file Crime

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO Mike Uhlmann
Bill Barr

- [ ] Take necessary action
- [ ] Approval or signature
- [ ] Comment
- [ ] Prepare reply
- [ ] Discuss with me
- [ ] For your information
- [ ] See remarks below

FROM Greg Jones GMJ DATE 7/16/82

REMARKS

This is a revised version of the Justice testimony for Monday on the insanity defense. It is consistent with the first version; however, in view of the timing, I have asked Justice to clear this edition directly with your office.

cc: Bob Carlstrom

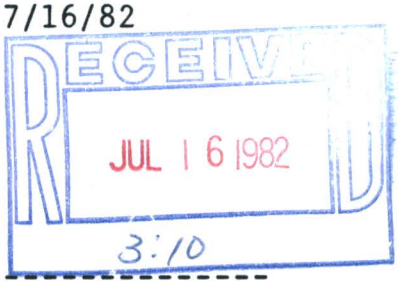
SPECIAL

OMB FORM 4
REV AUG 70

DRAFT

2nd Draft

7/16/82



TESTIMONY OF THE ATTORNEY GENERAL

SENATE JUDICIARY COMMITTEE

JULY 19, 1982

Chairman Thurmond, members of the Committee. I am pleased to have this opportunity to appear before you to testify in favor of basic changes in the insanity defense. The Administration's proposal to reform the insanity defense is one part of a larger program of legislation that would restore the balance between the forces of law and the forces of lawlessness. In recent years, through actions by the courts and inaction by the Congress, an imbalance has arisen in the scales of justice. The criminal justice system has tilted too decidedly in favor of the rights of criminals and against the rights of society.

After many years of debate -- and growing public outrage -- a substantial and bipartisan consensus has formed behind a carefully crafted set of basic reforms. Those proposed reforms would, among other things:

-- Reform our bail system to prevent the most dangerous offenders from returning to the streets once they've been caught;

-- Make jail sentences more certain and abolish the frequently abused process of parole;

-- Provide stronger criminal forfeiture laws that will take the profit out of crime, especially organized crime and drug-trafficking;

-- Increase the other federal penalties for drug-trafficking;

-- Recognize the rights of the victim more fully and require judges to weigh in sentencing the criminal's impact upon the innocent;

-- Make it a federal crime to kill, kidnap, or assault senior federal officials, including Justices of the Supreme Court; and

-- Permit the federal government to transfer surplus property to the states, free of charge, when the property is needed by the states for prisons.

The importance of these reforms to our system of justice and to the safety of the public cannot be overstated. It is now time for the full Senate to act. Perhaps then, the House will follow suit.

As you know, the Administration has proposed other legislative reforms that would also help to restore the balance between the forces of law and the lawless. Those important reforms include modification of the exclusionary rule, limiting federal habeas corpus, reinstituting the death penalty for the most serious of federal crimes -- and, the subject of my testimony today, changing the insanity defense.

Modification of the insanity defense is a major element of the program needed to restore the effectiveness of federal law enforcement. Combined with the other reforms I have outlined, reform of the insanity defense would improve our system of justice -- and heighten public confidence in the effectiveness and fairness of the criminal justice system. Like those other reforms

taken individually, modification of the insanity defense will lead to different judicial results in only a small percentage of all federal criminal cases. Taken together, however, the procedural reforms will affect nearly all federal criminal prosecutions -- either in terms of results or in terms of reallocating resources presently misspent in dealing with outmoded procedures.

The insanity defense is of great concern even though the number of occasions in which the defense is successfully employed is not large. The manner in which the defense is defined involves policy decisions about the nature of criminal responsibility that are of basic importance to the criminal justice system. In addition, the defense tends to be raised in cases of considerable notoriety, which serves to influence, far beyond the numbers, the public's perception of the fairness and efficiency of the entire criminal justice process.

Although the insanity defense is of fundamental significance to the federal justice system, it is ironic that neither the Congress nor the Supreme Court has yet played a major role in its development. Its evolution in England and in this country over several centuries has been haphazard and confusing. As the Committee knows from its work over the past decade or more on the Criminal Code revision bills, Congress has never enacted legislation defining the insanity defense -- or, for that matter, any other generally applicable defense. Similarly, the Supreme Court has generally left development of the defense to the various courts of appeals. As a result, the federal circuits do not even today apply a wholly uniform standard. In recent years, however, all of the federal circuits have adopted, with some variations,

the formulation proposed by the American Law Institute's Model Penal Code. According to that model, a "person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform to the requirements of the law."

In our view, this model statement of the insanity defense contains two critical flaws. First, it undermines basic concepts of criminal responsibility by introducing motivation into the determination of guilt or innocence. Second, it invites the presentation of massive amounts of conflicting and irrelevant evidence by psychiatric experts.

Many have long questioned whether mental disease or defect should excuse a defendant from criminal responsibility. Congress has by statute defined the elements of all federal offenses, including required mental elements or states of mind. Using murder as an example, Congress has said, in essence, that it is a crime intentionally to take the life of another human being. Ordinarily, under our law, the reason or motivation for such an act is irrelevant to guilt. For instance, the fact that a killing is politically motivated -- that the defendant genuinely believed that his act was morally justified because the victim was a "bad" man whose death would end injustice, be just recompense for past wrongs, or lead to a better social order -- is clearly, and properly, viewed as irrelevant to his guilt or innocence. One would expect such an assassin to be found guilty. Motivation, if deemed to involve mitigating circumstances, would be taken into account only by the judge in sentencing. Under the prevailing

insanity test, an analogous situation leads today to the opposite result: acquittal. A defendant who intentionally killed another person would be found not guilty by reason of insanity, for example, if some mental defect caused him to believe that God had ordered the murder because the victim was an agent of the devil interfering with God's work.

Not only is this difference in outcome difficult to explain, indeed in our judgment it is indefensible. A person who has intentionally killed another human being, or committed some other crime, should be held responsible for the act. Any mental disease or defect, like any other motivation, should be taken into account only at the time of sentencing.

The present insanity defense also frequently leads to a gross distortion of the trial process. Commonly, in a trial involving an insanity defense, the defendant's acts are conceded. The trial focuses on the issue of insanity. Both sides present an impressive array of expert psychiatric witnesses who offer conflicting opinions on the defendant's sanity. Unfortunately for the jury -- and society -- the terms used in any statement of the scope of the defense -- for example, the phrase "disease or defect" -- are usually not defined and the experts themselves do not agree on their meaning. Moreover, the experts often do not agree even on the extent to which certain behavior patterns or mental disorders that have been labeled "inadequate personality," "abnormal personality," and "schizophrenia" actually impel a person to act in a certain way. In short, medical disagreement is implicit in the issue of whether a person could conform to the requirements of the law.

