FEDERAL PUBLIC DEFENDER
District of Arizona
850 West Adams Street, Suite 201
PHOENIX, ARIZONA 85007

JON M. SANDS
Federal Public Defender

(602) 382-2700
1-800-758-7053
(FAX) 382-2800

November 21, 2007

Honorable Ricardo Hinojosa
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Follow-up on November 13, 2007 retroactivity hearing

Dear Judge Hinojosa:

We appreciated the opportunity to participate in the public hearing on November 13, 2007 regarding whether the Commission should make retroactive the crack and criminal history amendments. We commend the Commission for its commitment to fairness in promulgating the amendments, and we urge you to ensure that those sentenced before November 1, 2007 receive the same benefit from the amendments as those sentenced on or after November 1, 2007, that is, to have their guideline range calculated in accordance with the amendments.

Suggestions have been made that the Commission promulgate a policy statement for application of the crack amendment should the Commission decide to make it retroactive, ranging from general and non-binding (the Criminal Law Committee) to detailed and binding (Professor Chanenson). We believe that additional guidance is unnecessary, but that any policy statement that is promulgated should be general and should not declare itself to be binding.

Additional guidance is unnecessary because the statute and current policy statement already address the concerns raised during the proceedings. Section 3582(c) instructs the courts that they "may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Commission." The Commission's existing policy statement says that the district court "should consider the term of imprisonment that it would have imposed had the amendment[] . . . been in effect at the time the defendant was sentenced,"[1] and "shall substitute only" the amended guideline in determining the amended guideline range, such that "[a]ll other guideline

[1] U.S.S.G. § 1B1.10(b), p.s.

application decisions remain unaffected."[2] Thus, under the statute and the current policy statement, in determining whether, and to what extent, to apply the two-level reduction, the courts will consider, among other things and to the extent applicable, the seriousness of the offense and the need to protect the public.[3] Any more specific guidance would be superfluous.

Should the Commission decide that additional guidance is necessary, we agree with the Criminal Law Committee that it should be general and should not purport to be binding. As the Criminal Law Committee stated in its letter of November 2: "The main point remains that judicial flexibility is consistent with the long-articulated view of the Judicial Conference that sentencing guidelines should not deprive a judge of the discretion to reach an appropriate sentence."[4] Judge Walton, testifying on behalf of the Criminal Law Committee, further explained that although the Commission might provide guidance regarding factors courts could consider in determining whether to reduce a defendant's sentence, "I don't think those factors . . . should be necessarily determinative as to whether the reduction is afforded."[5]

A policy statement detailing reasons judges might deny or restrict the reduction is not necessary and would intrude on the courts' inherent competence to address differing factual situations in light of the purposes of sentencing. Judge Walton was quite clear that the Commission should not designate limits on the applicability of the amendment to particular categories of defendants. As he stated, "people do change."[6] Further, every defendant sentenced on or after November 1, 2007 will have his or her guideline range calculated in compliance with the amendment without any instructions as to whether or to what extent it should apply. Moreover, a detailed policy statement would invite litigation and appeals. A ruling on a § 3582 motion is reviewed for abuse of discretion, but a detailed policy statement would invite arguments that the judge misinterpreted the statement. If a party established a misinterpretation, it would be an error of law, reviewed *de novo*. If the defendant established a misinterpretation, the government would bear the burden of showing that it was harmless. *Williams v. United States*, 503 U.S. 193 (1992).

The Commission should not explicitly declare any policy statement to be binding. As Professor Chanenson acknowledged, no court has adopted the position that a policy statement in this area is "absolute" and the courts may not agree with such a theory. For the Commission to adopt this position would entail novel statutory and constitutional interpretation, which is not its proper role. Importantly, a policy statement declaring

---

[2] U.S.S.G. § 1B1.10, comment. (n.2).
[3] *See* 18 U.S.C. § 3553(a)
[4] Letter from Hon. Paul Cassell, Chair, Criminal Law Committee to Hon. Ricardo Hinojosa, *Re: Comments on Retroactivity of Crack Cocaine Amendments*, at 5 (Nov. 2, 2007).
[5] United States Sentencing Comm'n, *Public Hearing on Retroactivity*, Tr. at 44 (Nov. 13, 2007) (testimony of Hon. Reggie Walton).
[6] *Id.* at 28.

itself to be binding would create confusion which would have to be resolved through litigation. For example, how would courts apply such a policy statement in cases affected by both a retroactive amendment and the forthcoming *Kimbrough* decision? What would judges do with such a policy statement in cases involving crack and other controlled substances where application of the amendment results in a higher base offense level than would result from the same quantity of crack alone?[7] How could such a policy statement operate in cases where the original sentence was based on a departure, including a § 5K1.1 departure, or variance, already appropriately addressed in Application Note 3? The courts are quite capable of recognizing distinctive situations in which a policy statement cannot or should not be followed.

