

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
PROBATION AND PRETRIAL SERVICES OFFICE

044-95

NORMAN E. MUGLESTON, Chief
U.S. Probation/Pretrial Services Officer



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REPLY REQUESTED TO

- ANCHORAGE
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April 12, 1995

Phyllis Newton, Director
U.S. Sentencing Commission
Federal Judiciary Building
Washington, DC 20002-8002

RE: Proposal for Amendments to the Guidelines

Dear Ms. Newton:

I have attached a memorandum from Mary Frances Barnes, Sr. U.S. Probation Officer in our district, which summarizes our proposals for amendment on a few areas of the guidelines.

Please call me if you have any questions.

Sincerely,

Norman E. Mugleston
Chief U.S. Probation/Pretrial Services Officer

Enclosure

NEM:vhi

MEMORANDUM

DATE: March 31, 1995

REPLY TO: Mary Frances Barnes *MB*
ATTN OF: Sr. U.S.P.O.

SUBJECT: **Proposals for amendments to the guidelines**

TO: Norman Mugleston
C.U.S.P.O.

I have reviewed the guidelines and queried both the investigative and supervision units for their input. There are only a few areas suggested for improvement and clarification.

- As always the drug guideline U.S.S.G. § 2D1.1 is at issue. One "camp" would like to see the guidelines calculated on the type not quantity of drugs. One "camp" would like to see other specific characteristics and not quantity alone considered in setting the offense level.
- Regarding the Restraint of Victim guideline, U.S.S.G. § 3A1.3, we find this guideline too narrow.

First issue: the guideline does not define **victim**. Can a co-conspirator also be a victim? The Sentencing Commission was consulted and stated that in the absence of an explicit statement in the guidelines, the Court would have to make the decision. As far as I know this issue has come up before Singleton twice and he has ruled that a co-conspirator can be a victim and applied the enhancement. The last case involved the Jay Vought case and the defendant is currently appealing the enhancement.

Second issue: the term "**physically restrained**" is too narrow. U.S.S.G. § 3A1.3 relies on the definition of physical restraint at U.S.S.G. 1B1.1, comment.(n.1(i)), which describes a forcible restraint such as being tied, bound, or locked up. We would like to see the definition expanded to include physical restraint by use of force or the threatened use of force. We found case law that supported the enhancement when the victim was restrained at knife point and gun point. Judge Singleton has twice ruled for the enhancement when it included restraint by use or threatened use of force. Example: Jay Vought forced a victim (and co-defendant) into a vehicle at gun point, took her for a long car ride and threatened to kill her if she did not continue to sell drugs for him. The definition could include language such as physically restrained is when someone believes they are not free to leave because of the presence of a firearm or some other weapon or the threatened use of such.