

Sidney L. Moore, Jr., Attorney at Law

Trinity-Peachtree Building - 175 Trinity Avenue, S.W. - Atlanta, Georgia 30303

*Sidney L. (Sid) Moore, Jr.
Attorney at Law*

(404) 522-2588
Fax (404) 523-2573

January 17, 1995

Mr. Michael Courlander
Public Information Specialist
1 Columbus Circle NE
Suite 2-500
Washington, D.C. 20002

Re: Revision of Sentencing Guidelines

Dear Mr. Courlander:

I understand that you are the person through whom one might suggest revisions of the sentencing guidelines, or that you might be able to direct me to the proper person.

I have recently had an opportunity to review the guidelines in connection with a case I was handling in the United States District Court for the Northern District of Georgia. The name of the client is irrelevant for the purpose of this letter, as this comment is for general application.

In my case (see Exhibit D-1) quantities of methamphetamine (55% concentration) and cocaine (88% concentration) were seized by the DEA and went into the calculation of the Offense Level for the client. Based on the guidelines, the total "marijuana equivalent" of the substances seized from the Defendant was 139.69 kilograms, which with certain subtractions and additions (see exhibit) yielded an offense level of 25. This provided a sentencing range of 57 to 71 months, and the client in fact received a 60 month sentence.

Out of pure curiosity, I redid the calculation using 100% pure cocaine in the same quantities that were seized, and I was amazed to find that the calculation (see Exhibit D-2) yielded a marijuana equivalency of only 45.53 grams, with a resulting offense level (with the same additions and subtractions) of only 19. This offense level produced a guideline range of 30 to 37 months in-carceration.

In other words, under the guidelines the sentence for a quantity of 55% methamphetamine is double that for 100% cocaine in the same quantity. This simply doesn't make sense. Cocaine, according to my clients and others I have discussed it with, is far more dangerous to take, and its distribution presents more violences and other societal risks than are involved in the distribution of methamphetamine. Additionally, cocaine trafficking far more often involves international smuggling, official corruption, and even violence against the judicial system itself.

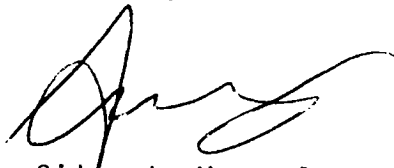
This apparent anomaly should be corrected. I have no idea what the origin was, but it has been suggested to me that perhaps methamphetamine cases are rare in the federal system compared to cases involving cocaine and marijuana, and thus the sentencing results studied were not of sufficient number to be a valid sample. Or, perhaps the majority of the smaller methamphetamine cases are in State Court and this skews the sample. In any event, the resultant comparison between the sentence guideline ranges of 55% (or even 1%) methamphetamine and 100% pure cocaine is not justified by any known facts.

Please let me know your response to this problem. Surely it might be remedied by increasing the recommendation on cocaine, as by decreasing the recommendation on methamphetamine, but I would imagine that the cocaine cases, being far greater numbers, would be the firmer and truer reflection of actual court activity than the methamphetamine cases, and the correct way to solve the problem would be to adjust the methamphetamine guidelines downward.

If, on the other hand, you believe that 1% methamphetamine should be considered five times as bad as 100% cocaine of equal weight, I would appreciate knowing why.

Thank you for your attention to these comments, and I look forward to your reply.

Sincerely,



Sidney L. Moore Jr.

EXHIBIT D 1

CALCULATION OF OFFENSE LEVEL

			Marijuana Equivalent
Exhibit A	Methamphetamine (sold)	27.7 grams	27.7 kilograms
Exhibit B	Methamphetamine (sold)	83.6 grams	83.6 kilograms
Exhibit C	Methamphetamine (possessed)	3.8 grams	3.8 kilograms
Exhibit C	Methamphetamine (possessed)	2.6 grams	2.6 kilograms
Exhibit C	Cocaine (Possessed)	109.9 grams	21.98 kilograms
Exhibit D	Marijuana (possessed)	6.5 grams	<u>.01 kilograms</u>
	TOTAL		139.69 kilograms

