

United States Sentencing Commission
March 19-20, 2001 Meeting

Monday, March 19

Chair Murphy called the meeting to order at 8:30 a.m. and spoke briefly about preparations for the public hearing. Murphy then discussed her efforts on the Hill to make the Commission's case for FY 2002 funding. She reported on her meeting with Gail Bel Balzo, chief staffer for our appropriation subcommittee on the House side. It appeared that Congressman Wolf may be interested in our recidivism study, faith-based prison programs, and human trafficking. Other Congressional staff also attended the meeting, including someone from Representative Serrano's office (ranking minority). On the Senate side, the Chair met with Jim Morhard, the clerk of the Senate appropriation subcommittee chaired by Senator Gregg and Clayton Heil, the subcommittee staff member assigned to review the Commission budget. In addition, the Chair reported that she had previously met with Ralph Mecham who made a helpful suggestion for our budget summary sheet. George Schafer on Mecham's staff continues to give sound advice and assistance.

In other Hill visits, Chair Murphy reported that she had met separately with Senators Sessions and Edwards and Representative Lamar Smith who is Chair of the Judiciary Committee's Crime Subcommittee. Representative Smith requested information on the crack/powder issue. Senator Sessions continues to support the guidelines and expressed interest in working with the Sentencing Commission on ways to improve the guidelines. Murphy said that she would be testifying before the Senate Caucus on International Narcotics Control on March 21 at a hearing on ecstasy.

Judge Murphy reported that her recent presentation to the Judicial Conference was well-received; the Chief Justice referred to the "resurrected Sentencing Commission" when introducing her. Before the meeting she had a few moments to speak with Attorney General Ashcroft about the Commission. Ashcroft told the Conference that his priorities are to reduce gun violence; drug abuse, especially involving school children, and including both supply and demand factors; and ending discrimination in our culture, including the right to vote. Senator Sessions also spoke to the Conference and said that after thirteen years it is time to look at the guidelines to see if there is room for improvement, to move toward more discretion for judges, and to focus on the offender's degree of culpability. He said he would be seeking advice in these areas.

Finally, Murphy reported on her meeting with John Halliday of the British Home Office. Mr. Halliday has been working on a year-long sentencing study and will submit his report in May.

Prior to beginning work on the substantive topics, Murphy took the opportunity to stress the need for commissioners to hold the line together at this pivotal point in the Commission's work, recognizing that the criminal justice policies of the new administration are not yet in place. She hoped commissioners would refrain from committing themselves to votes before

hearing the views of all and the full discussion on the matter.

Murphy then turned to Commissioner O'Neill for more information about the proposed recidivism study. O'Neill emphasized that the biggest problem would be to get the study completed if the Commission takes on a demanding agenda next cycle. Commissioners agreed that they had to plan very carefully for next year given the recidivism study and other long range issues they might be interested in considering. Staff Director McGrath reminded commissioners that the recidivism study and the 15 year review were not in the Commission's FY2001 budget request, but they are in our FY 2002 request. It is thus critical to these projects that the Commission receive a strong appropriation. O'Neill stated that the data collection would take approximately 3 to 6 months with a 16 to 18 month completion date planned for the study; NCIC data will be needed. The commissioners discussed whether to contract out parts of the study or do it in house. The commissioners agreed with the Staff Director's suggestion that the staff begin the process by collecting the data through the summer months and that the Commission consider contracting out data analysis. All favored proceeding with the study with these understandings.

At 9:15 a.m. the Commission adjourned for the public hearing and reconvened at 12:00 for a working lunch and afternoon meeting. The commissioners discussed the suggestion made by Julie Stewart of FAMM at the public hearing that documents and information received by the Commission be available to the public.

The Commission then began by discussing List I chemicals and ecstasy, followed by sexual predator issues. A question was raised about the impact of the proposed sexual predator guidelines on Native Americans, and McGrath was asked to inquire of the Federal Defenders identified by Jon Sands who might be contacted for immediate input because of the desire to complete this two year project during the current cycle.

The Commission ended its meeting with a discussion of money laundering and an update on staff's conversations with the Department of Justice.

Tuesday, March 20

Chair Murphy called the meeting to order at 8:30 a.m. and passed out a packet of supporting materials prepared for the Commission's budget request. Commissioner Kendall reported that he had taught at the Department of Justice Advocacy School and was very impressed with the caliber of Commission staff work. Vice Chair Steer gave a presentation on the organizational guidelines at the ABA's white collar crime summit in San Francisco and reported that the ABA was interested in repeating the presentation at its annual summer meeting. Steer noted that he would be teaching probation officers in South Carolina on March 21 and participating in the Kastenmeier seminar at the University of Wisconsin. Judge Kendall reported on his talk to the National Association of Criminal Defense Lawyers in Las Vegas, noting that the lawyers expressed concern with the sentencing tables and guidelines for first offenders.

The Commission turned to a discussion of the safety valve. The Department of Justice noted the new administration's opposition to expansion; the discussion focused on the proposed removal of the floor of 17 and whether that had been foreclosed by the earlier directive from Congress. Staff will prepare follow-up with the legislative history. There was consensus to eliminate the 26 level requirement and to make the amendment prospective only.

Taking up the economic crime package, the commissioners discussed the issue of consolidation of the fraud and theft tables, but did not reach consensus on it. Those favoring consolidation stressed simplicity and consistency, and those favoring deconsolidation stressed flexibility. The meeting was adjourned to meet with representatives of the Criminal Law Subcommittee. The Criminal Law Subcommittee would like to see "reasonable foreseeability" included in the definition of loss and proposes that the measurement of loss ordinarily be at the time of detection. The Committee prefers its package to that of the Commission, but believes the two groups are close.

The Commission reconvened briefly after meeting with the Criminal Law Committee and tentatively approved a proposal by Vice Chair Steer regarding methamphetamine. The Commission then broke for the public meeting.

Following the public meeting, the Commission resumed discussion of the economic crime package and reached consensus to include reasonable foreseeability in the definition of loss and sentencing as time to measure loss. The Commission reached consensus on NBC, human trafficking, stalking, and firearms, but determined further discussion was needed on cultural heritage loss.

The meeting was adjourned at 3:30 p.m.