

Date: July 18, 2014

Case: United States Sentencing Commission - Public Meeting



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Before the
UNITED STATES SENTENCING COMMISSION
Public Meeting

Friday, July 18, 2014

Education Center
Thurgood Marshall Federal Judiciary Building
One Columbus Circle
Washington, D.C. 20002-8002

The Commission meeting was convened,
pursuant to notice, at 1:00 p.m., before:

PATTI B. SARIS, Chairwoman

VICE CHAIR RICARDO H. HINOJOSA

VICE CHAIR KETANJI BROWN JACKSON

VICE CHAIR CHARLES R. BREYER

COMMISSIONER DABNEY FRIEDRICH

COMMISSIONER JONATHAN W. WROBLEWSKI

COMMISSIONER WILLIAM H. PRYOR

COMMISSIONER RACHAEL E. BARTOW

STAFF:

KENNETH P. COHEN, Staff Director

KATHLEEN C. GRILLI, General Counsel

TOBIAS DORSEY

1 P R O C E E D I N G S

2 (1:00 p.m.)

3 CHAIRWOMAN SARIS: The meeting is now
4 called to order.

5 Thank you, everyone, for coming to this
6 public meeting of the United States Sentencing
7 Commission. Once again, your attendance here is a
8 testament to the extraordinary interest in Federal
9 sentencing issues right now, and specifically in the
10 issue that the Commission is considering today:

11 Whether the Amendment the Commission
12 approved unanimously in April to reduce the Guideline
13 Levels applicable to the Drug Quantity Table by two
14 levels should be made retroactive for those eligible
15 offenders currently in prison.

16 The first order of business of today's
17 meeting is my report on several matters pending
18 before the Commission.

19 The first is our priorities for the
20 upcoming Amendment Cycle. I want to remind everyone
21 that on June 2nd, 2014, we published for comment in
22 the Federal Register a list of tentative priority

1 policy issues for the Amendment Cycle ending May 1st,
2 2015. The comment period is open until July 29th,
3 2014.

4 Give us feedback. We read everything, and
5 we're hoping that you will give us feedback on what
6 issues should be addressed in the upcoming Amendment
7 Cycle.

8 The second thing is, the United States
9 Sentencing Commission Live. It's our new broadcast
10 scheduled for August 19th, 2014. Topics will include
11 "drug guidelines," "interactive source books," and
12 discussion of "alternatives to incarceration."

13 Third, our National Training Seminar. So
14 here's the good news/bad news. The good news is,
15 we're pleased to announce that approximately 1,000
16 individuals have registered to attend our National--
17 Annual National Seminar on Federal Sentencing
18 Guidelines, which will be held in Philadelphia on
19 September 17-19, 2014. The bad news is, registration
20 is now closed. We have hit over-capacity. So we are
21 looking forward to that for everyone who has signed
22 up.

1 The next item of business is a vote to
2 adopt the April 10th, 2014, public meeting minutes.
3 Is there a motion to do so?

4 COMMISSIONER PRYOR: I so move.

5 CHAIRWOMAN SARIS: Do we have a second?

6 COMMISSIONER BARKOW: Second.

7 CHAIRWOMAN SARIS: Any discussion?

8 (No response.)

9 CHAIRWOMAN SARIS: All in favor?

10 (A chorus of ayes.)

11 CHAIRWOMAN SARIS: Anyone opposed?

12 (No response.)

13 CHAIRWOMAN SARIS: All right, the meeting
14 minutes are adopted by voice vote.

15 Now the next item of business is a vote on
16 the possible retroactivity of Amendment III
17 pertaining to Federal Drug Offenses.

18 The General Counsel, Ms. Grilli, will now
19 advise the Commission on that matter. Ms. Grilli?

20 MS. GRILLI: Thank you, Judge Saris.

21 This proposed Amendment provides for the
22 retroactive application of Amendment 782, subject to

1 a Special Instruction.

