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STATEMENT PREPARED FOR DELIVERY BY

AUDREY B. COLLINS
CHIEF UNITED STATES DISTRICT COURT JUDGE
CENTRAL DISTRICT OF CALIFORNIA

Good morning. Thank you for reaching out to the Central District of California and inviting me here to speak this morning. With thousands of defendants passing through our courtrooms every year, the judges of the Central District have had occasion to grapple with many, and varied, sentencing issues. So in preparation for this hearing, I canvassed my colleagues for particular issues they wished me to bring to your attention. Given the widely diverse views held by judges in my district regarding the Sentencing Guidelines, I cannot possibly hope to speak for all of them on every question. But on certain points, most, if not all, of my colleagues are in agreement. Thus, while the views I will express here this morning are my own, they are informed by the views of my colleagues, and for the most part, shared by many of them. And while my tenure as a judge did not start until after the era of the Sentencing Guidelines had begun (as I joined the bench in 1994), the same is not true of all of my colleagues; the Central District still has several judges serving who were sentencing defendants long before the Guidelines came into existence. Thus while I may not have first-hand knowledge of what life was like before the Guidelines, I have certainly heard from those who do.

I should also note that I have had the opportunity to review some of the statements and testimony of judges from around the country, offered at hearings held by the Commission in the last year. To a remarkable extent, sentencing issues we face in the Central District are not unique, and have already been addressed thoroughly at earlier hearings. I will therefore speak in less detail about these issues than I might have done a year ago, choosing rather to add my voice to the chorus already sounding in support of certain needed changes, and relying on the good work of those who came before me in elaborating on those issues to the Commission.

That said, I will echo what many have said before me, something with which I think all my colleagues in the Central District would agree: Booker provided a much-needed improvement to the sentencing process. Though the results in many cases may not be significantly different now than they would have been before Booker, overall the greater flexibility provides us with the ability to do a better job, and to impose more just sentences that better contribute to the goals our justice system was designed to serve. However, while it is for the better, post-Booker sentencings can be much more time-consuming, and much more work. This is even more true in the complex, and extremely large, criminal cases we see filed in our district on a regular basis, with up to 70 or 80 defendants per case. While we do not begrudge the extra time required to impose just and proper sentences -- far from it, in fact -- our judges simply do not have much extra time to provide. In our district especially, with its history of multiple and long-unfilled vacancies, and its demonstrated need for the creation of many new judgeships, judges are working to capacity, and beyond, in an attempt to keep up with the amount of work. While it is, of course, far beyond the mandate of the Sentencing Commission to fill judicial vacancies or create new positions to fill, the problem is not irrelevant to the work of the Commission. It is difficult under the best of circumstances to sentence all defendants justly and accurately, in accordance with any guidance -- or "Guidelines" -- the Commission might provide. But when the judiciary is not provided sufficient resources to carry out its mission, the quality of justice may suffer, despite the heroic efforts of my colleagues, and other members of the federal bench. Thus I repeat a variation of the plea I make to all audiences, given any opportunity: if there is anything the Commission can do, formally or informally, to advance the possibility that Congress might pass the Judgeship Bill, or to help speed the confirmation process along in any way, such efforts will in the end help to effectuate the work of the Commission as well.

1) Work with Congress to encourage the elimination of statutory mandatory minimum sentences.

Turning to more obviously relevant issues for why we are here today, I immediately come up against, once again, the fact that certain things are simply out of the Commission's control. To the many voices of those who have already spoken, I add my district's whole-hearted support for the idea that the Commission should work, in whatever capacity it can, to encourage the elimination of statutory mandatory minimum sentences. Obviously we recognize that the Commission does not have control over this issue, and that mandatory minimums are set by Congress. But much of the progress represented by Booker -- expanded sentencing discretion for judges, the renewed focus on the sentencing goals and factors of 18 USC § 3553(a), the ability of judges to impose truly just and reasonable sentences, tailored to a defendant's individual circumstances -- is undercut in cases involving mandatory minimum sentences. Mandatory minimums sweep so broadly that they often result in the imposition of extremely disproportionate sentences, preventing judges from carrying out one of the most basic goals of sentencing: that sentences imposed be "sufficient, but not greater than necessary," to carry out the goals of punishment, deterrence, protection, and rehabilitation set forth in 18 USC § 3553(a)(2). Mandatory minimums often result in sentences that are far greater than necessary to meet any of these goals.

Mandatory minimums are most often imposed due to criminal history and drug type/quantity. Thus, despite the theory that mandatory minimums lead to greater proportionality in sentencing, the reverse is often the case. Defendants whose conduct was in fact quite similar may receive widely divergent sentences, if one is subject to a mandatory minimum and the other is not. Likewise, a defendant whose role or conduct is much less culpable than that of his co-defendants may receive a sentence as severe, or even more so, if he triggers the minimum and his co-defendants do not.

If it is unreasonable to hope that mandatory minimums will be swept away entirely any time soon, then let us concentrate our efforts on those that apply to low-end, non-violent drug offenders. Such defendants, often addicts driven only to support their habit, are far too often subject to sentences that are entirely too long.

The bottom line is that judges should, above all, impose reasonable sentences -- and mandatory minimums are often not reasonable at all.

2) Revise the sentencing guidelines for defendants convicted of possession of child pornography.