Since the experts disagree about both the meaning of the terms used to discuss the defendant's mental state and the effect of particular mental states on actions, it is small wonder that trials involving an insanity plea are arduous, expensive, and worst of all, thoroughly confusing to the jury. Indeed, the disagreement of the supposed experts is perhaps so basic that it makes the jury's decision rationally impossible. Thus, a rational jury's decision can be in a sense ordained by the procedural question of burden of proof.

As a result of the intense debate and discussion following the recent verdict in the Hinckley case, the Administration again considered the proper scope of the insanity defense. We have concluded that the general approach adopted in Title VII of S. 2572 would best protect the public and promote efficiency. That approach has undergone years of thoughtful consideration both in the Department and in hearings before the Congress on criminal code reform measures. Nothing in recent events detracts from the soundness and superiority of that approach. It would best meet the three goals of reform -- protecting the public, ensuring that the guilty do not escape punishment, and avoiding an illogical choice between competing psychiatric opinions.

The bill provides for civilly committing defendants who are dangerously disturbed and who, for one reason or another, are not convicted. At present, other than in the District of Columbia, there is no federal statute authorizing or compelling the commitment of an acquitted but presently dangerous and insane individual. Today, when faced with such a situation, federal

prosecutors can do no more than call the matter to the attention of State or local authorities and urge them to institute appropriate commitment proceedings. The absence of such a requirement or federal procedure creates the very real potential that the public will not be adequately protected from a dangerously insane defendant who is acquitted at trial. The Task Force on Violent Crime which I appointed last year strongly recommended that legislation be enacted "to establish a federal commitment procedure for persons found incompetent to stand trial or not guilty by reason of insanity in federal court." Such provisions were developed in connection with S. 1630, the criminal code revision bill, and are also embodied in Title VII of S. 2572. I strongly support the recommendation of the Task Force on Violent Crime that these commitment procedures, about which there appears to be little doubt or controversy, be promptly enacted into law.

In addition, S. 2572 would simply abolish the insanity defense altogether and make mental illness -- like any other mitigating factor -- something to be considered at the time of sentencing. It would entirely eliminate as a test whether a defendant knew his actions were morally wrong and whether he could control his behavior. It would also, of course, entirely eliminate the presentation at trial of confusing psychiatric testimony on the issue. Under this approach, if the government proved all the elements of the offense, the defendant would be found guilty. Any evidence of mental abnormality would be presented in a presentence hearing along with other mitigating and aggravating factors. If the sentencing judge thought the defendant's current metal condition warranted it, he could

sentence the defendant to confinement in a mental hospital or other treatment in lieu of or in addition to traditional criminal sentences.

S. 2572 incorporates the one approach that would assure both that defendants do not inappropriately escape justice and that the criminal trial is not diverted into a time-consuming, confusing swearing contest between opposing psychiatrists. As the Committee's Report on the Criminal Code revision legislation has documented, this approach has been endorsed in the past by numerous legal scholars, bar associations, and psychiatrists. We share their view that it is the best way to revise the law from the perspective both of ensuring the public safety and of improving the efficiency of criminal trials.

One point should be emphasized in view of some recent debate. Under any approach, the government will always be required to prove every element of the statutory offense that is charged. This includes any specific intent or knowledge required by the statute. In the rare case, therefore, in which a defendant is so deranged that, for example, he did not know that he was shooting a human being, one of the elements of the offense could not be proved [the mental element or mens rea] and he could not be convicted under current law or under any constitutionally supportable change in the law. Under S. 2572 this is the <u>only</u> situation in which a defendant committing a criminal act could not be found guilty. In that case, however, the defendant would no longer be set free -- as he would be under current Federal law outside the District of Columbia -- but would be subject instead to civil commitment.

The need to change the law of insanity is urgent and clear. I am hopeful that the Congress will act to effect the reforms contained in Title VII of S. 2572 during this session -- as well as the many other criminal justice reforms that the Administration has proposed and the public needs.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Mike Uhlmann
Karen Wilson
Adrian Curtis

- [ ] Take necessary action
- [ ] Approval or signature
- [ ] Comment
- [ ] Prepare reply
- [ ] Discuss with me
- [ ] For your information
- [ ] See remarks below

FROM Greg Jones 5/3/83 DATE

REMARKS

I need a detailed, comprehensive analysis of this testimony by 3 PM this afternoon.

If I don't receive one from you, I will assume your concurrence. (The testimony merely supports the Adminsitration's crime proposals.)

Mike McConnell

OMB FORM 4
Rev Jul 82

TESTIMONY OF THE ATTORNEY GENERAL

SUBCOMMITTEE ON CRIMINAL LAW

SENATE JUDICIARY COMMITTEE

WEDNESDAY, MAY 4, 1983

DRAFT

Mr. Chairman, Members of the Sub Committee:

I am pleased to be here today to testify on behalf of the Comprehensive Crime Control Act of 1983.

In recent years crime has become an even more serious domestic problem as organized crime has expanded its operations to include drug trafficking. Indeed, most drug trafficking today is organized crime.

Large-scale drug dealers must organize their operations. They obtain the illicit substances, or the rights to the substances, overseas. Within our borders, the drug dealers have set up elaborate enterprises for cutting the pure imported drugs and distributing them over wide geographical areas.

And the organization does not stop there. Drug money is laundered through businesses set up as "fronts" for drug dealers. The profits are then plowed back into the drug business, just like any major enterprise. Increasingly, some of the profits are actually invested in legitimate businesses -- including real estate in Florida, restaurants in California, and other businesses across the Nation.

And the tremendous multi-billion dollar profits from drug trafficking are used to finance the other illegal activities of organized crime -- gambling, pornography, prostitution,

extortion, loansharking, fraud, weapons trafficking, and public corruption.

Through its drug profits, organized crime spawns a great deal of the crime in this Nation. In addition, illicit drugs themselves spawn a great proportion of crime. One recent study demonstrated that over an eleven-year period some 243 addicts committed about one half million crimes -- an average of 2000 crimes each or a crime every other day -- to support their habits. In fact, half of all jail and prison inmates regularly used drugs before committing their offenses. According to a recent Rand study, addicted offenders in California, for example, committed nearly nine times as many property crimes each year as non-addicted offenders.

Although much remains to be done, this Administration has already launched a new and promising assault upon organized crime and drug trafficking. A year ago last January, the FBI was brought into the drug fight for the first time -- to complement the excellent work of the DEA. Thereby, we gained not only the FBI's resources, but also its years of experience in fighting organized crime. Prior to January of 1982, the FBI had no specific drug investigations underway. By March of this year, the FBI had more than 1200 -- and about one-third were joint investigations with the DEA.