139.69 kilograms of marijuana = LEVEL 26

ACCEPTANCE -3

FIREARM +2

TOTAL LEVEL 25

LEVEL 25 = 57 to 71 months

file
Merlino

EXHIBIT D-2

CALCULATION TREATING ALL
METHAMPHETAMINE AND COCAINE
AS IF IT WERE PURE COCAINE

			MARIJUANA EQUIVALENT
EXHIBIT A	Cocaine (100%)	27.7 grams	5.54 kilograms
EXHIBIT B	Cocaine (100%)	83.6 grams	16.72 kilograms
EXHIBIT C	Cocaine (100%)	3.8 grams	.76 kilograms
EXHIBIT C	COCAINE (100%)	2.6 grams	.52 kilograms
EXHIBIT C	COCAINE (100%)	109.9 grams	21.98 kilograms
EXHIBIT D	MARIJUANA	6.5 grams	<u>.01 kilograms</u>
		TOTAL	45.53 kilograms

45.53 kilograms of marijuana = LEVEL 20

ACCEPTANCE	- 3
FIREARM	<u>+ 2</u>

TOTAL LEVEL 19

LEVEL 19 = 30 to 37 months

A

DEP IDENTIFIER

-S2

6. CUSTOMS REFERRAL

Decatur, Ga.

☐ Case No. OR ☐ Seizure No.
No.

OFFICE SUBUNIT

LATENT FINGERPRINTS REQUESTED

15. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG ☒ NO (Included above) ☐ YES (If Yes, enter exhibit no. and describe original container fully)

REMARKS: On 7-14-93 SG3-93-X039 purchased 1 ounce of methamphetamine from Thomas Bernard Merlino at Tommys Bar and Grill 1713 Griffin St. Decatur, Ga. at approximately 8:20pm for \$1500.00 OGF. Exhibit 1 was turned over to the custody and control of TF/A M.Bailey. TF/A Bailey stored Ex. 1 in the DeKalb County Police Dept. evidence overnight storage. TF/A Bailey picked up and maintained the control and custody of Ex. 1 until mailed to DEA SEL Miami registered mail, return receipt requested.

RUSH RUSH RUSH

TF/A Michael Bailey

G/S Leo A. DeFranco

16. SUBMITTED BY SPECIAL AGENT (Signature)

17. APPROVED BY (Signature & Title)

LABORATORY EVIDENCE RECEIPT REPORT

18. No. PACKAGES 1	19. RECEIVED FROM (Signature & Date) RM 622 095 856	20. TITLE
21. SEAL ☐ Broken ☒ Unbroken	22. RECEIVED BY (Signature & Date) K. Krut 7/19/95	23. TITLE F/C

LABORATORY ANALYSIS / COMPARISON REPORT

3/10/93

24. ANALYSIS SUMMARY AND REMARKS

Exhibit 1

Gross: 56.5 g

Net: 27.7 g

Note: Original containers submitted for fingerprint examination.

25. Exhibit No.	26. Lab. No.	27. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			31.	32.
			28. Strength	29. Measure	30. Unit	TOTAL NET	RESER
1	76964	d-methamphetamine Hydrochloride	55	%		15.2 g	23.9
3. ANALYST (Signature): <i>Ivette M. Vallejo</i>			34. TITLE Forensic Chemist Ivette M. Vallejo			35. DATE COMPLETED 08/05/93	
36. APPROVED BY: <i>Ivette M. Vallejo</i>			37. TITLE Laboratory Director			38. LAB LOCATION Miami, Flor	

1. HOW OBTAINED (Check) ☒ Purchase ☐ Seizure ☐ Free Sample ☐ Lab. Seizure ☐ Money Flashed ☐ Compliance Sample (Non-Criminal) ☐ Other (Specify)		2a. FILE NO.	1b. PROGRAM CODE	3. G-DEP ID IG3-S2
4a. WHERE OBTAINED (City, State/Country) Decatur, Georgia		4b. DATE OBTAINED 7/28/93		
5a. REFERRING AGENCY (Name)		5b. REFERRAL ☐ Case No. OR ☐ Seizure No. No.		

