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**TESTIMONY**

**of**

**Rick Fulginiti**

**National Trustee for the Maryland State Lodge,**

**Fraternal Order of Police**

**on**

**Fair Sentencing Act of 2010**

**Before the  
U.S. Sentencing Commission**

**17 MARCH 2011**

*—BUILDING ON A PROUD TRADITION—*

Good morning, Madam Chairman, distinguished Vice Chairmen, and Commissioners of the U.S. Sentencing Commission. My name is Rick Fulginiti, National Trustee for the Maryland State Lodge of the National Fraternal Order of Police, the largest law enforcement labor organization in the United States, representing more than 330,000 rank-and-file police officers in every region of the country.

I want to thank you, Madam Chairman, and the rest of the Commission for inviting me here today to share the views of these rank-and-file officers on the proposed amendments to the sentencing guidelines as they relate to drug offenses.

First, the Commission has proposed making permanent the emergency amendments that were put into place on November 1, 2010. As an organization, the FOP was generally opposed to the reduction in penalties for crack cocaine offenses, though we took no official position on the Fair Sentencing Act of 2010 (PL 111-273). The changes increased the quantities of crack cocaine that would trigger the five- and ten-year mandatory minimum penalties.

Prior to the emergency amendments, any amount of crack cocaine between 5 and 50 grams triggered a five-year mandatory minimum. The emergency amendments raised the quantity required to between 28 and 280 grams to trigger the same penalty. In order to trigger a ten-year mandatory minimum penalty, more than 280 grams of crack cocaine must be involved—a huge increase from the 50 grams previously required for the same sentence. Despite the fact that other drugs may have eclipsed cocaine as drug of the moment, the market for crack cocaine remains massive. The FOP strongly opposes any permanent amendment that would undercut the important role these mandatory minimums play in prosecuting drug crimes.

The Commission has also requested comment on the possible retroactive application of these guidelines. The FOP strongly opposes any retroactive application of the guidelines. According to the data provided by the Commission, nearly 13,000 offenders would be eligible to receive reduced sentences. And, within five years, more than 7,000 convicted drug offenders could be released back into society. Nearly half that number would be released within two years of enacting the proposed retroactive reductions.

It is important to note here that these numbers only apply if the base offense levels in the emergency amendments remain the same. However, the Commission has also suggested lowering the base offense levels that correspond to the mandatory minimums, allowing for the early release of an even greater number of convicted drug offenders.

These criminals are responsible for creating and feeding the addictions of countless Americans and their release would serve only to inflict great harm on many more innocent Americans. Furthermore, the current fiscal climate is such that law enforcement agencies are being forced to lay off officers and reduce community services across the nation. The release of criminals through retroactive reduction in sentences will serve only to create a dangerous situation that we can, and must, avoid.

Retroactive application of the guidelines would allow drug dealers with long criminal histories back onto the streets. For example, a parolee in Sacramento was arrested with thirty “rocks” of

cocaine in his possession. After a short prison sentence, that individual continued his involvement in criminal enterprise. He is currently awaiting sentence for his involvement in seven robberies and a kidnapping.

In yet another case, a man was arrested for possession of crack cocaine and received probation. While on probation, he was again arrested for six counts of robbery. Another man managed to stay out of prison for offenses involving drug possession and assault with a deadly weapon, only to be arrested later for murder.

These cases are both tragic and avoidable. It is imperative to ensure drug dealers know that their crimes will not go unpunished and that punishments will not be weakened through retroactive reduction in sentences. We must continue to send the message that we will not tolerate drugs or drug dealers in our communities.

In conclusion, Madam Chairman, I want to thank you and the Commission for your consideration of the view of more than 330,000 members of the Fraternal Order of Police. I would be pleased to answer any questions you may have.