

**Minutes of January 6, 2000,
United States Sentencing Commission Business Meeting**

The meeting was called to order by Chair Diana E. Murphy at 9:00 a.m. in the Commissioners' Conference room. The following commissioners, staff, and guests participated:

Diana E. Murphy, Chair
Ruben Castillo, Vice Chair
William Sessions, Vice Chair
John R. Steer, Vice Chair
Sterling Johnson, Jr., Commissioner
Joe Kendall, Commissioner
Michael O'Neill, Commissioner
Michael Gaines, *Ex Officio* Commissioner
Laird C. Kirkpatrick, *Ex Officio* Commissioner
Timothy McGrath, Acting Staff Director
A. Donald Purdy, Acting General Counsel
Paula Desio, Deputy General Counsel
Pamela G. Montgomery, Deputy General Counsel
Lou Reedt, Acting Director, Office of Policy Analysis
Fred Bennett, Representative, Practitioners' Advisory Group
Tom Hutchison, Representative, Federal Public Defenders
Lyle Yurko, Representative, Practitioners' Advisory Group

Chair Murphy began the meeting by outlining the day's agenda items, including presentations and votes to publish issues relating to the Methamphetamine Trafficking Penalty Enhancement Act of 1998 and the Identity Theft and Assumption Act of 1998, as well as a briefing on circuit conflicts. The Chair noted that the commissioners have been studying relevant materials and have had discussions on these issues.

Motion made by Commissioner Steer to approve the minutes of the December 14, 1999, business meeting with the following amendments: inserting at the end of the second sentence of the description for amendment options to USSC §2B5.3 on page 2 the phrase, "except for violations of 18 U.S.C. § 2319A", as well as two additional clerical corrections; seconded by Commissioner Johnson. Passed unanimously.

Dr. Reedt briefed the Commission on the Methamphetamine Trafficking Penalty Enhancement Act of 1998 (Pub. L. No. 105-277). He discussed characteristics associated with methamphetamine, as well as methamphetamine sentences in relation to other drug sentences in the federal system. Additionally, he provided a brief history of methamphetamine in terms of the statute and the guidelines. Acting General Counsel Purdy continued the presentation by discussing the proposed amendment options for publication.

Amendment: Methamphetamine

Revised option 1 changes the calculations in the Drug Quantity Table in §2D1.1 for methamphetamine substance (i.e., methamphetamine-actual) and “Ice” (i.e., d-methamphetamine hydrochloride of at least 80% purity) to conform the quantities for those drugs to the quantities that now trigger the statutory 5- and 10-year mandatory minimums. Revised option 2 generally proposes to eliminate the distinction between methamphetamine-actual and methamphetamine-mixture and generally sentence all methamphetamine offenses based on the weight of pure methamphetamine.

Motion made by Commissioner Steer to publish in the *Federal Register* for comment revised option 1 and revised option 2; seconded by Commissioner O’Neill. Passed unanimously.

Motion made by Commissioner O’Neill to make the comment period deadline March 10, 2000, for the methamphetamine revised options; seconded by Commissioner Johnson. Passed unanimously.

Deputy General Counsel Desio briefed the Commission on the Identity Theft and Assumption Act of 1998 (Pub. L. No. 105-318). She explained that the public law penalizes the unauthorized use or transfer of means of identification. Additionally, it directed the Commission to consider for sentencing purposes a number of factors, including the number of victims, nature of harm to victims, and the number of means of identification. Deputy General Counsel Desio also explained that the Commission’s data study reflected that identity theft encompasses a continuum of offense conduct, ranging from basic to complete identity take over. Acting General Counsel Purdy continued the presentation by discussing the proposed amendment options for publication.

Amendment: Identity Theft

Revised option 1 provides a two-prong enhancement, with a two-level increase and a minimum offense level of [10][11][12][13], if the offense involved (A) the use of any identifying information of an individual victim to obtain or make any unauthorized identification means of that individual victim; or (B) the possession of [5] or more unauthorized identification means. Revised option 2 provides a two-level increase and minimum offense level of [10][12] for harm to an individual’s reputation or credit standing, inconvenience related to the correction of records or restoration of an individual’s reputation or credit standing, or similar difficulties. It also provides a two-level increase if the offense involved the production or transfer of 6 or more identification documents, false identification documents, or means of identification. In addition to the proposed revised options are issues for comment.

Motion made by Commissioner O’Neill to publish in the *Federal Register* for comment revised option 1 and revised option 2, as well as the proposed revised issues for comment, with a deadline of March 10, 2000; seconded by Commissioner Johnson. Passed unanimously.

Deputy General Counsel Montgomery briefed the Commission on unresolved circuit conflicts relating to guideline amendments. The issues covered marihuana plants, drug sales in protected locations, dismissed/uncharged conduct departures, and possession/use of a firearm.

The Chair invited public comment, and several attendees introduced themselves and provided welcoming remarks to the Commission.

Murphy adjourned the meeting at 10:40 a.m.