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STATEMENT
OF
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YALE LAW SCHOOL J.S.D. CANDIDATE

BEFORE THE
UNITED STATES SENTENCING COMMISSION

CONCERNING
PROPOSALS TO AMEND CIVIL RIGHTS GUIDELINES

PRESENTED
MARCH 14, 1995
WASHINGTON D.C.

My name is Alexa Freeman. I am a graduate law student working on a Doctor of Science of Law degree at the Yale Law School. Before embarking on this degree, I practiced law for 10 years, most recently at the National Prison Project of the American Civil Liberties Union. My work at the National Prison Project gave me a great deal of familiarity with sentencing issues. While at Yale, I have been evaluating the impact of the federal sentencing guidelines on the sentencing of civil rights crimes. The staff at the Sentencing Commission have been extremely helpful to me in providing needed information in this endeavor. I am grateful for all the assistance I have received. I mention this because I do not want my comments to be construed as a criticism of the staff here. Rather, my comments go toward the Commission's public information policies.

In my research, I have attempted both a quantitative and qualitative analysis of the sentences police and other law enforcement officers receive when they are convicted of the civil rights crime of use of excessive force. These cases are prosecuted under 18 U.S.C. §242 which makes it a crime to interfere with civil rights under color of law. When public officials act in concert with each other or with private persons, they may also be charged under 18 U.S.C. §241 which outlaws conspiracy to interfere with civil rights. Under the current guideline scheme, these crimes are sentenced under guideline §§2H1.1 (§241) and 2H1.4 (§242).

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These guidelines are extremely important. Although the number of cases is relatively small compared to other federal crimes, civil rights violations are significant beyond their numbers. As evidenced by the Rodney King case, civil rights crimes can carry enormous symbolic weight. Sentencing decisions by courts communicate to the public how our society views civil rights. Sentences that are too lenient send a message that civil rights crimes are not taken seriously. On the other hand, if the guidelines are too stringent, courts might depart, thus undermining the important purposes of sentencing reform of achieving fairness and rationality.

For these reasons, I would hope that the Sentencing Commission would welcome educated comment on proposals which affect these civil rights guidelines. But unfortunately, due to the Commission's public information policies, I have been unable to obtain the data necessary to make as thorough an analysis as possible of sentences given in law enforcement excessive force cases.

To some extent, the lack of adequate data is the result of a small civil rights data base to begin with. This is particularly true for data on pre-guideline sentencing practices for these cases because no agency was responsible for compiling this information. However, it should be possible for members of the public to obtain information derived from public court records on post-guideline sentencing practices from the Sentencing Commission. Under the Sentencing Reform Act the courts are

required to submit sentencing data to the Commission, and the Commission is charged with the tasks of collecting, analyzing and disseminating sentencing information. Yet the only data sources available to the public are the relatively general information provided in the Commission's Annual Reports or the raw data that the Commission sends to Ann Arbor, Michigan in a data base format that only computer experts can make use of.

For example, the Commission does not provide basic data about all of the sentences imposed since the guidelines took effect in cases of law enforcement brutality. Nor does it supply a breakdown of relevant factors in each case so sentenced, such the underlying conduct, whether the victim died, the number of counts, and sentencing departures. These facts easily could be provided to the public without disclosing confidential information from pre-sentence reports. Thus, one purpose for commenting here today is to make a plea that the data analyses that expert Commission staff conduct of public information be made available to the public. I am told that one obstacle to disclosure is an agreement that was made between the Commission and the Federal Judicial Conference. To the extent that this agreement is the reason why the public is not given access to basic case information and staff research, I urge you to revisit this aspect of the agreement.

In addition, the information that the public was provided in the notice in the Federal Register for today's hearing on the proposed amendments to the civil rights guidelines was inadequate

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to evaluate whether the amendments are a good idea. I assume that Commission staff have done extensive statistical and qualitative analyses of civil rights sentences and that this staff research is the basis upon which the proposed amendments have been made. However, this information is not available to the public. We must then resort to educated guesses as to why the Commission is considering this change.

The practice of not sharing with the public the basis for the Commission's proposed action goes back to the initial enactment of the guidelines. For example, I have tried to determine why the first Commission enacted the civil rights guidelines that it did. I reviewed all the minutes of Commission meetings since the Commission was first appointed, went through old testimony stored in boxes in the basement, read all the Commission's reports, talked with current and former staff, and interviewed former Commissioners. Despite these efforts, the Commission's decision-making process at that time remains largely a mystery to me due to an insufficient record.

Similarly, the information that is made public does not reveal the basis for the Commission's current proposal to amend the civil rights guidelines. As a result, even though I am a student of civil rights sentencing and would like to be able to offer insights on the proposal before you, I am unable to provide you with substantive comments because there is not an adequate information base available to the public.

I urge that the Commission make its research available to the public and allow us to learn not simply what you are doing, but also why you are doing it. By taking this step, the Commission will benefit from more informed commentary on its actions.

Thank you for the opportunity to testify today.

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