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March 22, 1994

U. S. Sentencing Commission
One Columbus Circle, N.E. #2-500
Washington, D. C. 20002-8002

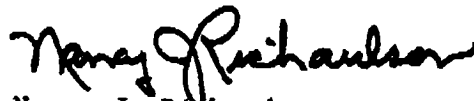
ATTENTION: PUBLIC COMMENT

Dear Chairman and Members of the Sentencing Commission:

On behalf of the 500 plus members of FAMM (Families Against Mandatory Minimums) in the State of Colorado, I am forwarding the attached position paper for your most valued review and consideration at your March 24th hearing.

Thank you for the opportunity to provide input to your meeting.

Sincerely,



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Attachment

March 10, 1994

Distinguished Members of the Sentencing Commission:

The role of judicial discretion in the sentencing process is a fundamental and inescapable issue that has been reduced to a mechanical formula with the implementation of mandatory minimum sentences that were prescribed in the Anti-Drug Abuse Act of 1986. This bill was created and enacted by politically conscious legislators in a fit of political hysteria to coincide with the sentencing guidelines that were already in effect. This poorly written bill in effect cut the legs out from under the Sentencing Commission. No thought was given to the devastating effect it would have on families or society at large. The guidelines allow judges much more leeway and are subject to judicial review, while the mandates are "set in stone."

The intended separation of the legislative and judicial branches of government was violated by Congress when they passed the Statutory Anti-Drug Abuse Act of 1986. This Act contained the mandatory minimums and incorporated the sentencing guidelines formulated by the congressionally appointed Sentencing Commission in 1984 and enacted by Congress in 1987. In essence, Congress not only tied the hands of all Federal Judges, but also the Sentencing Commission which they created, as well as the many members of the Federal Judiciary System who should have a justifiable influence in the sentencing process.

As it stands now, the statutory mandatory minimums are denying the Sentencing Commission, again, from accomplishing their most important and laudable goals for which they were created. This would be to receive and give serious consideration to the majority of the proposals and input they will receive from reasonable and sincere people and organizations at this year's hearings, for them to study, consider and submit to Congress. Many of these proposals will not be in the Commission's final recommendations because their implementation is not feasible due to the mandatory minimum sentencing structure.

There are many people and organizations who oppose mandatory minimums, including the majority of Federal Judges who dislike mandatory sentences of any kind. One of the main intentions of creating this predefined sentencing structure was to eliminate the disparity between the sentences handed down by Federal Judges across the country under the guidelines system that was in effect. In so doing they took all the power and discretion in determining an appropriate sentence out of the hands of the judges and transferred it to the oftentimes vindictive, power hungry prosecutors, and many inexperienced pre-sentencing investigators. With the aid of a vast array of large enhancements at their discretion, they are now able to give a person what amounts to a life sentence for something a Judge might have given them five years or less for, if the power to do so were in his hands, as it should be, based upon the premise of individualized justice that is supposedly guaranteed in our Constitution. When it comes to the exercise of discretion in sentencing, are the prosecutors more to be

trusted than the Judges? There is much to be said for restoring judicial discretion to the Judges who were appointed for that purpose and who exercise it in the public's view.

The combination of mandatory minimums with the sentencing guidelines do not allow a Judge to even consider any of the ten Statutory or mitigating factors and fair criteria, such as a defendant's personal history or prospects for rehabilitation. Some of the key factors about the "offender" that are eliminated from the sentencing computation are the person's age, employment, whether or not it was violent crime or the person's history of non-violence. The fact that whether or not the person has ever been to prison before cannot be given any consideration. There are many very rehabilitative non-violent offenders who were given 15-30 years on their first prison sentence. This was the minimum time allowed under the mandatory minimums for a person, with prior felonies, no matter what type or how marginal they may have been.

