

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED

95 AUG 23 PM 3:33

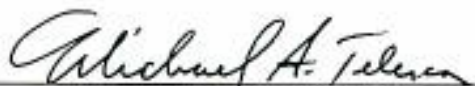
In the Matter of
Release of Federal Probation
Department Presentence
Investigation Reports

U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
ADMINISTRATIVE
ORDER

Whereas the U.S. Probation Department and the Erie County Probation Department have entered into a Memorandum of Understanding concerning the cross release of presentence reports, the terms and conditions of which are fully set forth in "A Memorandum of Understanding Between the U.S. Probation Department, Western District of New York and the Erie County Probation Department Regarding the Release of Federal Presentence Investigations" dated the 18th day of August, 1995, and therefore, it is hereby

ORDERED, that the Chief Probation Officer of the Western District of New York shall, and he is hereby authorized, to release any presentence report to the Erie County Probation Department having due consideration for the confidentiality of these reports.

SO ORDERED.


MICHAEL A. TELESCA
United States District Judge

DATED: Rochester, New York
August 18, 1995

**MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. PROBATION
DEPARTMENT, WESTERN DISTRICT OF NEW YORK AND THE ERIE COUNTY
PROBATION DEPARTMENT REGARDING THE RELEASE OF FEDERAL
PRESENTENCE INVESTIGATIONS**

Background

The U.S. Probation Department has historically denied release of the federal presentence report directly to the Erie County Probation Department for use in developing a County presentence investigation. Federal regulations guard against release of federal presentence reports for these reasons: (1) unauthorized disclosure to third parties of information regarding drug, alcohol, and mental health treatment of offenders with federal funds; and, (2) dissemination of the presentence report beyond local probation departments (for example law enforcement authorities). The Erie County Probation Department has periodically required the use of portions of the federal presentence report on select cases under their investigation. Although we allow County Probation Officers an opportunity to review the presentence report in our office, the ability to obtain a copy of a report for their use in developing a county presentence report within the confines of their office setting is preferred.

The Erie County Probation Department has routinely disclosed county presentence investigations to federal Probation Officers who incorporate portions of the material in the federal presentence report. The lack of reciprocity of release of federal presentence reports to Erie County Probation Departments has strained the relations between the two departments. In recent situations, defense attorneys who have received a copy of the federal presentence report have submitted their federal presentence report to local and county judicial officers who in turn have used the federal presentence report as a sentencing tool, bypassing both the U.S. Probation Department and the Erie County Probation Department.

Intent

It is the intent of this agreement to gain control over the use of the federal presentence report and avoid unauthorized or unintended use of the presentence report such as noted in the above example. It is our desire to reinforce the spirit of cooperation and achieve a compatible working relationship between both departments to further enhance the service offered to both the federal and local/state courts.

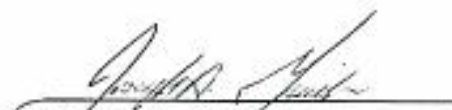
Agreement

By way of this agreement, the U.S. Probation Office hereby acknowledges the understanding that federal presentence reports will be released to the Erie County Probation Department once the appropriate consent to release form is signed by the offender. The consent will allow information relating to the offender's treatment (drug, alcohol, and mental health) to be disclosed in accordance to federal and New York State regulations.


Additionally, federal presentence reports that do not contain treatment information will be released without a consent form, but with the understanding that the dissemination of the report is strictly restricted to the Erie County Probation Department for investigation purpose. Each federal presentence report disclosed to the Erie County Probation Department will contain the following statement stamped upon each page "DO NOT DUPLICATE, DISSEMINATION OF THIS REPORT IS STRICTLY LIMITED TO THE ERIE COUNTY PROBATION DEPARTMENT, FURTHER DISSEMINATION IS PROHIBITED". The Erie County Probation Department agrees to shred each federal presentence report, in its entirety, upon completion of the county investigation, insuring that the report is not duplicated and/or released to a third party.

Finally, New York State regulations allow for the release of a copy of the county probation report to other probation departments and this practice will be reinstated between the Erie County Probation Department and the U.S. Probation Department for the Western District of New York.

The United States Probation Office for the Western District of New York and the Erie County Probation Department agree to provide services to each other as outlined in this Memorandum of Understanding.


Joseph A. Giacobbe
Chief U.S. Probation Officer

8/18/95
Date


Nicholas Ottaviani, Director
Erie County Probation Department

8/18/95
Date

Attachment