From: ~^! BELL, ~^!FRANCIS
Subject: [External] ***Request to Staff*** BELL, FRANCIS, [redacted]
Date: Friday, October 14, 2022 11:06:22 AM

To: Commission Members
Inmate Work Assignment: Rec A&O

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

Priority Nine: This is quit obvious. If I have been acquitted of a charged offense in court, doesn't Double Jeopardy attach. And as such how does any court see it as constitutional to then still use such conduct to compound or enhance the sentence of a totally unrelated case matter.

In the same vein, if using acquitted conduct is injust then so to must be the use of conduct that a prosecutor's offense didn't have sufficient evidence to even charge an offense, yet this is termed relevant conduct. So, that said, in what civilized society do u charge and prosecute and convict someone for a traffick offense then sentence them for a capital homicide?

Make sense to you? Nelson v. Colorado had it exactly right. A U.S. Citizen's Presumption of Innocence is paramount when one is in any way embroiled with our justice system. Our constitution illucidates that such circumstances are subject to the stringent standard of Proof Beyond A Reasonable Doubt, this leaves no room for there to be legislated or otherwise promulgated any less stringent standard, such as preponderance of evidence, as a means to deprive one of there property or liberty interests.

This practice needs to and must be discontinued immediately! And if you think not, then no true patriot are you.

From: Justin Dawson
To: Public Affairs
Subject: [External] Feedback
Date: Monday, October 10, 2022 7:52:58 PM

When considering possible amendments to the Guidelines manual to prohibit the use of acquitted conduct in applying the guidelines, you should also consider prohibiting the use of uncharged conduct that could have been presented to a jury from being used at sentencing as a enhancement.

Sent from my iPhone

From: ~^! GARY, ~^!KEVIN
Subject: [External] ***Request to Staff*** GARY, KEVIN, [redacted] FTD-D-B
Date: Friday, October 14, 2022 9:06:41 AM

To: Sentencing Commission
Inmate Work Assignment: 5741 Orderly

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

A lot of work has been done over the years for the lowering of inmates in the BOP and it's applauded and appreciated. No complaints there. But I have two issues that I'd like addressed during the sentencing commission meetings if possible. The laws that's being passed to help has everything to do with "non violent offenders" and nothing to do with "violent offenders". You have some of us "violent offenders" who aren't really "violent offenders" and was just charged as such for various reasons, excluding us from the benefits of the new laws. Many inmates, including myself gets discourage when new laws pass and the first thing we see is "non violent only". Even for those that are violent. Can the question be asked: Can Violent Offenders Change? I believe when asking that question you must look at the conduct of said inmates since they've been in the BOP, ask their counselors, unit team, and the correctional officers that's around us all day, almost everyday. One thing you cannot do is HIDE BEING VIOLENT. If you are a violent individual that's not willing to change your ways it will show in your actions and in your BOP progress. I've been in the BOP going on 16 years. Worked my way from the penitentiary on down to a low security. I'm not looking for praise for doing what I'm suppose to do, but I want you all to give us a glance once and give us something to look forward to. I've seen something before about a 2nd Chance Act where people who've been in the BOP for over a decade, no matter the charge, will get a chance to be reviewed by a board or something like that, but i haven't seen much else on it. I believe and feel we need a law in place or something to give individuals that's locked up for "violent offenses" to look forward to. Inmates locked up for "Non Violent Offenses" aren't the only ones capable of change. We change too. The second thing is Acquitted Conduct. I see the Acquitted Conduct Act in play in Congress, but I don't see any movement on it. This illegal practice is the only reason I still sit in federal prison today. Being held accountable for a crime 12 people said you wasn't guilty of goes against everything the Constitution stands for. It goes against the laws set forth by our forefathers. If it's not, then what is the use of having a jury trial if it doesn't matter what the verdict is? It's just not a fair practice. My name is Kevin Gary and I respectfully appreciate this opportunity to express this to you all and I pray that someone reads this and take it into account. Have a bless day and thank you again. Respectfully Submitted, Kevin Gary [redacted].

From: ~^! GIOELI, ~^!THOMAS
Subject: [External] ***Request to Staff*** GIOELI, THOMAS, [redacted], BUH-A-D
Date: Friday, October 14, 2022 12:06:44 PM

To:
Inmate Work Assignment: none

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

If we are to ignore the jury's verdict then why do we impanel them. The way it is now is a fraud, as a defendant you put all your trust in a jury verdict but then the judge just disregards the verdict and uses a lower bar to decide your fate. Not reasonable doubt but PA ponderance of evidence. The American way is a jury of your peers will decide your guilt or innocents. So with acquitted conduct you mist revert to presumption of innocents.