The disparities created from this trend are based on non-violent factors such as race, gender, crime rates, case loads, circuit and prosecutorial practices---sentences levied under the current guideline system "often dramatically outweigh the severity of the offense." Senior Judge Myron Bright of the U.S. Court of Appeals for the 8th Circuit has claimed that "the U.S. sentencing commission in its finite wisdom, set the scales of punishment for drug crimes based on the weight of the drugs, not the criminality of the offender. In too many cases, the sentences directed by the guidelines waste the lives of men and women."

In their over-zealousness to prove that they were tough on crime, Congress took the possibility of parole and all good time incentives from everyone sentenced under a mandatory minimum. They now must serve 85 percent of these extremely lengthy sentences, regardless of how rehabilitative the person might be, even though anyone sentenced under the old guidelines are parole eligible after one third of their time. One of the results of this provision is that non-violent first time offenders who could benefit from rehabilitative sentences are given much more longer sentences than people who have committed such heinous crimes as child molestation, rape and murder. These violent offenders are frequently granted early release to make room for offenders serving mandatory minimum sentences. The national average sentence for a drug offender is 6.5 years; for manslaughter, 3.6 years.

As the nation's population swells towards 1.4 million, prison officials must release career offenders to make room for first time drug offenders. The politically popular war on drugs of the 80's has given rise to the far less attractive cell crunch of the 90's. Mandatory minimum sentences for minor drug crimes have stuffed the prisons to bursting with non-violent offenders. The U.S. Sentencing Commission has estimated that the sentencing guidelines and tougher penalties for drug law violations may result in a 119 percent increase in the Federal prison population from 1987 to 1997. In 1980 about 25 percent of the sentenced Federal population was convicted of a drug offense. Today narcotic offenders occupy 61 percent of

the beds in Federal prison. At the current rate it is projected to be 72 percent by 1997. From 1986 to the present time the average length of stay for drug offenders has increased from 21.3 to 81.5 months for low level drug law offenders currently in the Bureau of Prisons. According to the latest study on nonviolent drug offenders, released on February 4, 1994 by the U.S. Department of Justice, under the present guideline system, these individuals will serve on the average, at least 5-3/4 years before release from prison.

Dramatic increases in admissions for drug offenders and more than a threefold increase in the length of their stay has led to a burgeoning prison population. Why has the average length of stay for drug offenders increased so dramatically? The answer lies in the relationship between sentencing changes that resulted from mandatory minimum sentencing and the incorporation of these changes into the U.S. Sentencing Guidelines for drug offenders. Compounding this situation is the fact that the U.S. Sentencing Commission, to meet the provisions of the Statutory Congressional Law, has written its drug offense guidelines to be consistent with the severe penalties prescribed by mandatory minimums.

First time offenders currently make up to 56 percent of the approximately 90,000 Federal inmates. President Clinton stated more than once during his presidential campaign that we needed to get these first time offenders back on the streets. In his first televised presidential debate he also stated that the criminal justice system saved the life of his half brother Roger, who was convicted in 1984 of Federal conspiracy and cocaine trafficking charges. His brother served 16 of the 24 month sentence he received. It isn't clear whether the President thinks his brother's life would have been saved by receiving the 10 years in a Federal Penitentiary which he would get today on the trafficking charge alone. This does not include any of the vast array of possible guideline enhancements he would have been eligible for and the fact that he would have had no parole possibilities or good time incentives, if he would have been convicted after November 1, 1987. If Roger Clinton would have been convicted a few years later this would have quite obviously been a waste of a "good man's life." He went on to successfully rehabilitate himself and now leads a very useful, productive life.

We are happy for the Clintons, but many families of people sentenced to a mandatory minimum are left wondering why Roger Clinton and others were given a chance to rehabilitate themselves in a relatively short period of time when thousands of other nonviolent offenders like him across the country are sentenced to the better part of their lives in prison and denied this same opportunity. We are not saying that people ought not to go to jail for their crime, but two years, three years, not 10, not 15 and certainly not twenty plus years for nonviolent crimes of mutual consent, when, in 1990, the average Federal sentence for homicide was six years eight months; robbery, eight years and sex offenses, five years and one month.

