



THE
AMERICAN
CONSERVATIVE
UNION
FOUNDATION

Pat Nolan
Director, Center for Criminal Justice Reform
(703) 777-1871
1331 H Street, NW, Suite 500, Washington, DC 20005

July 5, 2014

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

Re: Retroactivity of the amendment to the drug sentencing guidelines

Dear Judge Saris and commissioners,

First, I want to thank you again for inviting me to testify before the Commission on behalf of the American Conservative Union Foundation. I am proud to be part of the large and growing chorus of conservative voices raised in support of fundamental reforms in our criminal justice system. An important part of our reform efforts in the states and at the federal level is aimed at making our sentencing structures more just. It is as part of that effort to make our laws more just that I urge you to apply the lowered guideline range for drug offenses retroactively.

I am writing to supplement my written testimony to respond directly to the Department of Justice's effort to severely limit those eligible for retroactivity. At the hearing, I pointed out the injustice of prisoners sentenced under the old guidelines remaining in prison while inmates convicted of the same crime enter prison, serve their sentence and go free. If the Commission severely restricts eligibility for retroactivity as suggested by DOJ, similar injustices will occur.

To be just, sentences should be tailored to the actions of the individual offender and the impact the crime had on its victims and the community. Of course, public safety is a key factor to be considered. However, the determination of dangerousness should be based on the actual risk posed by the individual offender; not the broad and blunt categories proposed by the Department which are arbitrary stand-ins for dangerousness.

These rigid categories would operate like the mandatory minimums which the Commission has criticized. Chuck Colson, my former colleague, condemned mandatory minimums as "impos(ing) a single, one-size-fits-all sentencing structure with no regard for the

seriousness of the crime or for an offender's threat to the community.” The Department’s exclusions would do the same, stripping judges of the discretion to make sound retroactivity decisions.

You have equipped judges with sentencing and retroactivity instructions in the Guidelines and Congress has done so in federal statutes. Isn’t the better course to allow them to apply their judgment and let them do their job? We know that states around the country -- red, blue and purple -- are turning away from rigid risk categories to more nuanced factor-based assessments that give judges room to get it right, for every defendant they face. They have seen good results. I am confident you will as well.

Please don’t take a backward step. I urge you to reject line-drawing and instead allow our courts to protect our communities and do justice – case by case.

Sincerely,

Pat Nolan