

019-96

Congress of the United States
House of Representatives
Washington, DC 20515

March 6, 1996

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002
ATTENTION: Public Information Section

Ladies and Gentlemen:

We are writing to comment on amendments proposed by the United States Sentencing Commission ("Commission") as published in the Federal Register, Vol. 61, No. 1, pp. 80-83. Our comments are directed toward those proposed amendments relating to cocaine offenses included in the section designated Chapter Two, Part D.

As Members of Congress who actively supported the amendments proposed by the Commission last year to eliminate the 100-to-1 disparity in base penalties for crack and powder cocaine trafficking offenses and eliminating mandatory minimum sentences for simple possession of crack cocaine, we urge the Commission to propose these same amendments this amendment cycle. We do so for the following reasons:

First, the amendments proposed last year were correct. After extensive study of all the relevant factors surrounding the sentencing disparity, the majority of Commissioners concluded that there was no justification for treating two forms of the same drug differently. Even those Commissioners who dissented agreed that the 100-to-1 disparity for trafficking offenses could not be justified and that the mandatory minimum penalties for simple possession ought to be eliminated. In light of this, there is no defensible reason for the Commission to retreat from its original proposed amendments.

Second, the Commission was expressly created to make judgments independent of political considerations. It is not the role of the Commission to either consider or accommodate the political will of those public officials who take irrational, racially prejudged positions to prove that they are "tough on crime." Retreating from the position taken last year would compromise the integrity and political independence of the Commission. We believe that proposing the same amendments this year would not be inconsistent with the legislation passed during the first session of the 104th Congress. The Commission should not be influenced by the disapproval of these proposed amendments previously. Nor should the Commission be influenced by the possibility of a similar outcome if it reoffers the amendments during this presidential

[87]

election year. Indeed, we submit that the Commission should continue to offer these proposed amendments every year until justice and fairness prevail over political expediency.

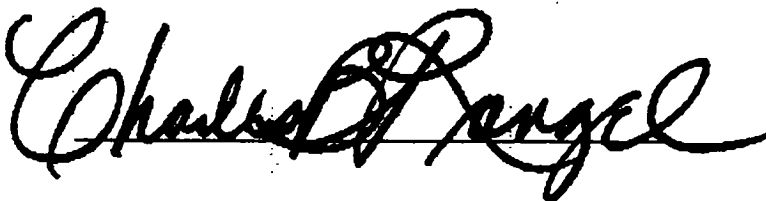
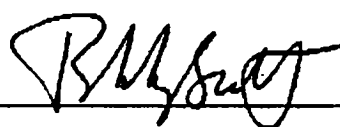
Finally, failing to offer the proposed amendments again this year would allow a racially discriminatory sentencing scheme to remain unchallenged. While we are all concerned about crime and its impact upon innocent victims, in our zeal to be "tough on crime" we cannot ignore statistics which show that 95% of those convicted for crack cocaine offenses are minorities, even though the majority of crack users are white. The continued existence of such a flawed scheme undermines the credibility of our entire system of justice. We can hardly afford any further erosion of the public's confidence.

Cases like United States v. Armstrong, which was argued before the Supreme Court on February 26, have again brought into focus the racially discriminatory impact of one of our laws. Nora Manella, the U.S. Attorney for Los Angeles, has openly and unapologetically admitted that federal law enforcement targets minority communities. Statistics herald the success of such targeting. African Americans account for nearly 90% of all federal crack cocaine defendants in the Los Angeles area. Similarly, court documents in other jurisdictions indicate that only minorities are prosecuted for crack cocaine offenses in federal courts in other large cities, including Boston, Chicago, Dallas, Denver and Miami. Recently, yet another case of unequal recently came to the public's attention in the Washington, D.C. area. Maryland's Prince George's County Police Department released three white defendants who were caught smoking crack cocaine with an infant present. African Americans caught in similar circumstances, on the other hand, are routinely prosecuted to the fullest extent of the law and their children placed in foster care.

We recognize that the Commission takes pride in its Congressional approval record for proposed amendments and that last year's disapproval of the proposed amendments for cocaine sentences represented the first Congressional "veto" of a Commission proposal. We would expect more amendments to be disapproved in the future, if Congress continues to be dominated by members who are willing to ignore evidence and tolerate racism in order to prove their toughness on crime. Rather than be unduly concerned about these rejections, we believe that the Commission should expect them as the natural consequence of exercising political independence.

We appreciate your consideration of these comments.

Sincerely,

Alfred Hastings

Earl F. Hilliard

Lucien D. Jones

John J. Jones

Will Blackman

John A. Harper

Raymond

Caroline Brown

Alma W. Waters

Donald M. Payne

Cyril McKim

Dean H. Norton

Albert R. Lyon

Samuel B. Brierly

John F. Clynch

John L. West

Edith B. Johnson

Mrs M. Clayton

Baby L. L. L.

~~Chield~~

Shelby J. L.

James H. L.

Ch. Fatt

Victor O. Trager

Major R. L.

~~Ch. Fatt~~

W. L. L.
E. L. L.

Charles Collins

Lonnie V. Sullivan