TRULINCS [redacted] - JACKSON, JOSHUA WILLIAM - Unit: SPG-V-B

From: Joshua William Jackson [redacted]
MCFP Springfield
P.O. Box 4000
Springfield, MO 65801

To: The Honorable United States Sentencing Commission,

I would like to make a comment on the Sentencing Guidelines and proposed amendments as per the notice on 9.29.2022. My name is Joshua William Jackson and I am the criminal defendant in Case No.: 3:16-CR-0196-L-1, in the Northern District of Texas. During my initial case, I proceeded Pro Se, and due to confusion and complications by my Sentencing Judge, I was sentenced to more than 110 months higher than what my sentencing Guidelines would have been, had they been properly applied..

Since then I have been focused on helping others around the nation (at the facilities where I am) resolve issues regarding the Sentencing Guidelines, and other issues. I would like to make requests and speak on proposed amendments that I have both experienced and personally witnessed.

USSG 1B1.13 - Compassionate Release

The original Compassionate Release Guidelines were extremely rigid and gave very few reasons for a petitioner or the Court to consider if a petitioner has an "extraordinary or compelling circumstance". As we have noticed over the last 4 years, many reasons can be considered Extraordinary and Compelling. Some of the reasons I would like to be considered are based on Supreme Court Cases that have gone into effect since the passage of the First Step Act;

*Gall, Molina-Martinez, and Rosales-Mireles - Misapplication of the United States Sentencing Guidelines:

One issue I have seen more often than not is when a Court during the Sentencing Hearing makes a grave misapplication of the Guidelines despite clear and concise instructions from the Sentencing Commission that have led to years (sometimes decades) in additional Incarceration.

In Gall, the Supreme Court explained that a Misapplication of the United States Guidelines can affect the entire sentencing proceeding. But after the issue has been made, it is nearly impossible for some inmates to amend the issue regardless of how clear the error was. There are so many procedural hurdles that prevent adequate review that families are stuck with a human-made error that would have otherwise not been an issue. Because the 3553(a) Factors also heavily rely on the Guidelines and the Sentencing Range the fact that Guidelines were misapplied could impact the entire Judicial Proceeding.

This was confirmed further in Molina-Martinez then Rosales-Mireles which explained that when the Guideline issue is clear, it can and most often should be resentenced. As mentioned before there are a number of procedural hurdles that would prevent an issue from being raised, and if a Court decides to ignore the issue, there is no chance for appellant review.

The 18 USC 3582 would provide a window for sentences that are unconstitutionally long to be reduced and errors made at a sentencing hearing to be resolved in a positive way that would also promote respect for the law, and fairness in the Courts.

Example:

I was charged in a three count Superseding Information with violating Use of a Facility of Interstate Commerce to Aid a Racketeering Enterprise 18 USC 1952(a)(3)(A) in violation of Texas Penal Code 43.02 (Prostitution), Illegal Receipt of a Firearm by a Person Under Indictment, 18 USC 922(n) and 924(a)(1)(D) and Cyberbullying 18 USC 2261A(2) and (b+5). My underlying offense for the Aiding Racketeering charge (1952) was Tex. Pen. Co. 43.02. Which is a Class B misdemeanor.

18 USC 1952 falls under the United States Sentencing Guidelines of 2E1.2. The Second Application Note states that if underlying conduct violates state law, the Court must determine the Most Analogous Federal Offense and use the Guidelines

(See 2E1.2 cmt. n. 2). In my case the Court did not understand that 18 USC 1952 could be violated by a state law and did not understand that the Sentencing Commission had directed the Court to determine the most analogous Federal Offense to the charged underlying conduct.

Instead of my offense level being 20 bringing me a guideline range of 37-46 months, it ended up being 34 bringing my range to 168-210. That is nearly a decade of a difference in regards to the Guidelines, based on what is essentially a simple mistake.

I am not 7 years into an incorrect sentence because the Court still doesn't understand the guidelines despite the Langley Decision from 1990. (United States v. Donald Langley, 5th Cir 1990). Because of the complexity of the 2E1.2 Guidelines I have no recourse to fix an illegal sentence because the Judge still doesn't understand the clear instructions in 2E1.2 cmt. n. 2.

If the 1B1.13 Guidelines were to also consider Misapplication of the United States Sentencing Guidelines and Extraordinary and Compelling issue, then it would require Courts to consider Guidelines issues and how appropriate a sentence is for a defendant after the issue has been resolved. Numerous Courts around the nation in the last four years have decided that a Misapplication of the Guidelines does in fact require Resentencing to preserve the interest of justice, fairness, and the public reputation of the Court.

*Concepcion - Intervening Changes in law

One of the major things that affect Defendants is when a law changes in their favor after serving a 30 year sentence because it is discovered that the issue was reversible. But without it being made retroactive, The inmate would still serve a sentence they would not have to serve otherwise.

