

**Testimony of Pat Nolan,  
Vice President of Prison Fellowship  
Before the U.S. Sentencing Commission  
November 13, 2007**

Good afternoon, my name is Pat Nolan. I am a Vice President of Prison Fellowship and lead their criminal justice reform arm, Justice Fellowship. I also am a member of both Prison Rape Elimination Commission and the Commission on Safety and Abuse in America's Prisons. I served 15 years as a member of the California State Assembly, four of those as the Assembly Republican Leader. I was a leader on crime issues, particularly on behalf of victims' rights. I was one of the original sponsors of the Victims' Bill of Rights and received the Victims' Advocate Award from Parents of Murdered Children. I was prosecuted for a campaign contribution I accepted which turned out to be part of an FBI sting. I pleaded guilty to one count of racketeering and served 29 months in federal custody.

I sit before you as a conservative Republican, a former legislator and former prisoner who is convinced that this country needs a more rational approach to apprehending, prosecuting, and sentencing those who traffic in cocaine. Prison Fellowship applauds the Sentencing Commission's decision to move us in that direction with the Amendment that went into effect on November 1. We respectfully ask that you take next important step: to apply those changes retroactively.

I know you have heard from legislators both in support of and in opposition to retroactivity. I would particularly like to address the concerns of several Republican members of the House and Senate who argue against the Commission applying the amendment retroactively.

I have a very high regard for each of the members who signed the letters, and I probably would have signed a similar letter had this issue arisen when I served in the legislature. However, as a result of my experiences in prison and as a member of the two commissions studying violence in prison, I would not sign it now. I strongly disagree with the letters' prediction about the impact of retroactivity

When I was a state legislator, I, too, thought that locking up people for long sentences made us safer. But I know differently now. Long sentences are not an end in themselves, but merely a means to make the public safer. In the case of crack cocaine sentences Congress specifically sought to give prosecutors the tools to get at the large traffickers.

The theory was that huge sentences would encourage street dealers to "rat" on their suppliers, who would then rat out their providers, and so on up the chain until the kingpins were nailed. In practice, the opposite has occurred. Instead of ratting up the

chain, offenders rat down the chain. They are afraid of those above them in the flow of cocaine, but are glad to offer up small fish in return for a shorter sentence. In reality, those that have the smallest involvement in the movement of crack generally serve the longest sentences because they have no one to rat out.

While incarcerating these small dealers may make a prosecutors' win/loss score look good, it doesn't stop the flow of cocaine into our cities. The small dealers are easily replaced with other young people gullible enough to think that they can get rich quickly dealing in crack.

I served time with plenty of crack dealers imprisoned for long sentences under the mandatory minimums. Typical of these small time dealers was the kid in the bunk above me at the Federal Prison Camp at Pleasanton. Jody was doing a ten year stretch for selling crack. But he was no "Mr. Big". He could hardly have organized a two car funeral, let alone a crack conspiracy.

Each prison cell costs \$100,000 to build, and each felon costs \$30,000 to incarcerate for a year. Add to that the cost of arresting and prosecuting Jody, and it will cost the taxpayers about \$500,000 for his minor role in crack sales. Are we any safer after spending that half million dollars putting Jody away?

In my 29 months in custody, I met plenty of small time dealers, but I never met a kingpin. The numbers confirm my observation. Only 7 percent of federal cocaine cases are directed at high level traffickers. Instead, federal authorities squander huge amounts of resources on small cogs in the cocaine distribution network: one third of all federal cocaine cases involve an average of 52 grams – the weight of a candy bar. This is a terrible misuse of the time and talent of federal law enforcement and prosecutors. Plus, it has filled our federal prisons to overflowing. Prisons are for people we are afraid of. Yet, we have filled them with people we are merely mad at. If we are to stop the flood of cocaine coming into our cities, federal resources should be focused on high-level traffickers. Making the Amendment retroactive is a step toward restoring some balance to the system.

I am not alone as a Republican who feels that our crack cocaine sentences are horribly out of balance. Former Congressman J. C. Watts recently joined me in an op-ed in the Washington Times. In that article we wrote, "If we are to stop the flood of cocaine coming into the country, federal resources should be focused on the networks that bring in boatloads of cocaine, and on people who shoot and kill - the large and violent operators that the local and state authorities cannot effectively combat. This would be good for the taxpayers, and more effective in stopping the flow of cocaine. After almost 21 years, the 100 to 1 crack and powder cocaine sentencing disparity has resulted in federal resources being misdirected on small time drug dealers and not on stopping the flow of drugs into the country."

