

U.S. Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

re: comments on proposed amendments

Paralegal Project  
Paula Anthony, Paralegal  


Honorable Judges and Committee Members:

I am deeply disappointed by any proposal that would make it more difficult, rather than less difficult, for the Commission to correct sentences after it has determined that a guideline no longer produces fair or proportionate results.

Retroactivity is not an academic exercise. Behind every retroactivity vote are real people, real families, and real years of human life.

The Commission has heard extensive evidence about sentencing disparities involving low-level drug offenders. It has recognized that drug quantity, purity, and a defendant's nominal place in a conspiracy do not always accurately measure culpability. Yet people sentenced under those earlier policies remain incarcerated—sometimes for decades—while similarly situated individuals sentenced after an amendment receive substantially lower sentences.

That result is particularly troubling for low-level participants. An addicted runner or courier may know almost nothing about the organization. The dealer or organizer knows the suppliers, customers, routes, finances, and other participants and therefore possesses valuable information to exchange for cooperation credit. The addicted courier frequently has nothing comparable to offer—not because the courier is more culpable, but precisely because he or she occupied such a low position in the organization.

The result can be perverse: the person with the greatest knowledge because of greater involvement receives the greater benefit, while the person with the least knowledge because of lesser involvement receives the greater punishment.

The absence of useful information is not evidence of greater culpability.

There is also a financial consequence that cannot be ignored. Chair Reeves

has already called attention to the substantial annual taxpayer cost of federal incarceration and, more importantly, to “The price of spending one day more than necessary in prison.” If one unnecessary day matters, then the Commission must confront the cost—both human and financial—of five, ten, or fifteen unnecessary years.

Taxpayers should not be required to finance incarceration that the Commission's own subsequent policy judgments indicate is longer than necessary to accomplish the purposes of sentencing. Nor should families continue losing parents, children, spouses, and grandparents merely because the correction of an outdated guideline came after their loved one's sentencing date.

Finality has value. But finality should not become a justification for perpetuating a punishment the federal sentencing system itself has subsequently concluded is disproportionate.

When the Commission determines that a guideline requires correction, retroactivity should remain a meaningful mechanism for extending that correction to people already serving sentences under the former rule. The procedural rules governing retroactivity should facilitate careful consideration of justice, public safety, proportionality, and fiscal responsibility—not create unnecessary additional barriers to relief.

I urge the Commission to remember that retroactivity does not automatically release anyone. It permits courts to review individual cases. Judges remain able to examine the defendant's conduct, institutional history, rehabilitation, public-safety considerations, and the factors under 18 U.S.C. § 3553(a).

Allow the courts to do that work.

Do not make it increasingly difficult for deserving individuals even to reach the courthouse door.

The Commission has the ability not only to improve sentencing for tomorrow's defendant, but also to address the consequences of yesterday's sentencing policies. A correction that benefits only the person sentenced tomorrow while leaving an identically situated person serving decades under yesterday's rule may be prospective reform, but it is not complete justice.

I am angry at the actions of this Commission. I have seen more and more unfair sentencing since I started Paralegal Project nearly ten years ago. Between the BOP making life more difficult than necessary, lack of medical, dental and healthcare in general, holding/destroying/not mailing mail (I have proof), disintegration of food and commissary availability, this debacle over application of

Congressional LAW (FSA ETC), unnecessary (preventable) death of AICs, and a whole host of other things while you recognize that past sentencing guidelines are monstrously out of proportion and have made current guidelines more reasonable now refuse to allow inmates (AICs) to petition to have their sentences adjusted to current levels. You'd rather see AICs rot in prison than go home. Getting into trouble should not be a lose your life sentence. Prison does not include losing your life but many have due to prison conditions. It will take an act of God to get Congress to do anything to bring fairness back to the justice system – that is YOUR (the Commission's) job and at this point I'm going to be blunt and say you have NOT brought fairness back to the justice system, especially for those sentenced before the current amendments.

Congress is sitting on the Safer Detention Act which would go a long way towards accomplishing what the Commission started. The Commission getting behind the Act would go a long way toward fixing some of the sentencing disparity from older guidelines. Nudging those you know in Washington may bring this legislation to fruition.