2 Amendment 782 generally revised the Drug
3 Quantity Table and Chemical Quantity Tables across
4 drug and chemical types.

5 The proposed Amendment lists Amendment
6 782, which was Amendment III in the amendments that
7 went to Congress this year, in the listing in
8 1(b)(1)10(d), as amendment that may be available for
9 retroactive application, subject to a Special
10 Instruction stating as follows:

11 "The court shall not order a reduced term
12 of imprisonment based on Amendment 782 unless the
13 effective date of the court's order is November 1st,
14 2015, or later."

15 The proposed Amendment also provides a new
16 Application Note clarifying that this Special
17 Instruction does not preclude the court from
18 conducting sentencing reduction proceedings, and
19 entering orders before November 1st, 2015, provided
20 that any order reducing the defendant's term of
21 imprisonment has an effective date of November 1st,
22 2015, or later.

1 As a result, offenders cannot be released
2 from custody pursuant to retroactive application of
3 Amendment 782 before November 1st, 2015.

4 A motion to promulgate the proposed
5 Amendment with an effective date of November 1st,
6 2014, and with technical and conforming amendment
7 authority to staff, is appropriate at this time.

8 VICE CHAIR BREYER: I so move.

9 COMMISSIONER BARKOW: Second.

10 CHAIRWOMAN SARIS: All right. Let me
11 begin. We will vote today on whether to grant
12 retroactive application of the Drug Guideline
13 Amendment to all offenders, subject to a Special
14 Instruction that reduced sentences shall not take
15 effect until November 1st, 2015, or later.

16 Before any offender would be released, a
17 Federal judge would have to decide that the offender
18 would not pose a public safety risk, and determine
19 whether release is appropriate.

20 As we always do for retroactivity
21 questions, we have considered the purposes of the
22 Amendment, the magnitude of the change, and the

1 difficulty of applying the change retroactively.

2 The massive response to our request for
3 public comment also speaks to the interest in this
4 issue. We received well over 60,000 letters during
5 our public comment period.

6 I want to thank the Members of Congress
7 who submitted letters. Senators Leahy, Durbin,
8 Whitehouse, and Paul; and Congressmen Conyers, Scott,
9 Cardenas, Cohen, Johnson, O'Rourke, and Richmond.

10 I also want to thank the Criminal Law
11 Committee of the Judicial Conference, the Department
12 of Justice, the Federal Public and Community
13 Defenders, our advisory groups, and the many advocacy
14 groups, law enforcement organizations, and of course
15 the many individuals who submitted views.

16 Your input was once again of paramount
17 importance in the process. After much discussion and
18 consideration, the Commission voted unanimously last
19 April to reduce the Guidelines applicable to the Drug
20 Quantity Table by two levels across all drug types.

21 That Amendment to the Guidelines is now
22 before Congress. Unless Congress acts to disapprove

1 the Amendment, it will become effective on November
2 1st.

3 So let me review why we adopted the Drug
4 Amendment last April. The Commission has the
5 statutory duty to ensure that the Guidelines minimize
6 the likelihood that the Federal prison population
7 will exceed capacity. Reducing the Federal prison
8 population has become urgent, with that population
9 almost three times where it was in 1991.

10 Federal prisons are 32 percent over
11 capacity, and 52 percent over capacity for the
12 highest security facilities. Federal prison spending
13 exceeds \$6 billion a year, making up more than a
14 quarter of the budget of the entire Department of
15 Justice, and reducing the resources available for
16 Federal prosecutors and law enforcement, aid to state
17 and local law enforcement, crime victim services, and
18 crime prevention programs, all of which promote
19 public safety.

20 Several changes in the Guidelines and the
21 law support lowering the Drug Quantity Table by two
22 levels. When the Drug Quantity Tables were set at

1 their current level above the Mandatory Minimum
2 Penalties, drug quantity was the primary driver of
3 the drug sentences.

