

PCRI-120/91

United States District Court

Northern District of Illinois
211 South Court Street
Rockford, Illinois 61101

Chambers of
Judge Stanley J. Roszkowski

November 8, 1990

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

Attn: Mr. Paul Martin, Communications Director

Dear Mr. Martin:

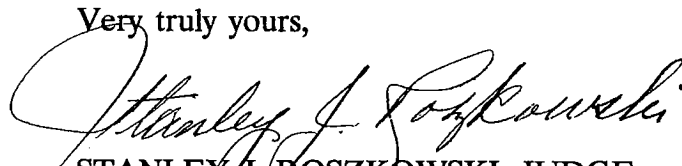
Pursuant to your request, I submit the following suggestions for amending the sentencing guidelines:

1. I would amend § 3E1.1 "Acceptance of Responsibility" in order to give the sentencing judge greater latitude in evaluating the defendant's acceptance of responsibility and in placing a value on that acceptance. Under the present guideline the court is limited to reducing the offense by two levels. It seems to me that the sentencing court should be given greater latitude in evaluating the extent of the defendant's acceptance of responsibility. (For example: a defendant under the present guidelines who has an offense level of 22 and a criminal history category of I can only receive a reduction from 41 - 51 months to 33 - 41 months, a minimal reduction, at best.) I suggest that this section be changed to expand the number of offense levels which can be used for reduction to a range of 2 - 6, or any level in between, to be determined at the discretion of the sentencing judge. (Taking the same hypothetical example above, the defendant could receive a reduction from 41 - 51 months to 21 - 27 months, depending on the extent of his recognition of and acceptance of personal responsibility.) As the commentary under this guideline so rightly observes, "The sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility." At the present time, although the judge may evaluate the defendant's acceptance of responsibility, he or she has very little ability to grant a reduction commensurate with the extent of that acceptance.

2. I believe that § 3B1.2 "Mitigating Role" should be more fully explained in the commentary. I note a great deal of confusion among lawyers, probation officers and judges in attempting to distinguish between minimal and minor. The application notes merely state that for purposes of § 3B1.2(b), "a minor participant means any participant who is less culpable than most other participants, but whose role could not be described as minimal," while "subsection (a) applies to a defendant who plays a minimal role in concerted activity." I fail to see the difference. I think different wording might be helpful. Webster defines minor as "lesser in size, amount, importance, etc." and minimal "the smallest quantity, number, etc. possible." While there is arguably some distinction, it appears to be a distinction without a difference. I would suggest that perhaps a different word be substituted for either "minor" or "minimal." For example: perhaps the word "lesser" or a similar word could be used instead of "minor." In addition, I believe that a more thorough explanation should be made in the application notes.

I hope these suggestions will prove to be helpful. Thank you for your continuing efforts to improve the guidelines.

Very truly yours,



STANLEY J. ROSZKOWSKI, JUDGE
UNITED STATES DISTRICT COURT

SJR:llw

cc: Mr. William T. Foster
Mr. Richard Bockover
Mr. Steve Osborne

United States District Court

Northern District of Illinois
211 South Court Street
Rockford, Illinois 61101

Chambers of
Judge Stanley J. Roszkowski

April 18, 1991

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

Attn: Mr. Paul Martin, Communications Director

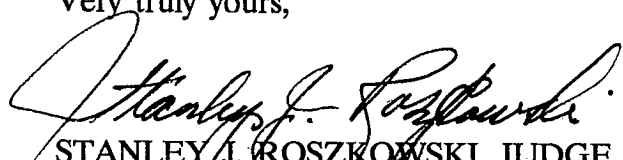
Dear Mr. Martin:

Pursuant to your request for comments on the sentencing guidelines, I would like to add to comments I have made on previous occasions.

Rather than duplicate the effort of U.S. Probation Officer Richard Bockover, I am enclosing his excellent letter of January 31, addressed to Deputy Chief Witkowski, which is self-explanatory. I would only add that I agree with its contents and conclusions. In particular, I believe that departures should be a matter of particular concern to the commission. As Mr. Bockover points out, the criminals who are "the most culpable and the most likely to be recidivists are the very ones who receive the least custody sentence and are the first to be released to the community." I have refused to go along with the government's recommendations on many occasions for this reason.

Thank you for your consideration of this matter.

Very truly yours,



STANLEY J. ROSZKOWSKI, JUDGE
UNITED STATES DISTRICT COURT

SJR:llw

Encls.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
PROBATION OFFICE

WILLIAM T. FOSTER
CHIEF PROBATION OFFICER

Rockford, Illinois
January 31, 1991

U. S. COURT HOUSE
219 S. DEARBORN STREET
CHICAGO 60604
312-435-5700

Gregory Witkowski
Deputy Chief U.S. Probation Officer
Room 1100 - U.S. Courthouse
219 S. Dearborn
Chicago, Illinois 60604

COPY

Dear Mr. Witkowski:

This is in response to our conversation of January 28, 1991, regarding my concerns about the United States Sentencing Commission's departure policies (5K1.1).

