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Sentencing Guidelines: Where We Are and How We Got Here

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PANEL REMARKS

SENTENCING GUIDELINES: WHERE WE ARE AND HOW WE GOT HERE

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It is my great pleasure to preside at this morning's discussion and to make brief introductory comments on sentencing in the federal courts.

The Federal Sentencing Guidelines were created in response to some real inadequacies of the federal criminal justice system. The Sentencing Reform Act of 1984 sought to bring consistency, coherence, and accountability to a sentencing regime deficient in all of these respects.

By consistency, I mean treating like offenders alike. By coherence and accountability, I mean a reasoned system of sentencing, in which judges must explain sentencing decisions with reference to common standards and principles. The means by which the Sentencing Reform Act would achieve these goals were three-fold: first, sentencing guidelines promulgated by an independent commission; second, appellate review of sentencing decisions; and third, abolition of early release or "parole."

In my view, appellate review was an important and genuine accomplishment of the Sentencing Reform Act. Every other important decision by the trial courts is subject to review, at least on an abuse of discretion basis. Why not sentencing?

But the statute did not stop with appellate review. It simultaneously created a commission that could be—and until now has been—composed largely of non-judges and charged that commission with developing and

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implementing a system of complex sentencing rules that would largely supplant the sentencing discretion historically exercised by federal judges.

The question before us today is not whether this system is better or worse than the system of unguided judicial discretion that it replaced. I think that issue is now effectively off the table. The question is whether the present system should be modified or reformed to achieve greater coherence, consistency, accountability, and ultimately, a higher level of justice.