

United States Sentencing Commission  
Minutes of March 10, 2000 Commissioners' Meeting

Chair Murphy opened the meeting at 9:00 a.m. The Chair called for reports of the various committees.

Vice Chair Sessions gave an update on retreat planning. Although the commissioners want to use this time to meet privately to assess their work, it was agreed that it would be a good idea to invite a specialist in research development to make a presentation. Jeremy Travis's name was mentioned as a possibility. The basic outline of the retreat has three components thus far: discussion of this year's amendment cycle - how the Commission feels about what was done and how it was done, goals for next year, and the question of Commission research development. A question was raised whether spouses should be invited.

Commissioner Kendall reported on plans for the September Sentencing Institute. Commissioner Kendall raised the question whether ex officio members would participate as panelists. The commissioners thought that the ex officios would contribute to the discussion. Commissioner Kendall said that he expected one part of the discussion would be a round table when each commissioner would express his or her vision of the work ahead. The commissioners decided that it would decline the opportunity to videotape the panel session.

Vice Chair Castillo expressed his view that when the commissioners speak to groups it is important that they attend as a group whenever possible. The more joint appearances the commissioners make the better it will be for the Commission. Appearances will help clear up misunderstandings about the process and the involvement of outside groups in the process. For example, many do not know about the Practitioners' Advisory Group and the role it plays. Commissioner Kendall added that judges need to be educated on the role Congress plays in the guideline process; he has a time slot on the Fifth Circuit Judicial Conference in November and invites commissioners to join him.

Judge Murphy reported that she would be making a report to the Judicial Conference of the United States and that one of her main points would be to express the commissioners' willingness to talk to judges and listen to their concerns.

Commissioner O'Neill reported on the plans for Economic Crimes Symposium. The agenda will provide for a mixture of plenary and break-out sessions. The Committee needs to decide on the number of invitees. He asked the commissioners to look at the proposed agenda and provide reactions. Keynote speakers need to be chosen. Eric Holder was mentioned as one possibility; thought also should be given to an expert from the private sector. The commissioners agreed that staff should contract to hold a large block of sleeping rooms (100) at a local hotel for the symposium participants.

Vice Chair Steer reported on the successful meeting with Senator Gregg. Commissioners

O'Neill and Steer reported that there is some interest on the Hill for an authorization bill. The commissioners discussed the importance of having such legislation, and suggested that the Commission should pursue an oversight hearing.

The new Staff Director, Tim McGrath, reported on his first day on the job, that staff is editing the data sets for the annual report. The report should go to press by mid-summer.

At 10:00 a.m. the Commission met with the Practitioners' Advisory Group ("PAG"). Jim Feldman and Barry Boss are the new co-chairs of the group. One practitioner participated by videoconference and several others by telephone. The members expressed their views on the circuit splits. On the bankruptcy fraud split, the PAG advocates that the guidelines not apply the enhancement to bankruptcy fraud, that it was not the intent of Congress to punish bankruptcy fraud greater than other fraud. The PAG supports a modified and limited "totality of the circumstances" approach to the aberrant behavior split. There was a lengthy discussion on the aberrant behavior split. With regard to the post-sentence rehabilitation split, the PAG suggests that because there are limited departures that the Commission not resolve the conflict at this time. The PAG also recommends that the Commission not take action on the meth amendments at this time, but wait until it looks at the entire drug issue, and that the Commission should stress the violence aspect of drug crimes rather than the quantity of drugs. The PAG also advocates a wait and see stance with regard to the identity theft guidelines - to see how the crimes are charged and how the case law develops.

Following the discussion with the PAG, the Chair turned to deliberations on the NET Act. Ken Cohen provided staff support. The commissioners agreed to eliminate options one and two, and provided suggested changes to options three and four.

The commissioners reached consensus on the telemarketing, technical, and meth amendments. No further staff work was required.

The Chair adjourned the meeting at approximately 2:00 p.m.