Much has been made of family values by the last three administrations, but what is the value to the family when a first time nonviolent offender has to serve many years in prison, leaving

spouse, children and family to suffer the devastation of a wrenching separation and financial hardship. We may fool ourselves into thinking we can afford the tremendous fiscal cost of our current doomed approach, but we will never be able to pay the greatest cost of all; the social cost incurred in the needless devastation of family's lives because it is impossible to replace years spent away from children and family. The social cost is never more evident than when one visits the visiting rooms at any of the many Federal prisons across the country and sees all of the fatherless children who will suffer irreversibly from the lifelong effects of these laws.

Aside from the hidden social costs there are billions of dollars being wasted annually due to our present sentencing policies. A recent Justice Department study concluded that one in five people in Federal prison today are there for nonviolent petty drug crimes. They alone are costing the American taxpayer 326 million a year. The study also concluded that longer sentences are no more rehabilitative than shorter sentences. Mandatory minimums have an adverse affect on the economy in ways too numerous to mention. They are the main contributor in the huge increase in prison population which has doubled with mainly nonviolent offenders since their implementation only seven years ago.

Once incarcerated, along with the social costs, there are many hidden fiscal costs, as the families left behind are often forced to seek public assistance. The cost of useless incarceration of most nonviolent offenders is alarming when you consider that the average cost per prisoner has recently been approximated at \$25,000.00 per year. This is made even worse by the fact that they could and should be paying taxes as productive members of society, instead of being supported by two or three taxpayers for each year of their incarceration. On top of this, at the 13 percent annual rate our jail population is rising, it will cost at least 100 million per week, for construction of new facilities alone, and we are just talking about Federal facilities here. In short, billions of tax dollars and human misery are the costs!

We applaud the Sentencing Commission's past findings and resulting recommendations to abolish the mandatory minimums. We know that your opinion is joined by the U.S. Judicial Conference which is the administrative arm of the Federal Courts and broadly reflects the thinking of the Federal Judiciary. All 12 Judicial Circuits and the Federal Courts Study Commission have come to this same conclusion. Just a few other people and organizations who oppose mandatory minimums include members of the clergy, civil rights leaders, the organized bar, prison officials, including the current Director of the Federal Bureau of Prisons, Kathleen Hawk, not to mention Attorney Janet Reno, Louis Freeh, F.B.I. Director and numerous other citizen groups across the country. We are grateful to the Sentencing Commission for the opportunity to at least have our voices heard and feelings known through written comment at these hearings. Even if most of our proposals do not have a realistic chance of being implemented due to the statutory mandatory minimums, hopefully Congress will hear our message through these hearings, and our

opinions and facts will have an impact on the elimination of mandatory minimums, which in turn, will inspire "Just and Creative" changes within future sentencing policies.

One of many issues that we would like to address, is the need for alternative sentencing for nonviolent crimes. We must consider the fact that only 25 percent of all sentenced offenders have been convicted of a violent crime and less than that on the Federal level. Despite what politicians attempt to portray, recent public opinion surveys in a number of states show that the public is supportive of alternatives to prison in appropriate cases. Nationally, four out of five Americans favor community corrections programs for offenders who are not dangerous. Attorney General Janet Reno has been instrumental in bringing alternative sentencing to the public's attention. She has been a breath of fresh air and a ray of hope. We applaud her call for a radical review of Federal crime fighting tactics and agree with her underlying view of more rehabilitation and drug treatment, rather than the "lock 'em up and throw away the key" policy in effect now, which in reality translates into, "Lock 'em up and spend thousands of dollars on them!"

Prison officials argue that the prison system would function more effectively if justice were served more swiftly, sentences imposed more reliably and space allocated more rationally. To that end Ms. Reno has suggested a much broader use of home confinement, probation with special conditions, boot camps, drug court with strict supervision and alternative sanctions as opposed to a mandatory minimum for relatively minor drug offenses. Sanctions that say you need and will get continual counseling and monitoring and if you successfully participate in these counseling and educational programs we are going to give you every chance to reintegrate into society with the resources and ability to cope as opposed to going to jail. We also feel these programs can work for the majority of nonviolent offenders provided they are provided with the resources. The resources they will need are far less than the resources that are necessary to maintain people in prison year after year.