We have in fact scored dramatic successes against organized crime. We have indicted and convicted numerous high-level members of syndicate families -- in some cities, the top structure of organized crime families regarded as untouchable a few short years ago. In the last two years, we have convicted

more than 1200 persons in organized crime cases -- including more than 350 members and associates of La Cosa Nostra. In addition, more than 300 La Cosa Nostra members and associates are currently awaiting trial.

To build on these successes, the President announced last Fall perhaps the most significant assault on organized crime and drug trafficking ever planned. The cornerstone of the President's eight-point initiative is twelve new regional Task Forces to mount a coordinated attack by all the involved federal agencies against organized drug trafficking. These Task Forces are in fact already becoming operational -- and the selection of the first major cases for each of the twelve headquarters cities has been nearly completed.

By creating these Task Forces -- and bringing the FBI into the battle against drug trafficking last January -- we will have approximately doubled our drug enforcement resources in about one year. Unlike prior federal drug efforts that focused on the street level, our new Task Forces will concentrate upon destroying the top levels of organized drug trafficking.

In addition, just last month the White House announced the creation of a new drug interdiction group headed by Vice-President George Bush. As a practical matter, this group will be looking outward from our borders in an effort to stop the movement of illicit drugs into this country. The new group will not have responsibility within the fifty states, where the Organized Crime Task Forces are in operation. The new group will, however, harness the power of the U.S. Customs, the Coast Guard,

and the military to deploy a first line of domestic defense against illicit substances shipped towards the United States.

Although we have made a good beginning in this new effort against the most serious form of crime in America, it is essential to the fight against modern and sophisticated organized crime that the Congress enact the significant criminal law reforms that the President has proposed. Organized crime will take advantage of any weakness in the law -- and weaknesses in each of these areas have been clearly identified through difficult and costly experience.

Appearing before you shortly will be Associate Attorney General Rudolph Giuliani, Assistant Treasury Secretary John Walker, and Assistant Attorney General Lowell Jensen, who will cover the major parts of the bill in more detail. Right now I would like briefly to note several areas where we believe reform is badly needed.

We propose reform of the federal bail system by authorizing the pretrial detention of defendants shown to be dangerous to the community and by reversing the current presumption in favor of bail pending appeal. The courts should be specifically authorized to inquire into the source of bail, and they should refuse to accept money or property that will not reasonably ensure a defendant's appearance at trial.

We propose sentencing reform -- abolishing the Parole Commission and establishing a system of uniform, determinate sentencing; authorizing government appeal of sentences; and restructuring the entire range of criminal fines and prison terms.

Criminal forfeitures must be made available in all major drug trafficking cases. We must strengthen procedures for

"freezing" forfeitable assets pending judicial action, expand the classes of property subject to forfeiture, and facilitate the administrative forfeiture of conveyances and other property in uncontested cases. We must provide specific authority for the forfeiture of the proceeds of an "enterprise" acquired or maintained in violation of the RICO statute.

The exclusionary rule has substantially hampered our law enforcement efforts. The suppression of evidence has freed the clearly guilty, diminished public respect for the law, distorted the truth-finding process, chilled legitimate police conduct, and put a tremendous strain on the courts. A recent National Institute of Justice report found that when felony drug arrests were not prosecuted in California, 30 percent of the time it was for search and seizure reasons. It also found that "[t]o a substantial degree, individuals released because of search and seizure problems were those with serious criminal records who appeared to continue to be involved in crime after their release." It is time to bar the use of the exclusionary rule when a law enforcement officer has acted in good faith, reasonably believing his action to have been legal. This modification of the exclusionary rule -- which is already the law in the Fifth and Eleventh Circuits -- would by itself do a great deal to restore public confidence in our criminal justice system.

The insanity defense is used in only a small percentage of criminal cases -- and it is used successfully in an even smaller percentage. Nevertheless, the public attention received by those cases has fully exposed glaring flaws in that defense. It is for this reason that the Administration proposed reform

of the insanity defense to limit its use to those who are unable to appreciate the nature or wrongfulness of their acts. Under our original proposal, the burden would rest on the defendant to establish insanity by clear and convincing evidence.

Already, our original proposal -- plus public concern about the abuse of the insanity defense -- have moved many knowledgeable persons to rethink the defense. Committees of the American Bar Association are considering -- and the American Psychiatric Association has adopted -- worthy proposals for reform. Those proposals would eliminate the second -- or "control" -- prong of the two-part ALI-Model Penal Code test. In other words, they would limit the insanity defense to only those situations in which, as the result of mental disease or defect, a defendant could not appreciate the wrongfulness of his conduct. Combined with requiring the defendant to prove by ~~a preponderance of the~~ clear + convincing evidence that he didn't appreciate the wrongfulness of his conduct, this approach would represent a substantial improvement over present law. By supporting such an approach, we hope to fashion a modification of the insanity defense that will enlist a broad base of support -- and ensure speedy reform in the Congress.

As several members of the Supreme Court -- and other concerned citizens -- have pointed out, one of the greatest problems facing our legal system is the overload of cases in the courts. Too much business ensures that the cases most in need of judicial attention will not necessarily receive it in a timely fashion. As one observer noted, due process of law risks becoming overdue process of law.

One criminal law reform that we have proposed would help to ease at least some of the burden on the courts. We have proposed a revision of the federal habeas corpus laws -- to impose a statute of limitations and provide that issues fully litigated in state courts would not be subject to relitigation in federal courts. The purpose of this reform is to restore some degree of finality to criminal convictions, but an incidental effect would be the removal of an unnecessary burden on the federal courts. In fact, state prisoners filed over 8,000 habeas cases in federal court just last year. The only thing to commend the vast majority of those cases, to paraphrase Judge Learned Hand, "is the hardihood in supposing they could possibly succeed."

The legislation before you now includes all of these proposals plus more than twenty others. This comprehensive criminal law reform bill collects in one place all of the most necessary changes -- including, for example, a constitutionally sound federal death penalty. It also includes provisions concerning the Tort Claims Act, the Justice Assistance Act, drug enforcement penalties, and surplus federal property.

