

**Statement of Diana E. Murphy
Chair of the United States Sentencing Commission
Before the Criminal Justice Oversight Subcommittee of the
Senate Committee on the Judiciary**

September 26, 2000

Mr. Chairman, members of the Subcommittee, I am Diana Murphy, Chair of the United States Sentencing Commission (the "Commission") and a judge on the United States Court of Appeals for the Eighth Circuit. I appreciate the opportunity to testify today about the ongoing work of the Commission, and we thank you for your continued support of the agency.

As you know, on November 15, 1999, a full complement of seven voting commissioners was appointed to the Commission, and I am proud to serve as Chair of this important agency. Our appointment ended an extended and unprecedented hiatus of more than a year during which the Commission was without *any* voting commissioners. We take our new responsibilities so seriously that we convened the day after our appointment in Washington, D.C. for two days of meetings and adopted a very ambitious policy agenda for the abbreviated guideline amendment cycle that ended May 1, 2000. I am particularly proud of how quickly and thoughtfully the new Commission has acted in less than a year to address many of the policy issues we found on our plate upon our appointment.

As a group, we bring extensive and varied experience to our new jobs. Among the seven voting and two non-voting members of the Commission, five are federal judges, three have prosecutorial experience, two have criminal defense experience, two formerly were police officers, and several have had prior experience working as congressional staff. We all have two goals in common: (1) to strengthen the Commission's good working relationship with Congress

and others in the federal criminal justice community, and (2) to maintain and improve the federal sentencing guideline system.

In order to achieve those goals, the new Commission has made it a priority to reach out to all who have an interest in the federal criminal justice system and to listen to their views about the sentencing guidelines and related issues and to engage in an open dialogue. This oversight hearing is one opportunity for us to conduct that dialogue, and it is in fact the second congressional hearing at which we have been invited to testify. We have also met with a number of members of Congress throughout the past year, as well as key staff. In turn we have instructed members of our staff to keep Congress fully informed of our work.

The new Commission has also met regularly with the Criminal Law Committee of the Judicial Conference, the Probation Officers' Advisory Group, the Practitioners' Advisory Group, and the Federal Public Defenders to gain their insights on the matters before us. We have worked closely with the Department of Justice through its *ex officio* member, and have obtained informal feedback when appropriate from representatives of concerned industry groups and relevant federal agencies. Throughout the amendment process, we held regular public meetings, published in the *Federal Register* for comment all of our proposed amendments, and conducted a public hearing in March so that concerned constituents could testify about proposed amendments.

In order to obtain input in a more informal way, Commissioners have attended and spoken at numerous seminars on sentencing issues around the country so that we can hear what users of the guidelines have to say about them. Just last week, all seven commissioners attended the National Sentencing Policy Institute in Phoenix, Arizona, where we were able to interact with many of the federal judges who use the guidelines every day. Because of this interest in our work, we are about to begin posting all of our official notices on the J-NET so that those judges who have an

interest will be better informed about our ongoing work. We are committed to taking a very inclusive approach to our decision making process.

With that brief introduction, I would like to focus my testimony today on three areas. First, I would like to report on the work we accomplished during the last guideline amendment cycle that ended May 1, 2000. Second, I would like to provide an overview of the policy development work we are planning for the current guideline amendment cycle, including the beginning of an extensive new research endeavor. Finally, I would like to address the Commission's critical budget situation and its need for the full \$10.6 million that it requested for fiscal year 2001.

Newly Appointed Commissioners Address Critical Backlog of Legislation

With no voting commissioners for 13 months, from October 1998 through mid November 1999, the Commission could not fulfill its most important ongoing statutory responsibility under the Sentencing Reform Act - to update and promulgate amendments to the sentencing guidelines for federal criminal offenders. Even before the earlier Commission went out of business, it found it difficult to promulgate amendments in 1997 and 1998 because it operated with only four voting members for much of that time, requiring a unanimous vote. *See* 28 U.S.C. § 994(a).

