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U.S. Sentencing Commission:
Changes Needed to Improve
Effectiveness

Statement of
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Administration of Justice Issues

Before the
Subcommittee on Criminal Justice
Committee on the Judiciary
United States House of
Representatives



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U. S. SENTENCING COMMISSION:
CHANGES NEEDED TO IMPROVE EFFECTIVENESS

SUMMARY OF STATEMENT BY
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The Sentencing Commission was created in 1984 to develop guidelines for use by federal judges in sentencing criminals. Although sentencing guidelines went into effect in November 1987, the Commission has fallen behind on major priorities such as (1) establishing a system to monitor sentences imposed under the guidelines and (2) evaluating the impacts of the guidelines.

Monitoring and evaluation are critical as a basis for amending the guidelines and improving their implementation, which in turn are the central items on the Commission's current agenda. Yet the Commission has missed every deadline it has set for the monitoring system and parts of it are still under development. On evaluating impacts, the Commission has yet to complete a basic evaluation design.

While the constitutional challenge resolved a year ago in part explains these delays, organizational disarray at the Commission is also a factor. We identified several aspects of this disarray:

- The Commission has not established a game plan for guiding its efforts through the post-guideline development period.
- The Commission did not establish, until recently, clear lines of authority defining a central role for the staff director.
- Research led by an individual commissioner appears to parallel staff research and may come into conflict with it, and another commission-led research project operated without accountability.
- The Commission has experienced vacancies and turnover in key positions. In its four years, the Commission has had an equal number of staff directors. The Commission has now been without a research director for more than 18 months.

We also found, during a limited review, weak internal controls over travel and time and attendance reports, and poorly defined policies for human resources management.

We offer recommendations to Congress and the Commission for making improvements in the management and operations of the Commission.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the results of our review of the United States Sentencing Commission. At your request we focused on the management and operations of the Commission.

The Commission's primary responsibility under the Sentencing Reform Act of 1984 was to develop guidelines for use by federal judges in sentencing criminals. The Commission has issued an initial set of guidelines and has made amendments to them. These guidelines survived constitutional challenges, and the Commission is working hard to win acceptance for them in the Judiciary and the criminal justice community at large.

A second major set of responsibilities assigned to the Commission was to monitor guidelines' sentencing and to evaluate its impacts, as a basis for validating the guidelines and determining whether they need to be changed.

The Commission has fallen behind in its efforts to accomplish the second set of tasks. It has missed every deadline set for completing its sentence monitoring system. This system, a prerequisite for assessing the impact of the guidelines, is not yet fully operational, and parts are still under development.

Moreover, the Commission has yet to complete the design for the evaluation called for under the statute. In response to input from its Research Advisory Group, the Commission is cutting back on certain aspects of the evaluation as initially proposed. The Commission has already scaled back the size of its monitoring program in response to earlier recommendations from the same group.

Our work for the Subcommittee identified factors leading to these conditions. The constitutional challenge explains, in part, some of these delays. But another key factor has been significant organizational disarray at the Commission.

-- The Commission has not established a game plan for guiding its efforts through the post-guideline development period.

-- The Commission did not establish and follow, until recently, clear lines of authority defining a central role for the staff director. Instead, direct communications between individual commissioners and members of the staff were frequent. This practice disrupted efforts of successive staff directors to carry out work assigned by the Commission as a whole.

-- Research led by an individual commissioner appears to parallel staff research and may come into conflict with it.

Another commissioner-led research project has operated without accountability. The results of the work were not accepted by the Commission after expenditure of Commission resources. The potential exists in all research produced by an individual commissioner that it will reflect the perspectives and concerns of that commissioner; one commissioner acknowledged to us that he pressed his own personal agenda in his research effort.

-- The Commission has experienced vacancies and turnover in key positions. In its four years, the Commission has had an equal number of staff directors. Former staff directors found it difficult to manage in an environment where they shared authority over the staff with individual commissioners. Furthermore, the Commission has now been without a research director for more than a year and a half.

We also found, during a limited review, weak internal controls over travel and time and attendance reports, and poorly defined policies for human resources management.

What needs to be done to put the Commission back on track? We have recommendations to Congress and the Commission for making improvements in the management and operations of the Commission which we offer below.

To assess the management and operations of the Sentencing Commission, over the past 6 months we interviewed all current and former commissioners, several current and former staff (including detailees) and contractors, and others who have frequent contact with the Commission. We also examined relevant Commission documents, attended Commission meetings, and reviewed the Commission's policies and procedures on travel and other administrative operations. In addition, for the past 2 years, we have followed the progress of the implementation of the sentencing guidelines by interviewing Commission staff, attending training sessions, reviewing plans, and interviewing court officials.