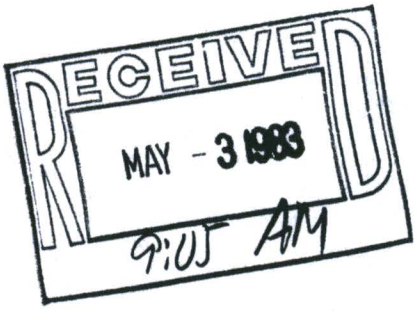
In drafting this bill, we were ever mindful of the need to safeguard individual liberty. But we also recognized that the most basic individual liberty is freedom from violence, and that liberty can be secured only by effective and vigorous enforcement of the criminal laws. As Judge Learned Hand recognized fifty years ago: "Our dangers do not lie in too little tenderness to the accused.... What we need to fear is the archaic formalism and the watery sentiment that obstructs, delays, and defeats the prosecution of crime."

That concludes my opening statement. Thank you. Rudy Giuliani, John Walker and Lowell Jensen are here to discuss the legislation in more detail and to answer any questions you may have.

FORMAL STATEMENT

OF

THE DEPARTMENT OF JUSTICE



BEFORE

THE

SUBCOMMITTEE ON CRIMINAL LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

REGARDING

S. 829, THE COMPREHENSIVE CRIME CONTROL ACT OF 1983

ON

MAY 4, 1983

TITLE I -- Bail Reform

The first title of the "Comprehensive Crime Control Act" addresses a matter of the highest priority: the urgent need for substantial improvements in federal bail law. In recent years, there has been a growing consensus among members of the Congress, the judiciary, the law enforcement community and the public at large, that legislation to cure the striking deficiencies of our bail laws must be enacted.

Certainly, it cannot be said that our current bail system is in all respects a failure. Present law, the Bail Reform Act of 1966, provides a workable and responsive framework for releasing non-violent offenders who pose little risk of flight, and this beneficial aspect of current law is retained in our bail amendments. However, it is with respect to the most serious offenders, the habitual violent or dangerous defendant or the well-heeled drug trafficker, that the system fails. These failures are a source of growing frustration to effective law enforcement and have fostered the public's increasing disillusionment with a criminal justice system that too often appears unable to protect the public safety or to assure that criminals are brought to trial.

To address these problems, the bail reform title of our bill would strengthen the ability of the courts to ensure that defendants appear for trial and would, for the first time, recognize defendant dangerousness as a legitimate consideration

in all bail decisions. The bail reform provisions of our bill are no doubt familiar to many of you. They are virtually identical to comprehensive bail reform legislation passed by the Senate last year by an overwhelming 95 to 1 vote and which, as S. 215, is now pending approval by the Judiciary Committee. As was evidenced in this fully bipartisan vote for strong bail legislation, the current bail reform movement is not a matter of politics or ideology. Rather, it is derived from more than fifteen years of experience with our present bail laws -- an experience that has clearly illustrated the need for change.

For example, in South Florida, despite the fact that the average bond for drug defendants is $75,000, seventeen percent of these defendants never appear for trial. Bonds in the hundreds of thousands of dollars are forfeited as major drug defendants flee the country to avoid prosecution. For persons in the enormously lucrative drug trade -- a trade that has been estimated to run in the tens of billions of dollars annually -- forfeiture of huge bonds has become a simple cost of doing business and ultimately an easily met cost of escaping conviction.

Although this alarming incidence of bail jumping points out the need to improve current law, at least current law provides a framework for addressing the problem of defendants who are very serious flight risks. The problem of the release of extremely dangerous defendants, however, is one that current law virtually ignores. Two cases from the Eastern District of Michigan amply

illustrate the need to put considerations of defendant dangerousness on an equal footing with considerations of risk of flight in the courts' bail determinations.

In November of last year, George Gibbs was charged with the armed robbery of a credit union. Despite the violent nature of the offense, very strong evidence of his guilt, and the fact that Gibbs was a suspect in four other armed robberies, the magistrate, over the protests of the government, set a $25,000 bond with only a 10% deposit required, citing his inability under current law to consider evidence of the defendant's dangerousness in setting bail. Although a district judge changed the bond to a cash surety bond after an appeal by the government, the amount of the bond was not increased, and Gibbs was able to meet it almost immediately. Four days later, Gibbs and a partner held up a bank, striking a teller, threatening to kill the assistant manager, and shooting the police officer who pursued them as they attempted to escape.

The second Michigan case also involved a defendant charged with bank robbery. In 1979, Michael Dorris was convicted of the armed robbery of a Michigan bank. Last year, within a few months after Dorris had been released on parole, the same bank was robbed at gunpoint again. Within hours, the FBI arrested Michael Dorris for this second robbery. He was not far from the scene of the crime and weapons and a large amount of cash were also seized at the time of his arrest. Like George Gibbs, Michael Dorris was soon released on bail. At a subsequent meeting with

his parole officer, Dorris was informed that in light of his latest arrest, the officer would seek revocation of his parole. Dorris, who under a rational bail system clearly should have been held in custody in light of the seriousness of the offense charged and his status as a parolee, simply got up and left when the parole officer went to locate a marshal. Inadequate bail laws could do nothing to stop the revolving door of the criminal justice system. Eventually Dorris resurfaced, but only after weeks of valuable FBI investigative effort had been wasted in trying to locate him.

The Administration's proposed bail legislation, like similar bills introduced in this and the last Congresses, sets out a comprehensive statutory scheme that would for the first time provide the federal courts with adequate authority to make release decisions that effectively protect both the integrity of the judicial process and the public safety.

The most prevalent criticism of the current bail system is that it does not permit the courts, except in capital cases, to consider the danger a defendant may pose to others if released.[1]/ The sole issue that may be addressed is likelihood that the defendant will appear for trial. Thus our judges are without statutory authority to impose conditions of release geared toward

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[1]/ The broad base of support for permitting consideration of defendant dangerousness in all pretrial release decisions is cited in the Judiciary Committee's report on S. 1554 in the last Congress -- legislation that is for the most part identical to the Administration's bail reform proposal. S. Rep. No. 97-317, 97th Cong., 2d Sess. 36-7 (1982).

assuring community safety or to deny release to those defendants who pose an especially grave danger to others. As a result, when making release decisions with respect to demonstrably dangerous defendants, judges are faced with a dilemma: they may release the defendant pending trial despite the fear that this will jeopardize the safety of others, or they can find a reason, such as risk of flight, to detain the defendant by imposing a high money bond. Many critics of current bail laws believe that too often the resolution of this dilemma may cause the courts to make intellectually dishonest determinations that the defendant may flee when the real problem is that he appears likely to engage in further dangerous criminal conduct if released. Our law denies the opportunity to address the issue of dangerousness squarely.

Federal bail law must be changed so that it recognizes that the danger a defendant may pose to others is as valid a consideration in the pretrial release decision as is the presently permitted consideration of risk of flight. This change is one of the most important elements of our proposed bail legislation.

