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United States Sentencing Commission  
Attention: Communications Director  
1331 Pennsylvania Avenue N.W., Suite 1400  
Washington D.C. 24004

Dear Communications Director:

Please accept this letter as a comment on the guidelines reliance on drug quantities in punishing drug offenders, particularly for less culpable aiders and abettors and/or minimal participants. See 3B1.2.

As a practitioner in the 10th Circuit, my familiarity with that court's opinions regarding upward departures based on uncharged quantities has become more the rule than the exception. Even though the court has commented in numerous cases that the guidelines recognize that upward departure should only be rarely be dealt out, my study of that court's opinions in the last 90 days finds upward departures to be almost regularly applied by the trial court and affirmed by the appellate court. To me there can be no greater injustice in the sentencing guidelines than for a defendant to be sentenced upon a plea of guilty to a quantity of drugs not alleged or proven in the information or indictment. The concept of relevant conduct can encompass and/or incorporate the overall quantity of a alleged conspiracy even though the defendant himself may have only been involved in one minor transaction. Because of the existing state of the law in this area, the trial courts are consistently applying guideline sentences based on the over all quantities alleged to have been distributed or potentially manufactured by a drug conspiracy.

It has been my experience, having regularly defended drug cases in the federal courts, that prosecutors may have a fairly decent case involving minimal quantity and achieve a conviction. Then at the time of the sentencing, the court can rely on third party hearsay and other evidence not subject to the rules regarding admissibility to produce quantity increases far beyond the scope of the charge for which the defendant stood accused and/or was convicted and/or pled guilty to. The concept of proof beyond a reasonable doubt at those proceedings has been rejected by the courts. This process in turn allows the government to avoid its more difficult burden of proof beyond a reasonable doubt at trial and in essence convict and increase sentences based on a mere preponderance of the evidence and evidence not guarded by the strict rules of admissability.

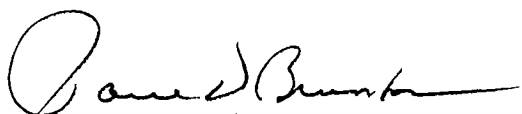
The reality of all of this procedure is creating a system which cannot cope with the numbers of individuals being sentenced, particularly for such long periods of time.

As an old state warden told me in the early 1970s, "Prisoners who have no hope of parole or early release become incorrigible and incredibly difficult to deal with". They have nothing to loose!

Where is the equality or justice in the guidelines when some poor schmuck who may have dealt only a minute quantity of drugs is sentenced based on the overall drug quantity alleged to have been attributed to a large international conspiracy?

Your consideration in reassessing the guideline sentences and quantities attributed to those individuals subject to its strictures is greatly appreciated.

Yours in Justice,

A handwritten signature in dark ink, appearing to read "Paul D. Brunton", is written over a horizontal line.

Paul D. Brunton  
Attorney at Law

PDB: se