4 There was only one other specific offense
5 characteristic in the Drug Guideline. Now there are
6 14 enhancements for factors like violence, firearms,
7 and aggravating role.

8 Quantity, while still an important proxy
9 for seriousness, no longer needs to be quite as
10 central to the calculation.

11 Also, originally Drug Guideline Levels
12 were set above the Mandatory Minimum penalty so that
13 even for the lowest level drug offenders with minimal
14 criminal history there would still be some room for
15 their sentences to move down before hitting the
16 Mandatory Minimum. That way, these offenders would
17 receive some benefit if they accept responsibility.

18 Since then, Congress added the safety
19 valve which provides for sentences below Mandatory
20 Minimum levels for low-level offenders and gives
21 those offenders a substantial benefit if they accept
22 responsibility.

1 It is no longer necessary to set the
2 Guidelines above Mandatory Minimum Penalties to
3 ensure that low-level offenders benefit from
4 accepting responsibility. Indeed, when the
5 Commission reduced Guideline Levels for crack
6 offenses by two levels in 2007, the overall rates at
7 which crack cocaine defendants pled guilty and
8 cooperated with the government remained stable.

9 This recent experience indicates that this
10 year's Amendment, which is similar in nature to the
11 2007 Crack Cocaine Amendment, should not affect the
12 willingness of defendants to plead guilty and
13 cooperate with authorities.

14 Many of the same factors which led us to
15 vote in April to reduce Drug Guidelines support
16 making those reductions retroactive. The same
17 changes in the Guidelines and laws I just mentioned
18 earlier that made the lower Guideline Levels more
19 appropriate prospectively also make lower Guideline
20 Levels appropriate for those offenders already in
21 prison, most of whom were convicted after many of the
22 statutory and Guideline changes were already in

1 place.

2 In addition, retroactive application of
3 the Amendment would have a significant impact on
4 reducing prison costs and over-capacity, which was an
5 important purpose of the Amendment, and the impact
6 would come much more quickly than from a prospective
7 change alone.

8 With respect to the magnitude of the
9 change, if the Commission votes today to make the
10 Amendment retroactive for all offenders subject to a
11 Special Instruction that reduced sentences shall not
12 take effect until November 1st, 2015, that would make
13 an estimated 46,290--46,290--offenders eligible for
14 reduced sentences.

15 These offenders would be eligible to have
16 their sentences reduced by an average of 25 months,
17 or 18.8 percent. They would still serve 108 months
18 on average.

19 This potential reduction would result over
20 time in savings of 79,740 prison bed years. The
21 magnitude of the change, both collectively and for
22 individual offenders, is significant. Retroactive

1 application of this change in the Guidelines would
2 make a real short-term and long-term difference as we
3 seek to help get the Federal prison budget and
4 population under control.

5 We have heard from many in Congress, as
6 well as Federal judges, advocacy organizations, faith
7 organizations, academics, and many thousands of
8 citizens urging us to make the Amendment Reducing
9 Drug Guideline Levels fully retroactive.

10 They have argued that retroactivity leads
11 to a fair and just result; that it will promote
12 rather than hinder public safety; and that judges are
13 well positioned to determine in which case a sentence
14 should and should not be reduced.

15 We have listened carefully to the law
16 enforcement community and paid close attention to the
17 concerns raised by many in law enforcement, and by
18 some judges about the public safety implications of
19 applying this Amendment retroactively.

20 Some, like the Major Cities' Chiefs
21 Association, and the Department of Justice, have been
22 supportive of retroactivity, but urge that it be done

1 in a way that safeguards public safety.

2 Others, like the Fraternal Order of
3 Police, the National Association of Assistant United
4 States Attorneys, and the National Narcotic Officers
5 Association's Coalition, have opposed retroactivity
6 based on public safety concerns.