Support for giving judges the authority to weigh risks to community safety in bail decisions is widely based and is a response to the growing problem of crimes committed by persons on release -- a problem that exists in spite of what many believe is a not uncommon practice of detaining especially dangerous defendants through the imposition of high money bonds. In a recent study conducted by the Lazar Institute, one out of six defendants were rearrested during the pretrial period. Nearly

one-third of these persons were rearrested more than once, and some as many as four times.[2]/ Similar levels of pretrial crime were reported in a study of release practices in the District of Columbia where thirteen percent of all felony defendants were rearrested. Among defendants released on surety bond, the form of conditional release reserved for those who are the greatest bail risks, the incidence of rearrest reached the alarming rate of twenty-five percent.[3]/

Allowing the courts to consider evidence of dangerousness and to impose conditions of release specifically geared toward reducing the likelihood of further criminal conduct such as third party custody or required drug or alcohol abuse treatment, would be a significant improvement in current law. It is, however, only a partial solution, for we must recognize that with respect to certain defendants, it will be clear that no form of conditional release will be adequate to address the significant threat they will pose to the safety of the innocent public if released. Therefore, it is essential that amendment of our bail laws include, as does our current legislative proposal, authority to deny release altogether in such cases.

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[2]/ Lazar Institute, "Pretrial Release: An Evaluation of Defendant Outcomes and Program Impact" 48 (Washington, D.C. August 1981).

[3]/ Institute for Law and Social Research, "Pretrial Release and Misconduct in the District of Columbia" 41 (April 1980).

Pretrial detention has, in the past, been a very controversial issue. While opposition to this concept still exists, increasing numbers of legislators and persons involved in the criminal justice system have come to realize that authority to deny bail to extremely dangerous defendants is a necessity.4/ Pretrial detention is, of course, already part of our bail system. The authority of the courts to deny release to defendants who are especially serious flight risks or who have threatened jurors or witnesses has been recognized in case law. Pretrial detention based on dangerousness was incorporated in the District of Columbia Code passed by the Congress in 1970 and is authorized under federal juvenile delinquency statutes. Moreover, a significant number of federal defendants are held in custody pending trial because they are unable to meet high money bonds.5/ -- and many argue that at least a portion of these cases of detention result from the imposition of bonds that are more a reflection of a judge's understandable concerns about the threat the defendant poses to others than of concerns that he will not appear for trial.

4/ For a discussion of the constitutionality of pretrial detention, See S. Rep. No. 97-317, supra note 1, at 37-8.

5/ For example, in fiscal year 1982, 18.4% of federal defendants were subject to some period of pretrial detention, and 61.3% of those defendants were held for more than ten days. 1982 Reports of the Proceedings of the Judicial Conference of the United States and Annual Report of the Director of the Administrative Office of the United States Courts (hereinafter cited as "1982 Annual Report") 352-5 (Table D-13). It is likely that a good proportion of the more substantial terms of pretrial detention were due to difficulties in meeting high money bonds.

Of course, the availability of pretrial detention authority will not entirely solve the problem of bail crime, nor is pretrial detention appropriate for other than a small, but identifiable, group of the most dangerous defendants. However, where there is a high probability that a person will commit additional crimes if released pending trial, the need to protect the public becomes sufficiently compelling that a defendant should not be released. This rationale -- that a defendant's interest in remaining free prior to conviction is, in certain circumstances, outweighed by the need to protect societal interests -- is, in essence, that which has served to support court decisions sanctioning the denial of bail to defendants who have threatened jurors or witnesses or who pose significant risks of flight.6/ In such cases, the societal interest at issue is the need to protect the integrity of the judicial process. Surely, the need to protect the innocent from brutal crimes is an equally compelling basis for ordering detention pending trial.

Because of the importance of the defendant's interest which is at stake when pretrial detention is considered, the authority to deny release should be available only in limited types of cases, only after a hearing incorporating significant procedural safeguards, and only when the findings on which the detention order is based are supported by clear and convincing evidence.

6/ See, e.g., United States v. Wind, 527 F.2d 627 (6th Cir. 1975); United States v. Abrahams, 575 F.2d 3 (1st Cir.), cert. denied, 439 U.S. 821 (1978).

The Administration's pretrial detention provision meets each of these requirements, and so provides a framework in which detention will be ordered only when no other alternative is available.

Our legislation also contains a specialized pretrial detention authority that would have been especially appropriate in the Dorris case I mentioned. This provision allows a temporary ten-day detention of defendants who are arrested while they are already on bail, parole, or probation. During this period, the defendant may be held in custody while the original releasing authorities are contacted and given an opportunity to take appropriate action. A similar provision of the District of Columbia Code has been cited by former United States Attorney Charles Ruff as one of the most effective tools available to his Office in dealing with recidivists.

As the statistics on bail jumping among drug defendants noted earlier indicate, the problems with current federal bail law aren't confined to the area of defendant dangerousness. The goal of assuring appearance at trial -- the very purpose of our present statute -- isn't being adequately met. Therefore, our bail reform proposals include amendments to address this problem as well. First, we provide clear authority for the courts to inquire into the sources of property that will be used to post bond and to reject the use of proceeds of crime for this purpose. Our experience with drug defendants has shown that the forfeiture of even very large bonds in these circumstances is not a sufficient disincentive to flight. Second, our proposals codify the

existing authority I mentioned earlier to deny release entirely to persons who are especially severe flight risks. Third, our proposal would enhance the deterrent value of the penalties for bail jumping by making them more closely proportionate to the severity of the offense with which the defendant was charged when he was released and requiring that they run consecutively to any other term of imprisonment imposed.

A final aspect of our proposal -- one that has been incorporated as well in other bail reform bills now before the Congress -- would address what the Attorney General's Task Force on Violent Crime described as "one of the most disturbing aspects" of current federal bail law, namely a standard which presumptively favors release of convicted persons who are awaiting imposition or execution of sentence or who are appealing their convictions. The Task Force's reasons for recommending that this standard be abandoned are sound ones:

> "First, conviction, in which the defendant's guilt is established beyond a reasonable doubt, is presumptively correct at law. Therefore, while a statutory presumption in favor of release prior to an adjudication of guilt may be appropriate, it is not appropriate after conviction. Second, the adoption of a liberal release policy for convicted persons, particularly during the pendency of lengthy appeals, undermines the deterrent effect of conviction and erodes the community's confidence in the criminal justice system by permitting convicted criminals to remain free even though their guilt has been established beyond a reasonable doubt."7/

7/ Attorney General's Task Force on Violent Crime, Washington, D.C., August 17, 1981, at 52.