Finally, we wish to briefly address one issue in the Department's letter of November 1, 2007, in which it asserts that "retroactive application of the crack guideline would result in serious and often violent offenders, who are more likely to recidivate than other offenders, being returned to the community unexpectedly early." In support of this assertion, the Department notes that a majority of the defendants who would be eligible for early release fall in Criminal History Category III or higher, and cites a Commission study to suggest that these offenders have a rate of recidivism ranging from 34.2% up to a "startling" 55.2%.[8] This is simply not true.

The rates of recidivism cited by the Department represent the *average* rates for all types of offenders, not just drug offenders. For Criminal History Categories II and higher, drug offenders actually have the lowest or second lowest rate of recidivism of all offenders, ranging from 16.7% (CHC II) to 48.1 % (CHC V).[9] Even more important, however, is that across all criminal history categories and for all offenders, the largest proportion of "recidivating events" that count toward these rates of recidivism are *supervised release revocations*, which can include revocations based on anything from failing to file a monthly report to failing to report a change of address.[10] In fact, drug trafficking accounts for only a small fraction – as little as 4.1% – of recidivating events for all offenders.[11]

---

[7] Despite the Commission's effort and intent to prevent this result, it can still occur in some cases under the amended guideline. For example, an offense involving 12 grams of crack and 6 grams of powder is assigned a combined base offense level of 26, whereas if the offense had involved 18 grams of crack only, the base offense level would be 24.

[8] *See* DOJ Letter to Hon. Ricardo Hinojosa, *Re: Public Affairs: Retroactivity Public Comment*, at 7 (Nov. 1, 2007) (citing United States Sentencing Comm'n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, Ex. 2 (May 2004)).

[9] *Id.* at 13 & Ex. 11

[10] *Id.* at 4, 5 & Exs. 2, 3, 13.

[11] *Id.* at Ex. 13. "[S]erious violent offenses," which include domestic violence and weapon possession, account for up to no more than 16.8% of recidivating events for all offenders. *Id.*

We also remind the Commission that Amendment 505, which capped the offense level for drug offenses at 38, was made retroactive. If one accepts that quantity reflects culpability, these worst offenders had the opportunity to have their sentences retroactively reduced.

As requested, a letter from Mr. Sady containing an adapted form of the memorandum regarding protocol that has been provided to all Defenders is attached to this letter as Exhibit A.

Again, thank you for your efforts. As always, we stand ready to assist this process in any way we can.

Very truly yours,

JON M. SANDS
Federal Public Defender
Chair, Federal Defender Sentencing Guidelines Committee
AMY BARON-EVANS
ANNE BLANCHARD
SARA E. NOONAN
JENNIFER N. COFFIN
Sentencing Resource Counsel

cc: Hon. Ruben Castillo, Vice Chair
Hon. William K. Sessions III, Vice Chair
Commissioner John R. Steer, Vice Chair
Commissioner Michael E. Horowitz
Commissioner Beryl A. Howell
Commissioner Dabney Friedrich
Commissioner *Ex Officio* Edward F. Reilly, Jr.
Commissioner *Ex Officio* Kelli Ferry
Judith Sheon, Chief of Staff
Kenneth Cohen, General Counsel

EXHIBIT
A

FEDERAL PUBLIC DEFENDER
DISTRICT OF OREGON

101 SW Main Street, Suite 1700
Portland OR 97204
503-326-2123 / Fax 503-326-5524

Branch Offices:

151 W. 7th, Suite 510
Eugene, OR 97401
541-465-6937
Fax 541-465-6975

15 Newtown Street
Medford, OR 97501
541-776-3630
Fax 541-776-3624

STEVEN T. WAX
Federal Public Defender
STEPHEN R. SADY
Chief Deputy Defender
Steven Jacobson
Bryan E. Lessley ▲
Nancy Bergeson
Christopher J. Schatz
Ellen C. Pitcher
Craig Weinerman ▲
Mark Bennett Weintraub ▲
Gerald M. Needham
Thomas J. Hester
Ruben L. Iñiguez
Anthony D. Bornstein
Lisa Hay

