

UNITED STATES DISTRICT COURT

District of Alaska
222 West 7th Avenue - No. 54
Anchorage, Alaska 99513-7545

H. Russel Holland
Chief Judge

October 16, 1990

The Honorable William W. Wilkins, Jr.
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Re: Review of Sentencing Commission
Guidelines & Policy Statements

Dear Judge Wilkins:

I am in receipt of your letter of September 21, 1990, soliciting the views of other judges with respect to guideline sections and policy statements which may need review, amendment, or clarification. In fact, the aspects of guideline sentencing which I view as being most in need of revision or amendment are in areas over which the Commission has no control: statutory, mandatory, minimum sentences, and the mandatory (as opposed to discretionary) use of the guidelines. In both of these areas, it is my opinion that Congress has unreasonably injected itself into the art of judging, and in particular the matter of determining just sentences. The trend toward mandatory minimum sentences is certainly understandable, but in my view it is an overreaction to a serious problem.

More to the point of your subject letter, and despite my view that guidelines should be discretionary rather than mandatory, I am finding the application of guidelines quite workable in almost all cases which have come before me. There is one area which does come to mind in which I have repeatedly faced a conflict between my personal evaluation of how a case should be treated and the dictates of the guidelines. This has to do with Part H of Section 5--specific offender characteristics. Part H of Section 5 in substance provides that age, education, and vocational skills, mental and emotional conditions, physical conditions, employment record, and family ties, etc., "are not ordinarily relevant in determining whether a sentence should be outside the guidelines." Several of the specific guidelines, of

TO: The Honorable William W. Wilkins, Jr.
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Guidelines & Policy Statements

10/16/90
Page 2

course, have variations of this theme. I frequently find myself feeling strongly that these kinds of considerations should be a factor in whether or not to depart from guidelines. It is my belief that historically these considerations were a factor in sentencing. I believe they were appropriately so used, and I believe the retreat from this practice was a philosophical mistake on the part of the Commission.

If I may divert your attention to a mundane, administrative matter, I would hope that any future, official publication of the Guidelines Manual would take the looseleaf form of the original manual rather than the paperback (bound) form of the present manual. I find the looseleaf version far easier to use. Also, an index in the official publication would be helpful for locating items to which one does not frequently refer.

Good luck on your endeavors.

Sincerely yours,



H. Russel Holland