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TESTIMONY

of

Richard Fulginiti

Chairman, National Legislative Committee

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on

Retroactive Application of Recent Changes to the U.S. Sentencing Guidelines

before the
U.S. Sentencing Commission

10 JUNE 2014

Good afternoon, Mr. Chairman, the Vice Chairman and the distinguished Commissioners of the U.S. Sentencing Commission. My name is Rick Fulginiti, the National Legislative Committee Chairman for the Fraternal Order of Police. The FOP is 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, Mr. Chairman, and the rest of the Commission for inviting me here this afternoon to share the views of these rank-and-file officers on your recent actions to lower the base offense levels in the Drug Quantity Table in U.S. Sentencing Commission's Guidelines Manual. The revisions have already been submitted to Congress and today we are considering whether or not the revised, lower levels should be retroactively applied to offenders currently serving the just sentences they received from the courts. It should come as no surprise that rank-and-file officers, who put themselves in harm's way to arrest and convict these drug offenders, oppose Amendment 782.

Let me begin with the obvious public safety concerns. According to the data compiled by the Commission, retroactive application of the new guidelines could result in the early release of more than 51,000 convicted drug traffickers who would be eligible to apply for premature release. If the courts grant full reduction in every case, these traffickers will see their sentences reduced by nearly two years. Of the 51,000 who would be eligible for early release, more than half were arrested and convicted since 2011.

It should also be noted that these sentencing reductions would be *in addition* to any other reductions the offender received, such as a reduction for cooperation with the United States or "good time" credit in prison. It is important that the Commission recognize that these are not all "low-level dealers" or first time offenders. Many have previously been convicted of a crime and were connected to drug dealing operations–not just slinging drugs as independent operators.

While the FOP believes that the new guidelines will certainly weaken the overall fight against drug traffickers, retroactive application of the guidelines will have an immediate and deleterious effect on public safety and the crime rates in our communities. Let me put it in perspective for you as a former law enforcement officer with the Prince George's County Police Department in Maryland.

In 2009, we arrested 1,102 individuals for manufacturing and selling drugs. Using the Commission's own data, if the retroactive sentencing guidelines are applied, 629 convicted traffickers will be coming home to Maryland and another 225 will be released to the District of Columbia. At a time when law enforcement in my county is making real strides in its fight to reduce violent crimes, it seems at variance with common sense and good public policy to release *en masse* more than 800 drug offenders into our area.

In many cases, these offenders were tried and convicted at the Federal level because the best efforts of local and State law enforcement authorities were not sufficient to deter their activity or remove them from the community. In many States, the judicial system is a revolving door that results in placing violent drug dealers back in their community after an all too brief period of

incarceration. Obviously, this is frustrating to local and State law enforcement officers as well as the residents of the communities where they conduct their criminal activities.

Federal prosecution and sentencing of drug traffickers can have a ripple effect in our neighborhoods. Conviction in the Federal courts which result in a significant sentence and the fact that these offenders are not eligible for parole sends a clear message that there are serious consequences for drug dealers who are prosecuted by Federal authorities. It also sends a message to the citizens we protect–that the criminal justice system is not completely broken and that drug traffickers can and will go to jail and stay there.

If the changes to the sentencing guidelines are made retroactive, it sends a very different message–that we are not serious about getting and keeping drug dealers out of our communities. And, obviously, the release of 51,000 drug dealers will have an immediate and certainly very negative effect on communities and their residents. Federal prosecutions are typically brought to bear because the State and local systems were unable to keep them locked up. With the new guidelines, and certainly, with applying them retroactively, we risk bringing the revolving door into the Federal system.

The Commission did analyze recidivism rates among those offenders who were affected by the retroactive application of the 2007 revisions regarding the changes to the base offense levels for crack cocaine. I am a retired police officer, not a statistician, but the data shows no statistically significant difference between those offenders that served their full sentences and those who applied for and were granted early release. Approximately one-third of offenders, whether they served a full or truncated sentence, will re-offend.

I know one of the driving forces behind a reduction of sentences for drug offenders is driven by the costs associated with incarceration. The FOP acknowledges that the Federal prison system is operating above capacity. However, if sentences are not real and not meaningful, if criminals begin to accept that short stays as guests of the government are just part of the costs of conducting illegal drug sales, then the recidivism rates will go up, not down. Any savings realized by early releases is likely to be lost to re-offenders.

One statistic that the FOP did find alarming in the recidivism study conducted by the Commission is that those who were released prematurely under the retroactively applied guidelines are more likely to have received a sentence increase for weapon involvement. This is a very troubling escalation of criminal behavior. The FOP often hears the refrain that we're looking to find alternatives to incarceration of "non-violent" offenders, but again we can reliably predict that recidivism rates hold at about 34% and of those, according to the study, 45-50% who are arrested again are adding weapon possession to the underlying charges. We have no guarantee that these so-called nonviolent offenders, one of three of whom will reoffend, will not add violence to their criminal resume.

As a nation, we worked hard over the past fifteen years to reduce our nation's crime rates to historic lows and this success was due in large part to the efforts of State and local law enforcement and a genuine commitment by the Federal government to incarcerate for longer periods of time these drug offenders. In our view, retroactive reduction of the sentences of the criminals responsible for creating and feeding the addictions of millions of Americans is a grievous error which will inflict great harm on many innocent citizens. For this reason, we urge the Commission to reject the retroactive application of the new sentencing guidelines.

I want to thank you and the Commission in advance for your consideration of the view of the more than 330,000 members of the Fraternal Order of Police and I hope that you recognize the sincerity of our position.

I would now be pleased to answer any questions you might have.