Tonia L. Moro +
Susan Russell
Patrick Ehlers
Francesca Freccero
C. Renée Manes
Amy Baggio
Nell Brown
Kristina Hellman
James Maus +
Harold DuCloux III
Alison M. Clark
Lynn Deffebach ⋆
Michelle Sweet ⋆
Shauna Curphey ⋆

▲ Eugene Office
+ Medford Office
⋆ Research/Writing Attorney

November 20, 2007

United States Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Re: Retroactivity of crack amendment

Dear Members of the Sentencing Commission:

Thank you once again for the opportunity to address the Commission on November 13, 2007, regarding the retroactivity of the crack amendments to the Guidelines. During the question period, I stated that I would provide an adapted form of the memorandum we have provided to all Federal Defenders. In doing so, I would like to be clear on several issues. First, there is no uniform policy among Federal Defenders regarding the approach to retroactivity; each District will need to determine whether the suggestions from the marijuana experience should be adopted in the context of crack retroactivity. Second, in Oregon, although we have agreed to share information and approach the matter cooperatively if the amendments are made retroactive, the United States Attorney's office has not entered an agreement regarding the disposition of cases if the Commission rejects the Department of Justice's opposition to retroactivity. Third, the adapted format below is from the concrete steps recommended by the memorandum and subsequent emails, with some revisions and deletions.

The following reflects a 1995 protocol circulated by the Oregon office, where large numbers of marijuana growers became eligible for § 3582(c) motions, with some adaptation for crack cocaine cases.

Communicate With The Other Players: The most important step from which all else followed was communication with the Chief Judge, the United States Attorneys Office,

the Probation Office, and the Bureau of Prisons. All players have an interest in making retroactivity work smoothly, without allocation of resources not previously earmarked for dozens or hundreds of resentencing motions. We want our clients to be in the best position to maximize the potential benefits of a sentence reduction scheme that still leaves discretion with the sentencing judge. We need to be sure CJA panel attorneys are aware of the Guidelines change and the possibilities of retroactive resentencings.

Identify The Potential Litigants: A reliable and complete list of crack cocaine sentencings is not as simple as one would think. In 1995, the Oregon FPD compiled its in-office list, then compared it against U.S. Attorney and Probation Office lists, as well as lists from the Sentencing Commission. The BOP also provided its list from the Sheridan institutions, so we were able to either assure we had the cases covered or we could refer the inmate to counsel in the proper District (*i.e.*, where the inmate was sentenced). It is unclear whether the Sentencing Commission will be providing us with lists of crack sentencings. Because the Probation Office in your District probably has identified, or can identify, most if not all potentially affected individuals, and the Sentencing Commission may not, it is very helpful to work with your Probation Office to compile a comprehensive list, as the Oregon office did in Attachment A.

Obtain Appointments And Authorizations: The initial contact with potential beneficiaries of the amendment was by letter; the form letter we sent is Attachment B. We wanted to assure representation of former clients seeking reduction of their judgment order, but we also needed to assure representation for persons who previously had either Criminal Justice Act counsel or who became indigent after representation by private counsel. The letter to the Magistrate Judge requesting mass appointments of counsel is Attachment C. At the organizing and educating stages, we worked with all clients, regardless of prior conflicts. For individual resentencings, individual lawyers may be needed from the CJA panel.

Educate The Clients: One of our most important functions is to make sure our clients make decisions based on correct information, especially in the prison setting where rumors can be pretty wild. Explaining the benefits, risks, and limitations of the retroactive amendment will pose different challenges in different Districts depending on numbers and proximity to institutions. Individual communication in visits, phone calls, and letters is important, but – if possible – meetings with groups of prisoners has some efficiency and substantive advantages. The BOP at Sheridan has allowed meetings with groups of affected prisoners, which relieves the institution of having to go through the time-consuming effort of arranging individual meetings. The Oregon marijuana team met with large groups of inmates at both the Sheridan camp and the FCI: first, we met with the whole group to present information and to answer non-client specific questions; second, we met with the individuals

privately while the others waited – the individual meetings could be much shorter because most of the issues were already out and discussed. This transparency in the prison was important: everyone had the same basic information and heard responses to the same general questions, which kept rumor mongering and anxiety to a minimum.