As a result of these chronic commissioner vacancies, important sentencing policy issues had gone unaddressed over several years. Those issues arose in a number of contexts. Crime legislation enacted by the 105th Congress specifically directed the Commission to make changes to the sentencing guidelines for a number of criminal offenses, most notably in the areas of intellectual property infringement, telemarketing fraud, fraudulent cloning of wireless telephones, unlawful identity theft, and criminal sexual offenses against children. Other recently enacted crime legislation did not contain express instructions to the Commission but did make changes in the substantive criminal law, such as in the areas of firearms and methamphetamine offenses. In

addition to these legislative items, a large number of conflicts among the United States Circuit Courts of Appeal regarding interpretation of the guidelines accrued during the absence of voting commissioners. As you are aware, the United States Supreme Court declared in Braxton v. United States, 500 U.S. 344 (1991), that the Commission has the initial and primary responsibility to eliminate conflicts among the circuit courts with respect to guideline interpretation.

We were confronted with a very abbreviated time frame in which to begin addressing them because of our mid-November appointments. The Sentencing Reform Act requires the Commission to submit amendments to the sentencing guidelines to Congress by May 1 in any given year for a 180 day review period. The May 1 submission to Congress is the culmination of a careful deliberative process that typically starts in June or July of the previous year.¹ So you can see the challenge we faced by being appointed in mid November, well into that cycle.

As I mentioned at the outset, we met immediately after our appointment and began to address the outstanding policy issues and to select those which were especially urgent that could be dealt with in the shortened amendment cycle. Although we recognized that there were many important sentencing policy issues facing the federal criminal justice system, we unanimously agreed to focus our efforts during our initial amendment cycle on the two areas of most pressing concern: (1) addressing the significant backlog of crime and sentencing related legislation enacted by the 105th Congress that required implementation by the Commission and (2) resolving a limited number of circuit conflicts on the application of the guidelines.

The outreach to our varied constituents, preparation by staff, and our own careful deliberations served us well for the many decision making votes we made throughout the

¹ See generally 18 U.S.C. §994; 5 U.S.C. §553; USSC Rules of Practice and Procedure.

amendment cycle. As a result we made great progress in clearing the backlog of crime legislation. On May 1, 2000, we submitted to Congress fifteen amendments to the guidelines that cover a wide range of criminal conduct that has been of great concern to Congress and other members of the federal judicial system. These amendments are scheduled to become effective November 1, 2000 (with the exception of the amendments implementing the NET Act and the Telemarketing Fraud Prevention Act of 1998, which are already in effect).

Although I cannot go into great detail on each of the amendments here, I would like to highlight some of the amendments:

- **Intellectual Property Offenses** - The **No Electronic Theft (NET) Act of 1997**, Pub. L. 105-147, expanded the scope of the criminal copyright infringement provisions to include infringement that occurs through electronic means, regardless of whether the defendant benefitted financially or commercially from the crime. In addition, Congress directed the Commission to ensure that the guideline penalties for all intellectual property offenses generally provide sufficient deterrence and specifically provide for consideration of the retail value and quantity of infringed items. In response to the Act, the Commission promulgated an amendment to USSG §2B5.3 (Criminal Infringement of Copyright or Trademark), that modifies the sentencing enhancement in §2B5.3(b)(1) to use the retail value of the infringed item, rather than the retail value of the infringing item, as a means for approximating pecuniary harm in most cases. Among other things, the amendment also increased the base offense level and added a sentencing enhancement of two levels (which represents an approximate 25 percent increase in sentence), and a minimum offense level of level 12, if the offense involved the manufacture, importation, or uploading of infringing items. The Commission believes that these changes will result in significantly more severe sentences for those offenders specifically targeted by the Act: offenders who upload infringing material, such as counterfeit software, to illegal Internet sites, thereby making them readily available for others to download illegally at no cost.
- **Telemarketing Fraud** - In the **Telemarketing Fraud Prevention Act of 1998**, Pub. L. 106-160, Congress strengthened criminal statutes relating to fraud against consumers, particularly the elderly. In addition to providing enhanced penalties for conspiracies to commit fraud offenses that involve telemarketing, the Act directed the Commission to provide substantially increased penalties for persons convicted of telemarketing offenses. The previous Commission promulgated temporary amendments to the guidelines that provide for three separate sentencing enhancements for fraud offenses that involve mass marketing, a large number of vulnerable victims, and the use of sophisticated means to carry out the offense. The Commission repromulgated this emergency amendment as permanent so that it would not expire by November 2000.