9. Exhibit No. 2	10. FDIN (8 characters)	11. ALLEGED DRUGS Methamphetamine	12. MARKS OR LABELS (Describe fully) 3 ziplocks bags containing white powder within (1) bag. (Latent fingerprints requested)	13. Seized	14. Submitted	15. Purchase Cost
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16. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☐ YES (If Yes, enter exhibit no. and describe original container fully)

REMARKS:
On 7/28/92 SG3-93-X03 purchased 3 ounces of methamphetamine from Thomas Bernard MERLINO at Tommy's Bar & Grill, 1713 Church Street, Decatur, Georgia at approximately 6:50 p.m. for 4350.00. Exhibit #2 was turned over to the custody and control of TF/A M. Bailey. TF/A Bailey stored Exhibit #2 in the Dekalb County P.D. Evidence overnight storage. TF/A Bailey picked up and maintained the control and custody of Exhibit #2 until mailed to DEA SEL Miami, FL registered mail return receipt requested.

17. SUBMITTED BY SPECIAL AGENT (Signature)
TF/A Michael Bailey

18. APPROVED BY (Signature & Title)
G/S Leo DeFranco

LABORATORY EVIDENCE RECEIPT REPORT

19. No. PACKAGE 145EE	20. RECEIVED FROM (Signature & Date) RM 623 p75 7/29/93	21. TITLE
22. SEAL ☐ Broken ☒ Unbroken	23. RECEIVED BY (Signature & Date) 7.2.93	24. TITLE ACT. EV. TECH

LABORATORY ANALYSIS/COMPARISON REPORT

25. ANALYSIS SUMMARY AND REMARKS

Exhibit 2
Gross: 115.8 g
Net: 83.6 g

Note: Original containers submitted for fingerprint examination.

26. Exhibit No. 2	27. Lab. No. 77104	28. ACTIVE DRUG INGREDIENT (Established or Common Name) d-methamphetamine Hydrochloride	WEIGHT PER UNIT ANALYZED			32. TOTAL NET 46 g	33. RESERVE 81.2 g
			29. Strength 55	30. Measure 2	31. Unit		
ANALYST (Signature) Ivette M. Vallojo			35. TITLE Forensic Chemist			36. DATE COMPLETED 08/12/93	
37. APPROVED BY			38. TITLE Laboratory Director			39. LAB LOCATION Miami, Florida	

1. HOW OBTAINED (Check) ☐ Purchase ☒ Seizure ☐ Free Sample
☐ Lab. Seizure ☐ Money Flashed ☐ Compliance Sample (Non-Criminal)
☐ Other (Specify) _____

2a. FILE NO. _____ 2b. PROGRAM CODE _____ 3. G-DEP ID _____ IGA 77

WHERE OBTAINED (City, State/Country) Decatur, GA 4b. DATE OBTAINED 04-28-94

5a. REFERRING AGENCY (Name) DEA Atlanta 6b. REFERRAL ☐ Case No. OR ☐ Seizure No. _____
 No. _____

9. Exhibit No.	10. FOIN (8 characters)	11. ALLEGED DRUGS	12. MARKS OR LABEL	13. Seized	14. Submitted	15. Purc. Cr.
5		Methamphetamine	Four plastic bags containing white powder, one yellow envelope containing brown powder in a plastic bag and one yellow envelope containing a white chunky substance in a plastic bag corner. Items are marked "1B"	187.7gms	167.7gms	N/A

16. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☒ NO (Included above) ☐ YES (If Yes, enter exhibit no. and describe original container fully)

REMARKS:

Exhibit 5 was seized during the service of a search warrant on Tommy's Bar and Grill in Decatur GA. Exhibit 5 remained in the custody of IF/A Bailey until processed as evidence and sent by registered mail to SEL.

