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Southern District of Texas

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

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**View from the Probation Office**

I'd first like to thank the members of the United States Sentencing Commission for this opportunity to testify before the United States Sentencing Commission at this regional hearing marking the 25th Anniversary of the passage of the Sentencing Reform Act of 1984. I, personally, as well as the staff of the district appreciate being given this time to express the ***View from the Probation Office*** regarding how the federal sentencing system is operating and to offer recommendations for consideration by the Commission.

I would be remiss if I did not recognize the work done by the Commission and its staff in providing guidance and training on an ongoing basis to those in the field. I also am especially appreciative of the improvements made in the document collection processes over the last few years. Speaking for a district that submitted 31157 sentencing documents to the Sentencing Commission in 2008, I can say the Commission's electronic submission program is excellent.

As you know, this is the sixth of seven regional hearings. In preparing to appear before the Commission, I reviewed the comments made by my Probation colleagues at the 5 previous regional hearings. I also solicited input from a number of probation officers in my district who are responsible for interpreting and applying the guidelines on a daily basis. Views from this district do not differ drastically from our counterparts, but the context from which they come does differ, significantly at times. In an effort to avoid redundancy, I will focus my comments today on two specific areas of concern.

The Southern District of Texas Probation Office is headquartered in Houston, Texas, with divisional offices in Galveston, Corpus Christi, Victoria, Brownsville, McAllen and Laredo. Three of these divisions are geographically located in immediate proximity to the Texas-Mexico border. In FY 2008, the Probation Office completed 6574 presentence investigations and supervised 5470 offenders in the community. In addition, the Texas Southern Probation Office produced the Judgment in a Criminal Case and Statement of Reasons for all felonies and Class A misdemeanors sentenced in the district. In looking

at the cases sentenced, we see that, by gender, 90.6% of those sentenced were male, and 9.4% were female; and by race, 90.1% were Hispanic, 5.5% White, 3.9% Black and .5% were other. Relative to the primary offense of conviction, Immigration comprised 72.5% of the cases, with drugs coming in second at 18%, and firearms, 2.9% and fraud, 2.2% virtually tied at a distant third.

As it pertains to sentencing practices, 57.7% of Texas Southern's 2008 cases were sentenced within the guideline range. While this was not drastically different from the national rate of 59.4%, it was significantly below the 5th Circuit rate of 70.4%. This perhaps resulted from higher Government sponsored below range sentences, which accounted for 34.8% of the total below range sentences imposed. Non-government sponsored below range sentences totaled 6.5%.

Not surprisingly perhaps, given the description of the sentencing workload in the district, the first area we urge the Commission to look at closely is that of simplifying the guidelines, specifically in the area of the definitions of "crime of violence", "aggravated felony", "violent felony" and "drug trafficking crime". With 4700 of the cases sentenced in our district in 2008 being for Immigration offenses, simplifying and clarifying guideline application in that area would result in significant savings of time and resources.

While those who are unfamiliar might be tempted to minimize the impact of these types of cases ("they are *just* Immigration cases"), the fact of the matter is that Supreme Court and 5th Circuit case law make these presentence investigations some of the most laborious to produce and the sentencings among the most complex. The "categorical approach" required to establish the classification of a prior conviction to support the accurate calculation of the offense level has increased significantly the time needed to obtain and analyze the supporting documentation. The circuit case law has made clear the importance of having the information to support the sentencing findings. In fact, since 2006, Texas Southern Probation has included this documentation with the disclosure of the presentence investigation report to the parties for review prior to sentencing, so that all of have had opportunity to review the documents. Clearly considered the better practice from a sentencing standpoint, it is nonetheless a significant burden on time and resources. I note that my colleague from Kansas addressed clarifying and simplifying the definitions cited in his comments to the Commission at the last regional hearing. The Probation Officers Advisory Group has also urged the Commission to address this area on multiple occasions, most recently supporting the need to study this issue identified in the Commission's final priorities (#6) for the upcoming amendment cycle. We also support and urge the Commission to continue its work in this area.

The second area of concern that Texas Southern Probation would like to specifically address is the American Bar Association's proposed amendment to Rule 32, Federal Rules of Criminal Procedure, requiring increased disclosure of Probation's investigative information. It is our recommendation that no changes be made to the current provisions of Rule 32, and by reference we adopt the fourteen points set forth by Chief U. S. Probation Officer Chris Hansen in his testimony to the Commission on May 29, 2009

supporting that position. In our view, there are two primary reasons not to adopt the changes proposed.

First, the results of the probation officer's presentence investigation are currently fully disclosed in report form pursuant to Rule 32 and opportunity afforded for scrutiny, challenge and objection, prior to submission of the report to the judge. If those disputes are not resolved at that level, there is another opportunity once the final report is submitted for the Court's review. If parties have concern about underlying documentation or support for the recommended findings in the presentence report, a request can be made to the judge of jurisdiction for review. Since probation officers conduct presentence investigations on direct order of the court, and are employees of the court, the sentencing judge is in the best position to conduct the requested review and to determine what is appropriate to be disclosed. As illustrated in several of the points made by Chief Hansen, if increased disclosure of source information becomes part of the rule, sources that currently share information with the court via the probation office will become unwilling to do so. Secondly, requiring the probation officer to submit a written summary of any information received orally will delay the investigative process significantly, and require more time for the investigation to be completed. In our view, the overall result of the rule changes, if adopted, will be to diminish the development of information available for sentencing and the appropriate and safe supervision of the individual in the community.

In closing, I thank the Commission again for the opportunity to provide our input.