- Identity Theft** - The **Identity Theft and Assumption Deterrence Act of 1998**, Pub. L. 105-318, criminalized the use or transfer of an individual's social security number, date of birth, credit cards, and any other identification means (including unique biometric data), without that individual's authorization to do so, in order to commit any federal or state felony. In addition, the Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for each offense under 18 U.S.C. §1028, relating to fraud in connection with identification means. In response to the Act, the Commission promulgated an amendment to the fraud guideline, USSG §2F1.1 (Fraud and Deceit), that, among other things, provides a sentencing enhancement and minimum offense level of level 12 for offenses involving (1) the possession or use of equipment that is used to manufacture access devices, (2) the production of, or trafficking in, unauthorized and counterfeit access devices, such as stolen credit cards, or (3) affirmative identity theft (i.e., unlawfully producing from any means of identification any other means of identification). The Commission believes that this amendment will address Congress's primary concern that penalties be significantly increased for offenses involving the illegal use of an individual victim's means of identification, even if no economic loss accrues to a financial or credit institution.
- Telephone Cloning** - The same amendment that implemented the Identity Theft Act also addressed the **Wireless Telephone Protection Act of 1998**, Pub. L. 105-172. That Act, among other things, eliminated the intent to defraud element for defendants who knowingly use, produce, or traffic in certain equipment used to clone cellular telephones, and it clarified the statutory penalty provisions for cellular telephone cloning offenses. Congress also directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for offenses involving the fraudulent cloning of wireless telephones. In response to the Act, the Commission added sentencing enhancements to the fraud guideline that recognized that offenders who manufacture or distribute are more culpable than offenders who only possess them.
- Sexual Offenses Against Children** - The **Protection of Children from Sexual Predators Act of 1998**, Pub. L. 105-314, created two new crimes: (1) the transmittal of information identifying minors for criminal sexual purposes; and (2) the distribution of obscene materials to minors. The Act also provided increased statutory penalties for existing crimes that address sexual activity with minors and child pornography and expressed Congress's zero tolerance for the sexual abuse and exploitation of children. In addition, the Act contained six directives to the Commission, many of which directly respond to recommendations the Commission made a few years ago in a report to Congress on sexual abuse and exploitation. In response, the Commission has undertaken a comprehensive reassessment of the guidelines pertaining to sexual offenses involving minors and passed a multi-part amendment to the guidelines for sexual abuse, child pornography, and obscenity distribution offenses that implements many of the directives in the Act. The amendment provides sentencing enhancements in six guidelines if the offense involved (1) the use of a computer or other Internet-access device and/or (2) the misrepresentation of a participant's identity. These separate enhancements – each representing about a 25 percent increase in

guideline punishment levels – reflect the concern of Congress and the Commission over the increased access to children provided by computers and the Internet, and the anonymous nature of on-line relationships, which allows some offenders to misrepresent their identities to the victim. In addition to adding these enhancements to the statutory rape guideline, the amendment also increases by three levels the base offense level in USSG §2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape)) if the offense involved a violation of chapter 117 of title 18, United States Code (relating to transportation of minors for illegal sexual activity) (this latter change represents about a 40 percent increase in guideline punishment level).