DELAYS IN THE DEVELOPMENT
OF A MONITORING SYSTEM AND
AN EVALUATION PLAN

The Commission's monitoring and evaluation activities are important because they provide information on how well the guidelines are operating and what their impacts have been. These activities include development of a system for monitoring sentences imposed under the guidelines, a plan for evaluating the operation and impact of the guidelines, and a case review system for assessing how well probation officers apply the guidelines.

All three projects have missed the original deadlines for their completion. While Commission officials explain that shifting resources for these activities to higher priority projects contributed to these delays, we believe better planning might have enabled the Commission to address more of its priorities concurrently rather than sequentially. Further, the sentence monitoring system and the guideline evaluation plan are being revised, so that neither will be as comprehensive as originally planned. Over 2 years have passed since guidelines' implementation, and, despite the scaling back of these activities, the monitoring system is not fully operational and the evaluation plan is not final.

The sentence monitoring system was expected to be operational in November 1987, but its development has experienced repeated delays. This system was expected to contain detailed data on every defendant sentenced under the guidelines (eventually over 40,000 cases per year). Parts of the system are up and running, but others are still in the developmental stage. Because of the delays and the magnitude of the undertaking, the Commission recently cut back on the size of the project, taking the advice of the Commission's Research Advisory Group, a panel of outside experts who reviewed the Commission's plans for this system. Even with the cut backs, the Commission does not expect the system to be fully operational until fiscal year 1991.

The Commission also experienced a delay in the completion of its guideline evaluation plan. Originally planned for completion in December 1988, the plan will be used as the basis for an assessment of the guidelines' impacts on prosecutorial discretion, plea bargaining, disparity in sentencing, and the use of and alternatives to incarceration. Currently, the plan is expected to be completed in June 1990. The Research Advisory Group's concerns about the plan were similar to their concerns about the monitoring system. On the basis of their recommendations, the Commission is cutting back on the scope of the plan. Even so, given the magnitude of the work to be done in order to meet the December 1991 statutory deadline for the study's completion, we are concerned that further delays may occur. Some Commission officials expressed the same concern.

Delays in completing the monitoring system and evaluation plan create a number of potential problems. For example, the Commission does not have complete information on how the guidelines are being applied in the district courts.

Furthermore, the Commission's evaluation study will need selected data from the monitoring system. The Commission is required by the act to submit the results of its evaluation study to us 5 months before we report to Congress. If the Commission's evaluation is not completed on time, we may not be able to meet an April 1992 reporting deadline contained in the act.

The Commission has experienced similar delays in establishing a case review system for assessing how well probation officers apply the guidelines. Probation officers are responsible for investigating the facts of a case, including the offense committed and the defendant's criminal history, and calculating the proper guideline sentence for judges to consider. Originally planned to be operational in November 1987, the Commission finally initiated its review system in January 1990 with the selection of the first 63 cases for detailed review. They plan to review a total of 1,100 cases sentenced during a 12-month period. Prior to that, the Commission did limited case reviews for 13 of the 94 judicial districts at the request of the Administrative Office of the U.S. Courts. These reviews identified some problems with how the guidelines were applied. Problems included inadequate consideration of relevant conduct in calculating the offense level and incorrect calculation of terms of supervised release and of fine ranges. Until the current case review effort is completed, the Commission has limited information on how accurately probation officers are applying the guidelines.

It should be noted that the Commission plans to report the results of its case review in its annual report for 1990. The report is to describe common problems that probation officers have calculating guidelines sentences.

ORGANIZATIONAL DISARRAY

What factors have led to these delays? While our work identified no single cause, we observed considerable disarray in the organization and management of the Commission. Clearly the constitutional challenge to the guidelines, resolved in January 1989, delayed the Commission's efforts in many areas. We noted several factors relating to the organization and management of the Commission which have come into play: (1) absence of a long-range plan to guide the Commission's efforts in the post-guideline development period; (2) lack of clear lines of authority; (3) problems posed by commissioner involvement in research; and (4) vacancies or turnover in key positions.