Another area uniformly of concern to my colleagues in the Central District is that presented by child porn cases. We see so many of these cases lately, and while we do not necessarily all agree on how they should be handled, everyone does agree that the Guidelines applicable to these cases are not well-designed. This is especially true for those defendants accused only of owning child pornography, and not of its creation or distribution. There is no question that these defendants deserve punishment, but how much? We have all seen cases in which the present draconian sentencing scheme results in an extremely long sentence the court has no choice but to impose, despite its apparent unreasonableness in light of the defendant's other characteristics. Given the political realities, it is highly unlikely that Congress will ever pass a law that could be characterized as "letting child pornographers off easy." But to the extent greater flexibility could be built into the Guidelines, some ability to craft better sentences might be restored. This could especially be achieved by the elimination of certain enhancements, such as the use of a computer, the possession of material involving a prepubescent minor, or an increase based upon the number of images possessed. Almost all child pornography offenses involve these same enhancements, rendering them meaningless. But the cumulative effect of these enhancements is the imposition of extremely long sentences in almost every case, often at or near the maximum even for first-time offenders. If the Commission could instead provide guidance, based on empirical data to the extent it exists or can be gathered, that could help judges determine which defendants pose a real risk of recidivism and which do not, we could impose more tailored sentences, thus both better serving justice and better protecting the community.

3) Urge Congress to adopt a one-to-one ratio for crack/powder cocaine offenses.

My next point I will not belabor, as it has been made often enough by others: many of my colleagues and I encourage the Commission to continue urging Congress to adopt a one-to-one ratio for crack and powder cocaine. Yes, the situation is better now than it was before Amendment 706, but it is still not nearly good enough. The current disparity is irrational, illogical, and unjust. It negatively impacts already disadvantaged communities, where the injustice engenders a distrust and lack of support harmful to the entire judicial system. The disparity simply cannot be justified, and should not be allowed to continue.

4) Explore additional alternatives to incarceration (and incentives for inmates to earn "early release").

I would also urge the Commission to seek additional alternatives to incarceration. There are effective sanctions that can be used as alternatives to any amount of incarceration in appropriate cases, as well as programs that can provide incentives to inmates to earn early release, thus reducing the actual amount of incarceration. This includes job training, substance abuse treatment, life skills instruction, literacy programs and continuing education, etc. Together with reentry programs that provide continued assistance in these areas after release, as well as help with housing and job placement, these efforts can reduce the rate of recidivism of the population passing through the federal penal system. Thus, encouraging defendants to participate in such programs should be incorporated into our sentencing scheme.

The Central District has just this month begun operations in a pilot reentry program, modeled in many respects on the drug courts operating in a number of California superior courts, though our options are much more limited than those available to the state courts. Those who successfully complete our program will receive a one-year reduction in the term of their supervised release or probation. Some of the options available to state court judges are beyond the ability of the Commission to provide, but at a minimum, the Guidelines could include a deduction to reward defendants who make substantial progress toward rehabilitation in such programs while awaiting sentencing. To the extent that sentences in federal court could be crafted from the beginning to encourage and reward participation in such programs, this can only benefit the system as a whole. Given the current administration's -- including especially the current Attorney General's -- support for these programs, now may be the best time to move forward on this issue.

5) Seek parity in punishments for financial crimes, which are too low.

So far, my comments would appear to suggest that all sentences imposed under the current Guidelines and statutes are too high. Not so. In fact, I think that in most cases, a sentence within the Guidelines range is quite appropriate. However, there are certain types of crimes for which the Guidelines range is quite often too low. White collar defendants charged with financial crimes -- with certain well-publicized exceptions -- often receive sentences that are too low to serve any real deterrent function, and do not seem to provide sufficient punishment for the amount of harm that can be caused by such defendants. Some of this may result from the decisions of AUSAs, over which the Commission obviously has little control, but perhaps the Guidelines could be amended to help judges more easily justify the imposition of longer sentences for financial crimes.

6) Increase the supervised release term for offenses under 21 U.S.C. § 843(b) from one to five years.

I also bring to your attention an issue one of my colleagues specifically asked me to raise. Again, this is something over which the Commission does not have complete control, but perhaps you could work with Congress to implement this suggestion. In the Central District in recent years, we have seen a rapid increase in the number of defendants charged with serious drug crimes, often in huge, multi-defendant cases of 70 or 80 defendants. We have noticed that in a number of these cases, the AUSAs have entered into plea bargains with many defendants, under which the more serious charges are dropped and the defendants are instead charged only under 21 U.S.C. § 843(b) with using a "communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter." In other words, they are charged only with the "phone count," which carries a four year maximum term of imprisonment; in practice, the government usually agrees to “time served.” Whatever the reasons for this sequence of events, many of our judges feel that these defendants, who were initially charged with committing serious drug offenses, are at risk of offending again. Unfortunately, the maximum supervised release term for this offense is one year. If the supervised release term could be increased to five years, the court would be able to monitor these defendants for a much more appropriate length of time, given the circumstances.

In closing, I would like to thank you once again for inviting me here today. And thanks also for all the hard work you do with the Commission. Creating and maintaining the Guidelines has not been easy, and while there is always room for improvement, it is reassuring to see your outreach in search of ways to pursue that improvement, and to refine the quality of justice in this country.