

**TESTIMONY OF THE VICTIMS ADVISORY GROUP
SUSAN HOWLEY, CHAIR**

**BEFORE THE UNITED STATES SENTENCING COMMISSION
PANEL I. ALTERNATIVES TO INCARCERATION/SPECIFIC OFFENDER CHARACTERISTICS
MARCH 17, 2010**

Good morning, Chairman Sessions and members of the Commission. My name is Susan Howley, and I am chair of the Victims Advisory Group (VAG). The VAG was established by the U.S. Sentencing Commission to assist the Commission in carrying out its statutory duties, provide the Commission its views on the Commission's activities as they relate to victims of crime, disseminate information to crime victims and victim advocacy organizations, and perform other functions as the Commission requests.

We are pleased to appear before you to offer our comments regarding proposed amendments to the U.S. Sentencing Guidelines.

Alternatives to Incarceration

The Commission proposes creating a new guideline, § 5C1.3, to provide the court authority to impose probation rather than imprisonment in certain drug offenses.

The VAG does not oppose this change. We note that the offenses under consideration do not appear to involve crimes with direct and proximate victims, and we support added flexibility for courts in sentencing low-level drug offenders.

At the same time, we do want courts to bear in mind that even drug offenses are not victimless crimes. The drug trade has a direct impact on a community's safety, and can keep neighbors "prisoner" in their homes. Drug use has also been tied to theft and other crimes committed in order to support an addiction, or violent crimes that are fueled by addiction or drug use. However, we recognize that probation conditioned on treatment may be a more effective sentence option than incarceration, especially for low level drug offenses that did not involve commission of another crime.

In creating the final version of the new § 5C1.3, we urge the Commission to ensure that probation conditioned on treatment, as an alternative to incarceration, be limited to those cases where the crime was significantly related to the addiction and there is an indication that treatment will be effective, as contemplated by the bracketed language in subsections (a)(1) and (2).

The Commission also invited comments on whether there should be an exception or alternatives to incarceration for mental illness. Such alternatives may be warranted in some cases, but only where a sentencing alternative can be imposed without causing a risk to public safety or a risk to any identified victim. Also, such alternatives should be restricted to cases where the defendant's mental or emotional condition was substantially

related to the offense and where treatment is likely to be effective. Upon request of the victim, the court should impose conditions of no contact with the victim or victim's family.

Victims have many concerns, including a desire to prevent reoffending. In addition, many victims know their offenders. In the case of offenders with mental illness, the victim often shares a desire that the defendant receive effective treatment for the mental illness. We do, however, wish to reiterate to the Commission that even in cases involving offenders with mental illness, victims must retain the rights to be informed, present, and heard throughout the process, as well as the right to be reasonably protected from the accused.

The Commission has requested comment on whether the contemplated Zone changes should apply to all offenses or only to certain categories of offenses such as certain white collar offenses. While we have no specific recommendations regarding the application of the modest Zone changes proposed, we wish to remind the Commission that white collar crimes can have a profound impact on victims, causing devastating financial as well as psychological and even physical effects. While such offenders may not pose the same danger to public or individual safety as violent offenders, incarceration may be warranted for purposes of punishment and deterrence.

Specific offender characteristics

The Commission has requested comment regarding whether certain offender characteristics should be considered at sentencing: age; mental and emotional conditions; physical condition including addictions; military, civil, charitable or public service; and lack of guidance as a youth or similar circumstances.

Each of these factors may be relevant and appropriate for courts to consider. However, the primary focus of court must remain with the statutory purposes of a sentence:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.¹

Where the specific offender characteristics are relevant to the purposes of the sentence, they should be considered.

For example, the drafters raise the problem of the apparent impact of the trauma sustained in military service on a defendant's propensity for violence. Such a connection could appropriately be taken into account in determining which treatment would be effective, and in which manner could it be provided so as to protect the public from future crimes. In so doing, the court should continue to consider any deterrence factor in

¹ 18 USC 3553(a)(2), and as recognized in the introduction to the sentencing Guidelines, 1.2.

sentencing, and of course consider the seriousness of the offense and the consequences of the crime on victims.

However, to treat such trauma as an excuse for criminal behavior or to state that such trauma obviates other goals of sentencing is not in the public interest. Similarly, to treat youth, mental illness, addiction, or lack of guidance as a reason to avoid culpability for an offense, where the offender retained the recognition that his or her actions were wrong, turns our criminal justice system on its head and denies victims the justice they are due.

Conclusion

Thank you for the opportunity to represent the interests of crime victims as you consider these amendments to the U.S. Sentencing Guidelines. The VAG is happy to answer any additional questions or provide additional information as you move forward with your deliberations.

**TESTIMONY OF THE VICTIMS ADVISORY GROUP
SUSAN HOWLEY, CHAIR**

**BEFORE THE UNITED STATES SENTENCING COMMISSION
ORGANIZATIONAL GUIDELINES AND MISCELLANEOUS AMENDMENTS
MARCH 17, 2010**

The Victims Advisory Group (VAG) wishes to submit its brief comments regarding proposed amendments to the U.S Sentencing Guidelines relating to organizational, hate crime, and miscellaneous Guidelines. The VAG was established by the U.S. Sentencing Commission to assist the Commission in carrying out its statutory duties, provide the Commission its views on the Commission's activities as they relate to victims of crime, disseminate information to crime victims and victim advocacy organizations, and perform other functions as the Commission requests. We are pleased to provide these comments.

Organizational Guidelines

The VAG supports the Commission's attempt to promote the prompt redress of harm to the victim by an organizational defendant. Guideline 8B2.1, Effective Compliance and Ethics program, already provides that an effective compliance and ethics program requires an organization to take reasonable steps to respond appropriately after criminal conduct is detected. The amendment would add an application note for that provision to provide that, "In the event the criminal conduct has an identifiable victim or victims the organization should take reasonable steps to provide restitution and otherwise remedy the harm resulting from the criminal conduct."

The VAG supports addition of such language, because it will serve to promote an improved and timely response to victims. Crimes involving organizational defendants most often result in financial harm to victims, and such harm is compounded by delays in the payment of compensation or restitution.

Hate crimes

The proposed changes to the hate crimes Guideline simply incorporate statutory changes, which were supported by crime victims. Therefore, the VAG supports the proposed amendments.

Miscellaneous

The Commission proposes certain amendments relating to issues raised by recent legislation. One of these involves Guideline § 2B1.5, related to property offenses. The amendment adds "paleontological resources" to the Guideline.

We suggest the Commission take the opportunity, while amending this Guideline, to amend Application Note 9 relating to upward departures. The note observes that application of the Guideline may substantially understate the seriousness of the offense. For example, an upward departure may be warranted if ... (B) the offense involved a cultural heritage resource that has profound significance to cultural identity (e.g., the Statue of Liberty or the Liberty Bell).” The VAG urges that this application note be amended to clearly contemplate the fact that many American Indian and Alaska Native artifacts are of priceless importance to tribal cultures.

Thank you for the opportunity to submit these brief comments. The VAG would welcome additional questions or requests for information as the Commission moves forward with its deliberations.