

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

**CHAMBERS OF
H. LEE SAROKIN
JUDGE**

**Room 329
U.S. Post Office Building
Newark, New Jersey 07102
(201) 645-2448
FTS (8) 341-2448**

February 4, 1991

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

Attention: Communications Director

I submit the following three situations for your consideration:

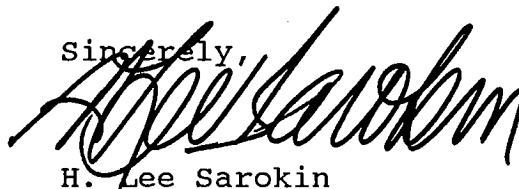
1. Frequently an indictment charges a conspiracy alleging a specific quantity of illegal drugs. During the course of the trial varying testimony is presented as to the amounts intended or involved. Thus a conviction is not necessarily dispositive of the issue of quantity for sentencing purposes. It might be appropriate to pose an interrogatory to the jury determining the quantity involved, if they otherwise find a defendant guilty. Otherwise the court is required to make that determination at the time of sentencing.

2. Likewise, I am concerned with the frequency with which the government enters into plea bargain agreements and stipulates the amount of drugs involved for guidelines purposes, but then proceeds to assert and attempts to prove a greater amount against those defendants who elect to go to trial. Apart from whether or not such stipulations should estop the government from such conduct as a matter of law, there is a serious question whether this practice should be dealt with as a matter of policy.

3. In many cases the amount of drugs is initiated by the undercover agent acting in the capacity of a purchaser or seller. In other words, the government agent has the ability to fix the level of punishment by increasing the amount he seeks to purchase or sell. In many instances the quantities requested reflect the defendant's original intentions and/or sources, but frequently it is the agent who enhances the level by discussing larger quantities than those offered, sought by or available to the defendant.

Although clearly not an entrapment scenario in the traditional sense, a defendant is enticed into buying or selling more than he wants or has available and thereby is subjected to a much harsher sentence solely by virtue of the government's injecting larger quantities into the conversations. This is particularly true in respect to conspiracy counts where defendant can promise to deliver much more than he can obtain just for the purpose of satisfying someone who appears to be a large prospective purchaser.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Lee Sarokin", written over the word "Sincerely,".

H. Lee Sarokin

HLS/jm

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Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)



February 14, 1991

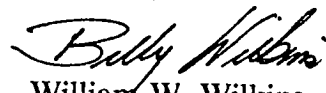
Honorable H. Lee Sarokin
United States District Court
Room 329 U.S. Post Office Building
Newark, NJ 07102

Dear Judge Sarokin:

I recently received your letter responding to my earlier request for comment on the operation of the sentencing guidelines. Thank you for taking the time to respond. Your letter has been circulated to all Commissioners.

With highest personal regards, I am

Sincerely,


William W. Wilkins, Jr.
Chairman