would like to see the Sentencing Commission provide further guidance for situations when the sentencing court determines to depart upward from Criminal History Category VI. We have several cases suggesting that the trial judge does not have unfettered discretion once he or she has made the determination that Criminal History Category VI does not adequately reflect the true criminal history of the defendant. See United States v. Gardner, 905 F.2d 1432, and United States v. Dean, 908 F.2d 1491. Those cases both suggest that there should be some articulable adherence to the guideline policy of uniformity and proportionality, although we eschew any rigid formula once departure is determined to be appropriate.

We have experienced many cases in this circuit involving upward departure from Criminal History Category VI, and I think we would all profit from further guidance as to any restraints that should be imposed to guide discretion of the sentencing judge in those situations.

Very truly yours,



David M. Ebel

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