Work programs can benefit inmates and taxpayers alike. For example, Minnesota's sentencing to service program has been putting nonviolent offenders to work in communities throughout the state since 1986. So far, it has logged 530,000 man hours, and when program costs are offset against earnings and reductions in prison costs, the effort comes up 6 million in the black. In work programs, inmates feel like they are paying back society instead of wasting away. Prison space must be allocated more judiciously; this means finding and exploring alternative penalties for nonviolent offenders.

Ms. Reno made another bold statement when she proposed dropping the automatic charges for using a gun in a Federal crime. As alarmed as every American is and has every right to be over guns and violence, they would be even more appalled to see the many instances of prosecutorial abuse involved in implementing the automatic enhancements for a gun in drug crimes. The majority of people convicted of a drug offense where a firearm was discovered along with

drugs in a search and arrest are serving more time for the firearm, which was in most cases legally purchased and never remotely used or brandished in said crime. Most of these firearm charges carry a minimum of five years and range to a minimum of thirty years without parole regardless of mitigating factors. Attorney General Reno is absolutely right again in calling for a review of these sentences and favoring a policy which would allow mitigating circumstances to be taken into account. An automatic five years in prison is too much time for a nonviolent person, legally possessing a gun.

Ms. Reno has also stated that the mandatory minimums shouldn't be used as leverage. Critics say when a person is facing a 10 to 15 year mandatory minimum, he gives up the names of his bosses. In actuality the reverse is usually true - the bosses give up the underlings or anybody for that matter. A person is likely to say most anything or prefabricate testimony to serve the prosecutor's needs in order to avoid doing the majority of the rest of their life in prison. Therefore, much of this form of testimony should be considered what it is; tainted and prejudicial. In so many cases it is a grave compromise of justice and judicial integrity.

The Attorney General has suggested returning to plea bargaining prohibited by the 1989 Thornburg Memo and giving judges and defense attorneys more input in sentencing reductions. The current rigidity of the guidelines is causing a massive, though unintended, transfer of discretion and authority from the court to the prosecutor. The guidelines have limited Federal prosecutor's formal authority to offer concessions and provide much leeway in a plea bargain. In regard to the leverage issue, the new provisions under the mandatory minimums create multiple charges out of one charge in drug and firearm cases, for the additional purpose of intimidating the accused into accepting an outrageous plea bargain, as opposed to taking it to trial where if convicted on all charges with enhancements he would face what amounts to a life sentence. Many people have accepted outrageous plea bargains which must conform to the guidelines, rather than take the chance of this happening to them, and in many cases do so upon the advice of their attorneys who know all too well the consequences of taking a case to trial and losing.

An example of this and one of the most overlooked victims of the government's war on drugs is its female P.O.W.'s. The majority of these women are minor players overrun by the government's blitzkrieg. Thousands of women are in prison today as first time offenders on such bogus charges as aiding and abetting, harboring a fugitive, failure to report a crime and - the vaguest and most abused charge - CONSPIRACY. Prosecutors use it as a blackmail tool, threatening and often indicting uncooperative or unknowing partners. (The crime should be labeled, "being loyal to your spouse"). In many instances, women receive harsher sentences than the guiltiest participants, because the most active drug traders are more useful to the Feds as informants.

A perfect, but very sad illustration of several of the preceding abuses, is the case of twenty year old Nicole Richardson, who languishes in a Federal prison today, sweating out a 10 year sentence

because she passed her drug-dealer boyfriend's number to one of his LSD customers. Her much more guilty boyfriend got only half her sentence because he had information to trade with prosecutors. Jurors in the Richardson case later said they would not have convicted her had they known about the mandatory minimum sentence she faced. Lately we are starting to see the reverse effect of the mandatory minimums at work as juries understand more and more what's happening with this sentencing scheme. They are becoming more reluctant to convict a person because the sentences are too tough.