In the Administration's bail proposal, post-conviction release would be available only in those cases in which the convicted person is able to produce convincing evidence that he will not flee or pose a danger to the community and, if the person is awaiting appeal, that his appeal raises a substantial question of law or fact likely to result in reversal of his conviction or an order for a new trial. No lesser standard, in our view, is justifiable, particularly since the reversal rate for federal convictions is only approximately ten percent.[8/]

Substantial improvements in federal bail laws are urgently needed. We can no longer have a statutory scheme that requires judges to ignore disturbing evidence of defendant dangerousness and we must do more to assure that defendants who are seeking release meet their responsibility to appear for trial. The bail amendments proposed by the Administration, and other similar bail reform legislation introduced again this year in the Congress such as S. 215, fulfill these needs and provide a framework for the courts to strike an appropriate balance between the legitimate interests of the defendant and the equally legitimate interests of the public in preserving the integrity of our judicial system and protecting community safety.

8/ In fiscal year 1982, the reversal rate for federal criminal cases was 9.7%. 1982 Annual Report, supra note 5 at 196.

TITLE II - SENTENCING REFORM

I. Introduction

The sentence in a criminal case is imposed at the end of a highly structured process designed to assure fairness to the defendant and to the public. Ideally, this sentence will represent society's statement as to the relative seriousness of the defendant's criminal conduct, and will deter criminal conduct by others. Unfortunately, despite the best efforts of the federal criminal justice system under current law, the sentence in a particular criminal case frequently fails to achieve these goals. This is true in large measure because the system fails not only to provide appropriate sentences in many individual cases, but even fails to provide a mechanism that might be capable of consistently achieving such a result.

In the last ten years or so, a consensus has developed among persons of different political views that the current federal sentencing system is riddled with serious shortcomings. More recently, there has developed substantial support for an approach by which the shortcomings might be remedied -- the creation of a system such as that set forth in title II of S. 829, a system that couples sentencing guidelines with determinate sentencing. These provisions are substantially identical to sentencing provisions approved by this Committee and the full Senate several times since the enactment of S. 1437 in 1978, most recently in

the past Congress with the repeated approval of the sentencing provisions contained in S. 2572 and added by the Senate to H.R. 3963. These provisions also formed the basis of a sentencing reform package passed by the State of Minnesota, which the National Academy of Sciences has recently reported to be the most successful of any of the State or local sentencing reform efforts. The Minnesota system, while providing less sophisticated guidelines than we contemplate for the federal system, is the only State or local system in operation that is similar to this proposal in every significant respect. In addition, I was pleased to note that the Judicial Conference of the United States has recently proposed legislation that contains a form of determinate sentencing guidelines system.

II. Sentencing Under Current Law and Practice

A. The Sentencing Process

A federal judge might sentence only a few dozen offenders a year, and a particular offender before him for sentencing might be the only person he has sentenced in a year or even longer for committing a particular offense. The judge, while trained in the law, has no special competence in imposing a sentence that will reflect society's values, and federal statutes do little to assist in correcting this problem.

Current federal law provides a sentencing judge with the discretion to impose sentence pursuant to numerous sentencing options and little or no guidance as to how to choose among the options. The statutes contain no statement of the purposes of sentencing, aside from occasional vague references to rehabilitation, and no direction to the judges as to the offense and offender characteristics that should be considered in determining an appropriate sentence. Federal sentencing law is limited mostly to the provision of a maximum term of imprisonment and maximum fine that may be imposed for violating a particular criminal statute, and these maximum sentences only indicate the congressional view of the appropriate sentence for the most serious offense committed by an offender with the most serious criminal record.

As a result of this absence of guidance, judges are left to impose sentences according to their own notions of the purposes of sentences. They are not required to state their reasons for choosing a particular sentence, and many of them do not. Sentences are reviewable only for illegality or for constitutional violation; a sentence that is substantially out of proportion to those for similar offenses committed by similar offenders is not otherwise subject to challenge.

B. Sentencing Options

While current law provides sentencing alternatives of probation, fines, imprisonment, and restitution, the law fails to provide a mechanism to inform sentencing judges how they should choose among them and fails to assure that each option is useable to serve the purposes of sentencing in the best way possible.

1. Probation. -- Probation is treated as a suspension of the imposition or execution of a sentence rather than as a sentence itself. Partly for that reason and partly because current law does not recommend possible probation conditions in any detail, there has been little incentive to impose conditions on probation that might make it a more effective punitive or remedial sanction -- it is generally viewed solely as a vehicle for rehabilitative efforts. This is especially troubling because of the crowded conditions of our prisons. As the Attorney General has stated recently, effective use of probation conditions for many non-violent offenders could alleviate much of the stress on our prison capacity without undermining the desirability of imposing prison sanctions in appropriate cases.

2. Fines. -- The maximum fine levels for criminal offenses vary inexplicably. They usually also reflect penalty levels of a century or more ago, and today are much too low to be a realistic measure of the seriousness of most offenses. They are often so low that they are not a realistic substitute for a

term of imprisonment when the nature of the offense might otherwise justify their use. Even if a fine is imposed, it may be difficult to collect under current law, which relies heavily on cumbersome and inconsistent state collection procedures.

3. Restitution. -- The newly enacted Victim and Witness Protection Act of 1982 contains, as you know, important new provisions for restitution to victims of crime in many federal criminal cases. Early experience with the provisions demonstrates that additional guidance as to how to determine the amount of restitution and how a payment schedule might be tailored to the financial situation of the defendant would be helpful to sentencing judges.

4. Imprisonment. -- Responsibility for imposing a term of imprisonment and determining its length is divided today between the judicial and executive branches. Under a two-step process, the sentencing judge imposes a term of imprisonment and sets the outside limit of the period of time a defendant may spend in prison, and then the Parole Commission decides what portion of the maximum term the defendant will actually serve. This practice was originally based on an outmoded 19th Century rehabilitative theory that has proved to be so faulty that it is no longer followed by the criminal justice system -- yet the outmoded process remains in place trying as best it can to use a more modern approach to sentencing.

Current imprisonment statutes were enacted at a time in which the criminal justice system utilized a "medical model" for determining when a prisoner should be released. Criminality was viewed as a disease that could be cured through rehabilitative programs in a prison setting. While the purpose of the sentence was to rehabilitate, no one could know when that rehabilitation would occur. Therefore, a defendant was sentenced to a term of imprisonment intended to be longer than the time it would take for rehabilitation to occur. Periodically, parole authorities would examine the prisoner's adaptation to the prison setting in order to determine whether he had been rehabilitated and could be released into society before the expiration of his imposed prison term.