The truth is, it was once said, to even serve one day of additional time in prison then is necessary would be a violation of due process and civil liberties, I believe by allowing Courts to not only consider the Misapplication of Guidelines but amended Guidelines and Intervening Changes in law, it would allow for a fair consideration between similar defendants (3553(a)(6)) and it would give people chances to reunite with their families after the laws change.

Next, I would like to request an amendment to USSG 2E1.2(a)(2) and cmt. n. 2:

As mentioned before I was charged with 18 USC 1952(a)(3)(A) in violation of Texas Penal Code 43.02, in Count 1 of my Superseding Information. 18 USC 1952 is in the statutory appendix of 2E1.2, which is pretty straightforward. The problem came when my Court didn't understand the language in Application Note 2.

Application Note 2 states that if underlying conduct violates state law, then the Court must determine the most analogous Federal Offense and use the guidelines (a)(2).

While the reading is clear the understanding was not for my Judge Sam A. Lindsay. It lead to an increase of more than 110 months in my federal guidelines and forced my 3 five year sentences to be run consecutively.

Texas Penal Code 43.02 is Prostitution in the State of Texas, a Class C Misdemeanor at best. But the Court stated that it "did not deal with state charges" despite the Guidelines stating specifically, "to find an Analogous Federal Offense to the underlying state conduct."

I believe if the Guidelines were a bit more clear, it would prevent issues like this in the future. I would propose something similar to;

Application Note 2: If the charged underlying conduct violates State Law,(ie a State Penal Code) the Court must first Determine the Most Analagous Federal Offense to the charged Underlying State Code, and use the applicable Federal Guidelines. If the charged underlying conduct violates Federal Law, the Court is to use the Federal Guidelines for the charged conduct.

This would stop the confusion with District Courts, and Appellant Courts (like in United States v. Langley {5th Cir. 1990} and my own case United States v. Jackson {N.D.Tex. 2016}) It would also reduce the risk of inappropriate sentences based on the misapplication of the United States Guidelines and errors in Sentencings.

Also by clarifying the Application Note, it would reduce the chance of Gall, Molina-Martinez, and Rosales-Mireles issues at the District Court Level. It would also allow more comfort in Guilty Pleas and confidence in the Sentencing Procedure. Even though the Guidelines are merely "advisory", the Court is still required to accurately calculate the Guidelines for the 3553(a) Factors.

The chances of inflated sentences are drastically reduced when there is clear instruction that can not be misconstrued.

If this is made retroactive as well, I would finally fix a sentence that is currently 4 years past it's prime.

I believe by showing an example of what 18 USC 1952(a)(3)(A) looks like and then explaining how to find the most analogous Federal Offense to any given state offense, would also help judges who are confused by the statutes or guidelines instructions. Other Guidelines show examples of how to apply the application notes. I believe 2E1.2 also needs to have explanations or examples because 18 USC 1952 is considered a complex charge due to its dual statute nature, and how it can be violated by both Federal and State laws in the same statute or multiple underlying offenses. (2E1.2 cmt. n. 1)

USSG 2X5.2 - Class A Misdemeanors:

While I was in COurt with United States Distict Judge Sam A. Lindsay, he could not understand that Class A Misdmeanors not listed in the statutory appendex of 2X5.2 still fell under 2X5.2 if it was not listed in another Federal Guideline.

I believe there are a number of Judges who have made a similar mistake and it can lead to potentially decades of additional prison time for defendants based on an issue ultimately caused by a Courts failure to understand the law.

I would like to request that 18 USC 1384 - Prostitution on or Near a Military Base or Establishment be added to the statutory appendix of USSG 2X5.2, as it is a Class A Misdemeanor but could accidentally fall under another statutory appendix if left unchecked, unclear, or decided.

The issue affected me directly because of Tex. Pen. Co. 43.02 and 18 USC 1384 are nearly identical with the exception of the Federalizing Element. If 18 USC 1384 was listed in the Guidelines of 2X5.2 it would have greatly reduced the risk of the Guidelines being misapplied in my case and my sentence being enhanced by 110+ months.

USSG 3E1.1 - Acceptance of Responsibility

I would like to also address the issue of the Government withholding Acceptance of Responsibility based on objections to the PSR based on a misapplication of the Guidelines.

Many federal inmates feel as if they are conned into pleading guilty with the bait of a lesser offense only to be enhanced based on "irrelevant conduct" that had been dismissed or never charged at all. Then if the defendant practices his rights to object, the Government withholds the acceptance of responsibility. It makes a mockery of the justice system because it shows that the Government does not have to honor a plea agreement it crafted, and then most of the time Inmates can not even withdraw the plea based on the duplicity they feel during their sentence that Justice was not served.