The saddest and most ironic development of the Richardson case occurred after Nicole was in prison serving her 10 year sentence. While she was on the phone to her mother a man broke into her mother's house with the intent of raping her. Nicole heard her mother pleading for her life and notified one of the correctional officers who called local authorities back home. Upon arriving at the Richardson residence, a man was caught holding a gun to Mrs. Richardson's head while committing the act of rape. The man was later convicted of first degree assault and rape, plus attempted murder. His state sentence will make him eligible for parole in four years with a good chance for release because of overcrowding and parole regulations in that state, while Nicole, the victim's daughter, will remain in prison for another five years.

This is just one of thousands of examples of the mandatory minimums incarcerating first time, often marginal, nonviolent drug offenders for longer than many convicted murderers and rapists on the state level. There is a tremendous disparity between state sentences which tend to be on the average of a much more violent nature than the nonviolent Federal crimes where people are serving much lengthier sentences. Attorney General Janet Reno has addressed the situation we have now where there are relatively low level nonviolent offenders serving 10, 15, and 20 plus year mandatory minimum sentences in Federal prisons while in state court and state prisons, people are getting out of their sentence after serving 20 to 60 percent of their time for armed robbery and other serious violent crimes. Ms. Reno has asked the judiciary and defense attorneys to have a better dialogue over what is Federal jurisdiction and what is state jurisdiction. We support the Attorney General's invitation for a ethical deliberation on this issue and agree with her suggestion that many of these minor drug offenses would be better prosecuted by local authorities. There is no doubt that justice would be better served by this approach and it is simply astonishing that politically conscious legislators are able to continue to turn a deaf ear to this grave injustice.

We also welcome the proposals that were offered and contained in remarks made by Kathleen Hawk, the Director of the Federal Bureau of Prisons, before the Subcommittee on Intellectual Property and Judicial Administration, House Judiciary Committee in May of 1993. These proposals were the result of a study by the Federal Bureau of Prisons that was ordered by Ms. Reno and the Justice Department. One hypothetical strategy would be to shorten sentences, especially for nonviolent offenders. The proposal mentioned relating to this, would be to cut drug sentences for first time offenders by 50 percent and

other drug sentences by 25 percent. Under this scenario we recognize that obviously at least three significant changes to the current system should be considered. Number one: if not abolished, there would have to be a change to the mandatory minimum sentences. Number two: the U.S. Sentencing Commission would have to revise its drug guidelines. Number three: some kind of provision would have to be made to effect the sentences of offenders already adjudicated and in custody, for example, a re-sentencing procedure. To that end we recommend the creation of a review panel, possibly made up of selected and appointed Federal Judges to review the mitigating factors in each case, (something that they have not been able to do in the last seven years) that should have been taken into consideration in their original sentence. This provision would be to insure equity and parity, so that sentence reductions would be applied retroactively. There would be a substantial initial expense in the creation of the review board, but in the long run this would be money well spent as it would alleviate the tremendous unnecessary tax burden of the useless lengthy incarceration of many intensely scrutinized nonviolent offenders. The adoption of this proposal alone could justifiably correct some of the thousands of injustices which have occurred since the implementation of the mandatory minimums.

The second hypothetical proposal, offered by Kathleen Hawk, that we strongly recommend and favor, is that current good time awarded be increased from 15 percent (54 days a year), to 30 percent (108 days a year). This could be optional based upon an inmate's institutional behavior and record. This reward would provide a valuable incentive to encourage inmates toward self-improvement activities and successful involvement in programs designed to help them prepare for a productive return to the community. This opportunity is lost under the current system. The former and present Director of the Federal Bureau of Prisons both realized that the current minuscule good time allowance has created a time bomb that is waiting to go off. It seems that we have forgotten the original purpose and intention of the penal system, which was to punish people for their crimes by removing them from society, and in this process rehabilitate them in preparation for their return to society, instead of the current "warehousing them for life" approach. The implementation of the good time is a statutory change which could be applied retroactively through administrative processes that do not require re-sentencing.

