Statement of Philip Miller, Chief United States Probation Officer
Eastern District of Michigan

United States Sentencing Commission
Regional Hearing on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984

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I would like to thank the United States Sentencing Commission for inviting me to appear before you today. I have had the opportunity to review the testimony of my colleagues at prior hearings and agree with their well-reasoned opinions. Specifically, I wish to acknowledge the statements of Chiefs William Henry for the District of Maryland; and Greg Forrest for the Western District of North Carolina which put the role of the Probation Department into historical perspective; and the statements of Chief Chris Hansen for the District of Nevada; and Deputy Chief Elizabeth Kerwood for the District of Hawaii who succinctly addressed the role of the Probation Department in the future of guideline sentencing. Like our colleagues in Nevada and Hawaii, the Eastern District of Michigan is a pilot district in the Administrative Office's effort to implement Evidence-Based Practices into federal community corrections.

Although at first blush it may appear strange to compare the Eastern District of Michigan to the island paradise described by Deputy Chief Kerwood, in fact many of the innovative correctional policies she described have been duplicated in Michigan Eastern. Both districts have been at the forefront of introducing Motivational Interviewing techniques into the presentence process. This has allowed us to better identify criminogenic needs and 18 U.S.C. § 3553(a) factors in the preparation of the presentence report. More importantly, it has shifted the focus of the presentence report from one that was historical in nature to one that is now future

based by addressing the criminogenic needs of the offender in an attempt to ensure an effective re-entry back into society.

SENTENCING POST BOOKER AND THE ROLE OF THE PROBATION OFFICER:

I was appointed a United States Probation Officer in 1992 and, prior to becoming Chief, my entire career was in the presentence unit. As such, I grew up as an officer under a mandatory guideline scheme. As Chief Henry noted in his testimony, the Sentencing Guidelines brought dramatic change to the work of the Probation Department. Prior to the Sentencing Reform Act, the probation officer spent their focus identifying the factors that may have had an impact on the offense and the offender. Under the mandatory guideline structure, the officer focused on the offense conduct and the offender's criminal history. There were many critics of this rigid calculation of a guideline range. Many thought the pendulum had swung too far in the opposite direction of where it was pre-guidelines. I believe that throughout the years the Commission has attempted to keep the pendulum centered; however, you were often thwarted by Congress. Two examples of this would be the Feeney Amendment and your initial attempts in the 1990s to bring some semblance of rationality to sentences imposed in crack cocaine cases.

In the post-Booker era the Commission is in the unique position of melding the pre-guideline and mandatory guideline schemes to ensure the pendulum stays centered. Under the advisory guideline system, probation officers have now been asked to look beyond the calculation of the offense conduct and criminal history category and to identify §3553 factors and reasons for departures and variances. This has lead to numerous discussions over the past few years on what the role should be of not only the guidelines, but of the officer, in the sentencing process. Some have argued that the advisory guidelines are just that, advisory, and should have a minimal impact on the sentence imposed, serving only as a baseline. Others have argued the

probation officer should only concentrate on the correct application of the guidelines and should leave the issue of §3553 factors and reasons for variances to defense counsel. I could not disagree more with either position.

The Sentencing Guidelines have, and will always continue to be, the only reasonable way to eliminate unwarranted sentencing disparities for similarly situated defendants. The work the Commission undertook in the early years of the Sentencing Reform Act, coupled with the continuing research and analysis that the Commission has conducted over the years, has ensured that our current system is honest, fair, and to a great extent proportionate to the severity of the crime involved.

In the Eastern District of Michigan officers in our presentence units have been required to develop a totally different mind set to how they conduct their jobs in the post-Booker era. The officer is now required to give the Court a complete picture of the defendant and not merely a properly calculated guideline range. The officers, who were all experts in calculating guideline ranges, were called on to become experts in identifying factors (mitigating, aggravating as well as criminogenic) and to advise the Court accordingly. They are required to humanize the defendant for the sentencing court. Our officers are acutely aware that prior to the presentence report being delivered to the sentencing court, the court only knows the defendant based on the pleadings of the case. The report is often the first time a total picture of the defendant is presented to the court in an objective way. We have been transformed from being the "guardian of the guidelines" to the more progressive role of "professional sentencing advisors".

THE FUTURE ROLE OF GUIDELINES IN FEDERAL SENTENCING:

The 25th anniversary of the passage of the Sentencing Reform Act comes at a time when our system is at a crossroads. Do the guidelines continue to focus solely on the offense conduct and criminal history, allowing two intersecting lines on a chart to determine the course of a defendant's life? Or should we instead choose a path that will require a great deal more time, resources, and energy? A path that will, instead, structure a sentence based on each individual as prescribed in 18 U.S.C. §3553(a). I believe we must look to 18 U.S.C. § 3553(a) openly, honestly, and with a great deal of transparency.

This will require the Commission to continue to be the leader in collecting and analyzing data relevant to sentencing procedures, and to continue to modify and revise the guidelines based on its research, experience, and analysis. The Commission should also continue to expand upon its efforts at exploring alternatives to incarceration not only at the post-sentence stage, but also at the time of sentencing. I would encourage the Commission to use the data it collects, coupled with current criminal justice research, to guide its amendment decisions to reflect reasonable sentences that address punishment, deterrence, and rehabilitation. The Eastern District of Michigan is one of the few, if not only, districts in the country that uses risk assessment tools at the presentence stage to assist us in recommending and justifying special conditions of supervision for defendants based on their criminogenic needs. As the sentencing process continues to move away from a mandatory guideline structure, a comprehensive, validated, actuarial risk/needs tool will be critical in allowing probation officers to make a number of important sentencing determinations when it comes to alternatives to incarceration. I would encourage the Commission to work closely with the Administrative Office as they develop a national risk assessment tool to determine if the AO's research can be integrated into the

guideline sentencing process.

This new approach will not be easy and will face a great deal of scrutiny, as it should. It should not be easy to determine a sentence that will have such a significant impact on so many individuals from the victims and their families, the defendants and their families, as well as society who will ultimately have to deal with a defendant who may not have spent an appropriate amount of time in custody or received the proper treatment while in custody because his criminogenic needs were not identified during the sentencing process.