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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
PROBATION OFFICE

THOMAS J. WEADOCK, JR.
CHIEF PROBATION OFFICER

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March 17, 1994

Judge William W. Wilkins, Jr.
Chairman, U.S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Chairman Wilkins,

It was again a great pleasure to present the Commission with Probation Officers' views on the guidelines and proposed amendments and we continue to be very grateful for the opportunity to do so. As always, we on the Advisory Group feel an enormous responsibility in representing the field, especially so because the Commission is so positively disposed to our input.

While I am aware that you have already received a written report on the Advisory Group's recommendations regarding proposed amendments, there is one additional comment which the Group discussed and I made comment on at the Hearing. Tommy Whiteside, Chairman of the Advisory Group suggested I send this letter as a supplement to his general report. The comment regards clarification amendments and one in particular:

Amend. 17 (Pg 62) Miscellaneous Substantive, Clarifying and Conforming Amendments

Clarification amendments are always worth passing because they result in no litigation, but may forestall any misunderstanding that might have occurred and also clear up any that have already occurred. The Commission staff is applauded for fine tuning the language of the guidelines to better communicate Commission intent and provide a clearer, efficient, more uniform application process. As in the past, the Probation Officers Advisory Group encourages the adoption of all clarifying amendments.

In particular, **Amend 17F** on Page 68 referencing §§ 2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt

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or Conspiracy), 2E1.1 (RICO), 2E1.2 (Travel in Aid of Racketeering), 2E1.3 (Violent Crimes in aid of Racketeering), and 2E1.4 (Use of Interstate Facilities in Murder for Hire) clarifies what is meant by "underlying offense" by making reference to § 1B1.2 application note 5. Whereas most other guidelines that refer to "underlying offense" make it clear that the "underlying offense" must be charged or be the offense of conviction (e.g. § 2X3.1 Accessory After the Fact Application Note 1. "Underlying Offense" means the offense as to which the defendant is convicted of being an accessory), the above referenced guidelines have left open a measure of ambiguity which could give rise to misinterpreting the Commission's intent.

This amendment would serve a vital need by making clear that offense guideline is selected on the basis of offense of conviction under §1B1.2 . Because it is a complicated issue, it is believed that the amendment could be made even stronger by inserting a parenthetical at end of the first sentence of application note 1. of §§ 2E1.1, 2E1.2, 2E1.3 and 2E1.4 that expressly reference that this determination is made on the basis of the conduct for which the defendant was convicted. Discussion with commission staff indicate that they concur with this suggestion.

Thank you for considering this supplement along with the other recommendations made by the Advisory Group.

With my very warmest regards, I remain

Very Truly Yours,



Francesca D. Bowman
Deputy Chief USPO

cc: Tommy Whiteside, Chairman
Probation Officers Advisory Group