Gather The Necessary Information: The basic text is the Presentence Report and the Statement of Reasons Order. For the marijuana retroactive amendments, the Oregon Probation Office made available these basic court documents, also dividing them into the categories of persons in custody, on supervised release, and out of custody. The first group we ranked by projected release date, which the BOP provided but which is also easily available from Inmate Locator on the BOP website, www.bop.gov. Although we ultimately were able to obtain orders regardless of the release dates, it makes sense to be sure that the clients who should already have been released are addressed first. The client interview sheet should be modified for crack cocaine cases.

Recalculate The Sentence: With the help of a paralegal, we then recalculated the sentence, assuming all other specific offense characteristics and adjustments, as well as the same place in the Guidelines range. We also evaluated whether the person would be entitled to immediate release, whether other factors were likely to result in a better sentence, and the effect of any applicable mandatory minimums. The worksheet should be adapted for the crack amendment.

Negotiate With The Government: During the implementation of the marijuana amendments, the government and our office did an initial review of the cases to determine which could likely be resolved by negotiation. For those that were not amenable to easy resolution, the cases were referred to the original prosecutor and defense counsel for either further negotiations or litigation. In the marijuana context, the vast majority of cases were resolved by agreement because the certainty and speed of a negotiated settlement outweighed the value of litigation.

Set Up A Remedy For Over-Incarceration: For some clients, the new sentence means release should already have occurred. In *United States v. Blake*, 88 F.3d 824, 825 (9th Cir. 1996), the court found that the new projected release date triggered supervised release, providing day-for-day reduction in the period of supervised release. By a 1997 Guidelines amendment to U.S.S.G. § 1B1.10 (b), the Commission adopted a program statement limiting sentence reductions to time served, but Application Note 5 notes the availability of equitable relief from over-incarceration, considering the totality of circumstances, in the form of reduced, modified, or terminated supervised release under 18 U.S.C. § 3583. The original reason for the Guidelines amendment became obsolete with the Supreme Court case, in the

context of *Bailey*, reversing *Blake*, which also affirmed the availability of § 3583(e) relief. *United States v. Johnson*, 529 U.S. 53, 60 (2000)("There can be no doubt that equitable considerations of great weight exist when an individual is incarcerated beyond the proper expiration of his prison term."). This remedy for over-incarceration has also been approved by the Ninth Circuit in the context of good time credits (*Mujahid v. Daniels*, 413 F.3d 991, 994-95 (9th Cir. 2005)), and DAP denial (*Gunderson v. Hood*, 268 F.3d 1149, 1151 (9th Cir. 2001)). There is an open question how a sentence to time served is determined given the requirement that the BOP calculate the service of the sentence in the first instance. *See United States v. Wilson*, 503 U.S. 329, 335 (1992).

Implement Agreed Sentences: We found that, in the marijuana context, for most clients, the benefits of an agreed resentencing – especially those resulting in immediate release – outweighed the risk and uncertainty of litigation. Many of the equitable considerations that could potentially warrant litigation could be adequately considered in a negotiated settlement. For those cases involving agreements, we sent packets to each of the individual judges with a cover letter, a motion for resentencing, and a proposed order (Attachment D). The BOP, through its institutional counsel, agreed to recalculate in advance so that, as soon as the orders hit their fax machines, they could enter the new sentence with the new projected release date. BOP counsel also assured that the Clerk's office had notice of the right fax number for each prisoner, since some clients were not in Sheridan. On the morning of November 1, 1995, the judges signed about 120 orders reducing sentences for marijuana growers, many of whom went home that day.

Evaluate Supervised Release Violators: In addition to prisoners serving their initial term of imprisonment, there will be supervised release violators whose sentences are potentially affected. We litigated this question in *United States v. Etherton*, 101 F.3d 80 (9th Cir. 1996), where the court upheld a district court's statutory authority to release a prisoner serving time for violation of his supervised release based on the retroactive amendment. In response to *Etherton*, the Commission adopted a 1997 amendment adding Application Note 4 that states that a reduction in the term of imprisonment for violation of supervised release is not authorized.