Realizing that departures are not a part of the United States Probation Officer's responsibilities, our Court in the Northern District of Illinois, Western Division, has still repeatedly asked for the opinion of the United States Probation Officer relative to a departure sentence. In discussing these departures with the Assistant United States Attorneys in the Northern District of Illinois, Western Division, it seems that there is no uniform policy among the Judicial Districts on how or when to use departures. The meaning of "substantial assistance to authorities" seems to be non-definitive and discretionary. In our division, it appears that substantial assistance to authorities is applicable whether it is making a telephone call, agreeing to testify against codefendants, wearing a recording device, or risking one's life. If the particular Assistant United States Attorney deems it "substantial assistance", he then has the flexibility to request the departure.

The amount of sentence reduction in a departure also seems to have no uniformity among the various Judicial Districts. It is my understanding that the United States Attorney's Office for the Northern District of Illinois allows the Assistants to recommend up to a 50% reduction in the amount of custody after they calculate the guidelines. Many times the recommended departure sentence falls below the statutory minimum sentence required by law. To my knowledge, there is no system used by the Assistant United States Attorneys in calculating the amount of recommended reduction in the sentence and therefore most of the defendants in the Western Division are given consideration for the 50% reduction regardless of the extent of their cooperation. Furthermore, it has been my experience that the less culpable defendants, who possess the least amount of criminal information, are not able to qualify for a departure and are sentenced within the appropriate guidelines range, while the more culpable defendants, who possess a greater amount of criminal information, are given lesser sentences. This seems to hold true whether or not these defendants have an

extensive prior criminal record. Therefore, the criminals who are the most culpable and most likely to become recidivists are the very ones who receive the least custody sentence and are the first to be released to the community. In my opinion, these departures are creating the very disparate sentences that the Sentencing Guidelines Act was supposed to abolish.

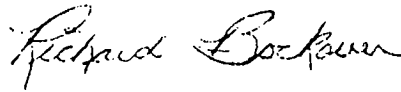
I would like to suggest that the Sentencing Commission consider the possibility of formulating specific definitions for varying degrees of cooperation. This would then be coupled with a defendant's criminal history level, which would only allow a defendant to receive a departure of a certain number of offense level reductions. It seems that the Sentencing Commission has done this in arriving at regular guidelines sentences and even for revocation proceedings. There doesn't seem to be any reason why the Sentencing Commission could not create a specific set of guideline characteristics for departures. It is my understanding that other Judicial Districts (Madison and Milwaukee, Wisconsin) have had to implement some guidelines and are refusing to depart unless the cooperating defendant's information leads to the arrest or indictment of another individual. If the departure is found warranted by the Court, there is still only a specific number of offense level reductions that the Court will entertain and this is after the guidelines have been calculated by the United States Probation Office. I find it somewhat aggravating and frustrating to expend numerous hours in completing a guidelines presentence investigation during which I gather extensive prior criminal records and background information only to have the Assistant United States Attorney essentially disregard the report and still recommend the departure because of a pre-plea agreement he has made with the defendant. It also seems unfair to me that the departure issue primarily pertains to the more serious offenders (primarily drug traffickers). The typical offender who acts alone in an offense, such as embezzlement by a bank teller or theft by a postal employee, are normally not eligible for a departure because they cannot provide any "substantial assistance to authorities". Therefore, they are almost always sentenced within the guidelines range, while some of the more dangerous offenders are not.

Please understand that I am not opposed to the policy of departures, and realize their importance within the Criminal Justice System. However, I feel that this part of the Sentencing Guidelines Act needs to be better defined and controlled or we are going to see the same degree of disparity in the future as may have existed in the past.

Thank you for your time and consideration in allowing me to express my opinion about this issue.

Gregory Witkowski, DCUSPO - Page 3
(1-31-91)

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard Bockover".

Richard Bockover
U. S. Probation Officer
Tel: 815-987-4363

RB:gm

c.c. William Foster, CUSPO, Chicago, IL

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Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)



April 25, 1991

Honorable Stanley J. Roszkowski
United States District Court
211 South Court Street
Rockford, Illinois 61101

Dear Judge Roszkowski:

Thank you for your thoughtful comments on the sentencing guidelines and for forwarding to us the letter from U.S. Probation Officer Richard Bockover. The two letters have been circulated to the Chairman, Commissioners and staff for their review.

Thank you for taking the time to respond.

Sincerely,

A handwritten signature in cursive script, reading "Michael Courlander".

Michael Courlander
Public Information Specialist