

PCRI 58-971

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

581 HUGO L. BLACK U.S. COURTHOUSE

1729 5TH AVENUE NORTH

BIRMINGHAM, AL 35203

October 11, 1990

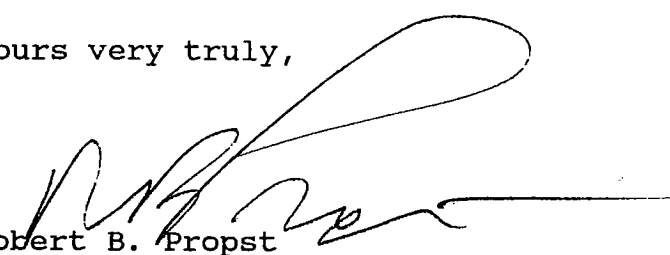
CHAMBERS OF
ROBERT B. PROPST
JUDGE

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

Dear Mr. Martin:

In response to Judge Wilkins' letter of September 27, 1990, I enclose a copy of a memorandum prepared by a probation officer whose opinions I respect and concur in.

Yours very truly,



Robert B. Propst

RBP:lyt

enclosure

memorandum

DATE: October 11, 1990

REPLY TO
ATTN OF: Oscar J. Stephenson, Jr.
Supervising U.S. Probation Officer

SUBJECT: GUIDELINE AMENDMENTS

TO: Honorable Robert B. Propst
U.S. District Judge

I appreciate the opportunity to share my thoughts regarding guideline amendments or changes. Basically, I believe the guidelines are well written and functional in actual practice.

I have selected three guideline sections which I believe need some additional consideration by the Commission. These sections are outlined as follows:

Chapter 3 Part B - Role in the Offense**3B1.3 Abuse of Position of Trust or Use of Special Skill**

This guideline needs to be broadened by deleting everything in Application Note 1 after the word crime in the first sentence. Application Note 1 would then read, "The position of trust must have contributed in some substantial way to facilitating the crime."

Chapter 4 Criminal History Category**4.A1.2 Application Note 6 - Invalid Convictions**

How to use uncounseled misdemeanors that did not result in imprisonment in the criminal history calculation is confusing. General Counsel for the Probation Division indicates such convictions are not to be counted, but reported under "Other Criminal Conduct" in the presentence report, with an explanation as to how the criminal history score would be changed if they were counted.

The Commission, in application Note 6, states that if the use of such convictions results in the imposition of a sentence of imprisonment under circumstances that would violate the U.S. Constitution, then such convictions are not counted but may be considered under adequacy of the criminal history category. This seems vague and difficult to implement. A clearer explanation as to the Commission's intent is needed, especially if there is agreement with the Probation Division on this matter. Basically, the Commission needs to determine if they are to be counted or not, and go with whichever position it wants the court to apply.

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Chapter 5 Part E - Restitution, Fines, Assessments,
Forfeitures

Section 5E1.2(c) and (i)

Fine calculations are burdensome and time-consuming under the present guideline. The Commission should use the Fine Table only without referring to the gain or loss associated with the offense. This is often difficult to determine, and it very seldom applied. The alternative fine section in 18 U.S.C. § 3571(d) is so infrequently used it is not worth using it in any aspect of the fine calculations.

The additional fine for the cost of supervision and incarceration sounds good, but it is infrequently used and it punishes those who have monetary resources that may not have been illegally obtained. This section should be deleted.

I hope this input helps with any response you may be making to Judge Wilkins. If I can provide additional information, please let me know.

OJS/mb