7 We take very seriously our duty to promote
8 public safety, and appreciate the hard work law
9 enforcement officers do every day to protect all of
10 our safety.

11 The proposal we vote on today seeks to
12 address these public safety concerns. It is
13 important to note that the Commission was informed by
14 studies we conducted, comparing the recidivism rates
15 for offenders who were released early as a result of
16 retroactive application of the Commission's 2007
17 Amendment Reducing Guideline Levels for Crack Cocaine
18 Offenders, with a control group of offenders who
19 served their full term of imprisonment.

20 The Commission detected no statistically
21 significant difference in the rates of recidivism for
22 the two groups of offenders after two years, and

1 again after five years.

2 This study suggests that retroactive
3 application of modest reductions in drug penalty such
4 as those in the Amendment we vote on today will not
5 increase the risk of recidivism.

6 Nonetheless, we recognize the reasonable
7 concerns we have heard that releasing a large number
8 of offenders within a short period of time can create
9 risks. I believe the proposal we vote on today takes
10 steps that will effectively address those risks, as
11 well as reduce the difficulty of applying the change
12 retroactively.

13 Specifically, under the Amendment we vote
14 on today judges will be able to begin considering
15 motions to reduce sentences based on retroactive
16 application of the Drug Amendment this November.
17 However, any order reducing terms of imprisonment
18 cannot be effective until November 1st, 2015--meaning
19 that no offenders will actually be released early
20 until November 2015.

21 This delayed implementation will address
22 public safety concerns in three ways:

1 First, it will allow judges more time to
2 consider the initial influx of motions for reduced
3 sentences. As we have consistently said,
4 retroactive application of this Amendment does not
5 automatically entitle anyone to a reduced sentence.

6 Judges will review every case to determine
7 whether it is appropriate for a given offender's
8 sentence to be reduced. The delayed implementation
9 we vote on today will allow judges time to carefully
10 weigh each case, including considering the public
11 safety implications of releasing any given offender
12 early; and will give courts enough time to obtain and
13 review the information necessary to make an
14 individualized determination.

15 In addition, the government will have an
16 adequate time to access information, including
17 information about offenders' conduct in prison, and
18 object to sentence reductions when prosecutors
19 believe public safety may be at risk.

20 We heard testimony from the Judiciary that
21 additional time would be essential to facilitate the
22 kind of consideration that is required. With an

1 estimated 7,953 offenders eligible for release in
2 November 2015 under retroactive application of this
3 Amendment, this added time to consider each case
4 thoroughly will be crucial, particularly in those
5 states like border states which have huge caseloads.

6 Second, the delayed implementation will
7 ensure that the Bureau of Prisons has enough time to
8 give every offender the usual transitional services
9 and opportunities that help increase the chances of
10 successful re-entry into society.

11 In the regular course, many offenders
12 transition from prison to what we call halfway
13 houses, or home confinement, before their ultimate
14 release. Officials from the Bureau of Prisons have
15 emphasized that these transitions help ensure that
16 offenders have the services, support, and skills they
17 need to live productive lives.

18 We heard testimony in June that without a
19 period of delay when a Guideline reduction was
20 applied retroactively in the past, some offenders
21 were released without a re-entry plan and services.
22 A Special Instruction on timing and the proposed

1 Amendment we will vote on today will mean that this
2 time no offenders will be released without having had
3 the opportunity for this regular transition.

4 Third, the delay will allow the Office of
5 Probation and Pretrial Services adequate time to
6 prepare so that released offenders can be effectively
7 supervised. This delay will allow probation officers
8 to be transferred or hired and trained, and allow
9 them to prepare for supervising additional offenders.

10 With time to prepare, the Office of
11 Probation and Pretrial Services will be able to
12 ensure more effective supervision which will increase
13 the chance of successful offender re-entry, and help
14 ensure public safety.

15 We have heard from judges and probation
16 officers that additional time for this step is
17 essential to protecting public safety, and today's
18 proposed Amendment directly addresses that concern.