The Lack of a Long-Range Planning Process

For its first 18 months of operation, the Commission had a single, overriding objective -- the development of the initial set of sentencing guidelines. Once the guidelines were completed, the nature of the workload changed and the Commission began dealing in greater depth with other statutorily defined responsibilities, including guidelines training, amendments, and monitoring and evaluating how the guidelines were being used. Though the Commission is now focusing more resources on such

areas as evaluating the impacts of the guidelines, it has not developed and approved a long-range plan for guiding it through the post-guidelines development period. Such a plan would assist the Commission in assessing future work and resource needs for its ongoing research program and its other activities.

Although some Commission staff developed annual work plans for use during the last two budgeting cycles, according to current and former Commission officials, there is a need for more "top down" planning and clearer communication of the Commission's priorities to the staff. In 1989, the Commission chairman developed lists of suggested priorities for future Commission work, which were considered and agreed upon by the full Commission. However, Commission officials told us that staff on priority projects -- especially in the research unit -- are still often diverted to work on other projects, such as ad hoc information requests from commissioners.

The Commission has no immediate plans for adopting a comprehensive, long-range planning process. However, the staff director is currently pilot testing a project planning and tracking system for managing individual staff projects. She also plans to have the new research director develop a research agenda. We believe that long-range planning, including development and Commission approval of a research agenda, would help the Commission identify future resource needs and research

opportunities and assist Congress in its oversight of the Commission.

Unclear Lines of Authority

During the life of the Commission, both commissioners and staff sometimes ignored the established chain of command and lines of authority. During its early history, the Commission operated as a loosely-organized task force to meet its mandated deadlines, and commissioners worked side by side with staff on projects, including the effort to draft guidelines. Although this may have been an expedient way to operate early on, the informality that developed allowed both individual commissioners and staff to bypass normal supervisory channels.

This mode of operating continued in some functional areas of the Commission, such as research, even after the guidelines were issued, although the Commission's focus was shifting and the size of the staff had increased. In our discussions with former and current Commission officials, we identified a number of problems that have occurred relating to blurred lines of authority and a weak chain of command. Some staff received direction from more than one source, such as the staff director, commissioners, and/or a staff manager. For example, staff in the research unit sometimes worked on projects without the knowledge or the approval of their immediate supervisors. Supervisors indicated

that these informal arrangements impaired their ability to execute plans and manage staff. We believe this mode of operating has contributed to factionalism within the organization and to difficulties in establishing a cohesive research unit.

A management consultant who analyzed the Commission's organization and management between July 1988 and February 1989 identified similar problems. He believes the Commission needs to strengthen the staff director and chairman positions to act as buffers between staff and commissioners to minimize these problems and improve the Commission's operations. We agree with his conclusions that the Commission needs to maintain a clear chain of command and effective lines of authority and that a central point of communication or buffer is needed between the commissioners and staff.

The Commission's recently appointed staff director has acknowledged some difficulties with lines of authority and is attempting to establish clearer staff direction. Previous staff directors were also concerned about the confused lines of authority and made attempts to improve them. In fact, after the initial guidelines were issued, the commissioners acknowledged the need to consistently operate through more structured lines of authority and a conventional chain of command, and agreed to go through the Chairman, or through the staff director in the

Chairman's absence. However, individual commissioners disregarded the agreement.

Involvement by Individual
Commissioners in Research
Activities

The act lays out a broad set of duties and powers for the commissioners. While the act does not limit the involvement of Commission members in the work of the Commission, the extensive involvement of individual commissioners in what would normally be staff activities nonetheless contributes to the organizational disarray we found at the Commission.

Most troublesome is the direct control by individual commissioners over major research projects. At the present time, two commissioners are personally and directly leading research projects--a comprehensive examination of alternatives to imprisonment and an indepth study of federal plea negotiating practices. A third commissioner undertook a major project to develop a set of proposed guidelines for organizations committing federal crimes.

We do not question the need for research on these issues, and have not assessed the quality of the research itself. However, we note that commissioner-led projects were initiated in the

absence of an overall research strategy agreed upon by the Commission as a whole. Such a strategy might address, among other concerns, the question of an appropriate division of labor between the staff and the Commission on research.

Without an overall plan, commissioner-led projects can create conflicts with ongoing staff research. For example, the commissioner responsible for the plea study told us that the research unit staff is beginning a parallel study, but acknowledged that she is not fully aware whether the staff study will overlap or conflict with the study she is leading. Neither she nor the staff can predict at this point whether the results of the two projects will be in conflict.

The commissioner-conducted project on organizational sanctions guidelines raised a further concern, an absence of accountability in commissioner-led projects. The Commission allowed this project to proceed without specifying deadlines or resource limits. According to Commission records, about \$155,000 was spent in fiscal year 1988 on contracts for research related to this effort. While we did not determine the value received for these expenditures, the draft guidelines were not accepted by the Commission. The Chairman told us that because of the experience, he now requests detailed plans from commissioners leading projects.