Acquitted Conduct:

I would also like to request not only Acquitted but uncharged conduct and conduct outside of the offense of conviction be removed from "relevant conduct".

Joshua William Jackson [redacted]
MCFP Springfield
P.O. Box 4000
Springfield, MO 65801-4000

From: ~^! LEONARD, ~^!TARRESSE
Subject: [External] ***Request to Staff*** LEONARD, TARRESSE, [redacted], COM-C-B
Date: Friday, October 14, 2022 9:49:52 AM

To: Commission
Inmate Work Assignment: n/a

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

I would like for the Commission to address "Acquitted Conduct". I had a jury trial and was acquitted for certain offenses but found guilty for a single offense. At sentencing, the district court used the acquitted charges to enhance my "base level" up 4 levels. This is a violation of the Sixth Amendment and needs to be corrected. Several Justices who currently resides on the Supreme Court has mentioned in concurrences and dissents that it violates the Constitution to enhance a sentence based on acquitted conduct. Also, I would like for the commission to explain what definition controls regarding 4B1.2(b). Section 4B1.2(b) should be determined by the definition at the federal level not state. I am aware the guidelines does not define what is a control substance, but my case is a federal case and the federal definition should control. These are two of the issues I would love for this Commission to take into serious consideration and make the appropriate changes.. Thanks for taking the time to read this and have a blessed day.

From: ~^! WILLIAMS, ~^!MARVIN WAYNE
Subject: [External] ***Request to Staff*** WILLIAMS, MARVIN, [redacted], PEM-B-S
Date: Friday, October 14, 2022 10:05:37 AM

To: TO WHOM IT CONCERNS
Inmate Work Assignment: N/A

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

THE ACQUITTED CONDUCT IS BEING USED ON ME. I WOULD LIKE FOR THIS TO BE ADDRESSED THIS YEAR, I WOULD LIKE FOR IT TO BE TAKEN OUT OF SENTENCING. ITS A CONSITUTIONAL VIOLATION, WHAT IS THE PURPOSE OF GOING TO TRIAL FOR IF YOUR GOING TO DISREGARD WHAT THE JURY VOTES/SAYS?????????? IF THATS THE CASE THERE IS NO NEED TO GO TO TRIAL, WE WOULD JUST GET LOCKED UP AND LET THE JUDGE DO WHAT EVER HE FEELS. YOU HAVE THE JUDGE PLAYING THE 13TH JUROR. ITS A BLATENT VIOLATION OF OUR CONSITUTIONAL RIGHTS. PLUS IT NEEDS TO BE RETRO ACTIVE. NEVER UNDERSTOOD HOW YOU CHANGE LAWS BUT DONT MAKE THEM RETRO ACTIVE. ALSO NEED THE 1:1 RATION ON CRACK OFFENSES ADDRESSED AND MADE RETRO ACTIVE. WITHOUT THE ACQUITTED CONDUCT ENHANCEMENT I WOULD HAVE BEEN HOME, I HAVE BEEN IN SINCE JUNE 2007, AND STILL DONT HAVE A RELEASE DATE TIL 2053,,SMH. THIS IS TERRIBLE,THIS NEEDS TO BE FIXED ASAP. THANK YOU FOR YOUR TIME AND ASSISTANCE. SINCERLY A PERSON IN DIRE NEED OF HELP

From: ~^! MCDOUGAL, ~^!DERRELL
Subject: [External] ***Request to Staff*** MCDOUGAL, DERRELL, [redacted], BML-W-B
Date: Friday, October 14, 2022 8:06:21 AM

To: Sentencing commission
Inmate Work Assignment: a.m compound

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

along with acquitted conduct,I believe that the Commissions should also consider prohibiting uncharged conduct. This is one of the most unfair practices used by federal courts today. If an individual is not charged with a crime,how can we be sentenced for it. And we can't go to trial to defend ourselves against the conduct because we have never been indicted for it. In my situation,I was arrested and plead guilty to conspiracy to possess with the intent to distribute 50 or more kilograms of marijuana but the Southern District of Mississippi held me accountable for 10 kilograms of cocaine and almost doubled my sentence using the preponderance of the evidence standard. I was never charged with any cocaine. I objected to it at sentencing. At sentencing,I was told there would be factual findings but the testimony from an agent was him saying that he "believe I was dealing cocaine." And the PSI writer said it was his opinion that I was dealing cocaine. There was nothing factual because there wasn't one grain of cocaine found or sold in this case. No phone conversations about any cocaine.This is even worse that acquitted conduct because acquitted conduct has at least been presented to a grand jury and or charged. Uncharged conduct is exactly what it says. In my opinion this is one of if not the worst practices used by federal courts today and this should be prohibited.I thought the law said a person has to be indicted and charged to be given time for a crime. This has to be a violation of Due Process or something because an individual can not choose to have a jury trial for conduct uncharged but this can be used to give a person a decade of prison time.