There are two principal problems with this theory: First, many sentences to terms of imprisonment are designed to serve purposes other than or in addition to rehabilitation. They may be designed to deter future criminal conduct by the defendant or others, to protect the public from criminal conduct of the defendant, or to punish the defendant for his conduct. Periodic review of prison behavior is irrelevant to any of these purposes; a sentence for any of these purposes logically should be set for a definite term.

Second, even if the sentence is for purposes of rehabilitation, the theory leading to an indefinite term is unsound. Behavioral scientists have concluded in recent years

that there is no reliable means of inducing rehabilitation. More importantly to consideration of this theory, they have also concluded that no one can tell from a prisoner's behavior in prison or before a parole board whether or when he has become rehabilitated. Consequently, the basic reason for an indeterminate sentence and thus for the existence of parole boards has disappeared.

The federal Parole Commission today acknowledges that it cannot tell from a prisoner's behavior whether or when he has become rehabilitated. It therefore no longer even attempts to accord its practice with the original theory. Instead, with few exceptions, it releases prisoners at the times specified by the Commission's self-developed guidelines -- guidelines that are based upon factors known at time of sentencing. Since the Commission's release determinations need no longer await an opportunity to observe the prisoner's conduct in confinement, there is no reason why the Commission cannot inform a prisoner of his proposed release date near the time of his incarceration -- and the Commission now does so in almost all cases.

Thus two branches of government -- at approximately the same time and based on essentially the same information -- set two different sentences to be served by the same defendant, with one of these sentences publicly announced and the lower one that will actually be served announced in private. This occurs because of attempts by the criminal

justice system to adapt an outmoded mechanism to modern thinking about sentencing. The result is that the judges attempt to adjust their sentences to override parole guidelines they see as inappropriately harsh or lenient, and that the parole authorities, in attempting to even out the resulting disparity in sentences, regularly ignore the actual sentences imposed by judges.

5. Specialized sentencing statutes. -- Finally, current law contains a number of specialized sentencing statutes that a judge may use in sentencing a specific category of offenders, such as young offenders or drug addicts. These statutes provide little guidance, other than some references to rehabilitation, as to when a judge should use them for a person in the category of offender covered by the statute and when he should not. They also fail to take into account the fact that a particular offender may belong to more than one category covered by these statutes.

One of these statutes, the Youth Corrections Act, has caused particular difficulties. Sentencing judges differ as to whether it should be used at all for violent offenders. Thus, similarly situated offenders sentenced by different judges may be sentenced either under the Act or to a regular adult sentence. Especially since the parole guidelines generally provide less prison time for persons sentenced under the Youth Corrections Act than under regular adult sentencing, the result can be that two

young offenders with similar criminal histories who are convicted of similar violent crimes will serve different prison terms simply because they were sentenced under different statutes.

In recent years, a more difficult problem has arisen with the Youth Corrections Act -- the courts have construed the Act to require that the Bureau of Prisons separate YCA offenders from adult offenders. Prisons officials have found the results of complying with these court decisions to be undesirable. Because there are only 1200 YCA offenders now in custody, only three institutions -- located in Petersburg, Virginia; Englewood, California; and Morgantown, West Virginia -- have been set aside to house them, with the result that most of these young offenders must be placed long distances from their homes and families. The placement of all YCA offenders in three institutions has also, in effect, negated the classification process for these inmates. The Bureau classifies inmates into six categories, with level one representing the minimal risk and level six representing the maximum risk. The result of placing these offenders in three institutions is a mixing of the criminally sophisticated with the unsophisticated, the hardened with the naive, the assaultive with the easily victimized, and the first time offender with the repeater. The distance from home, combined with the limited ability to separate these prisoners according to the prisoner classification system, compounds discipline problems with managing a youthful population more prone than an older population to act out and be disruptive.

The Youth Corrections Act should be repealed, not only because age is only one factor that may play a role in determining the appropriate sentence, but because the separate facilities for young offenders sentenced under the Act have proved unworkable. Thus, the Department of Justice strongly disagrees with the suggestion of the Judicial Conference in its proposed bill that sentencing judges be permitted to sentence young offenders to separate facilities.

C. Consequences of the Current System

The almost inevitable result of the proliferation of sentencing options and the lack of statutory guidance as to how to use them is considerable disparity in sentences imposed by federal judges. This disparity has been documented in numerous studies, including one conducted by the Federal Judicial Center of district judges in the Second Circuit and a more recent study conducted for the Department of Justice by INSLAW, Inc. and Yankelovich, Skelly and White, Inc. In the latter study, 208 federal judges were presented with 16 hypothetical cases. They agreed in only 3 of 16 cases on whether to sentence the defendant to prison. The study found that 21 per cent of sentence variation was due to the tendency of some judges to impose generally harsher or more lenient sentences than other judges, rather than to differences in offense or offender characteristics, and that even more variation was due to the tendency of a particular judge to impose harsher or more lenient

sentences than other judges for particular classes of offenses or offenders.

Various attempts by the Parole Commission and the judicial branch to reduce this disparity have been ineffective. The parole guidelines have served to reduce disparity in terms of imprisonment, but, as a recent General Accounting Office study shows, they have not been fully successful in doing so. And, of course, the parole guidelines cannot do anything about a probationary sentence that should have been a prison sentence or vice versa, or about an inappropriate level of fine or restitution, or about a prison term that makes a prisoner ineligible for parole on his guidelines date or results in his release before that date.

The judicial branch now supplies sentencing judges with information in the pre-sentence report concerning the parole guidelines probably applicable to the defendant and the kinds and lengths of sentences that are imposed nationwide and in the judge's district for the defendant's offense. I understand that it is in the process of improving its data collection to include more detailed information on sentences imposed on persons with particular offense and offender characteristics. At this stage, the information is useful to inform judges of past sentencing practices; it is not designed to alter those practices that need to be altered to assure that they adequately reflect sentencing goals.

The perception of sentencing disparity has serious consequences for the public and the criminal justice system. It tends to encourage defendants to relitigate their guilt continually. Combined with the artificial process by which judges impose long prison terms and parole authorities set early release dates shortly thereafter, it serves to undermine public confidence in the criminal justice system, thus robbing the system of some of its potential deterrent effect.

III. Sentencing Under Title II of the Bill

Title II of the bill would completely revise current law to legislate the purposes of sentencing, to create a mechanism to assure rationality and fairness in sentences designed to carry out those purposes, and to provide appellate review of sentences to assure their legality and reasonableness.