- **Methamphetamine Trafficking - The Methamphetamine Trafficking Penalty Enhancement Act of 1998**, Pub. L. 105-277, increased the penalties for manufacturing, importing, or trafficking in methamphetamine by reducing by one half the quantity of pure substance and methamphetamine mixture required to trigger the separate five and ten year mandatory minimum sentences in the drug statutes. Although the Act contains no directives to the Commission, the Commission promulgated an amendment that conforms methamphetamine (actual) penalties to the more stringent mandatory minimums established by the Act. In taking this action, the Commission followed the approach set forth in the original guidelines for the other principal controlled substances for which mandatory minimum penalties have been established by Congress. (No change was made in the guideline penalties for methamphetamine mixture offenses because those penalties already corresponded to the mandatory minimum penalties as amended by the Act.)
- **Firearms Offenses** - Congress addressed certain serious firearms offenses In Public Law 105-386, which amended 18 U.S.C. § 924(c) to create a tiered system of sentencing enhancement ranges. Each range has a mandatory minimum and presumed life maximum for cases in which a firearm is involved in a crime of violence or drug trafficking offense. The pertinent minimum sentence in that tiered system is dependent on whether the firearm was possessed, brandished, or discharged. The Act also changed the mandatory minimum for second or subsequent convictions under section 924(c) from 20 to 25 years, and it broadly defined the term “brandish.” Although the Act did not contain any directives to the Commission, the legislation required the Commission to promulgate amendments to the guidelines to incorporate the tiered statutory sentencing scheme into the guideline pertaining to section 924(c).

The Commission also resolved five circuit court conflicts by promulgating amendments to the guidelines that (i) clarify that the enhanced penalties in USSG §2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) apply only when the defendant is convicted of an offense referenced in that guideline; (ii) clarify that the enhancement in the fraud guideline for “violation of a judicial or administrative order, injunction, decree, or process” applies to false statements made during a bankruptcy proceeding;

(iii) prohibit post-sentencing rehabilitation as a basis for downward departure at any resentencing; (iv) clarify that a court can base an upward departure on conduct that was dismissed or uncharged as part of a plea agreement, and (v) define the parameters of conduct that may warrant a downward departure in an extraordinary case based on aberrant behavior, as well as delineating types of cases for which a downward departure based on aberrant behavior is prohibited. In addition, the amendments in response to the Sexual Predators Act and the firearms legislation described above addressed two other circuit conflicts; thus, in total we resolved seven such issues.

As you can see by the sheer volume of amendments, we had a very busy and productive first amendment cycle. But what you cannot see from a written list is how well this group of commissioners is working together. Each commissioner approached the guidelines discussions in a manner that was open minded and respectful of differing views. The commissioners listened to each other and to all interested parties. They were always well prepared and committed to improving the guidelines. **Indeed, I am pleased to report that every vote we have taken to date – whether it be a vote to publish a proposal or to actually promulgate an amendment – has been unanimous except in two instances when it was six to one.** Thus, Congress can be assured that the Commission is speaking with a unified voice with the amendments we submitted for your review on May 1.

Priorities for the Current Amendment Cycle

Shortly after our congressional submission, the commissioners held a retreat so that we could reflect on the work we had just completed. We reviewed both our work product as well as the processes we used to reach our decisions and we were overall quite satisfied. We also took that opportunity to start planning our priorities for the coming amendment cycle and to begin thinking about the longer term.

After publishing in the *Federal Register* a tentative list of policy priorities and receiving public comment from a variety of constituents, once again we have set a very ambitious policy agenda.

Economic Crime Guidelines - This year, the Commission hopes to complete a comprehensive reassessment of the economic crimes guidelines. Economic offenses account for more than a quarter of all the cases sentenced in the United States federal district courts. The Commission has received comment from the Federal Judiciary, the Department of Justice testimony and survey results that indicated that the sentences for these offenses were inadequate to punish appropriately defendants in cases in which the monetary loss was substantial. After approximately one year of data collection, analyses, public comment, and public hearings, a comprehensive “economic crimes package” was developed to revise the loss tables for fraud, theft, and tax offenses in order to impose higher sentences for offenses involving moderate and large monetary losses. Related amendments would consolidate the theft, fraud, and property destruction guidelines and clarify the definition of loss for selected economic crimes. Working in conjunction with the Criminal Law Committee of the Judicial Conference, a field test of the proposed loss definition by surveying federal judges and probation officers and applying the new definition to actual cases was conducted. Among the findings of the field test, more than 80 percent of the judges stated that the proposed loss definition produced results that were more appropriate than the current definition.

