

**U.S. Department of Justice**

*United States Attorney
District of Massachusetts*

*1003 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109*

March 8, 1994

Honorable Rya W. Zobel
United States District Judge
U.S. District Court
J.W. McCormack Post Office
& Courthouse Building
Boston, Massachusetts 02109

**Re: United States v. Alfred W. Trenkler,
Criminal No. 92-10369-S; Government's Supplemental
Grounds for Upward Departure**

Dear Judge Zobel:

The government respectfully requests that the Government's Sentencing Memorandum, filed yesterday in connection with the above matter (a copy of which was contemporaneously hand delivered to Attorney Segal's office), be supplemented (at ARGUMENT, Part D (p.16)) to include reference to Guidelines § 5K2.8 ("Extreme Conduct") as additional grounds for upward departure.

In support, the government directs the Court's attention to United States v. Ellis, 935 F.2d 385 (1st Cir. 1991) (copy attached), where the defendant was convicted of having violated the Mann Act (18 U.S.C. § 2423), that is, knowingly transporting individual under age of 18 in interstate commerce to engage in illegal sexual activity. The victim in Ellis was seven years old at the time the abusive conduct commenced. At sentencing, the district court (Freedman, J.) departed upwards 65 months, from the 235 month upper end of the Guideline.

On appeal, the First Circuit affirmed the propriety of the departure, ruling that :

The district court's decision to depart was not based simply on the victim's age, an element already incorporated in the base offense, but on the extreme psychological harm inflicted on the victim as a result of Ellis' conduct. . . Because Ellis' behavior was

excessive and outrageous, departure was also justified, as a matter of law, under § 5K2.8. . . . We cannot say that the [65 months] increase was unreasonable.

United States v. Ellis, 935 F.2d 385, 396-97 (1st Cir. 1991).

Respectfully submitted,

DONALD K. STERN
United States Attorney

By:


PAUL V. KELLY
Assistant U.S. Attorney


FRANK A. LIBBY, JR.
Assistant U.S. Attorney

cc: Terry Philip Segal, Esq. (by FAX)