

United States Sentencing Commission
Meeting Minutes
January 7 - 8, 2003

January 7, 2003

Chair Murphy called the meeting to order at 9:05 a.m. in the Commissioners Conference Room. She reported that the Commission would operate under a continuing budget resolution until January 11, 2003 and that it is not yet clear whether Congress will pass an appropriations bill or another continuing resolution by that date. The Commission's budget request for FY 2004 has been submitted to the OMB, and Congress is expected to begin consideration of the FY 2004 budget in the spring. Chair Murphy stated that we have been able to secure a favorable rate in Williamsburg, Virginia for our annual planning meeting on April 28-30, 2003. She noted that the minutes from the December meeting in Florida had been distributed and asked that any additions or corrections be mentioned during the meeting.

Chair Murphy reported that the Commission has received many favorable comments from judges on the executive summary of the judges survey. Commissioner O'Neill stated that he recently met with Senator Hatch who expressed interest in highlighting the transmission of the survey results to Congress, possibly by holding a hearing. Chair Murphy stated that this was an interesting suggestion that was related to a report later in the day on updating the mandatory minimum report.

Chair Murphy reported that the Commission received considerable press concerning the development of emergency guideline amendments as directed by the Sarbanes-Oxley Act. She stated that she had spoken with a New York Times reporter on the previous day and that the Commission expected several reporters at Wednesday's public meeting.

Chair Murphy asked the Commissioners to report on their recent and planned speeches. Chair Murphy reported that she spoke recently at the Iowa State Bar Association meeting. She also stated that a Wharton professor who works with Price Waterhouse Coopers came to her chambers to discuss the relationship between corporate compliance and ethics. Vice Chairs Castillo and Steer reported that they will be speaking at the PLI advanced seminars on corporate compliance this spring and summer. Vice Chair Castillo stated that he will be speaking before the Health Care Compliance Association in February and at the American Bar Association (ABA) white collar crime symposium in March. Vice Chair Steer reported that he will be speaking at a seminar on white collar crime sponsored by the Defense Research Institute. Vice Chair Sessions stated that he will be serving as a judge on the border in Las Cruces for two weeks and that he will speak to Bureau of Prisons treatment providers at a conference on April 15 in Baltimore. Commissioner O'Neill stated that he will speak about sentencing and recidivism at an American Law Institute program at the University of Pennsylvania in March. He also will be speaking at the University of Wisconsin in February on criminal history and the guidelines. Ex-Officio Commissioner Reilly stated that he met recently with members of the military parole board. Ex-Officio Commissioner Jaso stated that he plans to attend the Health

Care Compliance Association conference in February and may attend the ABA white collar crime symposium in March. Staff Director Tim McGrath reported that he spoke to the Pennsylvania Association of Student Governments in November. Vice Chair Castillo added that the ABA issue on punishment and sentencing with an article he wrote last summer is reportedly going to be published soon.

Chair Murphy reported that the Ad Hoc Advisory Group on Native American Sentencing Issues has been meeting by conference call and asked Theresa Cooney to report on the group's plans for meeting in February. Theresa stated that the group will meet in Phoenix, Arizona on February 28 and that Chief Judge Piersol recently made subcommittee assignments in four areas: murder/manslaughter, assault, sexual offenses, and drafting. Each subcommittee will report on its work at the February 28 meeting.

Chair Murphy asked Tim McGrath to give the Staff Director's Report. He introduced two new staff members: Kristin Rogers, visiting assistant Federal Public Defender, and Tracy Fox, research associate. He then distributed an addendum to DOJ's public comment submission regarding corporate crime and some informal DOJ comments on campaign finance. General Counsel Charles Tetzlaff asked whether the DOJ submissions should be included in the public record as official public comment, and Ex Officio Commissioner Jaso stated that he would reformat the informal comments on campaign finance so that both items could be included in the public record. Tim McGrath reported that the Thurgood Marshall Building was holding an event to commemorate the issuance of the new Thurgood Marshall stamp.

Pamela Montgomery reported on recent training seminars and feedback received from new judges regarding the guidelines. Vice Chair Castillo stated that he would like the commissioners to be more involved in follow up training for new judges held by the Federal Judicial Center. Chair Murphy stated that she would work with the new FJC director toward that end when he or she is appointed.

Ken Cohen updated the Commission on changes to proposed emergency amendment language and issues for comment regarding implementation of the Sarbanes-Oxley Act. Paula Desio provided the Commission with a snapshot of the number of employees typically employed by many publicly traded companies. The Commission requested that staff make several changes to the proposed amendment language. Ken Cohen briefed the Commission on comments he received from Hill staff regarding the Commission's published proposal implementing the Act. Courtney Semisch provided the Commission with data illustrating several possible changes to the loss table in combination with a possible alternative base offense level for certain offenses sentenced under §2B1.1. After discussion, the Commission asked General Counsel Tetzlaff for an opinion on the scope of our emergency authority under the Act, which he provided. The Commission requested that staff produce an estimated prison impact assessment relating to changes in the loss table and the use of an alternative base offense level. Ken Cohen briefed the Commission on revisions to the proposed emergency amendment language on obstruction of justice offenses under the Sarbanes-Oxley Act.

Tom Brown updated the Commission on changes to the proposed amendment language for

emergency amendments related to campaign finance. The Commission discussed the language and requested several changes to the draft language.

Lou Reedt provided the Commission with data regarding current disproportionate penalties for different amounts of oxycodone and presented draft amendment language setting penalties according to the actual amount of oxycodone involved in the offense.

Charles Tetzlaff discussed proposed amendment language relating to body armor and assaults against federal judges.

Lisa Klem briefed the Commission on a proposed issue for comment relating to cybersecurity.

Paul Hofer provided the Commission with an update on the progress of the 15 Year Review. He briefed the Commission on possible approaches to updating the 1991 mandatory minimum report and stated that he would have a proposed schedule for other components of the 15 Year Review in preparation for the Commission's February meeting.

Tim McGrath stated that Linda Maxfield will have an unabridged draft of the report on the judges survey ready for the February meeting. When it has been approved by the Commission, printed copies will be available for requests by interested parties, and it also will be available on the Commission's website.

Courtney Semisch presented the prison impact data that staff were able to generate on possible changes to the loss table and base offense level in §2B1.1

Tim McGrath presented the transit policy that staff have developed for inclusion in the Commission's employee manual. The Commission approved the draft policy.

The meeting was adjourned at 4:30 p.m.

February 8, 2003

Chair Murphy opened the meeting at 8:40 a.m. and asked staff to present revised proposed amendment language in preparation for the public meeting.

Charles Tetzlaff reported the views of the Office of General Counsel on the timeframe for reporting to Congress on the Commission's recommendations regarding campaign finance offenses. He and Judy Sheon updated the Commission on the most recent changes to the proposed amendment language for emergency amendments and the proposed issues for comment.

The meeting was adjourned at 9:45 a.m.