

United States District Court
Southern District of California
940 Front Street
San Diego, California 92101-8901

Chambers of
Marilyn L. Huff
Chief Judge

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August 1, 2003

Honorable Diana E. Murphy
United States Sentencing Commission
Attention: Public Affairs - Public Comment
One Columbus Circle N.E.
Suite 2-500, South Lobby
Washington, D.C. 2002-8002

Re: Public Affairs - Public Comment

Dear Judge Murphy:

Thank you for the opportunity to provide public comment concerning the Sentencing Commission's implementation of the PROTECT Act, Public Law No. 108-21, 117 Stat 650 (2003). Due to the expedited nature of the public comment period, I asked for comments from our United States Attorney, the Federal Public Defender, and the coordinator of the Criminal Justice Attorney Panel in our district in order to give the Sentencing Commission the benefit of their considerable experience with sentencing issues in our district. Enclosed are the responses that the court received for the Commission's review.

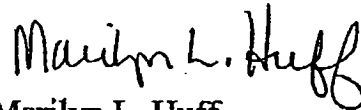
As the chief judge of a court with one of the highest number of felony cases in the nation, I emphasize the need of the Sentencing Commission to consider the unique circumstances and challenges faced by border districts when it addresses changes to a fast track disposition program or other departures not prohibited by the PROTECT Act.

The most recent published statistics for the Sentencing Commission indicate that the Southern District of California sentenced more guideline defendants (4,213) than the entire First Circuit (1,645), the entire Second Circuit (4,147), the entire Third Circuit (2,636), the entire Seventh Circuit (2,450), the entire Eighth Circuit (3,568), the entire Tenth Circuit (3,415) and the DC Circuit (276) in 2001. Despite the volume of cases, the Federal Court Management Statistics indicate that the Southern District of California in 2001 was the fastest in the nation for criminal dispositions while first in the nation in criminal felony cases. The Southern District of California faces geographical challenges in housing pretrial criminal defendants in several facilities,

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marshal shortages in handling a large volume of defendants, interpreter needs for non-English speaking defendants, and other circumstances not faced in the majority of districts. These unique circumstances may warrant a flexible fast track disposition program and other sentencing discretion for the court to appropriately exercise its sentencing authority under the law.

Sincerely,



Marilyn L. Huff
Chief Judge

MLH:am

cc: District Judges, Southern District of California
cc: Mario G. Conte, Federal Defenders of San Diego, Inc.
cc: Carol Lam, United States Attorney
cc: Mark Adams, Esq.
cc: Hon. Sim Lake
cc: Hon. William Moore
cc: Hon. Wm. Fremming Nielsen
cc: Mr. Michael Blommer

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VIA FACSIMILE & U.S. MAIL

July 30, 2003

Hon. Marilyn L. Huff, Chief Judge
United States District Court
940 Front Street, Rm. 4195
San Diego, CA 92101

Dear Judge Huff:

In response to the United States Sentencing Commission and Judicial Conference request for public comment concerning the implementation of the Prosecutorial Remedies and Other Tools to end Exploitation of Children Today Act of 2003, (The PROTECT Act; public law No. 108-21, 117 Stat 650 (2003)), I write on behalf of myself as a Criminal Justice Act Attorney and as this District's representative to the Administrative Office, Defender Services Division to comment on proposed implementation of the PROTECT Act and its impact on United States Sentencing Guidelines. I firmly believe that the Courts, in exercising their discretion in the most important aspect of the Criminal Justice System, that is, in imposing sentence, should be not be restricted in any further regard. Only the District Court can properly evaluate the individual accused standing before the court for sentencing, and the facts and circumstances of the case as filed against that accused. Accordingly, Section 5K2.0 and its commentary should not be revised. Rather than restrict District Court judges, the Commission should allow those District Courts to exercise their discretion in determining the circumstances which warrant a downward departure. The factors outlined in Chapters 2, 3 and 4 of the guidelines should remain unchanged, or if to be changed, should only be changed to permit the District Courts to exercise their sentencing discretion in determining when, and to what extent, a downward departure is warranted in a particular case.

When the Sentencing Commission and/or Congress seeks to impose more or more restrictive guidance on offender characteristics or on circumstances under which downward departures may be considered, the courts lose the ability to exercise their judgment in determining the appropriate sentence given a particular set of facts and circumstances involving both the facts of the case, the impact on a community and the offender to be sentenced. Whenever the Commission and Congress seek to restrict the discretion of the District Courts, they risk upsetting the balance of government in an inappropriate and,

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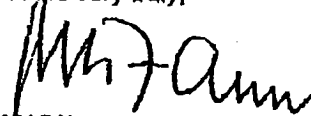
ATTORNEY AT LAW

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indeed, perhaps unconstitutional fashion by placing more power in the hands of the executive with respect to the determination of the appropriate sentence and ultimately the sentence actually imposed. This is not healthy for a democratic society. In exercising sentencing discretion, the District Courts should be permitted wide latitude in deciding the appropriate sentence. With respect to downward departures and departures for the evaluation of criminal history, it is very important that the United States Sentencing Commission not further restrict the District Court's Sentencing authority. If any change is to be made, the Commission should recognize that downward departures pursuant to an early disposition (fast track) program should be recognized as an appropriate exercise of the court's sentencing authority.

I hope my comments are of assistance to the Court and to the commission considering this important issue. Should your Honor have any further questions, I am available at your convenience.

Yours very truly,



MARK F. ADAMS
Attorney at Law

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DEFENDERS
OF
SAN DIEGO, INC.**

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Defender Organization
for the Southern
District of California
www.fdsdi.com

August 1, 2003

Honorable Marilyn L. Huff
United States District Judge
940 Front Street
San Diego, CA 92101

Dear Judge Huff:

I have attached for your review the suggestions of this office to the questions for the Sentencing Commission.

Although the deadline was short, I believe we have made constructive as well as innovative proposals.

I want to thank you for giving us the opportunity to assist the court in this endeavor.

Very truly yours,

Mario G. Conte
Executive Director

MGC/mlk
Enclosure

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