TESTIMONY OF

WILLIAM W. MERCER,
UNITED STATES ATTORNEY, DISTRICT OF MONTANA, AND

PAUL K. CHARLTON,
UNITED STATES ATTORNEY, DISTRICT OF ARIZONA,

BEFORE THE UNITED STATES SENTENCING COMMISSION

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INTRODUCTION

We appreciate the opportunity to appear before the Sentencing Commission today to discuss sentencing policy for fraud and homicide offenses. At the outset, we would like to thank the Commission and its staff for being responsive to many of the Justice Department's concerns this amendment year on various aspects of federal sentencing policy. We have had, and continue to have, differences with the Commission on certain important issues, just as Commissioners sometimes differ amongst themselves, our agencies may differ with Congress, and so on. To us, those differences of opinion on matters of public policy, and the robust debate that accompanies the process of making law, evidences a healthy system, not one which is broken. We do not overlook the many areas, including important ones, where the Commission and the Administration agree, and we do recognize all the hard work the Commission and its staff does in response to many competing demands. We especially appreciate your efforts to implement recent legislation relating to bioterrorism and cybercrime, work that is critical to our country's ongoing fight against terrorism.

FRAUD

Combating corporate crime and fraud continues to be a top priority of this Administration and of the Justice Department. Last summer, the President announced a comprehensive plan to renew public confidence in corporate America and revive trust in its markets. He called on Congress to pass higher maximum penalties for federal fraud and obstruction of justice crimes and called for the Sentencing Commission to increase the applicable penalties. The central purpose of these initiatives was to make sure that real prison time would be the rule rather than the exception for corporate criminals and for those who enrich themselves and harm innocent victims through fraud.

Congress responded with the Sarbanes-Oxley Act of 2002, which dramatically raised statutory penalties for fraud and obstruction, and directed the Commission to re-evaluate and amend existing Guidelines penalties accordingly. Mindful of the burdens imposed upon the Commission and its staff by these ambitious directives and short emergency amendment deadline, the Department undertook its own evaluation, turning to the AGAC and career prosecutors for their expertise, and submitted in short order a detailed proposal for implementing Congress's directives. We recommended that the Commission increase penalties on both lower- and higher-loss fraud offenses, to ensure that criminals responsible for significant harm would go to prison while those truly minor offenders would be eligible for leniency and even probation. We also recommended specific enhancements to punish the most egregious cases involving corporate officers and others who profit from corrupting their positions of trust and responsibility, or who cause harm to significant numbers of victims either directly or by running their corporations into ruin.

The Department also responded to the Sarbanes-Oxley Act with a new commitment to enforcement in corporate fraud cases. Just last week, Deputy Attorney General Larry Thompson and Assistant Attorney General Michael Chertoff announced that the former chief financial officer of HealthSouth Corp., the nation's largest provider of outpatient surgery, diagnostic imaging and rehabilitative services, agreed to plead guilty to securities fraud, conspiracy to commit securities and wire fraud, as well as false certification of financial records which were designed to inflate the company's revenues and earnings by hundreds of millions of dollars. This is the first false certification case brought pursuant to Sarbanes-Oxley and is just one example of the more than 160 individuals charged by the Justice Department and its Corporate Fraud Task Force.

Although the Commission voted in January to increase penalties for many of these exceptionally culpable criminals, it did nothing to raise the stakes for the vast majority of criminals federally prosecuted for fraud each year. Despite the Commission's subsequent efforts to convince the public and Congress that its January amendments were actually tough on crime, its actions – or more accurately, its inaction – sent exactly the wrong message to those who would commit such offenses. We are here today in part to discuss what additional amendments, if any, would be appropriate and responsive to the Sarbanes-Oxley Act's directives. No doubt we will again hear a chorus of voices urging the Commission to do nothing further, or even to repeal the narrow enhancements it passed in January. We hope that the Commission will instead heed the voices of the President and Congress, that it will take this final opportunity to finish the job the Act intended it to do, and thus avoid the prospect that the President and Congress will feel compelled to do the job themselves.

Our position regarding the fraud guidelines and the need for significant penalty increases beyond what the Commission has already promulgated in its emergency guideline amendment has been set out in detail and continues to be quite clear. Since last August, we have set forth both in writing and orally before the Commission our strong view on the need for across-the-board changes to the fraud loss table on a number of occasions. Our October 2002 letter laid out in detail our proposal for implementing the Sarbanes-Oxley Act by amending §2B1.1 to increase fraud sentences to respond appropriately to Congress' clear direction and to correspond to the significant increases in the fraud statutory maxima that were key elements of this legislation. We need not repeat these details here.

