

Testimony of Pat Nolan,
Vice President of Prison Fellowship
Before the U.S. Sentencing Commission
June 1, 2011

Mr. Chairman and Commissioners, thank you for allowing me to comment today. My name is Pat Nolan. I am a Vice President of Prison Fellowship, and Director of their criminal justice reform arm, Justice Fellowship. I was a member of the California State Assembly for 15 years, four of those as the Assembly Republican Leader. I was a leader on crime issues, particularly on behalf of victims' rights. I was one of the original sponsors of the Victims' Bill of Rights and received the Victims' Advocate Award from Parents of Murdered Children. I was prosecuted for a campaign contribution I accepted which turned out to be part of an FBI sting. I pleaded guilty to one count of racketeering and served 29 months in federal custody. So, I have seen our criminal justice system from both sides.

I sit before you as a conservative Republican, a former legislator and former prisoner who is convinced that this country needs a more rational approach to apprehending, prosecuting, and sentencing those who traffic in cocaine. Congress and the President moved us in that direction by enacting the Fair Sentencing Act. Prison Fellowship respectfully asks that you take next important step: to apply those changes retroactively.

While I was In prison I saw the bitter resentment created by the disparity in punishment of those who dealt in powder cocaine with those who sold crack. It made no sense that an inmate who sold crack cocaine received a longer sentence than a dealer that sold 40 or 50 times as much powder cocaine when both substances are pharmacologically equivalent. Congress recognized the injustice of this disparity and passed the Fair Sentencing Act.

However, unless you make the new sentences retroactive there will remain a terrible injustice in the system as offenders incarcerated under the new sentences arrive, serve their time and go home while inmates convicted of the same offense under the old law will remain behind bars for several more years. If you approve retroactivity, those offenders will not be getting off easily. The average offender benefiting from retroactivity will see their sentence drop from 167 months to 127 months; that is, they will end up serving over 10 1/2 years in prison for their offense. That is not a light sentence in anyone's book.

Prison Fellowship works with prisoners to help them turn their lives around. We share the good news of the Gospel, and work with inmates to develop a moral compass so they can make good, moral decisions after they leave prison.

We have found that our efforts ring hollow if we don't also care about the conditions in which their families live and the justice of the system that keeps them in prison. If you allow this disparity in sentences to remain, our volunteers will have a difficult time explaining the unequal treatment to the men and women we minister to. And it will very

hard to tell their spouses and children why they must suffer without a parent and partner when someone who did the same thing gets to go home. To us, 30 extra months may not seem that long. But to someone inside prison it seems like forever. Think of the family events they will miss if held for a longer time: graduations of their children and grandchildren, walking their daughters down the aisle at their weddings, funerals of parents and loved ones, coaching soccer, leading a Girl Scout troop.

I know the importance of these family occasions. The first furlough from my halfway house was the day of my eldest daughter's First Communion. My 3 year old son ran through the house, shouting "My daddy home, my daddy home". It would have broken my heart to miss that special day for my daughter and my family. It would have been even more devastating if someone convicted of the same offense were let out and I had to remain in prison. Supportive families are the most important factor in helping an offender make the difficult transition from prison to freedom successfully. Why would we keep these families apart a day longer than necessary, particularly when Congress has recognized the injustice of those original sentences?

Now, some will say "they should have thought of that before they committed the crime." In fact, that's probably what I would have said when I was in the Legislature. But I would have been wrong, because if they had thought of a lot things they wouldn't have committed the crime, and punishing them harder and longer than someone else with the same offense just isn't right. It is unfair to both the inmates and their families.

It is a fundamental principle of law, from the Code of Hamurabi through the Bible's Lex Talionis to our common law, that the punishment for a crime should do no more harm than the underlying offense. The disparity in sentences between crack and powder has done far more harm to our communities than the original offenses. To leave this vestige of the disparity unaddressed would be a tragedy not only for the individuals and their families but for their communities as well.

Some have warned that you will unleash a wave of violent criminals if you apply the new sentences retroactively. That is not borne out by past experience. Kingpins and violent drug dealers will not be set free if you make the Amendment retroactive. In fact, not a single offender will be released automatically. Retroactivity will merely permit certain offenders who have already served long sentences to request a reduction in their sentence. The decision to grant a sentence reduction can only be made by the sentencing judge. If there is reason to believe that the offender remains a danger to the community the government can present that evidence to the judge. In fact, the statute that allows retroactivity also directs the courts to take public safety into account.

No one wants to inflict an increase of violence on our cities. But we know from past experience that that won't happen. In 2007 I testified at the Commission's hearing on whether to make its recently-enacted two level downward adjustment retroactive. I listened as several officials with impressive titles made breathless predictions that mayhem, violence and social disintegration would follow retroactivity as surely as night follows day. An assistant US Attorney flatly predicted that "these offenders likely will

reoffend and will do so within a short time of getting out of jail." She testified that retroactivity would contribute to the growing violent crime problem, increase the numbers of murders and undermine public safety. Of course, those overheated predictions were wrong, and nothing of the sort happened.

So, for those who predict that applying the Fair Sentencing Act retroactively will set free thousands of violent criminals to run riot in our cities, I would press them to explain why this retroactivity would be different than the results of the Commission's 2007 decision. In addition, those benefitting from retroactivity would still have served more than 10 years on average. Do those who oppose applying the new sentences retroactively really believe that 10 years in prison won't change these inmates - but serving another 30 months will change their hearts and make them less dangerous? I would love to see them make that assertion with a straight face.

At the 2007 hearing, an Assistant Director of the U.S. Marshals Service predicted that his agency would be overwhelmed by the flood of requests, and that "manpower and funding (will) be diverted from task forces, protection details and new initiatives like the Adam Walsh Child Protection and Safety Act". We can always rely on the bureaucracy to threaten to close down a popular effort like the Adam Walsh Act in order to resist reforms. His prediction of cataclysm proved erroneous. The courts, prisons, prosecutors and marshals coordinated the processing of requests for retroactive sentence reduction and the system handled them seamlessly.

The Bible tells us that we are to seek punishment in proportion to the crime. The same punishment should be meted out for the same offense; measure for measure and pound for pound. This Commission has the opportunity to restore fairness and balance to our sentences for crack cocaine. As a matter principle and justice the Commission should make the new sentences retroactive. Thank you.