FILED

AUG 30 2001

CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

Civil Misc. No. 3095

ORDER DESIGNATING THE PROBATION OFFICE AS THE OFFICIAL KEEPER OF THE STATEMENT OF REASONS

It is hereby ORDERED, pursuant to the policy change enacted at the March 2001 session of the Judicial Conference of the United States, that before the Judgment in a criminal case is filed with the clerk's office the attached Statement of Reasons shall be removed and given to the Probation Office who shall maintain the official version of the Statement of Reasons and make those documents available to the clerk's office for appeals, other post-conviction matters, and any other disclosures as ordered by the court. The Statement of Reasons shall no longer be filed, stamped, docketed, or placed in the public file by the clerk's office.

DONE this 30th day of August, 2001.

Chief United States District Judge

United States District Judge

United States District Judge

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

August 13, 2001

MEMORANDUM TO ALL: **JUDGES, UNITED STATES COURTS OF APPEALS**
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS
CHIEF PROBATION OFFICERS
CHIEF PRETRIAL SERVICES OFFICERS

SUBJECT: Policy Change Restricting Routine Public Disclosure of the Statement of Reasons and Revised Forms for Judgments in a Criminal Case (AO245B - AO245I) **(IMPORTANT INFORMATION)**

At its March 2001 session, the Judicial Conference of the United States approved two revisions to the forms for judgments in a criminal case (AO245B-245I) for publication and distribution to the courts. The Judicial Conference also approved a policy change restricting the routine public disclosure of the statement of reasons.

Sheet 1 of the judgment forms, which provides basic information about the case, has been revised to include an adjudication of guilty and now includes the statement: "Accordingly, the court has adjudicated that the defendant is guilty of the following offenses." In addition, the two-part statement of reasons sheet has been revised by making it an attachment to the judgment form and adding a notice ("Not for Public Disclosure"). Courts have been increasingly using the statement of reasons not only to serve the statutory requirements for sentencing findings or reasons, in 18 U.S.C. § 3553(c), but also to serve a number of other purposes. Thus the form has evolved over time to include findings of disputed issues required by Fed. R. Crim. P. 32(c)(1) and findings that may not be required for sentencing purposes but that may be relevant for other post-sentencing purposes, such as classification, security, designation, and inmate separation decisions made by the Federal Bureau of Prisons. However, the judgment forms are public documents, and there have been ongoing concerns about the release of sensitive information that might be gleaned from the statement of reasons sheet, for example, cooperation information, that references a defendant's substantial assistance as the basis for a sentence departure.

The recommendation to limit routine public disclosure of the statement of reasons was made to the Judicial Conference by its Committee on Criminal Law in response to concerns raised by several district judges, defense attorneys, and personnel from the Federal Bureau of Prisons. Prison staff have been examining ways to limit inmate access to the presentence report and the statement of reasons because of the sensitive information they contain and to address an emerging problem of inmates pressuring other inmates for copies of their presentence reports and statement of reasons to learn if they are informants. If inmates refuse to produce the documents, they are often threatened, assaulted, or in any event seek protective custody.

The Federal Bureau of Prisons will soon revise its policy that authorizes inmates to retain a copy of their presentence report and the statement of reasons, which they can obtain from their prison file. The revised policy, expected to go into effect later this year, will limit, across the board, inmates from possessing copies of their presentence reports and statement of reasons in federal prisons. Inmates will have an opportunity to sit and review their records, including the ability to take notes, but will not be allowed to retain copies or possess photocopies of the documents. As a result, when pressured, inmates can legitimately cite their inability to obtain copies of these documents for verification. [1]

Under current judiciary policy, however, the judgments, including the statement of reasons, are ordinarily public records which can be obtained directly from the clerks' offices by anyone, including the general public. As a result, it would still be possible to circumvent the Federal Bureau of Prisons' policy, since a surrogate of the inmate can obtain a copy of the statement of reasons for purposes of inmate intimidation or harm. Therefore, as a logical extension of the Federal Bureau of Prisons' policy and to provide additional protection to inmates, the Judicial Conference approved the Committee on Criminal Law's recommendation to make the statement of reasons an attachment to the judgment form, and to add a notice ("Not for Public Disclosure") to the statement of reasons attachment. The Committee reasoned, and the Conference agreed, that neither 18 U.S.C. § 3663(c) nor any other provision of law requires that the statement of reasons form be routinely disclosed to any and all members of the public, and that reasonable restrictions may be placed on its access when the safety of defendants and others may be promoted by such restrictions.

As a result, effective immediately, the statement of reasons should no longer be filed, stamped, docketed, or placed in the public file by the clerk's office. The judgment, without the statement of reasons, will be filed and remain available to the public, unless sealed by the court. The pages of the judgment should be numbered exclusive of the statement of reasons. The courts will determine which court unit, the clerk's or probation office, is responsible for the preparation, maintenance, and distribution of copies of the statement of reasons. Unless otherwise ordered by the court, distribution of the judgment with the statement of reasons is limited to the defense counsel, government attorneys, financial litigation units of the United States attorneys' offices,

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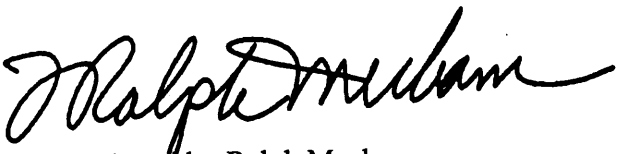
[1] The only exception is for presentence defendants who need to possess and review their presentence reports prior to sentencing.

probation and pretrial services offices, the United States Sentencing Commission and, if a term of imprisonment is imposed, the Federal Bureau of Prisons. Probation offices shall maintain the official version of the statement of reasons (as well as the presentence report) and make those documents available to the clerks' offices for appeals, other post-conviction matters, and any other disclosures as ordered by the court.

Sample copies of the revised forms AO245B, Judgment in a Criminal Case; AO245C, Amended Judgment in a Criminal Case; AO245D, Judgment in a Criminal Case (for Revocation of Probation and Supervised Release); AO245E, Judgment in a Criminal Case for Organizational Defendants; AO245F, Amended Judgment in a Criminal Case for Organizational Defendants; AO245G, Judgment in a Criminal Case (for Revocation of Probation for Organizational Defendants; AO245H, Judgment in a Criminal Case for Petty Offenses (Short Form); and AO245I, Judgment in a Criminal Case for Petty Offenses are posted on the judiciary's Intranet site in WordPerfect at http://jnet.ao.dcn/library/aoforms/contents.html. To access the forms from the J-Net Home Page, click on "Library," scroll to "Forms" and click on "AO (National) Forms." Court staff can download the forms and customize the layout for local use. The Judgment in a Criminal Case (Rev. 7/90) should still be used for offenses that occurred prior to November 1, 1987. At its March 1995 session, the Judicial Conference adopted the use of standard judgment orders to ensure that significant information required by all components of the criminal justice system is included in the orders. Courts are urged to use the most current version of the judgments to avoid difficulties that can occur by using outdated forms.

Questions regarding these changes may be directed to either the Federal Corrections and Supervision Division at 202/502-1600, the District Court Administration Division at 202/502-1570, or the Appellate Court and Circuit Administration Division at 202/502-1520.



Leonidas Ralph Mecham