The third hypothetical strategy mentioned by Kathleen Hawk was the diversion from traditional incarceration for carefully selected offenders who pose a negligible risk to the community. The Justice Department's long awaited report on mandatory minimum sentencing which was released February 4, 1994, concluded that long mandatory sentences for low level drug offenders don't deter crime any better than short sentences. The report also found that low level, nonviolent drug offenders account for 21.2 percent of the Federal prison population. This would mean that approximately 16,316 prisoners could be eligible for consideration to some type of diversion program which can meet specific offender needs, including increasing the opportunities for home confinement and more fully utilize halfway houses. Currently the Federal Bureau of Prison policy is to allow a maximum of six months

participation in these community programs. Why? Why not one or two years, or more? Why is home confinement used to such a minuscule degree? These programs are definite deterrents to a vast majority of nonviolent offenders. Isn't deterrence from future criminal activity one point of the criminal justice system? As history has shown, to just be tough is dumb - - and expensive.

These proposals were a small result of the Attorney General's invitation to the Federal Bureau of Prisons to assist her with identifying strategies that would better serve justice and reduce the growth rate of the Bureau of Prisons inmate population. This would be a secondary benefit of all three of these proposals. It is obvious they would all better serve justice. They lean more toward emphasizing drug treatment and rehabilitation instead of extreme punishment which inflicts tremendous social and fiscal costs yearly. It is our feeling and opinion that these alternative proposals make common sense, and should be given serious consideration by Congress. This apparently has not happened as we have heard no mention or discussion of any of these proposals since they were suggested to select members of Congress in May of 1993. It appears that opposing the mandatory minimums is too bold of a step for our politicians and the current administration, even though the evidence is in their own latest report!

There are many organizations in this country who seek to reform sentencing policies. Included in them are the Sentencing Project, the Criminal Justice Policy Foundation, and the National Drug Policy Foundation. We hope that their collective input will have some negligible influence in the shaping of future sentencing policies as they focus more on prevention and rehabilitation and less on the current "warehouse them" for punishment approach. The Research and Advocacy Group, the National Council on Crime and Delinquency also seeks to influence public policies that deal with crime and the criminal justice system. They also encourage citizen involvement in effective, humane, and economically sound solutions to the problems of crime and delinquency.

This private agency has been asked to provide input to the Clinton Administration on the issue of sentencing reform. Lee Brown, the current Drug Czar and the nation's first law enforcement professional to be named to head this department, is a former board member of the National Council on Crime and Delinquency. It is refreshing to see Janet Reno, Lee Brown, Louis Freeh and the Clinton Administration seeking input from an organization like the NCCD, because we believe that their hard answers and common sense plan will reduce crime and violence in America and save tax dollars in so doing.

In the summer of 1992 the National Council on Crime and Delinquency issued a new statement on sentencing policies in the United States. We feel that each of their 13 positions contained in this statement bear mentioning and each should be given serious consideration. Their positions are;

Sentencing Philosophy:

Position 1: Objection criteria, designed to make discretion visible and to promote the accountability of government officials, should be adopted at every stage of the sentencing process.

Position 2: The court's sentence should take into account: a) the gravity of the offense, b) the offender's current risk to public safety, c) offender rehabilitation and treatment needs, and d) the relative costs-benefits of each available sanction.

Position 3: No sentencing legislation should be implemented without a complete fiscal impact statement on the likely effects of proposed legislation on prisons, jails, probation, parole, and public safety.

Position 4: Victim's interests should be effectively represented in the sentencing decision.

Position 5: Existing alternative sentencing options should be used more fully by the courts.

Position 6: Financial incentives should be created for local governments to regulate both the number of prison admissions and sentence length, and to expand the use of alternative sentencing options.

