

047-9^u

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
PROBATION OFFICE

March 3, 1994

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DANIEL C. LANFORD, JR.
CHIEF U.S. PROBATION OFFICER

ROBERT C. HUGHES, JR.
DEPUTY CHIEF U.S. PROBATION OFFICER

U.S. POST OFFICE & COURTHOUSE
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REPLY TO MACON

Judge William W. Wilkins, Jr., Chairman
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Wilkins:

I write to summarize the Probation Officer Advisory Group's response to Amendments 19 and 31 as published in the United States Sentencing Commission December 1993, Proposed Guideline Amendments for Public Comment. As you will recall, we discussed our responses with the Commission during the public hearing on February 24, 1994.

Amendment 19 makes a number of minor revisions to clarify the operation of §1B1.10 (Retroactivity of Amended Guideline Range). This particular amendment was not included in the Probation Officer Advisory Group Survey, however, the amendment was discussed at length by the Advisory Group during our working session. It is noted that the amendment does, in fact, make several minor revisions which do clarify the operation of this policy statement. For example, it will eliminate any question about the policy statements applicability when it states that if an amendment is not listed in §(d), a sentence reduction is not authorized versus not consistent with this policy statement. It also makes it very clear that the court is to apply the Guideline Manual currently in effect to determine the amended sentence.

It appears, however, that the amendment broadens the court's discretion as to the amount of sentence reduction. The amendment deletes current §1B1.0(c) which is, in essence, a "cap" on the amount of time the court can reduce a defendant's sentence. In addition, this broader discretion is of some concern as we feel it may serve to increase disparity throughout the system. Certainly, there was some rationale for the original "cap" inclusion in the guidelines and to remove this boundary raises a question. Also, we

are not convinced that there presently exist a problem to the degree that significant change to the policy statement is warranted.

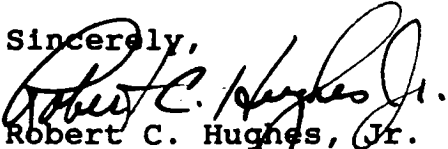
Amendment No. 31 was included in the Probation Officer Advisory Group Survey. We received fifty-five (55) responses to this amendment, 78% of which stated that the guideline should remain as written. We examined and discussed this amendment in our working group and concluded that the amendment does, in fact, offer some positive change. As we analyzed the written comments in our survey, we theorized that responding U. S. Probation Officers were, in fact, asking the Commission for stability and consistency in the area of guidelines and policy statement modification. Again, it does not appear that Probation Officers perceive a problem significant enough to warrant formal change in this area.

As mentioned, the working group had somewhat of a different view. One of the issues in this change concerns the "whole book concept" versus the "retroactive amendment concept". In essence, when the court modifies a sentence under this policy statement, the court presently applies the entire set of guidelines. Under the proposed amendment, the court would apply only the retroactive amendment within the set of guidelines under which the defendant was originally sentenced. The argument here is that the current method, "the whole book method", makes every guideline in the new guideline set retroactive "en masse" generating complications and disparity.

There have been some problems in resentencing LSD cases. For example, a defendant in an LSD case being resentenced may receive consideration for a possible application of the third level of "acceptance" effective November 1992, in the current guidelines even though other codefendants are denied retroactive consideration. Also, new factual issues can arise whenever it is necessary to determine new guidelines. This may serve to complicate the resentencing process. It may require an evidentiary hearing to determine the new facts to determine the guidelines which did not exist or were different at the time of sentence.

In summary, although we recognize there are some problems with the application of §1B1.10, we are of the opinion that these problems do not warrant significant change to the policy statement at this time.

Sincerely,


Robert C. Hughes, Jr.

Deputy Chief U. S. Probation Officer