

NORTHWESTERN SCHOOL of LAW
of LEWIS & CLARK
COLLEGE



Public Affairs
U.S. Sentencing Commission
One Columbus Circle NE
Washington, D.C., 20002-8002
VIA FedEx

Dear Sentencing Commission:

I note that the U.S. Sentencing Commission has proposed and circulated for public comment a new policy statement that says, "In any case involving the sentencing of a defendant for an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in 18 U.S.C. sec. 3771 and in any other provision of federal law pertaining to the treatment of crime victims." While I appreciate the (somewhat belated) recognition of victims' rights in the federal sentencing guidelines, I am gravely concerned that the Commission has undertaken a meaningless gesture. Of course, federal judges will follow federal law in sentencing. Instructing judges to follow the law is not, in our view, particularly helpful. To be frank, it gives the appearance that the Commission is intent on doing as little as possible for crime victims.

What would be more helpful is for the Sentencing Commission, as the expert sentencing agency in the federal system, to provide guidance to judges on how to afford victims' rights in the sentencing process. In particular, 18 U.S.C. 3771(a) guarantees crime victims the right "to be heard" and "to be treated with fairness and with respect for the victim's dignity and privacy" throughout the federal criminal justice process, including the sentencing phase of the process. I believe that the Commission could helpfully instruct judges on how to provide that congressionally-mandated rights to be "heard" and to "fairness" to victims in that process. Of particular concern to us is that crime victims have access to relevant parts of the pre-sentence report. As Judge Cassell cogently explained in his testimony before the Commission on the subject, access to the pre-sentence report is critically important to crime victims. He recently expanded his arguments in "Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims Rights Act," 2005 BYU L. Rev. 835, 892-903. I will not repeat his arguments other than to say we concur.

In brief, I don't understand how the Commission, which must fully appreciate the importance of the PSR to the sentencing process, could possibly take the position that denying victims access to the report is treating them with "fairness." Nor do I see how the Commission could possibly take the position that refusing a victim a chance to comment on guideline issues is treating them with "fairness." Accordingly, I specifically request that you either expand your policy statement to explain how victims should be treated fairly or expand the discussion of your "application notes" to section 6A1.5 to explain that federal law requires that victims be treated fairly and that victims should therefore be given access to relevant parts of the pre-sentence

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report and should be given a chance to speak to disputed guideline issues (when they have something relevant to say on the subject). I also specifically request the crime victims be integrated into other aspects of the sentencing process, in ways that the Commission believes are appropriate.

These steps would be in keeping with the trend in state courts to allow victims access to pre-sentence report information. The following is but a sample of state laws giving victims access to presentence reports. Alaska Rev. Stat. Sec. 12.55.023(a)(1)-(4) ("If a victim requests, the prosecuting attorney shall provide the victim before the sentencing hearing, with a copy of the following portions of the presentence report: (1) the summary of the offense prepared by the Department of Corrections; (2) the defendant's version of the offense; (3) all statements and summaries of statements of the victim; and (4) the sentence recommendation of the Department of Corrections"; Ariz. Const. art. II, ' 2.1(A)(7): "To preserve and protect victims' rights to justice and due process, a victim of crime has a right ... 7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant." Ariz. Rev. Stat. ' 13-4425: "If the presentence report is available to the defendant, the court shall permit the victim to inspect the presentence report, except those parts excised by the court or made confidential by law. If the court excises any portion of the presentence report, it shall inform the parties and the victim of its decision and shall state on the record its reasons for the excision. On request of the victim, the prosecutor's office shall provide to the victim a copy of the presentence report"; Idaho Const. art. 1, ' 22(9): "A crime victim, as defined by statute, has the following rights ... (9) To read presentence reports relating to the crime." Idaho Code ' 19-5306(1)(h): "Each victim of a criminal or juvenile offense shall be ... allowed to read, prior to the sentencing hearing, the presentence report relating to the crime. The victim shall maintain the confidentiality of the presentence report, and shall not disclose its contents to any person except statements made by the victim to the prosecuting attorney or the court ..."; Fla. Stat. Ann. ' 960.001(1)(g)(2) "Upon request, the state attorney shall permit the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin in the case of a homicide to review a copy of the presentence investigation report prior to the sentencing hearing if one was completed. Any confidential information that pertains to medical history, mental health, or substance abuse and any information that pertains to any other victim shall be redacted from the copy of the report. Any person who reviews the report pursuant to this paragraph must maintain the confidentiality of the report and shall not disclose its contents to any person except statements made to the state attorney or the court"; Ind. Code ' 35-40-5-6 "the victim has the right to read presentence reports; relating to the crime committed against the victim; except those parts of the reports containing the following; (1) The source of confidential information.; (2) Information about another victim. Other information determined confidential or privileged by the judge in a proceeding. The information given to the victim; must afford the victim; a fair opportunity to respond to the material included in the presentence report."

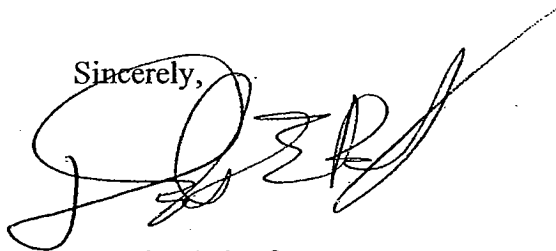
Accordingly, I specifically request that you either expand your policy statement to explain how victims should be treated fairly or expand the discussion of your "application notes" to section 6A1.5 to explain that federal law requires that victims be treated fairly and that victims should therefore be given access to relevant parts of the pre-sentence report and should be given

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a chance to speak to disputed guideline issues (when they have something relevant to say on the subject). I also specifically request the crime victims be integrated into other aspects of the sentencing process, in ways that the Commission believes are appropriate.

In closing, the Commission now has a chance to use its expertise to craft appropriate procedures to treat crime victims fairly. If the Commission is unwilling to do anything more on crime victims rights than instruct judges to follow the law, I will ask Congress to take the lead on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Douglas Beloof', with a large, stylized initial 'D' and a long, sweeping horizontal stroke extending to the right.

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