Prison Sentences:

Position 7: Prison sentences should be principally reserved for three types of offenders: a) first time felons who have committed a violent or heinous crime, b) repeat felons whose new crimes involve a substantial threat to public safety, and c) felons whose crimes involve substantial violations of the public trust.

Position 8: In general, prison sentences should be short and determinant.

Position 9: Repeat felon offenders and/or those convicted of extraordinarily violent or heinous crimes should be given maximum terms that allow for the possibility of parole.

Position 10: The use of mandatory prison sentences and life sentences without the possibility of parole should be abolished.

The Release Decision:

Position 11: For those offenders who have been given a lengthy period of imprisonment, the main consideration in the release decision should be the inmate's risk to the community, once a satisfactory fraction of the term has been served.

Position 12: The availability of earned good time credits for inmates who participate in meaningful work, educational, and other self-improvement programs should be expanded.

Research:

Position 13: A rigorous program of research should be conducted on the effects of various sanctions on offenders, the corrections system, and crime reduction.

The last two issues that we would like to address are the ones at the forefront of discussion at this year's Sentencing Commission hearings. There are the changes in weights used to determine the length of a sentence in crack and marijuana. More specifically, the 100 to 1 ratio of crack to powder cocaine and the 10 to 1 ratio used on every marijuana plant over 50 in Federal marijuana convictions. Both of these current sentencing procedures are beyond the arbitrary and capricious that several appeals courts have ruled them to be. They border on the ludicrous and the absurd. These are just two of the

many particulars that Congress did not consider when they created the mandatory minimums with the structured, predetermined sentences for a predefined weight on drugs they knew nothing about. These fallacies in determining weights used at sentencing not only create an unbelievable disparity, but are also very racist in the case of crack cocaine because a much higher percentage of black men are convicted of crack cocaine than whites, who are convicted for a much higher percentage of powder cocaine. The current weights used in crack and marijuana make huge differences in the length of a person's sentence in related cases. This is something that we hope the Sentencing Commission will take immediate and forceful action on at this year's hearings. There are a few of the issues that represent obvious injustices that should facilitate a recommendation for change by the Sentencing Commission with some of the remaining authority vested to them by Congress.

As Janet Reno said earlier this year: "Sometimes doing the right thing is very politically unpopular. Sometimes it will be painful, or it will of necessity hurt someone." Asked what happens when the right thing conflicts with the law, Ms. Reno replied, "You try to get the law changed." We can only pray and hope that the Honorable members of the Sentencing Commission will exert their power and influence the members of Congress to "Do the right thing", and recommend the appropriate changes in these unjust Federal Sentencing Laws.

In our conclusion, we quote and wholeheartedly agree with the Honorable Judge Donald P. Lay of the Eighth Circuit Court of Appeals in his speech to the National Association of Pre-Trial Services Agencies in September of 1990.....

Judge Lay: "The public has every right to deeply resent those who commit crime. However, I respectfully submit that the "knee jerk" reactions by angry executives, politically conscious legislatures, and vindictive judicial officers is taking us down a primrose path with little success in combating crime. The resulting approach is accomplishing nothing more than exorbitantly wasting tax dollars, creating a warehouse of human degradation, and in the long run breeding societal resentment that causes more crime....."

Space does not permit discussion of another failure of our criminal justice system: the cost of the useless incarceration of persons convicted of nonviolent offenses. There exists a crying need to develop a nationwide system of intermediate sanctions for those who are convicted of nonviolent felonies. Our penology systems needs to develop work release programs, community service programs, schooling, vocational training, and other forms of supervised productivity in lieu of wasteful expenditures of tax dollars and wholesale warehousing of individuals. Punishment is one thing, but our current incarceration policies are wasteful and should be changed. Present policies breed further crime, dehumanizes individuals, and require gross expenditures of tax dollars needed for other purposes. With our nation facing both societal and fiscal crises of unrivaled proportions, we must move quickly and forcefully to overhaul the current system.