A. Principles of Sentencing Policy for Fraud Offenders

We do think it useful to briefly review some of the principles underlying our position; principles which undergird the Sentencing Reform Act and which the Sarbanes-Oxley Act built upon.

We begin with the principle that the certainty of real and significant punishment best serves the purposes of deterring fraud offenders and particularly white collar criminals; in fact to a greater extent than for other types of offenders. Research has shown that if the risk of being caught for breaking the law is real, and if genuine punishment is the likely, if not certain outcome, then crime – and especially white collar crime, which is typically committed after a studied evaluation of the costs and benefits rather than out of passion – can be prevented. While we have made this point to you before, we suggest that you ask some of the criminal defense attorneys who represent white collar offenders and who will be appearing before the Commission about this. We think they will tell you the overwhelming

motivation of their clients is to stay out of prison. People with much to lose, especially people who have never been in trouble with the law before, don't want to go to prison, and will literally pay any price to stay out. If criminals or those contemplating criminal conduct perceive the risk of incarceration as minimal, they often view fines and even probation merely as a cost of doing business. We aim to remove the price tag from a prison term. We believe that if it is unmistakable that the automatic consequence for one who commits a fraud offense is prison, many will be deterred, and at the least, those who do the crime will indeed do the time.

Second, we believe the certainty of significant penalties – meaning real jail time – in white collar cases fosters trust and confidence in the criminal justice system. If drug and violent offenders get long prison terms while many white collar offenders get probation, people will draw the conclusion that felons with wealth and influence are not held to the same standards as those without. Such cases feed the public perception that there is a double standard for haves and have-nots, and that certain people are above the law. We think this is unacceptable and corrosive to societal order.

Third, we believe that so-called "lower loss" frauds – those involving less than $100,000 or even less than $50,000, which for most people is a lot of money to get stolen – are serious crimes that should trigger at least some prison time for those who commit them. As the Attorney General said at a corporate fraud conference last fall, the Department is committed to pursuing "allegations of corporate fraud regardless of the size or the prominence of the company under scrutiny." To victims of such frauds – a small business targeted for embezzlement or creditors cheated by bankruptcy fraud (where

only the federal government has jurisdiction to prosecute) – these losses can indeed be significant, even devastating. Such cases constitute a significant percentage of federal fraud prosecutions, particularly outside the major cities. Therefore, we have repeatedly indicated our concern that the November 2001 fraud guideline amendments, which decreased sentences for lower-loss offenses, in particular for those offenders responsible for losses under $70,000, will have a widespread detrimental affect on our ability to punish, and, as a result, to deter, such crimes. Moreover, more significant punishment is necessary at the "lower level," to deter smaller players in large frauds who participate in, but may not be at the heart of, a major corporate fraud. Such persons can provide invaluable information to the Department's investigations if given the appropriate level of incentive.

Under the current guidelines, for example, a first-time offender can defraud others of amounts less than $30,000 and still receive "straight probation" (assuming the defendant pleads guilty and no other specific offense characteristic is applied to him) even without obtaining a downward departure from the court. The same offender who causes a loss between $30,000 and $70,000 will receive a Zone B sentence; again, with no requirement of incarceration. This contrasts with the pre-2001 guidelines where fraud defendants responsible for losses between $40,000 and $70,000 resulted in Zone C sentences and were ineligible for probation. Indeed, under the revised guidelines, a white collar criminal can steal up to $120,000 and still receive a Zone C sentence, which could result in as little as five months' incarceration. Experience shows that defendants sentenced for fraud crimes in Zones B and C most frequently receive little if any prison time. Our proposal would significantly change the sentencing structure at these loss levels. Under our proposal, only those offenders who defraud others

of less than $10,000 would eligible for straight probation. Those offenses involving loss amounts between $10,000 and $20,000 would receive a Zone B sentence; offenses involving between $20,000 and $50,000 would receive a Zone C sentence; and those over $50,000 would receive a straight prison sentence.