Yours truly,

Stephen R. Sady
Chief Deputy Federal Public Defender

SRS/jcd
O:\Client\Sady\Crack 2007\sentencing commission.ltr.wpd

Cocaine Base Drug Cases

as of October 25, 2007,

Facts	Defendant	Docket	Judge	Conviction	Sentence Date	BOP mos	Defense	AUSA	USPO
	[redacted]		Haggerty	• Possession with Intent to Distribute 5 Grams or More Cocaine Base	10-06-03	60	David Audet	Kerin	Painter
	[redacted]		rown	• Possess with Intent to Distribute 5 Grams or More of Mixture with Cocaine Base	09-20-01	135	Lynn Morgan	Monbe	Painter
	[redacted]		Mannan	• Possess with Intent to Distribute [nlse drugs including Cocaine Base] (2 Counts)	02-07-05	97 + 97 cc	Todd Dofferding	Stuckey	Painter
3	[redacted]		edden	• Possession with Intent to Distribute Cocaine Base	10-02-03	120 cc to undischarged MCCo case	Dennis Balske	Bickers	Painter
	[redacted]		Haggerly	• Conspiracy to Distribute Cocaine Base; • Money Laundering	12-03-01	240	Thomas Price	Scruggs	Stewart
24	[redacted]		Jones	• Distribution of Cocaine Base	01-05-93	60	Brian Coury	Sussman	Painter
44	[redacted]		Redden	• Possession with Intent to Distribute a Mixture or Substance Containing a Detectable Amount of Cocaine Base	11-13-03	102 cc to 98-496 currently serving	Dennis Balske	Bickers	Painter
	[redacted]		BR Brown	• Distribution of Cocaine Base	04-17-00	120	Thomas Price	Stuckey	Stewart
	[redacted]		BR Brown	• Possession with Intent to Distribute Cocaine, Cocaine Base and Methamphetamine	11-18-02	121	Lauri Bender	Haub	Engle
30	[redacted]		I- Hogan	• Possession of Crack Cocaine	07-03-02	41	Kelly Beckley	Thomson	
33	[redacted]		Redden	• Conspiracy to Distribute Cocaine	01-10-05	151	Richard Smith	Bickers	Engle
13	[redacted]		Haggerty	• Possession with Intent to Distribute 50 Grams or More Cocaine	08-05-02	120	Ivan Karmel	Stuckey	Engle
34	[redacted]		Mannan	• Conspiracy to Possess with Intent to Distribute Cocaine and Cocaine Base	02-07-05	70	Drynn G. Hershman	Stuckey	Engle
28	[redacted]		'A Haggerty	• Conspiracy to Possess with Intent to Distribute and to Distribute More than Five Kilograms Cocaine and Cocaine Base; • Distribution of 5 or More Grams of Cocaine Base (6 counts)	06-11-01	210 + 210 cc	Emily Simon	Scruggs, Holsinger	Engle
	[redacted]			• Unlawful Entry by Eluding Inspection and Examination by Immigration		24 cc			

Attachment A

FEDERAL PUBLIC DEFENDER FOR
THE DISTRICT OF OREGON

STEVEN T. WAX
Federal Public Defender
STEPHEN R. SADY - Chief Deputy
Steven Jacobson
Colleen B. Scissors
Bryan E. Lessley*
Nancy Bergeson
Christopher J. Schatz
Ellen C. Pitcher
Michael R. Levine
Dennis N. Balske
Arron Guevara
Craig Weinerman*
Mark Bennett Weintraub*
Charles G. Rogers
*Eugene Branch Attorneys

Reply: 851 SW Sixth Avenue
Suite 1375
Portland, OR 97204
(503) 326-2123
FAX: (503) 326-5524

44 W. Broadway
Suite 400
Eugene, OR 97401
(503) 465-6937
FAX: (503) 465-6975

[redacted]
Reg. No. [redacted]
FJC Sheridan
P.O. Box 6000
Sheridan, OR 97378-6000

Dear Mr. [redacted]

This office has been reviewing the marijuana cases prosecuted in this district since November 1989 to determine whether people are eligible for benefits under the retroactive amendment to the marijuana guideline. The amendment returns the equivalency from one plant = one kilogram to one plant = 100 grams. The mandatory minimum, if it applies to you, is an issue that will probably need to be addressed on a case-by-case basis. Regardless of the application of the mandatory minimum, you should have representation to assure you obtain what benefits may be possible.

Since you were sentenced based on the old plant equivalency, we need to determine whether you are represented or need to be represented. We would like to arrive at agreed orders on as many cases as possible so new sentences can be recomputed and ordered as soon as the guideline goes into effect on November 1, 1995.

