

TESTIMONY

of

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on

Retroactive Application of Recent Changes
to the U.S. Sentencing Guidelines

before the
U.S. Sentencing Commission

13 November 2007

Good afternoon, Mr. Chairman, the Vice Chairman and the distinguished Commissioners of the U.S. Sentencing Commission. My name is Chuck Canterbury, National President of the Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing more than 325,000 rank-and-file police officers in every region of the country.

I want to thank you, Mr. Chairman, and the rest of the Commission for inviting me here this afternoon to share the views of these rank-and-file officers. As I am sure you will recall, I testified before you last year and urged the Commission not to adopt changes to the sentencing guidelines that would lower the penalties for crack cocaine offenses by two levels. The Commission had done so on two previous occasions, but fortunately those amendments were rejected by Congress. Regrettably, this time Congress failed to act and the amendment lowering the penalties for crack cocaine offenses that was adopted earlier this year by the Commission went into effect on 1 November.

Under these new guidelines, the so-called “disparity” between sentences for crack and powdered cocaine will be reduced from 100:1 to approximately from 30:1 to 70:1 because of the unique nature of the guidelines and the varying offense level. However, the statutory mandatory minimums remain unchanged, which will result in bunching at the 5 and 10 year levels and will minimize the credit that defendants will get for pleading guilty. Further, the new guidelines treat crack differently than all other drugs having a mandatory minimum—for other drugs having a five-year mandatory minimum for trafficking offenses, the guidelines offense level is 26. The recent changes single out crack cocaine by assigning a base offense level of 24 for an amount of drugs commiserate with the five-year mandatory minimum.

With these changes already in place, the issue before us today is whether these recent changes to the sentencing guidelines (specifically Amendments 9 and 12) should be included in subsection (c) of §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)), thus allowing the retroactive application of these amendments to previously sentenced defendants. The FOP strongly opposes such application.

To begin with, data provided by the Commission indicates that such application would result in the reduced sentences for at least 19,500 crack dealers. It should also be noted that these sentencing reductions would be *in addition* to any other reductions the offender received, such as a reduction for cooperation with the United States or “good time” credit in prison. It is important that the Commission recognize that these are not “low-level dealers” or first time offenders. At least 80% of them had previously been convicted of a crime, a majority of them have multiple prior convictions and 35% of them also possessed a firearm in connection with their drug dealing operation. Further, more than 15% of these offenders are in the highest criminal history category (VI). Clearly, these inmates are far more likely to reoffend.

These are not empty statistics—but hard facts. While the new guidelines have certainly weakened the overall fight against crack-related crime, retroactive application of the guidelines will have an immediate and deleterious effect on public safety and the crime rates in our communities. Using the Commission’s own data, it is projected that at least 2,500 additional crack dealers will be released into the community either immediately or within the first year of retroactive application. Another

5,000 could be released into the community within twenty-four months of the effective date of the retroactive application. Further, while the average reduction in sentence is approximately 27 months, some offenders—primarily those who are the most likely to be high-level dealers with significant criminal histories—could see their sentences reduced in excess of 49 months. At a time when law enforcement is seeing an increase in crime rates that have fallen for more than a decade, it seems at variance with common sense and good public policy to release *en masse* crack dealers and drug offenders into our neighborhoods.

Let me give you some concrete examples as to how the retroactive application of these new guidelines may affect real communities and the people that live there. Consider the case of Leonard Brown. Mr. Brown, before his arrest, conviction, and sentencing, was the main drug supplier for Sandersville, Georgia, a rural community with approximately 10,000 residents. Mr. Brown, prior to being selected by a jury of his peers to serve a sentence that this Commission now deems to be too lengthy, has an impressively long criminal history, which includes crimes of violence and drug dealing. Yet, despite this impressive body of work, the best efforts of local and State law enforcement authorities were not sufficient to remove Mr. Brown from the community. The State judicial system had become a revolving door that resulted in placing violent drug dealers back in their community after an all too brief period of incarceration. Obviously, this frustrated local and State law enforcement officers as well as the residents of Sandersville—whose safety was at risk—while Mr. Brown’s business was in operation.

However, the Federal prosecution and sentencing of Mr. Brown had a ripple effect in Sandersville. Admittedly, the actual amounts of crack cocaine possessed by Mr. Brown at the time of his arrest for the offenses for which is currently incarcerated were not particularly high, but for a community the size of Sandersville, Mr. Brown served as a kingpin, of sorts, supplying a substantial amount of drugs from his trailer. As befits a person of his standing, he employed minors to do the actual leg work, exposing them to all the risks, while he reaped the rewards. It was not until he was prosecuted by Federal authorities, however, that he was held to account for his crimes. His conviction, the significant sentence he received and the fact that he would not be eligible for parole sent a clear message that there were serious consequences for drug dealers if they were prosecuted by Federal authorities. It also sent a message to the residents of Sandersville—that the criminal justice system was not completely broken and that a long-time drug dealer like Mr. Brown could and would go to jail and stay there.

If the changes to the sentencing guidelines were made retroactive, Mr. Brown’s sentence will be reduced by approximately three years, making him eligible for immediate release. This also sends a clear message—that we are not serious about getting and keeping drug dealers out of communities. The residents of Sandersville, Georgia, should be outraged because they know it will not take long for Mr. Brown to return to business.

Let me give you another example—a drug dealer from Chattanooga, Tennessee by the name of Sylvester Pryor. Like Mr. Brown, his criminal history includes possession of crack for resale, possession of deadly weapons, and two assaults on a law enforcement officer. He was arrested on Federal charges with the aid of a confidential informant and sentenced to nine years and six months

in prison. If the latest revisions to the U.S. sentencing guidelines are made retroactive, Mr. Pryor may be eligible for immediate release.

Jesse Lee Evans was the leader of a drug ring operating in Pennington, Alabama. Over the course of a year and a half, he sold crack out of his house in Choctaw County, until undercover officers executed several controlled drug buys, enabling his arrest. Mr. Evans was classified as Criminal History Category IV and was sentenced to more than 21 years, but would be eligible for release immediately if the changes to the sentencing guidelines are made retroactive.

These are but a few examples of how the retroactive application of the new rules will have an immediate and certainly very negative effect on communities and their residents. Federal prosecutions were brought to bear on these two criminals because the State and local systems were unable to keep them locked up. With the new guidelines, and certainly, with applying them retroactively, we risk bringing the revolving door into the Federal system.

I think it is important to remember the incalculable devastation wrought on our nation during the crack epidemic—millions of lives were damaged and families wrecked by this drug and many of our cities have never fully recovered. Just ask the people in Sandersville or Pennington how many lives were ruined by Leonard Brown or Jesse Lee Evans and their drug business. Or ask the officers that were attacked by Sylvester Pryor in Chattanooga. As a nation, we worked hard over the past fifteen years to reduce our nation's crime rates to historic lows and this success was due in large part to the efforts of State and local law enforcement and a genuine commitment by the Federal government to incarcerate for longer periods of time these offenders who dealt in crack cocaine. While other drugs of the moment may have eclipsed crack in popularity and availability, the market for crack remains massive—with nearly one million Americans who continue their addiction to this terrible drug. In our view, retroactive reduction of the sentences of the criminals responsible for creating and feeding these addictions is a grievous error which will inflict great harm on many innocent Americans. For this reason, we urge the Commission to reject the retroactive application of the new sentencing guidelines.

I want to thank you and the Commission in advance for your consideration of the view of the more than 325,000 members of the Fraternal Order of Police and I hope that you recognize the sincerity of our position.

I would now be pleased to answer any questions you might have.