Thank you for you time and consideration.

TRULINCS [redacted] - MURRAY, AARON MICHAEL - Unit: COL-B-D

~~FROM: [redacted]~~
~~TO: Health Services LOW~~
~~SUBJECT: ***Request to Staff*** MURRAY, AARON, [redacted], COL-B-D~~
~~DATE: 10/02/2022 01:05:14 PM~~

~~To: Delete~~
~~Inmate Work Assignment: N/A~~

October 1, 2022

United States Sentencing Commission
ATTN: Public Affairs-Priorities Comment
1 Columbus Circle, NE, Suite 2500, South Lobby
Washington, DC 20002-8002

RE: Public Comment on Proposed Priorities for
Amendment Cycle Ending May 1, 2023

Dear Sentencing Commission,

My name is Aaron Murray and I am a federal prisoner at the Federal Correction Complex- Coleman Low in Coleman, Florida. During my incarceration, I received my paralegal certification and have held a position as the Legal Clerk in the prison's Law Library. Over the last several years, I have been in contact with Carrie Wilson of this Commission and I am aware that you periodically review comments and recommendations from inmates regarding potential changes to the sentencing guidelines. Therefore, I am offering several comments on possible policy priorities for the amendment cycle ending May 1, 2023.

My comments to the proposed priorities for the amendment cycle, that were enumerated by this Commission, are as follows:

(1) Consideration of possible amendments to 1B1.13 (Reduction in Term of Imprisonment under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)).

-The First Step Act plainly intended that federal judges be allowed an independent and individualized consideration on whether to grant a sentence reduction or compassionate release. Despite the Eleventh Circuit's erroneous conclusion in UNITED STATES V. BRYANT, 996 F.3d 1243 (11th Cir. May 7, 2021), every other Circuit has concluded that U.S.S.G. 1B1.13 is not an applicable policy statement for defendant filed motions. While 1B1.13 needs to be updated, it is important to remember that the Guidelines are advisory and that, even absent a policy statement, federal judges have authority to adjudicate whether a defendant has offered "extraordinary and compelling reasons" warranting relief. The 3582 statute merely requires that courts' decisions on sentence reductions and compassionate releases be "consistent with" any applicable policy statement. 18 U.S.C. 3582(c)(1)(A). As the Seventh Circuit put it, "'Consistent with' differs from 'authorized by.'" UNITED STATES V. GUNN,, 980 F.3d at 1180 (7th Cir. Nov. 20, 2020). Congress delegated the authority to determine the meaning of "extraordinary and compelling reasons" to this Commission. See 28 U.S.C. 944(t). While this Commission "shall DESCRIBE what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples," (944(t)), you do not have the authority to "define" what can be considered "extraordinary and compelling." Therefore, district courts, directly authorized by Congress, have the inherent equitable power to grant a reduction in sentence or compassionate release for any reason beside rehabilitation alone. See 28 U.S.C. 994(t). Thus this Commission must update the 1B1.13 Guideline to include defendant filed motions while providing guidance to district courts on what can be considered "extraordinary and compelling."

TRULINCS [redacted] - MURRAY, AARON MICHAEL - Unit: COL-B-D

~~FROM: [redacted]~~
~~TO: Health Services LOW~~
~~SUBJECT: **Request to Staff** MURRAY, AARON, [redacted] COL-B-D~~
~~DATE: 10/02/2022 01:28:55 PM~~

~~To: Delete~~
~~Inmate Work Assignment: N/A~~

(7) Consideration of possible amendments to the Guidelines Manual relating to criminal history to address the treatment of defendants with zero criminal history points.

-This Commission has performed numerous studies on how an offender's background and age effect recidivism. However, despite having zero criminal history points, many criminal defendants receive similar or greater sentences than those who have a much worse criminal history. With statutory minimums and maximums, the way most courts calculate guideline ranges do not account for defendants with zero criminal history points and who have no or low risk of recidivism. I propose that a first-time offender "safety-valve" guideline be created and that the Probation Office's Pre-Sentencing Report include a defendant's recidivism risk level prior to sentencing.

As this commission is aware, some first-time offenders are eligible for safety-valve relief under 18 U.S.C. 3553(f). However, most defendants do not meet the criteria for this reduction. Although district courts cannot sentence a defendant under the mandatory minimum, a new Guideline should be created to standardize how courts treat defendants with zero criminal history points. Just like U.S.S.G. 5K1.1, a court should be authorized to grant a downward departure for first-time offenders with zero criminal history points. In the Federal Sentencing Guidelines Manual, this new Guideline an be added under Chapter Five, Part K-Departures.