I plan to be at Sheridan Camp on Tuesday, October 17, 1995, at 5:30 p.m. to discuss the amendments. I hope you can attend. We will be meeting individually to determine who has retained counsel and who needs motions filed or other assistance by this office.

I look forward to seeing you Tuesday.

Yours truly,

Stephen R. Sady
Chief Deputy Federal Public Defender

SRS:cm(mj-ltr1)

Attachment B

FEDERAL PUBLIC DEFENDER FOR THE DISTRICT OF OREGON

STEVEN T. WAX
Federal Public Defender
STEPHEN R. SADY - Chief Deputy
Steven Jacobson
Colleen B. Scissors
Bryan E. Lessley*
Nancy Bergeson
Christopher J. Schatz
Ellen C. Pilcher
Michael R. Levine
Dennis N. Balske
Aaron Guevara
Craig Weinerman*
Mark Bennett Weinraub*
Charles G. Rogers
*Eugene Branch Attorneys

Reply: 851 SW Sixth Avenue
Suite 1375
Portland, OR 97204
(503) 326-2123
FAX: (503) 326-5524

44 W. Broadway
Suite 400
Eugene, OR 97401
(503) 465-6937
FAX: (503) 465-6975

October 13, 1995

[redacted] OUT OF CUSTODY OR DISTRICT

Dear [redacted]

This office has been reviewing the marijuana cases prosecuted in this district since November 1989 to determine whether people are eligible for benefits under the retroactive amendment to the marijuana guideline. The amendment returns the equivalency from one plant = one kilogram to one plant = 100 grams. The mandatory minimum, if it applies to you, is an issue that will probably need to be addressed on a case-by-case basis. Regardless of the application of the mandatory minimum, you should have representation to assure you obtain what benefits may be possible.

Please call this office collect right away so we can determine if you are represented by retained counsel or need assistance. Ask for me; if I am not available, ask for Christine or Lynn. We are trying to be sure everybody receives assistance well before November 1. Please be sure to call as soon as possible.

Yours truly,

Stephen R. Sady
Chief Deputy Federal Public Defender

SRS:cm(mj-ltr.b)

Attachment B

FEDERAL PUBLIC DEFENDER FOR
THE DISTRICT OF OREGON

STEVEN T. WAX
Federal Public Defender

STEPHEN R. SADY
Chief Deputy

MAIN OFFICE (REPLY TO):
851 SW Sixth, Suite 1375
Portland, OR 97204
(503) 326-2123/FAX (503) 326-5524

BRANCH OFFICE:
44 W. Broadway, Suite 400
Eugene, OR 97401
(503) 465-6937/FAX (503) 465-6975

October 13, 1995

The Honorable Donald C. Ashmanskas
United States Magistrate Judge
Gus J. Solomon U.S. Courthouse
620 SW Main
Portland, OR 97205

Re: Retroactive Marijuana Amendment Cases

Dear Judge Ashmanskas:

The people on the attached list are among those in custody in connection with convictions for growing marijuana. We believe they are potential beneficiaries of the retroactive guidelines amendment changing the plant equivalency from one kilogram to 100 grams. They or their prior attorneys have requested that counsel be appointed to represent them regarding a potential motion to reduce under 18 U.S.C. §3582(c) or such other advantage as can be obtained based on the change in law. Since they are in custody, they do not appear to have sufficient resources to retain counsel to assist them with this matter. This is a sentencing procedure where liberty interests are at stake, so the Criminal Justice Act applies.

The individuals on the first list will be represented by this office; those on the second list have CJA panel attorneys who will represent them.

For the foregoing reasons, we respectfully request that the Court sign the attached orders assigning this office or CJA attorneys to represent these defendants. We expect many more such requests for counsel in the near future as we receive more requests for assistance from inmates.

Yours truly,

Steven T. Wax
Federal Public Defender

SRS:cm(mj-ltr.c)

Enclosure

Attachment C

Stephen R. Sady, OSB #81099
Chief Deputy Federal Public Defender
851 SW Sixth Avenue, Suite 1375
Portland, OR 97204
(503) 326-2123

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff, vs [redacted] Defendant.	CASE NO. ORDER APPOINTING COUNSEL

IT IS ORDERED that the Federal Public Defender is appointed as counsel for [redacted] pursuant to the provisions of 18 U.S.C. §3006A.

DATED this _____ day of October, 1995.