The Commission has planned a Symposium on economic crimes, “Federal Sentencing Policy for Economic Crimes and New Technology Offences” for October 12-13, 2000. The Criminal Law Committee, the American Bar Association White Collar Crime Committee, and the National White Collar Crime Center have agreed to be co-sponsors. The symposium is designed

to (1) discuss current sentencing issues pertaining to economic crimes; (2) identify how new technologies are being used to further “traditional” criminal activity, *e.g.*, fraud, and the novel forms for criminal activity new technologies have created, *e.g.*, denial of service attacks, cyberterrorism, and the misuse of data encryption; and (3) identify how new technologies impact law enforcement, and the sentencing policy implications of these offenses. With the advent of the Internet and increasing prevalence of computers in our daily lives, the Commission recognizes that technology is changing how traditional crimes are committed, making new types of crimes possible, and generally lowering barriers to criminal activity. All of this creates unique challenges to law enforcement and sentencing policy makers.

The symposium will be held at the George Mason University School of Law, with approximately 175 invited guests from the federal legal community (federal judges, prosecutors, defense attorneys, and probation officers), academia, and technology companies such as AOL, Microsoft, and Yahoo. Deputy Attorney General Eric Holder and FBI Director Louis Freeh are scheduled to speak. Of course, we hope that you or a member of your staff can attend the symposium.

Money Laundering - This year the Commission also expects to address money laundering offenses. As you know, in the past a prior Commission passed an amendment to the money laundering guideline in 1995 that was subsequently disapproved by Congress. We expect to start anew, and are working closely with the Department of Justice and others on a new approach. We hope to develop a guideline structure that ties money laundering penalties more closely to the underlying offense conduct which generated the laundered proceeds. Penalties for money laundering offenses involving proceeds generated by drug trafficking, crimes of violence,

terrorism, and sexual offenses might also be more severe than penalties for other money laundering offenses. I assure you that we are taking a careful and thoughtful approach to this.

Counterfeiting - The Commission also is working on another economic crime this year - counterfeiting bearer obligations of the United States. The Commission has received comment from the Department of Treasury and Secret Service that the current guideline, USSG §2B5.1 (Counterfeiting), does not sufficiently deter or punish counterfeiting offenses in light of recent technological changes. Historically, counterfeiting was accomplished using offset printing, which requires expensive equipment, a large indoor space to house the equipment, and persons with printing expertise. Now, increased availability and affordability of personal computers, ink jet printers, and other digital technology make it possible for great numbers of people to engage in counterfeiting. While counterfeiters previously made large “runs” of counterfeit currency and typically maintained a sizeable “inventory,” they now typically only print counterfeit currency on an “as needed” basis.

The Department of Treasury proposed specific modifications to the guidelines to address this changing technology. Commission staff also has recently completed a report on the impact of technology on counterfeiting sentences. We are in the process of reviewing Treasury’s proposals as well as our staff’s report and expect that we may be able to promulgate amendments to the guideline this amendment cycle.

Sexual Offenses Against Children - Because of the limited time available between our appointments on November 15, 1999, and the statutorily required May 1 date for submitting guideline amendments to Congress, we were unable to complete our response to the Sexual Predators Act directive requiring that the guidelines “provide for an appropriate enhancement in any case in which the defendant engaged in a pattern of activity of sexual abuse and exploitation of

a minor.” The Commission is aware that a variety of legislation is pending in both the Senate and the House that, if enacted, would significantly impact our work in this area. This is an area of critical importance and a complicated one. You can be assured that the Commission shares Congress’s concern about these particularly heinous offenses, and we fully expect to implement this remaining directive, as well as complete a proportionality review of the relevant guidelines, during this amendment cycle.

Firearms - During the last amendment cycle the Commission made a number of changes to the guidelines pertaining to firearms offenses in order to conform with recently enacted legislation. One item that we did not have time to address, however, was whether the current sentencing enhancement for offenses involving multiple firearms should be increased. The Bureau of Alcohol, Tobacco, and Firearms has requested that the Commission consider expanding the enhancement for multiple firearms in USSG §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms) to differentiate among offenses with more than 50 firearms. The Commission is considering this proposal, as well as other possible modifications to the firearms guidelines.