B. Downward Departures

We remain very concerned about the growing number of non-substantial assistance downward departures and its impact on federal sentencing policy generally, and fraud enforcement and sentencing policy in particular. We are confident that this concern is shared by many interested members of Congress. Because Congress contemplated that the sentencing guidelines would cover most factual circumstances, the Sentencing Reform Act, and indeed the original Guidelines, expressly anticipated that it would rarely be appropriate, much less necessary, for judges to depart from the sentence range prescribed by the guidelines. In those cases where the facts are unique and not addressed by the guidelines, a judge can depart upward or downward to reflect the unusual gravity of the crime or the inordinate extremity of the punishment (compared to similarly-situated defendants). Appropriately, the guidelines also permit judges to grant downward departures for "substantial assistance," rewarding a defendant's willingness and ability to cooperate with law enforcement in prosecuting more serious crimes. However, the pattern now seems clear that federal judges are using downward departures frequently, in some cases nearly routinely, as a way of avoiding imposing the prescribed guidelines sentences. This phenomenon is just as detrimental to the overall goal of deterring and equitably

punishing white collar and fraud crimes as the related problem of inappropriate flexibility *within* the guidelines allowing these defendants to be sentenced to probation rather than jail.

Further exacerbating the problem, the more deferential standard of review announced by the Supreme Court in *Koon v. United States*, 518 U.S. 81 (1996), has impaired the government's ability successfully to challenge district court departures. We are very concerned about the type and increasing number of non-substantial assistance downward departures; the impact of these departures in white collar cases and on federal sentencing policy cannot be overstated.

Although the Supreme Court adopted a deferential appellate standard of review in *Koon*, the Court also noted that in developing the guidelines, the Sentencing Commission contemplated that departures based upon grounds not mentioned in the guidelines would be "highly infrequent." Unfortunately, in some districts, non-substantial assistance downward departures are anything but infrequent (10,026 non-substantial assistance downward departures were made in FY 2001). In 2001, districts without large illegal alien caseloads reported large downward departure percentages – e.g., E.D. Washington (51.8%), Connecticut (33.8%), Vermont (23.4%), E.D. Oklahoma (20.4%), W.D. Washington (23.9%), Massachusetts (20.7%), and Minnesota (19.3%). In contrast, only one district within the Fourth Circuit exceeded 10% non-substantial assistance downward departures, and the districts in that circuit averaged 5%.

Further, departures made pursuant to §5K2.0, for civic or charitable work (§5H1.11), aberrant behavior (§5K2.20), employment record (§5H1.5), family ties (§5H1.6), post-offense rehabilitation, diminished capacity (§5K2.13), mental condition (§5H1.3), and other departures not mentioned in the guidelines, but construed as outside the heartland of the guidelines, are fodder in virtually every sentencing of a white collar defendant given the community standing and background of many white collar defendants. These departures further erode the relatively less onerous guideline ranges in white collar cases.

Some examples explain our frustration. Attached is a document previously provided to the Commission that sets out some troubling and recent non-substantial assistance departures. While some of these cases resulted in successful government appeals, they are nevertheless instructive of the treatment of white collar defendants by many district courts. Our experience suggests that similar departure decisions by district courts are allowed to stand because the record from the sentencing hearing does not permit the government to prove an abuse of discretion under *Koon*.

These cases demonstrate what the Commission knew in the 1980s and attempted to address in the original guidelines: for a variety of reasons, federal judges are hesitant to incarcerate white collar defendants. *Koon* and other Supreme Court decisions gave the Commission the responsibility to monitor downward departures and to take the steps necessary to insure that the frequency and extent of downward departures do not become an obstacle to reaching the statutory goals of sentencing. We do not believe the Commission has fulfilled this responsibility. As a result and we have indicated

elsewhere, we will seek legislation both to address what we see as the unfinished business of the Sarbanes-Oxley Act – to provide higher guideline penalties across the loss spectrum – as well as to address the unacceptably high levels of non-substantial assistance downward departures.

HOMICIDE

Sentencing policy for homicide offenses is a topic of particular importance to us because our districts routinely handle high numbers of prosecutions under the Major Crimes Act arising out of violations in Indian country, including federal manslaughter cases. The low statutory and guideline sentences for these offenses, however, are a topic of widespread frustration and are routinely discussed among our state and local counterparts with similar criminal jurisdiction and responsibilities. To bring greater focus to the issue and to provide you with specific examples, we will concentrate in this testimony on the experience in the District of Arizona, the district with the single highest number of prosecutions under the Major Crimes Act arising out of violations in Indian country in the United States.

