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Communications Director
United States Sentencing Commission
1331 Pennsylvania Avenue, N. W., Suite 1400
Washington, D. C. 20004

RE: RESPONSE TO REQUEST FOR COMMENT
ON GUIDELINE ISSUES

Dear Communications Director:

Pursuant to Phyllis J. Newton's request for comment on guideline issues, memorandum dated August 9, 1990, the following response relates to the issue of acceptance of responsibility. It is the undersigned officer's opinion that the acceptance of responsibility assessment, as currently used in guideline applications, severely deprecates and undermines the sentencing process if an error is made in assessing the defendant's acceptance of responsibility. When errors are made in assessing the defendant's acceptance, again, in this officer's opinion, the sentencing process is invalidated and discredited in the mind of the defendant.

The problem with making a definitive statement regarding the defendant's acceptance of responsibility prior to imposition of sentence is manifold. When acceptance of responsibility is not correctly assessed, the judicial system is not only discredited, but it also fails to realize the goal of uniformity which is a fundamental basis of promulgating the guidelines in the first place.

The crux of the problem lies in whether or not sufficient data exists in the presentence investigation stage to accurately assess a defendant's acceptance of responsibility. Depending on the Court's finding related to the acceptance credit, the Court chances making an incorrect decision whether it decides to credit or not credit acceptance of responsibility (see Appendix A). As the decision process currently stands, acceptance of responsibility relies almost wholly on the statements and assertions made by the defendant regarding his or her involvement and responsibility in the instant offense. Judges, attorneys, probation officers, and other parties involved in the judicial process have long understood the problems of accurately evaluating a person's veracity concerning his or her conduct after being charged. Consequently, it is the undersigned officer's assertion that there is and always will be insufficient data to make an assessment about a defendant's acceptance of responsibility prior to sentencing. Therefore, it is believed that the acceptance of responsibility issue tends to muddle and complicate the sentencing process unnecessarily at the presentencing stage.

Though there may be problems with correctly assessing the issue of a defendant's acceptance of responsibility at the sentencing stage, it should not be taken out of the total equation. Acceptance of responsibility is a significant first step in the rehabilitative process. Without first realizing one's inappropriate conduct or behavior, there is no basis for change. Secondly, it is believed (also supported by empirical research) that behavioral change can be influenced by different motivators.

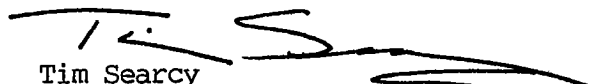
One of the problems with crediting a defendant with acceptance of responsibility at the sentencing stage is that you immediately lose a powerful motivator. However, if you delay this assessment further in the judicial process, it could conceivably provide hope for the defendant that he or she could have his or her sentence reduced should they sustain and maintain law-abiding behavior. This would also provide the Court and the probation office with more tangible data to base a decision on regarding a defendant's acceptance of responsibility. Some indices, which would suggest and could possibly be used to determine a defendant's acceptance of responsibility, would include the following:

1. There are no new criminal violations for a specified period.
2. The supervisee has secured and maintained lawful and gainful employment and has supported his or her dependents over a specified period.
3. Supervisee has remained drug-free for the specified period.

By deferring the assessment of acceptance of responsibility to later in the rehabilitative process, the judicial system would reduce the probability of making an error in its assessment. This would enhance the system's credibility while at the same time provide a strong motivator for defendant's to sustain positive adjustment in the community. This also would conceivably be a "win-win" situation for all parties concerned (defendant, criminal justice system, and taxpayers).

I wish to extend my appreciation to the Commission for its active solicitation for input on how to improve the system. By utilizing the wealth of experience and knowledge throughout the system, the end product can only improve. Should the acceptance of responsibility group require additional information about my ideas presented in this letter, please do not hesitate to contact me at FTS 852-2319.

Very truly yours,


Tim Searcy
U. S. Probation Officer

TS/ss

APPENDIX A

ACCEPTANCE OF RESPONSIBILITY 2 X 2

DECISION MATRIX

		<u>True State of Affairs</u>	
		Defendant Accepts Responsibility	Defendant Doesn't Accept Responsibility
<u>Court's Assessment of Acceptance</u>	Credits Acceptance	Cell A CORRECT DECISION % ?	Cell B INCORRECT DECISION % ?
	Doesn't Credit Acceptance	Cell C INCORRECT DECISION % ?	Cell D CORRECT DECISION % ?