The Honorable Donald C. Ashmanskas
United States Magistrate Judge

PRESENTED BY:

Steven T. Wax/Stephen R. Sady
Federal Public Defender

Attachment C

FEDERAL PUBLIC DEFENDER FOR
THE DISTRICT OF OREGON

STEVEN T. WAX
Federal Public Defender

STEPHEN R. SADY
Chief Deputy

MAIN OFFICE (REPLY TO):
851 SW Sixth, Suite 1375
Portland, OR 97204
(503) 326-2123/FAX (503) 326-5524

BRANCH OFFICE:
44 W. Broadway, Suite 400
Eugene, OR 97401
(503) 465-6937/FAX (503) 465-6975

October 24, 1995

The Honorable Helen J. Frye
U.S. District Judge
118 U.S. Courthouse
620 S.W. Main
Portland, Oregon 97205

Re: [redacted]

Dear Judge Frye:

[redacted] received a sentence to fifty-one months incarceration by this Court on May 26, 1992. He is the beneficiary of the retroactive amendment on marijuana counts. His base offense level in the presentence report will change from 24 to 18, reducing his guideline range to 27-33 months. No mandatory minimum applies.

The government and the defense have met and agreed that the new sentence should be twenty-seven months. This agreement is based on the original calculation of specific offense characteristics, adjustments, and departures, as well as the location of the original sentence within the guideline range. The parties and the Bureau of Prisons agree to the form and content of the order that accompanies this motion.

Absent legislation from Congress canceling the retroactive application of the change in plant equivalency, the retroactive amendment goes into effect on November 1, 1995. [redacted] currently in custody and appears to be eligible for immediate release or a favorable change in custody status. For that reason, we are filing the defendant's motion and the proposed agreed order, copies of which are attached, prior to that time. However, the parties are agreed that the Court should not sign the order until November 1 to assure that the guideline is in effect. The order reducing sentencing should be provided to the Bureau of Prisons upon its signing in order to secure [redacted]elease.

We hope the Court agrees with the proposed resolution the parties have reached. If so, we would appreciate it if the order could be signed and faxed to the BOP early on November 1.

Attachment D

We have provided the BOP with the tentative new sentence, so the recalculation will be complete and the order can go into effect as soon as the amendment goes into effect.

The question of the date of commencement of supervised release is preserved.

Thank you for your attention to this matter.

Yours truly,

Stephen R. Sady
Chief Deputy Federal Public Defender

SRS:cm[ecolling-11.hjf]

cc: AUSA Leslie Baker
USPO Kathy Zimmerman
[redacted]
Mary Sullivan

Attachment D

Stephen R. Sady, OSB #81099
Chief Deputy Federal Public Defender
851 SW Sixth Avenue, Suite 1375
Portland, OR 97204
(503) 326-2123

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff, vs. [redacted] Defendant.	[redacted] MOTION TO REDUCE SENTENCE

The defendant, through his attorney, Stephen R. Sady, respectfully moves this Court pursuant to 18 U.S.C. §3582(c) for an order reducing the term of imprisonment from fifty-one months to a sentence of twenty-seven months on the grounds that the retroactive amendment to the marijuana plant-count guideline changes the base offense level in [redacted] presentence report from 24 to 18. The government and the defense agree the new sentence should be twenty-seven months imprisonment based on the prior computation of specific offense characteristics, adjustments, and departures, as well as the location of the original sentence within the guideline range.

RESPECTFULLY SUBMITTED this October 24, 1995.

Stephen R. Sady
Attorney for Defendant

Attachment D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

[redacted]

Defendant.

[redacted]

ORDER REDUCING SENTENCE

This matter having come before the Court upon the motion of the defendant for reduction of sentence pursuant to 18 U.S.C. §3582(c), and the Court having found that the retroactive amendment to the marijuana guideline reduces the base offense level from 24 to 18, and the parties having agreed upon the disposition of this case,

IT IS HEREBY ORDERED that the term of imprisonment originally imposed is reduced to eight months;

IT IS FURTHER ORDERED THAT all other terms and provisions of the original judgment remain in effect.

Unless otherwise ordered, the defendant shall report to the United States Probation Office

/ / /

/ / /

/ / /

Attachment D

closest to the release destination within seventy-two hours.

RESPECTFULLY SUBMITTED this _____ day of _____, 1995.