19 I understand that this Special Instruction
20 on the effective date of reduced sentences under
21 retroactive application of the Drug Amendment will
22 reduce somewhat the number of offenders who will

1 benefit. But I believe this limitation is necessary
2 to ease the difficulty in applying the Amendment
3 retroactively by enabling appropriate consideration
4 of individual petition, ensuring sufficient staffing
5 and preparation to effectively supervise offenders
6 upon release, and allowing for effective re-entry
7 plans.

8 All of these steps will ultimately help to
9 protect public safety and we believe make this delay
10 necessary. I am convinced that today's proposed
11 Amendment is a well reasoned approach to
12 appropriately reduce prison costs and over-capacity,
13 while safeguarding public safety.

14 That is why I will vote for retroactive
15 application today.

16 Now I understand some people have further
17 discussion of this motion. Judge Hinojosa, why don't
18 I start with you.

19 VICE CHAIR HINOJOSA: Thank you, Chair
20 Saris.

21 I voted for the reduction of two levels
22 with regards to the Drug Trafficking Table because I

1 felt very strongly that it continued to be consistent
2 with the Mandatory Minimum statutes passed by
3 Congress. It continued to recognize that weight was
4 an important factor with regards to sentencing in
5 drug trafficking offenses. And at the same time also
6 recognized that, since the original Guidelines had
7 been promulgated there have been aggravating and
8 mitigating factors that have been added, as stated by
9 Chair Saris, with regards to the need for adjustment
10 based on those aggravating and mitigating factors
11 that had been added.

12 I also voted for it because our recidivism
13 studies showed that the reduction of two levels with
14 regards to crack cocaine had not affected in any way
15 the recidivism rates with regards to individuals who
16 had served longer sentences.

17 I also voted for the retroactivity study
18 to be conducted because I felt it was appropriate to
19 do so in a change such as we had just made.

20 During the process, as Chair Saris has
21 pointed out, we have heard from thousands of
22 individuals, some we know and some we don't, but they

1 have all been helpful.

2 We have heard from judges, especially from
3 judges on the Southwest border, and that is certain
4 the group of judges who handles a significant part of
5 the criminal docket when looked at on a national
6 scale. Some of those judges have asked us to vote
7 for retroactivity for policy and resource reasons;
8 others have just as eloquently asked us not to vote
9 for retroactivity for policy and resource reasons.

10 And after careful consideration of their
11 input as well as the thousands and letters we have
12 received and e-mails, and everything else that has
13 come to us, I have decided that when you consider the
14 three factors that we normally consider with regards
15 to retroactivity, that a vote for retroactivity is
16 appropriate.

17 I will also say that, having listened to
18 those on the Southwest border that will bear the
19 brunt of the work that has to be done as judges,
20 there are ample reasons, as Judge Saris has pointed
21 out, with regards to the reason for the delay in the
22 implementation to November 1st of 2015.

1 It is not only the work of the judges that
2 will be helped by this because they will certainly
3 have a big responsibility, as Chair Saris pointed
4 out, with regards to making individual decisions with
5 regards to whether these motions for reduction should
6 be granted, it will also help with regards to the
7 Department of Justice being able to study these cases
8 more closely, rather than just--because there is no
9 doubt that the U.S. attorneys in those areas have
10 huge dockets--it will also help with regards to the
11 probation office.

12 We cannot underestimate the help that we
13 as judges receive from the probation office with
14 regards to any sentencing decision that we make. As
15 Chair Saris so aptly pointed out, this delay will
16 allow the time and the resources to be able to be
17 marshalled within the probation office to be prepared
18 for the number of cases that will be affected. Time
19 from the standpoint that if staff needs to be added,
20 there is a process with regards to how staff can be
21 added and it can be a somewhat lengthy process, and
22 at the same time time to find resources necessary, if

1 same be necessary, with regards to being able to
2 supply the work that is necessary to do this.