Nuclear, Biological, and Chemical Weapons - Within the past few years there has been a growing interest by Congress, and the public generally, about the threat posed by criminal behavior that involves nuclear, biological and chemical weapons, materials, and technologies. Some congressional action in this area specifically relates to sentencing policy. For example, in section 1423 of the National Defense Authorization Act of Fiscal Year 1997, Congress expressed the sense that the sentencing guidelines were inadequate for certain offenses involving the importation and exportation of such material. Congress also recently created several new offenses in this area. Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 incorporated attempt and conspiracy into 18 U.S.C. § 175, which prohibits the production, stockpiling, transferring,

acquiring, retaining or possession of biological material. Section 201 of the Chemical Weapons Convention Implementation Act of 1998 also created a new offense at 18 U.S.C. § 229, which makes it unlawful for a person unknowingly to develop, produce, or otherwise acquire, transfer, receive, stockpile, retain, own, possess, use, or threaten to use any chemical weapon, to assist or induce any person to do so, or to conspire to do so. In light of these legislative developments, the Commission has formed a policy development team to examine the relevant guidelines and hopes to make any necessary modifications to the guidelines this amendment cycle.

Criminal History - The Commission has identified a number of circuit conflicts relating to Chapter Four of the guidelines, which the court uses to determine an offender's criminal history category. This suggests that certain provisions relating to criminal history are unclear and require clarification. In addition, we have received public comment requesting that the Commission examine the criminal history guidelines. As a result, the Commission has formed a policy development team to begin a review of the guidelines relating to criminal history. Although we do not expect to complete this work this amendment cycle, we hope to make significant progress in developing amendments that would resolve these circuit conflicts.

Safety Valve - The area of mandatory minimum sentences, particularly for drug offenses, has received a great deal of attention of late. For instance, in May 2000, the House Governmental Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources asked me to testify about drug sentencing trends, mandatory minimum penalties, and how these statutory penalties interact with the federal sentencing guidelines. Because of short notice and a scheduling conflict, I asked Vice Chair John Steer to testify on my behalf. He did so, both orally and in writing. The Criminal Law Committee of the Judicial Conference suggested that the Commission update its August 1991 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice*

System, and a variety of other constituents, including members of Congress, have suggested that the Commission further study these matters.

During this amendment cycle the Commission plans to begin analyzing the operation of the “safety valve” guideline, USSG §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases). We have been told a recidivism study conducted by the Bureau of Prisons will soon be available which could help inform our deliberations. We hope to work closely with Congress, the Department of Justice, the Bureau of Prisons, and others as we explore whether any adjustments to the safety valve would be advisable.

Circuit Conflicts - As I mentioned earlier, the Commission resolved five circuit conflicts during the last amendment cycle. Commission staff has identified approximately 40 remaining circuit conflicts. Such conflicts threaten the uniform application of the guidelines throughout the nation, and elimination of unwarranted sentencing disparity is a cornerstone of the Sentencing Reform Act. Although the Commission cannot reasonably expect to resolve all of these conflicts in one year, we have identified eleven circuit conflicts which we will address during this cycle.

New Legislation - The Commission also has been following closely the legislative developments of the 106th Congress and is prepared to implement any crime legislation as appropriate. For instance, Public Law No. 106-172 provided for the emergency scheduling of Gamma Hydroxybutyric Acid (GHB) as a Schedule I or Schedule II drug, and the addition of Gamma Butyrolactone as a List I chemical. The Commission also is mindful of and shares concerns over the increased use of ecstasy and other so called “club drugs.” The Commission has formed a policy development team to study whether the guideline penalties for these particularly drugs are sufficiently severe and, if not, to develop appropriate amendments to the guidelines.

New Research Initiative

The Sentencing Reform Act requires the Commission to do much more than promulgate amendments to the guidelines. It requires the Commission to serve as an expert agency on sentencing policy. The Commission acts as a clearinghouse and information center for information on federal sentencing practices and is statutorily responsible for monitoring how well sentences imposed under the guidelines are achieving the purposes of sentencing as set forth under 18 U.S.C. § 3553(a). *See* 28 U.S.C. 995(a)(12), (a)(15).