As far as including a defendant's risk of recidivism in the Probation Officer's PSR, this information would assist district courts with imposing an appropriate sentence. A defendant's risk or recidivism is currently not being considered at sentencing, despite being related to multiple factors under 3553(a)(2). The Department of Justice has already released a risk assessment tool, known as PATTERN, as required by 18 U.S.C. 3553(a)(2). Among other things, PATTERN was designed to evaluate "the recidivism risk or each prisoner as part of the intake process, and classify each prisoner as having minimum, low, medium, or high risk for recidivism." 19 U.S.C. 3632(a)(1). Therefore, it is reasonable to conclude that the Probation Office, the Department of Justice, and the Bureau of Prisons could work together to calculate a defendant's recidivism risk level prior to the district court's sentencing.

(9) Consideration of possible amendments to the Guidelines Manual to prohibit the use of acquitted conduct in applying the guidelines.

-Using acquitted conduct at sentencing is anathema to Due Process and the fundamental fairness of justice embodied in the Constitution. District courts should not have the authority to use conduct that the jury found a defendant innocent of to increase a sentence. However, while not using acquitted conduct is important, there are several other types of conduct that deserve this Commission's scrutiny.

Uncharged conduct, especially conduct that is in-and-of-itself a separate charge, should not be considered at sentencing. This uncharged conduct never appeared before a grand jury and criminal defendants never received fair notice. Prosecutors have full discretion to present this conduct to a grand jury to receive an indictment or superseding indictment. it is unfair to add uncharged conduct into a PSR for enhancement purposes and, besides objections to the PSR at sentencing, defendants have no way to defend themselves against this conduct.

Not only does uncharged conduct fly in the face of the legal axiom that criminal defendants are innocent until proven guilty, but so does using dismissed conduct to enhance a sentence. There are many reasons prosecutors choose to dismiss charges. Whether is is the result of a plea deal or lack of evidence to bring that charge to trial, defendants should not receive enhanced sentences for charges that were dismissed.

District courts use both uncharged conduct and dismissed conduct at sentencing through the "preponderance of evidence" standard, instead of the stricter "beyond reasonable doubt" standard that is required for a jury to convict. Thus, any conduct not admitted to in a plea agreement or found by jury at trial should not be used at sentencing. Therefore, this Commission should ensure that the Constitution and Bill or Rights is upheld to guide courts in not utilizing acquitted, dismissed, and uncharged conduct at sentencing.

TRULINCS [redacted] - MURRAY, AARON MICHAEL - Unit: COL-B-D

~~FROM: [redacted]~~
~~TO: Health Services LOW~~
~~SUBJECT: ***Request to Staff*** MURRAY, AARON, [redacted] COL-B-D~~
~~DATE: 10/02/2022 01:56:17 PM~~

~~To Delete~~
~~Inmate Work Assignment: N/A~~

(12) Multiyear study of court-sponsored diversion and alternatives-to-incarceration programs (e.g., Pretrial Opportunity Program, CASA Program, SOS Program), including consideration of possible amendments to the Guidelines Manual that might be appropriate.

-The federal prison system is full of first-time, nonviolent offenders who have a very low risk of recidivism. In light of the COVID-19 pandemic and the CARES Act of 2020, this fact became perfectly clear. The Attorney General was granted permission by Congress to place federal prisoners on home confinement. Thousands of prisoners were granted home confinement placement and all indicators so far show that this program has been a success. In addition, many criminal defendants are granted bond and placed on Pretrial Services monitoring pending trial, proving that they are capable of following the law while on court monitoring without incarceration. Alternatives-to-incarceration programs will not only assist with the current overpopulation problem federal prisons are currently experiencing, especially now that private prisons have been shutdown, but it will also save the taxpayers the cost of incarcerating nonviolent and low risk criminals. Therefore, the federal criminal justice system needs more rehabilitation programs in lieu of prison sentences. Anything this Commission can do to help increase alternatives-to-incarceration programs would benefit not only criminal defendants, but society as a whole.

(13) Consideration of other miscellaneous issues, including possible amendments to (A) 3D1.2 (Grouping of Closely Related Counts) to address the interactions between 2G1.3 and 3D1.2(d).

