

UNITED STATES SENTENCING COMMISSION
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April 5, 2001

MEMORANDUM:

TO: Chair Murphy
Commissioners
Tim McGrath
Susan Hayes
Charlie Tetzlaff
Ken Cohen
J. Deon Haynes
Sharon Henegan
Pam Montgomery
Lou Reedt
Judy Sheon
Susan Winarsky

FROM: Mike Courlander

SUBJECT: Public Comment

Attached is some additional public comment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NEW YORK 10007-1312

CHAMBERS OF
MICHAEL B. MUKASEY
CHIEF JUDGE

PHONE
(212) 805-0234

April 2, 2001

Mr. Timothy B. McGrath
Staff Director
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500 South Lobby
Washington, DC 20002-8002

Dear Mr. McGrath:

You have asked for comment on the proposed amendment to the illegal reentry guideline, §2L1.2. I believe the judges of this district would support the effort to improve this guideline by drawing distinctions based on the comparative seriousness of the defendant's prior conviction.

Every year approximately 125 defendants are sentenced in this district under §2L1.2 and, in almost every case, the prior conviction is for an "aggravated felony." Thus, with a 3 point reduction for acceptance of responsibility, the sentencing range for a defendant in Criminal History Category I is 37-46 months. However, it is almost always the case that the defendant's criminal history places him in a higher Criminal History Category.

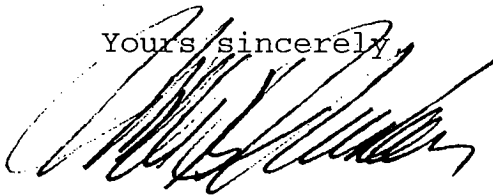
Given the wide range of prior convictions that fall within the definition of aggravated felony, a sentencing scheme that does not differentiate based on the seriousness of the underlying felony conviction fails to meet the goal of Congress that the guideline system should "impose appropriately different sentences for criminal conduct of different severity." Guideline Manual, Chapter 1, Part A, Subsection 3. While the proposed change is not the only way to attempt to measure the comparative seriousness of prior convictions, the length of the sentence

imposed is in most cases a good indication of the seriousness of the underlying crime.

Ameliorating the severity of the guideline range in illegal re-entry cases is desirable for another reason. In this district, many of those who return after deportation are persons who have lived all of their adult lives in this country and whose families still reside here. Although this fact does not excuse their crime, it seems particularly unjust to impose on such a defendant a sentence that does not distinguish a relatively minor criminal record from the more serious records of other illegal re-entrants.

If there is any additional information I can provide, please feel free to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to be "M. J. [unclear]", written over the typed name "M. J. [unclear]".