The Honorable Helen J. Frye
United States District Judge

SUBMITTED BY:

Stephen R. Sady
Attorney for Defendant

John Deits
Assistant U.S. Attorney

Attachment D

FEDERAL PUBLIC DEFENDER FOR
THE DISTRICT OF OREGON

STEVEN T. WAX
Federal Public Defender

STEPHEN R. SADY
Chief Deputy

MAIN OFFICE (REPLY TO):
851 SW Sixth, Suite 1375
Portland, OR 97204
(503) 326-2123/FAX (503) 326-5524

BRANCH OFFICE:
44 W. Broadway, Suite 400
Eugene, OR 97401
(503) 465-6937/FAX (503) 465-6975

October 25, 1995

The Honorable Helen J. Frye
U.S. District Judge
118 U.S. Courthouse
620 S.W. Main
Portland, Oregon 97205

Re: [redacted]

Dear Judge Frye:

[redacted] received a sentence to seventy months incarceration by this Court on May 11, 1992. He is the beneficiary of the retroactive amendment on marijuana counts. His base offense level in the presentence report will be changed from 26 to 20, reducing his guideline range to the mandatory minimum of sixty months. The parties are agreed that further potential benefits of the retroactive amendments can be negotiated or litigated without prejudice from this initial §3582(c) motion.

The government and the defense have met and agreed that the new sentence should be sixty months. This agreement is based on the original calculation of specific offense characteristics, adjustments, and departures, as well as the location of the original sentence within the guideline range. The parties and the Bureau of Prisons agree to the form and content of the order that accompanies this motion.

Absent legislation from Congress canceling the retroactive application of the change in plant equivalency, the retroactive amendment goes into effect on November 1, 1995. [redacted] is currently in custody and appears to be eligible for immediate release or a favorable change in custody status. For that reason, we are filing the defendant's motion and the proposed agreed order, copies of which are attached, prior to that time. However, the parties are agreed that the Court should not sign the order until November 1 to assure that the guideline is in effect. The order reducing sentencing should be provided to the Bureau of Prisons upon its signing in order to secure [redacted] release.

We hope the Court agrees with the proposed resolution the parties have reached. If so, we would appreciate it if the order could be signed and faxed to the BOP early on November 1.

Attachment D

We have provided the BOP with the tentative new sentence, so the recalculation will be complete and the order can go into effect as soon as the amendment goes into effect.

Thank you for your attention to this matter.

Yours truly,

Stephen R. Sady
Chief Deputy Federal Public Defender

SRS:cm[wcolling-11.hjf]

cc: AUSA Leslie Baker
USPO Kathy Zimmerman
[redacted]
Mary Sullivan

Attachment D

Stephen R. Sady, OSB #81099
Chief Deputy Federal Public Defender
851 SW Sixth Avenue, Suite 1375
Portland, OR 97204
(503) 326-2123

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff, vs. [redacted], Defendant.	[redacted] MOTION TO REDUCE SENTENCE

The defendant, through his attorney, Stephen R. Sady, respectfully moves this Court pursuant to 18 U.S.C. §3582(c) for an order reducing the term of imprisonment from seventy months to a sentence of sixty months on the grounds that the retroactive amendment to the marijuana plant-count guideline changes the base offense level in [redacted] presentence report from 26 to 20. The government and the defense agree the new sentence should be sixty months imprisonment based on the prior computation of specific offense characteristics, adjustments, and departures, as well as the location of the original sentence within the guideline range.

RESPECTFULLY SUBMITTED this October 25, 1995.

Stephen R. Sady
Attorney for Defendant

Attachment D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

[redacted]

Defendant.

[redacted]

ORDER REDUCING SENTENCE

This matter having come before the Court upon the motion of the defendant for reduction of sentence pursuant to 18 U.S.C. §3582(c), and the Court having found that the retroactive amendment to the marijuana guideline reduces the base offense level from 26 to 20, and the parties having agreed upon the disposition of this case,

IT IS HEREBY ORDERED that the term of imprisonment originally imposed is reduced to sixty months;

IT IS FURTHER ORDERED THAT all other terms and provisions of the original judgment remain in effect.

Unless otherwise ordered, the defendant shall report to the United States Probation Office

/ / /

/ / /

/ / /

Attachment D

closest to the release destination within seventy-two hours.

RESPECTFULLY SUBMITTED this _____ day of _____, 1995.

_____
The Honorable Helen J. Frye
United States District Judge

SUBMITTED BY:

_____
Stephen R. Sady
Attorney for Defendant

_____
John Deits
Assistant U.S. Attorney

Attachment D