

**Statement of Wilfredo Torres, Deputy Chief U.S. Probation Officer  
United States Probation Office-District of New Jersey**

United States Sentencing Commission  
Regional Hearing on the 25<sup>th</sup> Anniversary of the Sentencing Reform Act of 1984  
U.S. Court of International Trade, New York, New York

July 9, 2009

**“View from the Probation Office”**

I am honored to have been selected to speak before the U.S. Sentencing Commission and the equally esteemed community that is present here today. From the moment that Chief U.S. Probation Officer Christopher Maloney asked me to represent our office, I realized how fortunate I am to be part of a process that reflects the Commission’s ongoing commitment to meet its statutory responsibility and purpose of “evaluating the effects of the sentencing guidelines on the criminal justice system.” I sense an even greater opportunity today for all of us to advance our duty as government entities to operate with increased transparency and advance our efforts to earn the public’s trust.

**The District of New Jersey**

New Jersey has a total population of over 8 million residents. While the population growth slowed the early part of this decade, in 2006 and 2007, there were signs of modest increases. The primary reason for the increases is international migration. In 2007, New Jersey stood as the 11<sup>th</sup> most populous state and remained as the nation’s most densely populated (Wu, 2008). U.S. Census figures for 2007 indicate that, by race, persons living in New Jersey include 62.2% who are White, 15.9% Hispanic, 14.5% Black, and 7.5% Asian ([www.census.gov](http://www.census.gov)).

The probation office in the district of New Jersey has seven offices statewide. Presentence investigation units are located in our Newark, Trenton, and Camden courthouses. They are currently staffed with 5 supervisors and 28 officers, including 8 guideline specialists and 1 financial specialist. In 2008, officers completed 1,091 presentence reports, and were assigned 1,007 new investigations.

Our probation office and the court benefit greatly from our practice of having presentence officers serve as liaisons to each of our district court and magistrate judges. Our officers acknowledge that this unique opportunity enables them to continue to hone their skills and abilities in the important task of assisting the court, counsel, and other parties to assure that the presentence process receives the highest level of attention and quality service. Court liaisons are also available to provide information on confinement, community supervision, and other post-sentence matters.

## **Defendant and Offense in the District of New Jersey**

By gender, those sentenced in 2008 were 90% male and 10% female. By race, they were 34% White, 36% Black, 32% Hispanic, 4% Asian, and 2% listed as other. The nature of offenses involved 34% drug, 34% property, 12% firearms, 7% violent, and 4% immigration. These figures have remained consistent through the last three years. The 34% property crime figure is higher than national figures of 16.2% for similar crimes (fraud, non-fraud white collar, and larceny).

## **Post *Booker* Sentencing in New Jersey**

In fiscal year 2008, national statistics for sentences resulting from upward departures/above the guideline range citing *Booker* represented just 1% of those imposed whereas in the Third Circuit and also the District of New Jersey this figure is the same, 0.7%. Conversely, national statistics for sentences resulting from downward departures/below the guideline range citing *Booker* represented 10.2% of those imposed whereas in the Third Circuit and the District of New Jersey, these figures were 15.4% and 16%, respectively. Looking at the same figures for fiscal years 2007 and 2006, the impact of *Booker* on sentences above or below the guideline range were similar to those for 2008 (United States Sentencing Commission, 2006-2008). These statistics appear to suggest that in the post-*Booker* era, defendants in the District of New Jersey are sentenced below the guideline range at a rate higher than the national average. Citing *Booker*, sentences above the range are rare.

## **Role of the Guidelines**

As a result of the *Booker* decision, we have been presented with an opportunity for greater exploration of the complexities of crime, the individuals who commit them, and the impact felt on society when our laws are broken. Our current sentencing matrix continues to be situated in the right place—the advisory guidelines are the starting point of the sentencing process. Keeping the guidelines at this phase will further advance their critical purpose of avoiding unwarranted disparity. Further, courts now articulate in greater detail each step of the sentencing process, including the applications of particular guidelines, departures, and variances consistent with the factors set forth in 18 U.S.C. § 3553(a) which allows the necessary public scrutiny that sustains the objectivity and transparency of our sentencing system.

## **Offender Characteristics**

Were we to actually weigh presentence reports written pre-*Booker*, the offense conduct and criminal history sections would largely outweigh those containing the personal history and characteristics of the defendant. There was an argument for balance then, particularly from defense counsel, and *Booker* has enabled us to move closer to that point by the advisory nature of the guidelines. In a post-*Booker* world, the presentence process accounts for the necessity of gathering more information on a defendant's family and community experiences, substance and mental health history, employment and educational history, etc., than in the past.

Probation officers in my district welcome the opportunity to recommend a variance where one is warranted. Nonetheless, because these considerations are often based on personal history and characteristics, they approach these cases cautiously. This may partially be a left over effect of the pre-*Booker* era mind-set, where the mandatory guidelines “discouraged” such factors for departures. Caution is nonetheless important since it plays a key role in preventing the use of these factors in instances that would actually contribute to unwarranted disparate sentences.

### **The Rules of Criminal Procedure**

I support the position outlined in prior testimony by my colleagues in the probation system concerning the American Bar Association’s arguments for changes to Rule 32. Specifically, our office opposes providing all parties copies of any and all documentation and oral information we receive. We adopt, by reference, the arguments set forth in Chief U.S. Probation Officer Chris Hansen’s testimony to the Commission on May 29, 2009, for opposing these changes. Of most concern, if the ABA’s position is to be adopted, there would be too great a risk of further unregulated dissemination of this information and the time and efforts allotted to this process would cause us to pull away already scarce resources that are being more critically applied to existing presentence procedures. We submit that the sentencing process, and hearing itself, provides the satisfactory venue through which counsel may make a persuasive argument as to why this information should be provided to them.

### **Additional Recommendations**

By all accounts, our sentencing process continues to rely primarily on the imprisonment range calculated from the advisory sentencing guidelines. As such, the Sentencing Commission is well positioned to approach Congress to remove or amend the statutory mandatory minimum sentences for drug offenses. The quantity of drugs or other offense characteristics sufficiently drive the applicable advisory guideline range that courts consistently adopt.

The Sentencing Commission should continue its efforts to establish policy that is partly driven by what the research community is learning about current sentencing processes and outcomes. Of particular interest to probation officers is ongoing research and training that may enhance the process in determining when recommendations for variances are appropriate. Currently, such factors seem constrained by the “discouraged” language that exists in the advisory guidelines language versus the more permissive criteria provided under 18 U.S.C. § 3553(a).

Finally, as noted earlier, New Jersey is a densely populated state, with a diverse population, both in terms of race, financial status, and the issues they face in each of their unique communities. As I reviewed prior testimony that has come before you, I was impressed by the equally diverse groups of witnesses that have appeared in past hearings. Whether the dialogue emanates from the Judicial or Executive Branch, the Defense Bar, law enforcement agencies, the American Civil Liberties Union, Families Against Mandatory Minimums, and other advocacy groups, their inclusion by the Commission well demonstrates that the federal criminal justice system will not constrain any words that will move it forward, including those that come from people who believe they have no voice in a process that seems to impact them the most.

## References

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