

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA
730 WARREN E. BURGER BUILDING
316 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55101-1461

CHAMBERS OF
PAUL A. MAGNUSON
CHIEF JUDGE
(612) 290-3967

March 3, 1995

United States Sentencing Commission
Attn: Public Information
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Commissioners:

I understand that an amendment to the United States Sentencing Guidelines has been proposed relating to the calculation of drug quantities for marijuana offenses. I submit this letter as a comment on the proposed amendment, which would change the Drug Quantity Table in § 2D1.1 of the guidelines to replace the one plant = one kilogram equivalency used for offenses involving more than 50 marijuana plants with the one plant = 100 grams equivalency. This amendment is practical, reasonable, and fair, and I support it wholeheartedly.

In my experience as a United States District Court Judge in Minnesota, I have presided over trials in which defendants were convicted of growing numerous marijuana plants. In many if not all of these cases, the one plant = one kilogram equivalency did not reflect the facts of the situation, nor did it accurately reflect the culpability of the defendants. For example, in *United States v. Angell*, 11 F.3d 806 (8th Cir. 1993), an expert witness *for the Government* testified at sentencing that a one plant = one pound ratio was more appropriate in this region of the country. Nevertheless, because of the equivalency set forth in § 2D1.1, the Eighth Circuit held that the defendants could only be sentenced using the one plant = one kilogram equivalency.

As you no doubt are aware, it is common knowledge that many of the marijuana plants that are used in calculating drug quantities would never reach the drug marketplace. Weather and other environmental forces often reduce the number of plants before the plants reach maturity. In addition, marijuana plants that grew not from cultivation by the offender but through the natural spread of

vegetation are typically included with those counted for the offense, despite the fact that the defendant frequently had no intention of selling those plants. The proposed amendment would help reduce the inequities resulting from the one plant = one kilogram method of calculation.

I strongly support the adoption of the proposed amendment and add that provision should be made to allow its retroactive application. Thank you for your consideration of these remarks.

Warm regards,

A handwritten signature in black ink, appearing to read "Paul A. Magnuson", written in a cursive style.

Paul A. Magnuson
United States District Court