17. SUBMITTED BY SPECIAL AGENT (Signature) Michael Bailey 18. APPROVED BY (Signature & Title) [Signature] ASST

LABORATORY EVIDENCE RECEIPT REPORT

19. No. PACKAGES 1 KEE 20. RECEIVED FROM (Signature & Date) RM 429613673 21. TITLE _____
 22. SEAL ☐ Broken ☒ Unbroken 23. RECEIVED BY (Signature & Date) [Signature] 1PS 5/2/94 24. TITLE F/C

LABORATORY ANALYSIS/COMPARISON REPORT

25. ANALYSIS SUMMARY AND REMARKS

Exhibit 5
 Gross: 168.5 g
 Net: Exhibit 5.01: 3.8 g
 Exhibit 5.02: 2.6 g
 Exhibit 5.03: 109.9 g

8066

CCV

26. Exhibit No.	27. Lab. No.	28. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			32. TOTAL NET	33. RESE
			29. Strength	30. Measure	31. Unit		
5.01	80603	d-Methamphetamine Hydrochloride	92	%		3.5 g	3.1 g
5.02	80606	d-Methamphetamine Hydrochloride	35	%		0.91 g	1.7 g
5.03	80603	Cocaine Hydrochloride	38	%		96.7 g	107.3 g

34. ANALYST (Signature) Juene M. Vallette by RSB 35. TITLE Forensic Chemist
 Ivette M. Vallette 36. DATE COMPLETED 5/23/94
 37. APPROVED BY [Signature] 38. TITLE Laboratory Director 39. LAB LOCATION Miami, Fla.

1. HOW OBTAINED (Check) ☐ Purchase ☒ Seizure ☐ Free Sample ☐ Lab. Seizure ☐ Money Flashed ☐ Compliance Sample (Non-Criminal) ☐ Other (Specify)			2a. FILE NO.		2b. PROGRAM CODE		3. G-DEP IGA22			
3. WHERE OBTAINED (City, State/Country) Decatur, GA			4b. DATE OBTAINED 04-26-94		D				WARD	
6a. REFERRING AGENCY (Name) DEA Atlanta			6b. REFERRAL ☐ Case No. OR ☐ Seizure No. No.						GROUP NO. SK FORCE	
9. Exhibit No.	10. FOIN (8 characters)	11. ALLEGED DRUGS	12. MARKS OR LABELS (Describe fully)			13. Seized	14. SUBMITTED QUANTITY		15. Pur	
6		Marijuana	One plastic bag containing a green leafy substance and one plastic bag containing a hand-rolled cigarette. Items are marked "B".			39.5gms	39.5gms			
16. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☒ NO (Included above) ☐ YES (If Yes, enter exhibit no. and describe original container fully)										
REMARKS: Exhibit 6 was seized during the service of a search warrant on Tommy's Bar and Grill in Decatur GA. Exhibit 6 remained in the custody of TF/A Bailey until processed as evidence and sent by registered mail to SEEL.										
7. SUBMITTED BY SPECIAL AGENT (Signature) TF/A Michael Bailey					18. APPROVED BY (Signature & Title) G./S. Leo DeFranco					
LABORATORY EVIDENCE RECEIPT REPORT										
19. No. PACKAGES 1 HSEE		20. RECEIVED FROM (Signature & Date) RM 429 613 673			21. TITLE					
22. SEAL ☐ Broken ☒ Unbroken		23. RECEIVED BY (Signature & Date) V. K. H. 5/2/94			24. TITLE FIC 5/24/94					
LABORATORY ANALYSIS/COMPARISON REPORT										
25. ANALYSIS SUMMARY AND REMARKS Exhibit: u Gross: 40.4 g Net: 7.0 g										
806										
CCV										
26. Exhibit No.	27. Lab. No.	28. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			32. TOTAL NET	33. RES			
6	80609	Marijuana (Cannabis)	29. Strength	30. Measure	31. Unit		6.5			
34. ANALYST (Signature) Ivette M. Vallejo by RSB			35. TITLE Forensic Chemist Ivette M. Vallejo			36. DATE COMPLETE 5/23/94				
37. APPROVED BY [Signature]			38. TITLE Laboratory Director			39. LAB LOCATION Miami, FL				