-In many cases, the U.S. Sentencing Guidelines sentencing range will roughly approximate a sentence that would achieve the objectives of 18 U.S.C. 3553(a). These ranges are typically the product of this Commission's careful study, and are based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions. But not all Guidelines possess this pedigree. And where a Guideline does not reflect the careful study of this Commission, it is likely not a reliable indicator of this Commission's perspective on a fair sentence. As numerous courts and commentators have explained, the child pornography Guidelines are by and large not the result of this Commission's expertise, nor based on careful study and empirical data. See HENDERSON, 649 F,3d at 960-63; UNITED STATES V. DORVEE, 616 F.3d 174, 184-86 (2nd Cir. 2010). Instead, 2G2.2 is the result of two decades' worth of Congressional directives-at times actively opposed by this Commission-that have continually ratcheted up penalties and piled on enhancements. HENDERSON, 649 F.3d at 960-63; DORVEE, 616 F.3d at 184-86; see also generally Troy Stabenow, Deconstructing the Myth of Careful Study: A Primer on the Flawed Progression of the Child Pornography Guidelines (2009).

Of course, Congress' active role in shaping 2G2.2 is not in and of itself reason to question the Guideline's wisdom or efficacy. The real problem, as courts across the country have recognized, is that 2G2.2 simply does not work. GROBER, 624 F.3d at 607-10; HENDERSON, 649 F.3d at 960-63; DORVEE, 616 F.3d at 184-86; UNITED STATES V. DIAZ, 720 F. Supp. 2d 1039, 1041-42 (E.D. Wis. 2010)(collecting cases). Rather than carefully differentiating between offenders based on their culpability and dangerousness, 2G2.2 consists of a hodgepodge of outdated enhancements than apply in nearly every case. DORVEE, 616 F.3d at 186. As a result, this Guideline routinely results in sentencing ranges near or exceeding the statutory maximum, even in run-of-the-mill cases involving first-time offenders. Id.

This broken Guideline has not escaped this Commission's attention. Following several years of research, you issued a comprehensive report on 2G2.2. United States Sentencing Commission, Report to Congress: Federal Child Pornography Offenses (Dec. 2012). However, while this Commission recommended major revisions to the Guideline, you left it to the discretion of Congress because of its extensive involvement in crafting that Guideline. However, Congress has shown, time and time again, that politics prevents it from correcting this Guideline. The Senate's Confirmation Hearing for Justice Ketanji Brown Jackson made it perfectly clear that Congress will NEVER act to correct this problem. Thus, this Commission has an independent duty to correct 2G2.2 and the child pornography Guidelines.

Respectfully Submitted,
Aaron Murray

Aaron Murray
[redacted] [redacted]
FCC Coleman Low
P.O. Box 1031
Coleman, FL 33521-1031

From: ~^! RICHARD, ~^!NICHOLAS T
Subject: [External] ***Request to Staff*** RICHARD, NICHOLAS, [redacted], FTD-N-C
Date: Thursday, October 13, 2022 6:05:28 PM

To:
Inmate Work Assignment: compound

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

On March 4, 2021 Bill S.601 was introduced to amend section 3661 of title 18 United States Code to prohibit the consideration of acquitted conduct at sentencing. Would you please include another amendment that would also prohibit the consideration of non-proven conduct as well? All too often a person's sentence is enhanced using information, such as a criminal complaint or police report that is several months or years decades old, even if that information or complaint never leads to an arrest or charges or when charges have been dismissed or dropped without going to court or trial.

Such sentence enhancements allow abuse by prosecutors who, if unhappy with current sentencing guidelines could file a false charge only to drop it later, then use that same dropped charge to enhance a person's sentence by several years or decades more.

This kind of sentence enhancement violates a person's Due Process rights by effectively ruling that person guilty and imposing a consecutive sentence without allowing that person his/her constitutional right to defend one's self in a court of law
against those dropped charges or a complaint he or she was never arrested or charged for.

In many cases, charges are dropped when there is no evidence a crime had been committed, yet a sentence will be enhanced because of that dropped, unproven charge.

The American judicial system is built on the tradition that everyone is the be "considered innocent until proven guilty in a court of law." Allowing the consideration of dropped, dismissed or unproven charges or complaints at sentencing goes completely against that honored tradition. I asked you to please consider this amendment and make it retroactive to correct the wrongs imposed against thousands of Americans who are serving additional times in prison away from their families and loved ones for crimes they were convicted of committing.

Thank you for your time,
Respectfully, Nicholas Richard

From: ~^! SMITH, ~^!SCOTT JACOB
Subject: [External] ***Request to Staff*** SMITH, SCOTT, [redacted], SST-K-A
Date: Thursday, October 13, 2022 6:05:33 PM

To:
Inmate Work Assignment: educ/day

ATTENTION

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Inmate Message Below

Could you please address judges using aquitted conduct at sentencing. Not only do I fear this is a violation of due process, but it also disregaurds the verdict of the jury. I am not sure if changes made by the comission can be retroactive, but I believe this is most definatly a case where retroactivity should apply. Even if retroactivity can not be applied, it is important to remedy this for the court in the interest of justice for all. Thank you for your consideration.