3 And at the same time, as Chair Saris
4 pointed out, it also gives the Bureau of Prisons the
5 time to make sure that the public safety factors of
6 reintegration into society are taken care of with
7 enough time for halfway house and/or home
8 confinement, a re-entry program that's normally done
9 on the part of anybody who is released.

10 It is important to point out that about
11 possibly 25 to 30 percent of the defendants that will
12 benefit from this are noncitizens of the United
13 States. In all likelihood, they will be deported.

14 I think it would be important for the
15 Administration to make sure that they are in
16 consultation with their governments to make sure that
17 they understand that perhaps on November 1st of 2015
18 there may be a slightly larger number of individuals
19 that will be released and sent to their country of
20 origin, and that perhaps they would like to do
21 something with regards to the re-entry of those
22 individuals into their country.

1 The factors that we normally use certainly
2 speak strongly with regards to supporting this
3 Amendment. I also need to--supporting the
4 retroactivity of this Amendment.

5 A caveat to all this is that I hope that
6 everyone, especially Members of Congress on both
7 sides of the aisle, recognize that this is not a
8 solution to the drug trafficking statutory situation.
9 The Commission has, and continues to strongly believe
10 that Congress should seriously consider the issue of
11 reducing the statutory Mandatory Minimums and the
12 extension of the Safety Valve to somewhat of a larger
13 Criminal History Category than just one Criminal
14 History Point. I hope that by this action no one
15 will feel that that need does not continue.

16 For all these reasons, I will support this
17 Amendment--this retroactivity of the Amendment.

18 CHAIRWOMAN SARIS: Thank you. Judge
19 Jackson?

20 VICE CHAIR JACKSON: I want to speak only
21 to one aspect of the proposed Amendment today, which
22 is the fact that it makes the Drug Amendment that we

1 voted on in April retroactive without condition,
2 except for delaying the implementation date.

3 At our hearing on retroactivity, the
4 Department of Justice expressed its serious concern
5 that dangerous offenders might have their sentences
6 reduced as a result of this Guideline change, and its
7 being implemented retroactively, and it is a concern
8 that many of us on the Commission share.

9 As a result, much of our work this past
10 month has been devoted to analyzing and evaluating
11 various potential limitations that would attempt to
12 target and exclude dangerous offenders. And it was
13 in the midst of our work on this that I for one came
14 to the conclusion that it is nearly impossible to
15 make the dangerousness determination in a principled
16 and fair way retrospectively and as a categorical
17 matter.

18 Each drug offender is going to have to be
19 evaluated individually in order to determine whether
20 or not as a result of dangerousness or otherwise his
21 or her sentence should be reduced.

22 Despite the enormity of this task, in

1 light of the huge numbers, the judges have testified
2 that they are willing to take up this charge.

3 I will be voting for today's proposed
4 Amendment because I am confident that by extending
5 the implementation date we have given the entire
6 criminal justice community sufficient time to make
7 the kinds of individualized assessments and
8 accommodations that are necessary to ensure public
9 safety.

10 CHAIRWOMAN SARIS: Thank you.

11 Commissioner Wroblewski?

12 COMMISSIONER WROBLEWSKI: Thank you, Judge
13 Saris. Let me first say that your leadership has
14 been a criminal component of the Commission's
15 successful work over the last two-and-a-half years,
16 and we appreciate it very much.

17 And thank you, also, to everyone who has
18 participated in this Amendment process.

19 The last eight years have seen major
20 changes to sentencing and corrections policy at the
21 state level across the country. Faced with huge
22 budget challenges arising in part from the 2008

1 Recession, states have implemented new reforms to
2 sentencing policy that have reduced incarceration
3 modestly.

4 These states have reinvested some of the
5 savings from these reductions in other public safety
6 investments, including drug courts, police, and
7 community corrections. And over that time, the
8 violent crime rate nationwide has fallen
9 significantly.