The letters from the Republican legislators warn that retroactivity will significantly shorten the sentence or result in the release of, in their words “major crack dealers with long criminal records, including firearms offenses.” The letters go on to say, “Yet those convicted of simple possession will see little, if any, reduction.”

Those claims are only partially correct. Yes, those convicted of simple possession will receive shorter sentences than offenders serving longer sentences. However, it is simply a function of the limit of two levels imposed by the sentencing guidelines.

And, the letters are right that some people sentenced for simple possession will not see any reduction. But that will not be the result of any action by this Commission. Rather it is required by the five-year mandatory minimum sentences mandated by Congress. Only Congress can change those mandatory minimum sentences.

One assertion in the letters is flat wrong. Major dealers will not be set free if you make the Amendment retroactive. In fact, not a single offender will be released automatically. Retroactivity will merely *permit* certain offenders who have already served long sentences to request a reduction in their sentence. The decision to grant a sentence reduction can only be made by the sentencing judge. If there is reason to believe that the offender remains a danger to the community the government can present that evidence to the judge. In fact, the statute that allows retroactivity also directs the courts to take public safety into account. Prison Fellowship believes that public safety is a top priority of our justice system, and making the Commission’s policies retroactive would be consistent with protecting the public.

In fact, I would assert that *NOT* making the policy retroactive will endanger the public. Let me explain why.

Our prisons are bursting at the seams. Overcrowded prisons contribute to a toxic environment that results in horrible violence, endangering both correctional officers and inmates. As I mentioned earlier, I serve on the Prison Rape Elimination Commission and the Commission on Safety and Abuse in America’s Prisons. In dozens of hearings around the country, corrections officials have told us that prison crowding makes prison management almost impossible. Former California Corrections Secretary Roderick Hickman told the Commission that the California Department of Corrections and Rehabilitation confines twice as many people as the facilities were designed to house. He listed overcrowding as first among the significant factors contributing to violence.

The report of the Commission on Safety and Abuse found that “The majority of prisons and many jails hold more people than they can deal with safely and effectively, creating a degree of disorder and tension almost certain to erupt into violence.” Reducing prison crowding was the Commission’s number one recommendation to curb prison violence, and retroactivity addresses that goal.

By applying your policy retroactively, the Commission will help reduce prison crowding and violence in a very intelligent way – by allowing offenders who have already served

long sentences to be released unless the judge finds they pose a risk to society. With an average sentence served of over 27 months, no one will be “getting off easy”.

By lessening prison crowding, retroactivity will also increase safety in our communities by creating a better environment in which inmates can prepare to live healthy, contributing lives after they are released. As the Commission stated, “What happens in prisons doesn’t stay in prisons.” The skills inmates develop to survive inside violent prisons make them anti-social after they are released. Lessening the crowded, violent environment in prisons will allow the institutions to prepare the inmates to be better neighbors when they are released.

The sheer number of inmates has forced corrections officials to turn every available area of prisons into housing for the inmates, thereby squeezing out space for programs that prepare inmates for release. I serve on Governor Schwarzenegger’s Rehabilitation Strike Team. One of the largest hurdles we face is that every classroom, chapel, hallway and closet has been converted into dorm space. This means that there is nowhere to hold GED courses, drug treatment classes, life skills training, Bible studies or other programs. Sending inmates home without preparation only increases the risk for all of us.

Now, let me turn to the fairness of your policies. The commission has concluded that the sentences for crack offenders are so harsh that they will no longer be imposed on people who commit that offense in the future. The Commission’s policies are correct – and they are just as correct for those sentenced before November 1 as those sentenced after.

The Bible tells us that we are to seek punishment in proportion to the crime. “An eye for an eye and a tooth for a tooth” was a restriction on the power of government so that sentences imposed would be no worse than the harm done by the crime. Punishment should be measure for measure and pound for pound. As a matter principle and justice the Commission should make the Amendment retroactive.

In sum, applying your Amendment retroactively will NOT automatically release dangerous offenders. It WILL promote institutional safety by reducing crowding, just as it WILL promote community safety freeing up space and resources to prepare inmates for release. And most important of all, it is the fair and just thing to do. Thank you.