The District of Arizona encompasses the entire state of Arizona. The federal government has exclusive authority to prosecute Major Crimes Act violations occurring within Arizona's 21 Indian Reservations. Two of the nation's largest Indian Reservations are located in Arizona – the Navajo Nation, with an approximate total population of 275,000 members and a land base of over 17 million acres spanning three states (Arizona, New Mexico and Utah) and the Tohono O'odham Nation, with an approximate total population of 24,000 members and a land base comparable to the state of Connecticut. Recent Department of Justice data show that the violent crime rate on the Navajo

Reservation is about five times the national average. In total, in calendar year 2002, the District of Arizona prosecuted 64 manslaughter and 94 murder cases. In a two-year period ending September 2002, the Flagstaff division of the U.S. Attorney's Office (which responds to Northern Arizona federal crimes) handled 65 homicide prosecutions including 27 manslaughter and 38 murder cases.

In the summer of 2001, the Commission held a hearing on the impact of the sentencing guidelines on Native Americans committing offenses in Indian country. The perception going into this hearing was that Native Americans sentenced under the federal sentencing guidelines are treated more harshly than those who are adjudicated in the state system. The experiences of federal prosecutors in the District of Arizona, as they relate to the crimes of voluntary and involuntary manslaughter, are not consistent with this perception. We believe, as do many Indian and non-Indian victims, that the federal criminal justice system is actually in many circumstances unjustly lenient. Consequently, the respect and confidence of surviving victims in the federal criminal justice system is severely undermined and will continue to be, we believe, until the statutory maximum penalties are increased to reflect the seriousness of the crime and the sentencing guidelines are appropriately increased as well.

As you know, in 1994, Congress amended the statutory penalty for involuntary manslaughter from three years to the current six year maximum term. One of the primary purposes for the amendment was to correct the inadequacy of the three-year penalty as it applied to drunk driving homicides. In passing the amendment, one senator noted, "involuntary manslaughter most often occurs through reckless or drunken driving. A three-year maximum sentence is not adequate to vindicate the

most egregious instances of this conduct, which takes an increasing toll of innocent victims' lives." 134 Cong. Rec. S.7446-01 (statement of Sen. Byrd). While we applaud Congress's efforts in amending the law, it has become abundantly clear that current sentencing policy remains inadequate to deter and punish offenders, because the federal manslaughter sentencing guideline was never changed to reflect the increased penalty.

Today, the average sentencing range for a federal defendant convicted of involuntary manslaughter – which, lest we forget, always involves the death of a fellow human being – is only 16 - 24 months imprisonment. We are extremely frustrated by such penalties. I want to share with the Commission some of the experiences faced by federal prosecutors assigned to DUI homicides in Indian country; this will best illustrate the gravity of theses crimes, and along with comparable state sentences imposed we discuss, will demonstrate the need for increased penalties and comparable sentencing guidelines:

- Kyle Peterson, was charged with one count of involuntary manslaughter for the death of a 60-year old man who was driving to work southbound on the Loop 101 Freeway in Phoenix. Peterson was driving north in the southbound lanes of the Loop 101. The two vehicles collided head-on as they entered a portion of the freeway located in Indian country. The victim was killed instantly. Peterson suffered serious head injuries but has recovered. At the time of impact, Peterson's blood alcohol level was .158. He pleaded guilty to involuntary manslaughter with no sentence agreements and was sentenced to 14 months in custody followed by three

years on supervised release. In her victim impact statement, the decedent's widow stated "[f]inally there is my rage at a system that allows a criminal to face almost no punishment because of federal Sentencing Commission

laws . . . DUI is a criminal offense. Why does the federal system not treat it as such?"

- Gaylen Lomatuwayma was charged with one count of involuntary manslaughter after he struck and killed the victim, who was walking along Navajo Route 2. The crash took place after a night of drinking in Flagstaff, Arizona. After he struck the victim, the defendant kept driving until his truck stopped working. He was indicted on one count of involuntary manslaughter and was sentenced to 21 months in custody followed by three years on supervised release.

