

THE LAW OFFICES OF
MARVIN D. MILLER
1203 DUKE STREET
ALEXANDRIA, VIRGINIA 22314

058-94

MAILING ADDRESS:
P.O. BOX 663
ALEXANDRIA, VIRGINIA 22313

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TELEPHONE:
(703) 548-5000
FAX (703) 739-0179

UNITED STATES SENTENCING COMMISSION
1 Columbus Circle, N.E.
Suite 2-500
Washington, D. C. 20002-8002

Dear Commissioners:

On behalf of the National Organization for the Reform of Marijuana Laws (NORML) and its Legal Committee, I appreciate this opportunity to bring some of our concerns to your attention. I have been involved in the representation of individuals accused of growing marijuana for more than twenty (20) years. I am also a board member of the Virginia College of Criminal Defense Attorneys.

I wish to invite you to look at the manner by which the weight of marijuana plants is calculated under the current Guidelines. The method currently employed is not accurate. It creates false sentencing disparities.

Our experiences have shown us that the total number of plants an individual has planted is not normally indicative of the actual yield. Many horticultural experts who work in commercial plant nurseries have indicated in discussions and in testimony that it is not uncommon to lose up to twenty (20) percent of the plants when one is growing seedlings. More importantly, most marijuana experts agree that when growing plants, it is possible for as many as fifty (50) percent of the plants to be male plants. Using conservative numbers derived from these facts, eighty (80) seedlings could easily yield no more than forty (40) actual usable plants. Certainly, they would not yield eighty plants at 100 grams each or eighty (80) plants at 1000 grams each.

-All experts, including those from law enforcement recognize that only the female plant produces intoxication. The male plant is undeniably of no value to the marijuana smoker. This is one issue where gender is a critical fact.

Another fact to consider is that most marijuana users these days use only the buds of the plant. The leaves are generally discarded. The stalks themselves have no value at all.

Under Section 2D1.1 of the Guidelines, the whole plant, including unusable stalks and roots can apparently be included in

the weight. Using such a weight creates an invalid computation which bears no relationship to the individual defendant's actual intent or ability insofar as growing usable marijuana is concerned. For example, if more than fifty (50) plants are involved, even seedlings that cannot be determined to be nonusable male or usable female, then the result is an arbitrary tenfold increase from 100 grams per plant to 1,000 grams (one kilogram) per plant. Such a quantum leap is simply unrealistic. It certainly bears no honest relationship to what is intended or the realistic end result.

Applicable Note 1 in the Commentary to Guideline Section 2D1.1 ought to make it clear that the only portion of the plant to be considered when computing weight is the female plant's buds and perhaps the leaves. Roots, stalks and male plants clearly ought to be excluded. Making such an amendment to the commentaries would create a more honest system of computation.

Given the Commission's desire for practical sentencing considerations dealing with practical situations, it is not reasonable to ascribe one hundred (100) grams for each and every plant seized from someone who is growing marijuana. Mature plants are easily distinguishable between male and female. The automatic ten (10) fold increase which comes into play in cases involving over fifty (50) plants also ought to be amended to be more in keeping with practical situations.

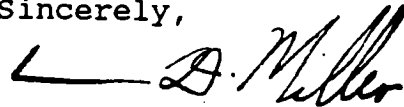
Many individuals who are not distributors but who merely grow for personal use, including medical use, may have fifty (50) plants, hoping that twenty (20) or so will survive and be female with an actual yield of a high quality personal supply of flower buds. Those plants that fail, the male plants and all but the buds of the female are discarded. There is no provision in the current federal law for this situation. The result is disparity in sentencing whereby personal users are wrongly treated as commercial dealers. Courts used to be able to make those distinctions but they are no longer real participants in sentencing. (Courts can almost always depart up and be affirmed but downward departures are nearly always overruled on appeal).

— Since the Guidelines tie judges hands, they should permit courts to make honest distinctions that they are not currently allowed to make. This can be achieved by giving consideration to the purpose for which the plants are being grown as well as to the actual or reasonably foreseeable yield of usable plant material.

You are urged to reconsider the manner of determination and the weight the Guidelines ascribe so that it can be brought in line with the practical realities of what is actually occurring in these situations. By making this charge, the Commission will be taking a step towards real truth in sentencing.

Lastly, it should be known that the Commission's opposition to mandatory minimums is appreciated by both law enforcement and the defense. Many prosecutors and law enforcement agents recognize that these minimums create unreasonably harsh sentencing disparities. This is particularly so for the low level defendant who has no one to turn in. The big guy gets a reduction and low sentence while the little guy gets the big time. Elimination of mandatory minimums would help end this unfair difference in sentencing.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. D. Miller". The signature is written in a cursive, flowing style with a long horizontal stroke at the beginning.

MARVIN D. MILLER