

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CHAMBERS OF
JUDGE DAVID F. HAMILTON

BIRCH BAYH U.S. COURTHOUSE
ROOM 330
46 EAST OHIO STREET
INDIANAPOLIS, INDIANA 46204

September 4, 2007

Honorable Ricardo H. Hinojosa
Chair, United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: *Retroactive Application of Crack Cocaine Guideline Amendments*

Dear Judge Hinojosa:

I am writing to urge the United States Sentencing Commission to list its 2007 amendments to the crack cocaine guidelines as retroactive under USSG § 1B1.10(c).

The 2007 amendments are important and welcome steps toward more equitable sentencing in drug cases. The entire Commission deserves thanks and praise for making a courageous and wise decision.

I realize that the issue of retroactivity has other dimensions, and I know that all Commissioners will give the issue your closest attention. In my mind, respect for the law weighs heavily in favor of retroactive application.

Several thousand inmates now in federal prison were sentenced for crack cocaine offenses under a legal regime that was both unconstitutional and unreasonable. We know the legal regime was unconstitutional because *United States v. Booker* held that mandatory guidelines were unconstitutional. The Commission knows – and many others in the federal criminal justice system know – that the older guidelines were unreasonable because they were based on the 100:1 crack/powder ratio, which tends to exaggerate the serious harm caused by crack.

A determination of retroactivity would allow district courts to reduce some sentences that now appear, with the benefit of hindsight, to have been both unconstitutional and unreasonably severe. A judge who still believes the original sentence was appropriate will be able to rule accordingly. But for many defendants, a decision by the Commission to list the 2007 crack amendments as retroactive is the only viable way to modify sentences that are now recognized as both unconstitutional and unreasonable.

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Thank you for considering these views. I would welcome the chance to talk further with you and other Commission members on the subject.

Sincerely yours,

A handwritten signature in cursive script that reads "David F. Hamilton". The signature is written in dark ink and is positioned above the printed name.

David F. Hamilton

DFH/jm

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