- In July, 2001, Zacharay Guerrero, was driving intoxicated on the Salt River Pima – Maricopa Reservation near Phoenix, when he failed to stop at a clearly posted stop sign. He collided with a vehicle occupied by two female tribal members. On impact, both females were ejected from the vehicle which ignited in flames and burned at the scene. Guerrero fled the scene. The investigation revealed that the defendant's vehicle had an impact speed of between 64 and 70 mph, while the posted speed limit was 35 mph and the victim vehicle had an impact speed of 9 mph. One victim died at the scene. The medical examiner attributed her death to multiple blunt force trauma due to the motor vehicle impact. The second victim died two months later. While there were small amounts of alcohol detected in the victim/driver's blood, the accident reconstructionist did not believe it was a significant contributing factor to the crash. Guerrero

was charged and pleaded guilty to two counts of involuntary manslaughter with no sentencing agreement. The guideline calculation resulted in a total offense level 13, with acceptance of responsibility, or a sentencing range of only 12-18 months. Only because of Guerrero's prior criminal history did he receive a sentence of concurrent terms of 37 months, the high end of the applicable guideline range.

- In November 2001, Ernest Zahony was driving eastbound on Highway 160 near the Old Red Lake Trading Post on the Navajo Indian Reservation. He crossed the center line and struck a family headed westbound and on their way to a late Thanksgiving dinner. The driver was pinned behind the steering wheel and later died as a result of her injuries. Five other occupants, including children, received serious injuries. The defendant walked away from the scene and was found about a mile away. The defendant admitted to drinking all night and into the morning. At the time of the crash, he is estimated to have had a .252 blood alcohol level. The court, applying an upward departure sentenced the defendant to 40 months in custody.[1]

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[1] Two examples from the District of Montana are also illustrative. Dustin Baker was convicted of for involuntary manslaughter. A college student at MSU – Northern in Havre, Baker left Billings at 4:00 a.m. to make his first class in Havre by 8:00. When he reached the Rocky Boy's Indian reservation at about sunrise, he left the road going in excess of 90 miles per hour. His vehicle then came back across the highway and struck the vehicle of the victims John Doney and Richard Brisboe, two residents of the Rocky Boy's reservation on their way to work. John and Richard were killed instantly in a violent crash. Brisboe left 4 children, Doney left two. Baker was sentenced to 12 months in prison. While he was not drinking, witnesses who saw his vehicle before the crash confirmed that he was driving at an extremely high rate of speed and was swerving around the road.

In *US v. Semsak*, the defendant, a driver of a tractor-trailer, was driving a vehicle weighing 78,000 lbs, traveling on the wrong side of a narrow two lane road. His BAC was 0.17. He had run several other vehicles off the road before the accident with the victim. The victim's vehicle was not recognized by law officers as a car, since it appeared to be just a heap of metal; the tractor-trailer had driven completely over the top of the car on impact. The car was all the way off the road trying to avoid the wreck. The body of the victim, a husband and father, was found in the barrow pit rolled up in what was left of the dashboard of the car. His features were not recognized as human.

In Arizona state court, the crime of manslaughter is designated either "dangerous" or "non-dangerous". In Maricopa County, DUI homicides are almost exclusively charged as "dangerous" felonies.[2] The sentence for manslaughter "dangerous" ranges from seven - 21 years in custody and yields a presumptive 10 ½ year sentence. The Maricopa County Attorney's Office has stated that generally, where an intoxicated defendant crosses a center line striking and killing someone, he/she will almost certainly receive a sentence of 10 ½ years. If the individual has a prior drunk driving history, the range of sentence increases by 2 years. In cases where a passenger in a defendant's car is killed, the range of sentence generally is 7 - 10 ½ years in custody.

Victim families routinely hear or read about state drunk driving homicide cases where long sentences are imposed by state court judges. Without exception, every Assistant U.S. Attorney and Victim Advocate assigned to federal drunk driving homicides must go through the painful process of explaining to victim families that the long sentences meted out in the state court system do not apply because the defendant will be sentenced under the federal sentencing guideline scheme. Victim families cannot comprehend that had the crime occurred in state jurisdiction the defendant would be imprisoned for a substantially longer term. Ironically, if any of the victims in the above-mentioned cases were

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The judge did departed and gave the defendant a sentence of 33 months. The usual guideline sentence following a guilty plea would have been 15-21 months (the defendant had a criminal history of III). The case is on appeal from the sentence.

[2] According to the Maricopa County Attorney's Office, "non-dangerous" felonies are reserved for those DUI homicides with great evidentiary weaknesses and are rarely, if ever, charged.

injured, rather than killed, each defendant may have been sentenced under the assault statute resulting in much harsher penalties[3].