November 2002 will mark the 15 year anniversary of the guidelines. Since their implementation in November 1987, the guidelines have been used to sentence over 400,000 defendants. Soon we will experience the 15 year anniversary and 500,000 defendants sentenced under the guidelines, and the Commission believes it prudent to step back and examine the operation of the guidelines over these years. We are undertaking an analysis that we hope will culminate with a published report sometime around November 2002. Questions that we hope to address include how well the guidelines are accomplishing the statutory purposes of sentencing, including crime control, as set forth at 18 U.S.C. § 3553(a)(2).

The Commission believes that the federal sentencing guidelines have advanced the goals of Congress as expressed in the Sentencing Reform Act by providing certain, fair, and markedly more uniform punishment for similar offenders. This has strengthened the ability of the criminal justice system to combat crime. We hope that our empirical research will confirm our belief.

Commission Faces Dire Budget Constraints

I discussed at the outset that the new Commission faced a substantial backlog when we arrived, and we have experienced renewed interest in many areas of the guidelines and in their impact. Unfortunately, we have been forced to tackle an unusually heavy workload at a time when the staff has been severely diminished because of the severe reductions in the Commission budget

while there were no voting commissioners. As a result, we are busier than ever with far

fewer resources, and we cannot accomplish what we have before us without receiving our full budget request to Congress.

The Commission cannot meet all of its statutory obligations in a timely and thorough manner unless it receives the full \$10.6 million that it requested for fiscal year 2001. In addition to the extraordinarily heavy workload this year in terms of both policy development and research that I have outlined, the Commission must continue to perform its many other important statutory obligations. Because I am sure you are well aware of the numerous requirements imposed on the Commission by the Sentencing Reform Act, I will highlight just a few of them.

In order to comply with the statutory requirement to collect and disseminate information concerning sentences, in fiscal year 1999, the Commission received court documents for more than 55,000 cases sentenced between October 1, 1998, and September 30, 1999. For each case, the Commission extracts and enters into its comprehensive database more than 260 pieces of information, including case identifiers, sentence imposed, demographic information, statutory information, the complete range of court guideline application decisions, and departure information. In 1999, as required by statute, Commission staff provided training on the sentencing guidelines to more than 2,200 individuals at 47 training programs across the country, including programs sponsored by the Commission, the Federal Judicial Center, the Department of Justice, the American Bar Association, and other criminal justice agencies.

The \$10.6 million requested by the Commission for fiscal year 2001 is the bare minimum necessary to restore staffing levels to that of fiscal year 1998, the last time the

agency had a fully functional Commission in place. We appreciate the efforts that many members of this Subcommittee, and of the full Judiciary Committee, have made on our behalf to increase funding for the Commission. However, your continued assistance is urgently needed. The \$9.9 million mark approved by the Senate Appropriations Committee is not sufficient to get the Commission fully up and running.

Conclusion

In closing, I assure you that this Commission is committed to working thoughtfully to accomplish as much as we reasonably can, not only during this amendment cycle but throughout our terms of appointment. I think we demonstrated our commitment last amendment cycle by working very hard in a very short time – less than six months – to clear the significant backlog of crime and sentencing legislation that awaited our implementation. Every week brings new issues that require our careful attention. For example just days ago at the National Sentencing Institute, several federal judges raised serious questions about the impact of the recent Supreme Court decision in Apprendi v. United States, 120 S.Ct. 2348 (2000), on the constitutionality of current practices and certain mandatory minimums and guidelines for firearms and drug trafficking offenses. This is just one example of how new matters regularly occur to create unexpected work areas.

We welcome this opportunity to report to the Subcommittee and value highly a good working relationship with Congress and others interested in federal sentencing. We thank the Subcommittee, and in particular Chairman Thurmond, for providing us the opportunity to share with you our accomplishments from the last amendment cycle and our goals for the current cycle.