10 New research has shown that prisoner
11 re-entry can indeed be effective; that certain
12 strategies do work to reduce re-offending. We have
13 talked at the Department of Justice a lot over the
14 past several years about the promise of swift,
15 certain, and fair re-entry accountability programs,
16 most notably the Hawaii and Washington State HOPE
17 programs. And we will continue to encourage the
18 Commission to support research and development around
19 these programs.

20 From the experience of the states, and
21 from our own history, we have learned that while
22 prison can work to reduce crime, just as importantly

1 less prison can also work to reduce crime--especially
2 when justice is delivered with swiftness and
3 certainty.

4 Sanctions do not have to be severe but
5 they must be imposed swiftly and consistently. When
6 punishments are excessive, their connection to the
7 crime is obscured or forgotten. They no longer serve
8 public safety goals, and in fact deplete the system
9 of resources needed for police, prosecution, and
10 other criminal functions.

11 We have learned that what happens after a
12 prison sentence is served is crucial to ensuring
13 public safety. When judges, probation officers,
14 prosecutors, and police work in a unified way with
15 released offenders, punish all infractions
16 consistently and swiftly, and provide needed
17 services, the likelihood of the offender's
18 post-prison success rises dramatically, and with it
19 the level of safety in the community.

20 This less-prison, swift sanctions, strong
21 re-entry approach improves public safety at lower
22 fiscal, human, and community costs. It is part of

1 the Smart-on-Crimes strategy that includes robust
2 policing and a commitment to treatment, prevention,
3 and re-entry. It is better public policy.

4 In the last three years, we at the Federal
5 level have experienced our own fiscal austerity.
6 Budgets have been cut and we have all been forced to
7 do more with less. We now must be more thoughtful
8 and deliberate with our criminal justice policy
9 decisions.

10 For all of these reasons, we supported the
11 recently promulgated Drug Guideline Amendment as an
12 important step to moving Federal criminal justice the
13 lower cost approach to sentencing and corrections and
14 the fight against drug trafficking and drug abuse.
15 And it is why we continue to call for Congressional
16 action on pending sentencing legislation.

17 About a month ago, United States Attorney
18 Sally Abes testified before the Commission in support
19 of retroactive application of the Drug Guideline
20 Amendment. She spoke about her personal experience,
21 and about the importance of this issue to the cause
22 of justice and improved public safety.

1 We are grateful to the Commission for
2 considering the views of the Department of Justice.
3 While the Commission has taken a different approach
4 than the one we advocated to address our public
5 safety concerns, we appreciate very much that the
6 Commission recognized these important concerns and we
7 think the steps to delay implementation of
8 retroactivity will help address them, in particular
9 by giving the Bureau of Prisons the opportunity to
10 move prisoners through halfway houses and otherwise
11 provide transitional services.

12 After today's vote will come many months
13 of implementation. We think it is imperative for the
14 Commission to help facilitate the implementation of
15 retroactivity, and we appreciate the discussions we
16 have already had, and the planning that the
17 Commission and the staff have already done.

18 We pledge our support in seeing that
19 retroactivity is implemented efficiently and that
20 courts get the information they need to make informed
21 decisions on the thousands of sentence modifications
22 requests that will be filed.

1 I want to in particular mention for just a
2 moment my colleagues in the U.S. Attorneys offices
3 from coast to coast who go to work every day with two
4 things front and center in their minds: To keep our
5 communities safe, and to do justice.

6 We owe them our gratitude, as we do the
7 entire court family.

8 Violent crime rates across the country are
9 at generational lows. In the last five-and-a-half
10 years, violent crime has been reduced across the
11 country more than 20 percent. Part of the reason for
12 this is effective sentencing policy.

13 We still need strong sentencing, and we
14 look forward to examining important systemic issues
15 facing Federal sentencing and corrections policy with
16 the Commission over the coming months. But strong
17 sentencing policy should also be fair and smart
18 sentencing policy--swift, certain, fair, and not
19 excessive.

