

Chief Judge Patti B. Saris
Chair, United States Sentencing Commission
Remarks for Public Meeting
January 9, 2015

Thank you all for coming to this public meeting of the United States Sentencing Commission. As always, we appreciate the significant public interest in federal sentencing issues.

I want to take a moment to acknowledge once again the extraordinary contribution of two Commissioners who completed their terms last month. Judge Ketanji Brown Jackson served as a member and Vice Chair of the Commission. Judge Ricardo Hinojosa served as a Vice Chair and before that served as Chair of the Commission. He also was the longest serving Commissioner in our history. Their service to the Commission and the country was exemplary, and they are already deeply missed.

I also want to acknowledge Russell Butler, who completed his term as Chair of the Commission's Victims Advisory Group last month. Russell was one of the original members of the Victims Advisory Group, and his leadership has helped the Commission to more successfully understand and address the needs of victims in the federal criminal justice system.

Over the past two years, the Commission has focused on the important goal of reducing the costs of incarceration and overcapacity of prisons. As part of this effort, and after exhaustively reviewing data, expert analysis, and public opinion and carefully considering public safety, the Commission last year decided to reduce guideline levels for most federal drug offenders and to make that change retroactive. That change went into effect this past November for new cases, and courts are now considering motions for retroactive application of the guidelines reduction, with some offenders eligible for earlier release as soon as this coming November.

We said last year, though, that only Congress can fully address the issue of excessive federal prison populations and costs, as well as the many problems the Commission has documented with existing statutory mandatory minimum penalties, particularly in the drug context. We continue to strongly support Congressional action to address these problems and to be guided by these concerns in our own work as well.

We also are focusing this year on some of the other key missions of the Commission. Every year, we seek to make the sentencing guidelines more efficient and more effective. We examine data and talk to judges, prosecutors, defenders, and the public, among others, about ways to make the guidelines work better. We try to make them clearer, more reflective of practical and legal realities, more useful for courts and litigants, and of course consistent with public safety. Doing so helps to ensure consistency and justice, to reduce unwarranted disparity, and to limit unnecessary litigation, which saves time and money. This good government mission of making the guidelines and federal sentencing work better was another key consideration informing the proposed amendments we offer today.

As a reminder, today's amendments are just preliminary proposals that we put forward for public comment. We will vote this spring on whether to approve these amendments and send them to

Congress, but only after a public comment period, a hearing, and further deliberations. And regardless of how many Commissioners we have at that time, it will take an affirmative vote of four Commissioners to pass any amendment.

The Commission has been studying the guideline governing fraud offenses in depth for several years. We held a symposium in the fall of 2013 at John Jay College of Criminal Justice in New York, where we heard from many stakeholders on this issue. We met with judges and others including the American Bar Association on this subject at our National Training Seminar in Philadelphia this past September. Our staff has spent countless hours analyzing data on fraud sentences, some of which you saw here today. It is important to remember, as this data makes clear, that fraud cases occur all over the country and constitute a wide variety of types of offenses, including identity theft, Medicare fraud, mortgage fraud, wire fraud, and many others, well beyond the more highly publicized Wall Street cases.

This extensive process has led us to believe that the fraud guideline may not be fundamentally broken for most forms of fraud. As Dr. Semisch detailed earlier, sentences on average hew fairly closely to the guidelines for all but the highest dollar values, over \$1 million in loss. In our discussions with judges and a comprehensive survey several years ago, we learned that, while some judges are concerned about the fraud guideline, most are relatively satisfied with it for most types of fraud.

Our process has identified some problem areas where changes may be necessary. We have heard significant concerns about the use of intended loss and the sophisticated means enhancement, as well as suggestions that the current guideline may not effectively reflect the harm to victims because it is predicated only on the number of victims. Some have expressed strong concerns about how the guidelines address fraud on the market cases, and the Commission is proposing a modified approach to sentencing for this type of fraud case. The Commission has not made up its mind on any of these issues, and we look forward to your comments and to a hearing. We also do not know yet whether addressing these perceived problem areas will be sufficient, which our outreach and analysis suggests is possible, or whether broader changes might be needed in the future.

I also wanted to note briefly the proposed amendment addressing sentences for offenses related to hydrocodone. The Drug Enforcement Administration recently rescheduled hydrocodone to reflect the seriousness of that drug, as well as the new, potentially more potent, forms in which it has become available. The proposed amendment puts forward changes that reflect that rescheduling and that we hope are appropriate reactions to this growing and serious problem.

I mentioned earlier the need for the Commission to work to make the guidelines more effective and more efficient. We hope that many of the amendments proposed today will do so. The proposed fraud amendments are intended to increase clarity, reduce ambiguity, and better reflect reality. Other amendments seek to address circuit conflicts and clarify important guidelines provisions like the mitigating role adjustment and the provisions governing jointly undertaken criminal activity. An amendment adjusting the tables based on amounts of money for inflation attempts to keep the guidelines current and follow the approach generally mandated by statute

for most civil monetary penalties. We will make publicly available an analysis of the impact of that proposed amendment shortly.

I did want to briefly address an issue that does not appear in the proposed amendments. As I announced at the last public meeting, the Commission held a roundtable discussion this fall on the definition of “crimes of violence” and related terms. We had hoped that we would be positioned to publish some proposals today as an outgrowth of that very informative roundtable, and we conducted considerable follow up work after that event. But ultimately, after much consideration of this issue internally and consultation with leading experts, the Commission concluded that, given the existing statutory scheme, any attempts by the Commission at this time to clarify these definitions or establish more consistency within the guidelines would likely only lead to more confusion and renewed litigation. We are currently considering whether it would be helpful for the Commission to issue a report on this issue with recommendations for legislative fixes.

Again, I thank you for your interest in these important issues, and I look forward as always to your comments and feedback.

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