There are some things you cannot do. You cannot make the prosecutors quit lying and manufacturing evidence. I am now told lying and manufacturing evidence is legal for prosecutors. It doesn't bring out the truth. You can't make Judges be fair because your biggest vocabulary word is discretion – to hell with the law if a judge decides he/she doesn't want to adjust the sentence for fairness. I have had several clients petition for adjustments under the youthful offender amendment only to be totally ignored – while the facts fit the Judge's discretion does not. Judicial discretion also deserves careful consideration when the Commission evaluates retroactivity. Discretion is essential to individualized sentencing, but discretion can also defeat the very purpose of an amendment when the circumstances that prompted the Commission to change a guideline are subsequently used as reasons to deny the benefit of that change.

I have seen this occur with the Commission's treatment of youthful offenders. I assisted a young man who was approximately twenty years old at the time of his drug offense and received a life sentence. **20 years old with a life sentence.....** at taxpayer expense. When relief was later sought based upon the Commission's recognition of youth and science as an important sentencing consideration, the court pointed to his troubling teenage history in deciding whether relief was warranted. Under discretion the Judge denied the petition. Science has determined that culpability as a youth can extend into the early 30's for some while the median age for maturity is 25 years old.

That illustrates the problem vividly. A troubled adolescence should not automatically become evidence against application of a policy intended to recognize the diminished maturity, vulnerability, impulsivity, susceptibility to influence, and capacity for change associated with youth. In appropriate cases, that history may be part of the reason the sentencing policy was changed in the first place.

The same danger exists with drug amendments. If the Commission recognizes that a courier, runner, addicted participant, or other low-level defendant may have been punished too severely because quantity, purity, or relevant conduct overstated actual culpability, retroactivity should provide a genuine opportunity for correction. It should not merely create another discretionary proceeding in which the characteristics that demonstrate the defendant's lesser role are transformed into reasons to preserve the original sentence. Someone 33<sup>rd</sup> on a 45 person indictment should not receive 15 years more than the primary operator. I have several clients on large indictments that got a LOT more time than the dealer/organizer.

Judicial discretion should permit consideration of genuine individualized public-safety concerns. It should not become a mechanism through which recognized sentencing disparities simply survive under another name.

I am angry that a Commission that recognizes the **COST** of incarceration is borne by taxpayers but is not doing anything to relieve that cost. And then the cost of the destruction of families. I have had 5 clients (all low or minimum custody) lose a parent (and one lost both parents) and the BOP would not even let them furlough for the funeral. There again is our "fair" justice system. I have had a bunch of clients - 5-10 that I know of - who have been through divorce proceedings this past year. Some had children and those children are now being kept from communicating with the AICs. All of this because of sentencing under the prior drug amendments without a way to bring their sentence to current levels and an optimistic look forward. Our system saddens me a great deal. I waffle between continuing to help and quitting. I am frustrated Judges will do nothing to implement the amendments (discretion – we don't HAVE to). Until the Judges **have** to rule according to the amendments without discretion, the amendments are useless for AICs sentenced on old guidelines.

Now you want to make it much more difficult to get retroactivity by requiring more votes to pass – more than a quorum - not simple majority. Why should it take four Commissioners to recognize and correct a defective or outdated sentencing guideline for tomorrow's defendant, but five Commissioners to allow a

court even to consider applying that correction to yesterday's defendant? Silent roadblock ahead. It now will never happen or IF it does, it will be with an amendment that will literally affect few. I never seen 5 voting people on a small Commission of ANY kind agree..... you are intentionally making it so retroactivity never happens – again our “fair” justice system.

Amendments are recognition of a problem in the sentencing guidelines. What once was should be no more. Yet prosecutors and PSR developers (are they properly trained) look for reasons to add time to a sentence and then congratulate themselves on a job well done. But the job is not well done if it doesn't abide by the spirit of the amendment as well as the law. Status quo survives all too often and all too well. If a sentencing guideline is a problem recognized today – shouldn't it apply to that same guideline yesteryear?

Judges adjudicate. Commission fabricates. Prosecutors roll their eyes and look for ways around changes. Only thing positive I can say is at least they don't hang people anymore.

**Four votes are sufficient to change a sentencing guideline. It should not require five votes to permit a court to consider whether that same correction should apply to a person still imprisoned under the guideline the Commission determined needed changing.**

**Do not adopt the proposed five-vote requirement for retroactivity.**

Thank you for your attention.

Working under grace,

Kind regards,

A handwritten signature in cursive script that reads "Paula Anthony, Paralegal".

Paralegal Project

Paula Anthony, Paralegal



"Life is not about waiting for the storms to pass, it's about learning how to dance in the rain."  
Sistas