



National District Attorneys Association
99 Canal Center Plaza, Suite 330, Alexandria, VA 22314
703.549.9222 (o) • 703.836.3195 (f)
www.ndaa.org

Written Testimony of

Mr. Raymond F. Morrogh

**Commonwealth's Attorney
Fairfax County, VA**

and

**Director-at-Large
National District Attorneys Association**

Hearing before the United States Sentencing Commission

on

Whether the Commission should amend guidelines applicable to drug offenses,

including

possible consideration of amending the Drug Quantity Table in §2D1. across drug types

March 13, 2014

Judge Saris, members of the Commission, thank you for inviting me to testify today on behalf of the National District Attorneys Association (NDAA), the oldest and largest organization representing over 39,000 district attorneys, State's attorneys, Commonwealth attorneys, and county and city prosecutors with the responsibility for prosecuting 95% of criminal violations in all 50 states in America.

We are here today to consider potential amendments to federal sentencing guidelines which if enacted could decrease sentences for roughly 70% of the federal prison population incarcerated

for drug offenses. I fear if it weren't for the federal government's budget shortfalls we would not be here today considering such amendments. To many of the State and local prosecutors represented by the NDAA, this is a case of weighing balancing federal budgets versus public safety, which leads me to ask the question, "Is this a conversation we really should be having?"

The truth is crime is down significantly in the United States, in many states at record lows. I spoke with a prosecutor friend of mine in Florida recently, who told me that crime in Florida is the lowest it has been in 42 years, and many prosecutors echo the same statistics in their respective states. Across the country, homicides are down 50% over the past 30 years – isn't this a statistic we can all be proud of? In addition, the crimes of rape, robbery, assault, burglary - nearly every category of crime - is likewise down 30% to 40%.

I understand America's federal budget problems are real. Deep budget cuts and the effects of sequestration toward federal programs like the Byrne Justice Assistance Grant program, which largely funds multi-jurisdictional drug task forces; the John R. Justice Loan Repayment Program for Prosecutors and Public Defenders, a repayment program to encourage young lawyers to pursue public service; and the closure of the National Advocacy Center in Columbia, SC, which was the only facility in America dedicated to training State and local prosecutors, continue to hit State and local law enforcement hard. However, with crime down to historically low levels, shouldn't we consider other areas of the federal budget to "trim the fat" off of rather than roll the dice with the safety of America's communities?

Prosecutors have many tools to choose from in doing their part to drive down crime and keep communities safe and one of those important tools have been federal sentencing guidelines in relation to drug offenses. While current Federal sentences for drug crimes sometimes result in outcomes that seem harsh, the vast majority of those cases are the result of a defendant that rejected plea negotiations, went to trial, and then received the sentence he or she said would be mandatory if convicted by a jury or judge. In addition, mandatory sentences have been extremely helpful to state and local prosecutors as leverage to secure cooperation from defendants and witnesses and solve other crimes or, in a drug distribution case, “move up the chain” and prosecute those at higher levels of sophisticated trafficking organizations; it is a tool that has been used sparingly but effectively by state and local prosecutors.

Despite the myth being promulgated by the U.S. Department of Justice that “America’s federal prison system is bloated with first-time, low level drug offenders”, the vast majority of prisoners in the Federal prison system have been very bad actors for a long time. For many of them, it was their 5th or 6th offense or their sentences were enhanced because they possessed a weapon or stolen property. Rewarding convicted felons with lighter sentences because America can’t balance its budget doesn’t seem fair to both victims of crime and the millions of families in America victimized every year by the scourge of drugs in America’s communities.

State and local prosecutors will tell you that it is a very small percentage of offenders that commit the vast majority of crimes, people who insist no matter what we do to change their behavior, commit crime after crime. It has also been found that nearly 80% of violent crimes are committed under the influence of drugs and alcohol. Is it not appropriate, after all attempts have

failed, or in the event the person commits a very serious offense, to sentence them to longer prison terms which has inarguably resulted in lower crime rates and safer communities? Why now, as we are getting even smarter on drugs and crime with programs like Drug Courts, 24/7 and Project Hope as carrots would we whittle away one of the most effective sticks – harsh but effective drug penalties?

Judge Saris, members of the Commission, I appreciate the opportunity to testify before you on this important matter and will be happy to answer any questions you might have.