A. Legislatively Prescribed Purposes

Title II would for the first time give legislative recognition to the appropriate purposes of sentencing. The stated purposes specifically include reflecting the seriousness of the offense and just punishment, deterrence of criminal conduct, protection of the public from further crimes of the defendant, and providing rehabilitation programs in the most effective manner. The bill deliberately does not favor one purpose over another, since any one of these purposes may be the

major purpose of a sentence in any given case. For example, the the major purpose of a sentence to imprisonment for a violent offender may be just punishment while the major purpose of a sentence to probation conditioned on obtaining mental health treatment for a non-violent offender may be rehabilitation. The bill does recognize that rehabilitation should not be the purpose of sentencing a defendant to imprisonment nor a factor in determining the length of a prison term. Of course, this does not mean that the Department will not continue to make every effort to provide suitable rehabilitation programs to prisoners in its custody. It is simply unfair to send a person to prison for rehabilitation or base the length of that term on whether he is rehabilitated when we recognize that no one knows when or whether a prisoner has been rehabilitated.

B. The Sentencing Process

The sentencing judge would impose sentence after considering the purposes of sentencing and sentencing guidelines promulgated by a commission in the judicial branch that would recommend an appropriate kind and range of sentence for each combination of offense and offender characteristics. The judge would be required to impose sentence in accord with the guidelines recommendation unless he found that a factor in the case was not adequately considered in the guidelines and should affect the sentence. If the judge imposes sentence outside the guidelines, he must state specific reasons for doing so. The

question whether the sentence is reasonable is subject to appellate review at the request of the defendant if the sentence is above the guidelines and at the request of the government, made on behalf of the public and personally approved by the Solicitor General or the Attorney General, if it is below the guidelines. If the sentence was to a term of imprisonment, the term imposed by the judge would represent the actual time served less a small amount of credit that could be earned for complying with institution rules. The Parole Commission and its function of setting release dates would be abolished, and the current practice of judges artificially inflating prison terms because of the parole system would be eliminated. If the sentencing judge thought a defendant would need street supervision following his term of imprisonment, he could impose a term of supervised release to follow the term of imprisonment.

Sentencing guidelines and policy statements would be promulgated by a United States Sentencing Commission in the judicial branch. The Commission would consist of seven members who would be appointed by the President by and with the advice and consent of the Senate, after the President had consulted with judges, prosecutors, defense counsel, and others interested in the criminal justice system for their recommendations. The Commission members, including any members from the federal judiciary, would serve full time and would be paid at the rate of judges of the federal appellate courts. The bill provides for a staff of highly qualified professionals for the Commission, and

directs that the Commission, in addition to promulgating guidelines, engage in sentencing research and training.

C. Sentencing Options

Each of the sentencing options would be improved under title II -- and the sentencing guidelines will enable the system to make the most effective use of these improved sentencing options.

1. Probation. -- Probation would become a sentence in itself, rather than a deferral of imposition or execution of another form of sentence. If a sentencing judge imposed probation in a felony case, he would be required to impose, at a minimum, a condition that the defendant pay a fine or restitution or engage in community service. In addition, the judge would be required to impose as a condition of probation in every case a prohibition against committing a new offense. The bill also lists a number of new conditions that may be imposed on a sentence of probation for consideration of the Sentencing Commission and the judges.

2. Fines. -- Title II significantly increases maximum fine levels for most federal offenses. The maximums are increased to a quarter of a million dollars for an individual convicted of a felony and half a million dollars for an organization convicted of a felony. The amount within that

maximum will be determined according to the sentencing guidelines and will be based in part on the defendant's ability to pay and the seriousness of the offense. Fine collection procedures will be improved by permitting reliance on lien procedures patterned after the federal tax laws.

3. Restitution. -- Restitution provisions are substantially similar to the provisions in the Victim and Witness Protection Act of 1982, with the provisions dovetailed into the new sentencing provisions. This will permit the sentencing guidelines and policy statements to provide more detail than is present in current law as to how the amount of restitution should be calculated and methods by which restitution can be imposed so that it can be paid, for example, in installments if the defendant is a salaried employee. S. 829 also provides for government assistance in collecting unpaid restitution, a measure we believe will improve the enforceability of an order of restitution.

4. Imprisonment. -- As discussed earlier, title II completely changes the way in which the length of a term is imposed, abolishing early release on parole and converting to a system in which the sentence imposed by the judge represents the actual time to be served less good time.

It should be noted that S. 829 differs from the sentencing provisions in S. 668 and S. 830 in two respects.

First, it extends slightly the maximum terms of imprisonment that may be imposed for a particular grade of offense. This will give the Sentencing Commission more flexibility in fashioning sentencing recommendations for the most serious offenses. Second, S.829 does not provide for a repeated reexamination by the courts of long sentences. The Department of Justice is of the view that such a provision only serves to create unnecessary and time-consuming court hearings that are contrary to the purpose of creating a system in which final sentences are publicly announced at the time of sentencing. The defendant will have had an earlier opportunity to appeal his sentence if it is unusually high, and we believe that one review is sufficient. S. 829, like the other bills, does permit reexamination of a sentence in other limited circumstances. The Bureau of Prisons may request reduction of a sentence for extraordinary and compelling reasons, such as terminal illness. In addition, if the sentencing guidelines for a particular offense are lowered and it is consistent with a policy statement of the Sentencing Commission, the court, on its own motion or at the request of the defendant or the Bureau of Prisons, may reduce the sentence of a defendant sentenced under the old guidelines. We believe these limited opportunities to change sentences are sufficient to assure reconsideration of sentence whenever justified.

5. Specialized sentencing statutes. -- S. 829 would repeal all the specialized sentencing statutes that create provisions applicable to only one category of offender. The

guidelines system is a far preferable method of determining an appropriate sentence for offenders with particular characteristics since it provides for systematic consideration of all offender characteristics at the same time rather than one isolated characteristic.

D. Advantages of Title II Over Current Law

Title II provides numerous advantages over current law. The most important of these is that it will provide a sentencing mechanism whose purpose is to assure both fair sentences and the appearance of fair sentences. The sentencing guidelines will enable the sentencing judges to determine an appropriate sentence for a defendant with a particular criminal history convicted of a particular offense, knowing that the sentence is fair as compared to the sentences for all other offenders. Everyone, including the defendant, the public, and those in the criminal justice system charged with implementing the sentence, will know at the time of sentencing exactly what the sentence is and why it was imposed. The characteristics of the offense and the offender that result in a sentence different from that for another offender will be apparent -- and if a sentence is inappropriate, it can be corrected on appeal. The appeal mechanism has another advantage over current law -- it will result in the development of a body of case law concerning whether particular reasons legally justify imposing sentences outside the guidelines. The bill permits not only defendant appeal of an unusually high