From: ~^! SKILLERN, ~^!MICHAEL DON
Subject: [External] ***Request to Staff*** SKILLERN, MICHAEL, [redacted], BML-G-C
Date: Friday, October 14, 2022 11:20:23 AM

To: US Sentencing Commission
Inmate Work Assignment: GM3 - plumbing

ATTENTION

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Inmate Message Below

Greetings,

I write to advocate eliminating acquitted and uncharged conduct from relevant conduct in sentence calculation. Innocent until proven guilty should be conceptually respected if not revered. Constitutional innocence until proven guilty is little more than entrapment by estoppel if legally unproved criminal conduct is a basis for sentence.

Please eliminate the use of any unproved conduct as a basis for sentence calculation. The Founders of the United States and its government will be proud that you respected such a fundamental tenet.

Thank you for taking the time to read my remarks.

M. Skillern

Proposed amendment to prohibit acquitted conduct consideration.

I wholeheartedly agree that both acquitted conduct and (in the case of plea agreements) uncharged conduct that is not relevant conduct to the charged count of conviction should be prohibited from guideline calculations. Considering either of these factors in determining a sentence seriously undermines the perception of fairness in judicial proceedings. It is actually quite surprising that, in a country where citizens are presumed innocent until proven guilty, any discussion needs to be had about whether to sentence a defendant for aquitted and uncharged conduct. It is a bedrock principle of justice that individuals should only face penalties for crimes that they actually committed, and that clearly and obviously precludes acquitted conduct from a defendant's sentencing.

Also, defendants often accept plea agreements specifically to reduce their sentencing exposure, and the use of uncharged conduct in sentencing undermines the plea bargaining process. Courts frequently use "pseudo counts" that are not relevant conduct as defined in 1B1.3 to any charged count of conviction to enhance defendants' sentences with the multiple count provisions of 3D1.1. While the commentary of 3D1.1 clearly indicates that the provision only applies to counts that are included in an indictment or information, that doesnt stop the use of uncharged "pseudo counts" against defendants. The willingness of district courts to adopt the phrase "pseudo counts" is in itself quite troubling. Webster's New World College Dictionary, Fourth Edition (2002) defines the word pseudo as "Sham; false; spurious; pretended; counterfeit." Nothing about that definition strikes a chord of legitimacy. The flagrant use of such a term erodes the public confidence and perception of fairness and integrity of judicial proceedings. Use of "sham" counts also does absolutely nothing to advance the 3553(a)(2)(A) factor of promoting respect for the law and providing just punishment.

Recently, Russia held a refferendum on the anexation of territory in Ukraine which the government of the United States decried as a "sham". Why, then, do district courts in the United States regularly sentence defendants with enhancements based upon a synonymous term?

The use of "pseudo counts" also creates sentence disparities that are to be avoided according to 3553(a)(6) by allowing sone district courts to sentence some defendants for uncharged conduct while other courts do not. Once again, a fundamental principle of fairness is that defendants should only face penalties for crimes for which they were actually charged and convicted.

This short circuiting of the basic ideas of legitimacy, fairness, and integrity of judicial proceedings needs to be stopped to restore public trust in the institution.

Thank you for your time.

Zachary Stinson

From: Rod Warner
To: Public Affairs
Subject: [External] Dr.Michael Rimlawi
Date: Tuesday, October 11, 2022 10:36:23 PM

I Rod Warner implore the United States Sentencing Commission to make an amendment to the Guideline Manual, to prohibit the use of acquitted conduct in applying the guidelines. This amendment should be a "no brainer". Our country already has the highest rate of incarceration of any country in the world. Astonishing, we are more in line with Cuba and China's incarceration rates than our European partners. We imprison too many people and for way too long, especially not violent crimes. Then to punish our citizens further for conduct that they were acquitted of by a jury at trial is preposterous. This amendment needs to be retro-active to undo past injustices.

Another priority should be to reduce sentencing guidelines for ambiguous federal statutes such as the Health Care Anti-Kickback Statute. We need to recognize the risk of an ever-expanding roster of federal crimes which invite abuse by prosecutors. For example there are surgeons in prison right now for 7-9 years, simply because a hospital marketed their cutting edge treatments to the public. Prosecutors have deemed for the first time in US history that hospital marketing of its physicians is a kick-back and targeted physicians criminally. Because of the vagueness, the federal criminal law has become too often a trap for the unwary honest citizen instead of a legitimate tool for protecting society. This is a threat to the nation as a whole. I'm sending this on the behalf of Dr. Michael Rimlawi.

Sincerely,

Rod Warner