Federal prosecutors routinely seek upward departures to increase a drunk driving defendant's final adjusted sentence. However, courts are reluctant to impose upward departures in manslaughter cases. Even in the most egregious cases, courts are reluctant to depart upward. In *United States v. Merrival*,[4] a case prosecuted by the District of South Dakota, the defendant was charged with one count of involuntary manslaughter for the DUI homicide of his two passengers, which included a 5-month-old infant. The defendant pleaded guilty to the indictment and the district court departed upward to sentence him to 70 months in custody. In imposing sentence, the court stated that the defendant's conduct was extremely dangerous and resulted in two deaths and severe bodily injury to the three surviving victims. In upholding the sentence, the Eighth Circuit stated "[w]e make special note, however, that in imposing a departure of this magnitude, the district court acted at the outermost limits of its discretionary authority."[5]

Additionally, if a defendant's tribal criminal history reflects repeated criminal conduct while they are under the influence of alcohol, a prosecutor may seek an enhanced sentence pursuant to §4A1.3,

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[3] The statutory maximum for Assault with a Dangerous Weapon and Assault Resulting in Serious Bodily Injury is no more than 10 years and a $250,000 fine. 18 U.S.C. § 113. The Base Offense Level is 15 and allows for specific offense characteristics which may result in a substantially higher sentencing range.

[4] See *United States v. Merrival, 176 F.3d 1079 (8th Cir. 1999).*

[5] *Id. at 1082.*

(Adequacy of Criminal History)[6]. However, district judges have been reluctant to apply an upward departure even where a defendant has prior multiple tribal court DUI convictions. Recently, Dale Haskan received a 14 month sentence for the DUI homicide of a 15-year-old girl. Haskan had multiple prior DUIs in tribal court dating back 20 years. The district court ruled that only one of his prior convictions was admissible because of inadequate documentation and his concern whether Haskan was represented in tribal court on those multiple convictions.

Depending on the extent and substance of a defendant's tribal criminal history, the facts, and the character of the victim, a court may make legal and factual findings that the defendant is entitled to an enhancement.[7] In drunk driving homicides, however, it is hard for a prosecutor to argue that the Sentencing Commission did not take into account the loss of life or the degree of a defendant's intoxication. Therefore, sentencing enhancements in these cases, although routinely sought, are difficult to substantiate and thus are rarely imposed.

We would like to briefly address the adequacy of penalties for second degree murder. As you consider addressing manslaughter, we urge the Commission to reexamine the murder sentencing guidelines in relationship to the statutory maximum penalty, life imprisonment. The Commission must evaluate whether the 33 base offense level is appropriate given that second degree murder involves a

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[6] This section may only be applied where a defendant's prior sentence(s) are not factored into his sentencing guideline range. §4A1.3(a).

[7] *See United States v. Betti Rowbal*, 105 F.3d 667 (9th Cir. Nev.) (unpublished decision).

high level of culpability on the part of the defendant[8]. For example, Douglas Tree pleaded guilty to second degree murder for beating his girlfriend's 18 month old daughter. Her injuries included a fractured clavicle and fractured ribs. He waited until his girlfriend came home to take the child in for medical treatment. The infant was hospitalized, placed on life support and later died. Tree received a 142 month sentence. Leslie Vanwinkle was also charged with second degree murder for the beating death of his 70-year-old father. Vanwinkle was sentenced to a term of 151 months in custody. These crimes are among the most malicious and often occur with weapons including knives, rocks and shovels.

The frustration felt by the victim families, prosecutors and often expressed by district court judges in imposing sentences is all to common in our districts and experienced by every federal prosecutor with similar federal criminal jurisdictional responsibilities. We are thankful and encouraged that the Commission continues to have an interest in this area. We are also encouraged that the Commission created the Native American Ad Hoc Advisory Committee to more thoroughly review the perceptions of Indian Country crimes and sentencing disparity.

We believe the guideline penalties for homicide, other than for first degree murder, are seriously inadequate. We think the Commission should ask the Native American Working Group to complete its

[8] With a Criminal History of I and a 3-level adjustment for Acceptance of Responsibility, a defendant would face an adjusted offense level of 30 (97 -121 months in custody).

work on these issue by this summer so that the Commission can promptly revisit all of the homicide and assault guidelines in the next amendment year and make adjustments to the guidelines as warranted.

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We thank you again for inviting us and for taking up these important issues of federal sentencing policy. We would be happy to address any questions.