

Congress of the United States

Washington, DC 20515

October 8, 2010

The Honorable William K. Sessions III
Chairman
United States Sentencing Commission
One Columbus Circle NE
Washington, D.C. 20002-8002

Dear Chairman Sessions:

We write to let you know we believe that assigning a base offense level of 24 for offenses involving 28 or more grams of crack cocaine rather than at level 26 would be more consistent with the intent and background of the Fair Sentencing Act of 2010.

The primary focus of S. 1789, the Fair Sentencing Act of 2010, was to reduce the disparity in the statutory mandatory minimum sentencing requirements so the sentences for the crack form of cocaine could be set to reflect the individual facts and circumstances of a case on a basis nearer to the existing sentencing requirements for the powder form of cocaine. The initial Fair Sentencing Act (S. 1789, the Fair Sentencing Act of 2009) and H.R. 3245, the "Fairness in Cocaine Sentencing Act of 2009," which was passed by the House Judiciary Committee, called for crack cocaine to be sentenced on the same basis as powder cocaine. The Department of Justice also went on record, for the first time, in support of the effort to have crack and powder cocaine sentenced alike.

Although we were not able to get a one-to-one ratio adopted into law, clearly a large part of the foundation and impetus behind the effort to address the disparity has been to allow sentencing for the crack form of cocaine to be the same, or as close as possible, as that for the powder form. Assigning a guideline range that starts slightly below, but exceeds the statutory minimum, does not suggest that a judge can, or should be able to, set a sentence below the statutory minimum, just as starting the guidelines below the statutory minimum did not mean this under the prior law. It simply allows the maximum flexibility to assure sentences for crack can be imposed nearer to sentences for powder under comparable circumstances for crack offenders eligible for minimal role consideration.

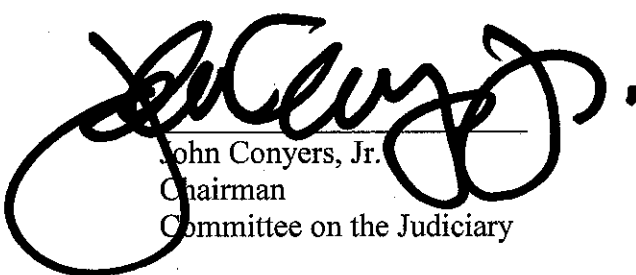
The Honorable William K. Sessions III

October 8, 2010

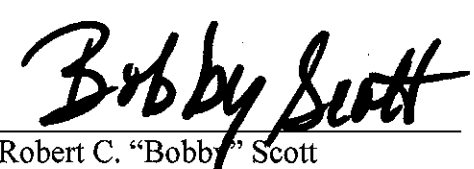
Page 2

We will continue the statutory effort to have crack and powder cocaine sentenced the same. In the meantime, we hope the Commission will continue to reflect its recognition of the importance of this concept by allowing the maximum flexibility under the guidelines for crack and powder to be sentenced as much the same as the current law allows by not increasing the current base offense level from 24 to 26.

Sincerely,



John Conyers, Jr.
Chairman
Committee on the Judiciary



Robert C. "Bobby" Scott
Chairman, Subcommittee on Crime,
Terrorism, and Homeland Security