Commissioner involvement in research, especially as direct managers of research projects, raises a further concern. This approach creates the potential for the research to reflect the perspectives and interests of the commissioner conducting the project. Charges of result-driven research and promotion of individual commissioner's views through research have been made. Some current and former Commission officials expressed similar concerns. A former commissioner acknowledged to us that he pressed his own agenda in the project he ran. In the end, the Commission did not accept the results of this effort; however, we note that the introduction of a research agenda driven by the Commission as a whole might have avoided this excursion altogether.

Vacancies and Turnover in
Key Positions

Vacancies and turnover have affected two critical staff positions--staff director and research director. In 4 years the Commission has had four staff directors or executive directors and one interim staff director. According to former staff directors, it was difficult to manage in an environment where they could not maintain authority over the staff because of commissioner involvement. We believe it is critical that the role of the staff director be strengthened so that this

individual serves as a conduit for communications between the commissioners and the staff.

The research director's position has been vacant for over a year and a half. Current and former Commission officials told us that the delay in filling the position has been caused, in part, by the lack of consensus among the commissioners regarding candidates. Some of the officials also said that part of the problem has been finding qualified candidates who would be willing to take the position, given perceptions that the working environment is complicated by commissioner involvement in research and other matters.

Given the importance of research to the Commission's efforts, we believe it is critical to have a person in this position to lead the development of a research agenda and direct and coordinate the Commission's research efforts -- particularly its efforts to monitor and evaluate the guidelines. The Commission initiated a formal search for a research director in December 1989 and plans to fill the position by March 1990.

Finally, we should note that there are currently three vacancies on the Commission itself. Of the three vacant positions, one has been vacant for over 2 years and the other two since September and November 1989, respectively. The act provided for a Commission composed of seven full-time voting members (one of

whom is the chairman). We are especially concerned that these vacancies may create problems in future votes. Because the statute calls for a minimum of four votes to promulgate or amend guidelines, a unanimous vote would currently be required to meet this requirement.

WEAK INTERNAL CONTROLS OVER
TRAVEL AND TIME AND ATTENDANCE,
AND POORLY DEFINED POLICIES
FOR HUMAN RESOURCES MANAGEMENT

Finally, Mr. Chairman, we made a limited review of the Commission's internal controls. This disclosed weaknesses in several major areas of the Commission's administrative operations including its internal controls over travel, time and attendance, and administrative policies. We found that

- Travel sometimes occurs without written authorization and travel vouchers are not always completed properly.

- Time and attendance reports are not always certified for accuracy, standard leave application forms are not always prepared or completed properly, and records for compensatory time and overtime are not always kept up to date.

-- Position descriptions and performance evaluations have not been prepared to support the planned merit pay program.

-- The Commission has not prepared written policies and procedures for Equal Employment Opportunity and Affirmative Action programs.

In some instances, these weaknesses resulted from Commission staff not complying with existing policies. In other cases, the Commission does not have policies to provide guidance in these matters. The Commission's Administrative Officer told us that she is taking action to insure compliance with existing policies and has identified areas where new or revised policies are needed.

We believe that the Commission did not focus a great deal of effort on administrative issues because other work, such as guidelines development and research, had a higher priority. We agree that the Commission's primary mission is critical. However, we also believe that administrative programs can be supportive of the Commission's objectives and can provide needed accountability and internal controls.

RECOMMENDATIONS

To address the Commission's management weaknesses, we recommend that Congress:

- explore directly with the commissioners ways to strengthen the role of the staff director. One way is to amend the Sentencing Reform Act to shift the Commission's control and authority over the staff director to the Chairman. This could be accomplished by giving the Chairman, rather than the Commission, responsibility for appointing the staff director and fixing the staff director's duties.
- step up congressional oversight over the Commission's monitoring and evaluation activities, with particular attention to the need for a set of milestones to pace actions needed to assure that the Commission's statutorily required report will be accurate, complete, and timely.
- prohibit commissioner-led research projects which are not consistent with an overall research agenda adopted by the full Commission.

We also recommend that the Commission establish a long-range plan or strategy to guide it through the next several years. Such a plan should serve as a basis for allocating staff and

other commission resources in accordance with priorities set by the Commission as a whole.

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This concludes my prepared statement. We would be pleased to respond to questions.