20 We think the Commission's actions today
21 are consistent with strong, fair, and smart
22 sentencing.

1 Thank you again, Judge Saris, for
2 considering our views and for your leadership.

3 CHAIRWOMAN SARIS: Thank you. Any further
4 discussion?

5 (No response.)

6 CHAIRWOMAN SARIS: Hearing no further
7 discussion, would the Staff Director, Ken Cohen,
8 please call the roll.

9 STAFF DIRECTOR COHEN: Commissioner
10 Barkow.

11 COMMISSIONER BARKOW: I vote in favor of
12 retroactivity.

13 STAFF DIRECTOR COHEN: Vice Chair Breyer.

14 COMMISSIONER BREYER: Aye.

15 STAFF DIRECTOR COHEN: Commissioner
16 Friedrich.

17 COMMISSIONER FRIEDRICH: Aye.

18 STAFF DIRECTOR COHEN: Vice Chair
19 Hinojosa.

20 VICE CHAIR HINOJOSA: Aye.

21 STAFF DIRECTOR COHEN: Vice Chair Jackson.

22 VICE CHAIR JACKSON: Aye.

1 STAFF DIRECTOR COHEN: Judge Pryor.

2 COMMISSIONER PRYOR: Aye.

3 STAFF DIRECTOR COHEN: Chair Saris.

4 CHAIRWOMAN SARIS: Aye.

5 STAFF DIRECTOR COHEN: The motion carries
6 unanimously.

7 CHAIRWOMAN SARIS: Thank you.

8 All right, so some final concluding
9 remarks. Members of the Commission come from across
10 the country and across the political spectrum. I am
11 proud that we have not only worked hard, listened to
12 each other, and that we have given this important
13 issue the very serious consideration it deserved, we
14 have also so often been able to reach consensus.

15 By working together, we have reached
16 results that are balanced and supported by empirical
17 evidence. We voted unanimously in April to reduce
18 Guideline Levels for drug offenses, and we've worked
19 hard to achieve similar consensus today.

20 This Amendment received unanimous support
21 because it is a measured approach to reducing prison
22 costs and populations, and it responds to statutory

1 and Guideline changes, while reducing the difficulty
2 of application and safeguarding public safety.

3 As Judge Hinojosa mentioned, we hope that
4 Congress can work together to pass legislation to
5 address the many problems the Commission has found
6 with the current statutory Mandatory Minimum
7 penalties.

8 The steps the Commission is taking today
9 is an important one, but only Congress can bring
10 about the more comprehensive reforms needed to reduce
11 disparity, to fully address prison costs and
12 population, and to make the Federal criminal justice
13 system work better.

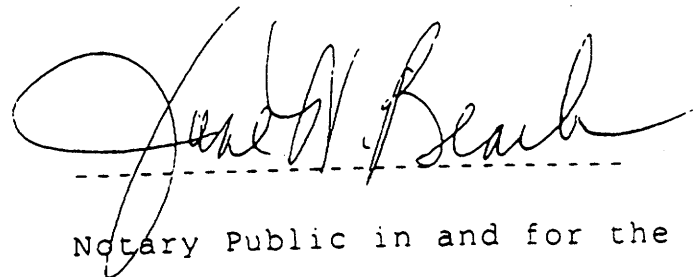
14 I want to thank everyone again for coming,
15 for all the Members of Congress--we received so many
16 letters from judges, from organizations, and from
17 members of the public, and they committed very
18 much--we read them all, we really do--to the process.

19 I would also like to thank our staff who
20 has acted so professionally to ensure that we have

21

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand thereafter reduced to typewriting by me or under direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially otherwise interested in the outcome of this act.



Notary Public in and for the
District of Columbia

My Commission Expires: DECEMBER 14, 2016

