

**Minutes of October 30, 2000,  
United States Sentencing Commission Business Meeting**

The meeting was called to order by Chair Diana E. Murphy at 1:30 p.m. in the Commissioners Conference room. The following commissioners and staff 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  
Laird C. Kirkpatrick, *Ex Officio* Commissioner  
Timothy McGrath, Staff Director  
Kenneth Cohen, Director, Office of Legislative  
and Governmental Affairs  
A. Donald Purdy, Acting General Counsel

Chair Murphy began the meeting by stating that the Commission just concluded its Federal Sentencing Policy for Economic Crimes and New Technology Offenses Symposium held on October 12-13, 2000. Vice Chair Steer mentioned that the symposium proceedings are available on the Commission's website ([www.ussc.gov](http://www.ussc.gov)) and that a larger paper derived from symposium participants' contributions will be published in the George Mason's Law Review. On behalf of the Commission, Vice Chair Steer recognized staff contributions, particularly those of Andy Purdy as coordinator with Tom Brown's assistance, Mary Harris and Alice Englehardt for their secretarial support, and visiting attorneys Sigmund Popko and Lynn Rosenthal with the program content. He also stated that the symposium came significantly under budget.

Chair Murphy reported that at the same time as the Commission's symposium on October 13, the Senate Criminal Justice Oversight Subcommittee held an oversight hearing of the Commission. Chair Murphy said that she testified about all the Commission's activities since appointment, including responding to congressional directives and resolving circuit court conflicts. Vice Chair Steer's testimony related to his interpretation of sentencing data on downward departures. Chair Murphy mentioned that written responses to follow-up questions from Senators Thurmond and Leahy are due on November 3, 2000.

Staff Director McGrath reported that Pam Montgomery has been named acting director of the Office of Education and Sentencing Practice and Deon Haynes has been named acting director of the Office of Monitoring. He reported that Mark Allenbaum, Allen Dorhofer, and Karen Hickey have joined the Office of the General Counsel in various capacities, and that Timothy Crystal has joined the Office of Policy Analysis, and Terri Reilly-Williams has joined the Office of Administration. He introduced AUSA Lynn Rosenthal (Middle District of Florida) on temporary assignment to the Commission. He also thanked Federal Defender Zig Popko for his

contributions, especially in addressing circuit conflicts, as he returns to Arizona. Finally, he mentioned that the most recent edition of the Guidelines Manual would be distributed this week to all federal judges, probation officers and others, and is available online at the USSC website. He thanked Janeen Gaffney, Janet Henry, and Judy Sheon for their work on the Manual.

Motion made by Commissioner Johnson to approve the minutes of the August 8, 2000, business meeting; seconded by Commissioner Castillo; Passed unanimously.

#### PROPOSED AMENDMENTS:

##### Tax Privacy

This proposed amendment addresses several offenses relating to unlawful disclosure and/or inspection of tax return information.

Motion made by Commissioner Steer to publish in the *Federal Register* for comment; seconded by Commissioner Sessions. Passed unanimously.

##### Unauthorized Compensation

This proposed amendment addresses the issue of whether, and to what extent, the guideline offense levels should be increased in §2C1.4, the guideline for offenses under 18 U.S.C. § 209 involving the unlawful supplementation of the salary of various federal employees.

- Motion made by Commissioner Sessions to publish in the *Federal Register* for comment, with the inclusion of the strikeout language in §2C3.1(b)(1) and technical conforming changes; seconded by Commissioner Johnson. Passed unanimously.

##### Counterfeiting

This proposed amendment (A) increases the base offense level in §2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) from level 9 to level 10; (B) replaces the "floor" offense level of level 15 for manufacturing with a two-level enhancement; and (C) proposes to delete commentary that suggests that the manufacturing adjustment does not apply if the defendant "merely photocopies."

Motion made by Commissioner Castillo to publish in the *Federal Register* with an issue for comment on whether a 2-level increase should be provided for more sophisticated conduct; seconded by Commissioner Steer. Passed unanimously.

## PROPOSED AMENDMENTS: CIRCUIT CONFLICTS

### Aggravated Assault

This proposed amendment addresses an issue related to the use of a dangerous weapon during an aggravated assault.

Motion made by Commissioner Steer to publish in the *Federal Register* Options 1 and 2, including in Option 2 the strikeout language of §2A2.2(b)(3)(D) and (E), and modify the proposal by making no changes to §2A2.3 (Minor Assault); seconded by Commissioner Sessions. Passed unanimously.

### Mitigating Role

This proposed amendment addresses whether application of §3B1.2 (Mitigating Role) automatically is precluded (*i.e.*, without the necessity of applying the guideline to the facts) in the case of a single defendant drug courier if the defendant's base offense level is determined solely by the quantity personally handled by the defendant and that quantity constitutes all of the defendant's relevant conduct.

Motion made by Commissioner Steer to publish in the *Federal Register* for comment, with the deletion in proposed Application Note 4 of the bracketed language, and the addition of two issues for comment regarding whether certain defendants should be precluded for minimal role adjustment; seconded by Commissioner Castillo. Commissioners Castillo, Johnson, Murphy, and Steer voted in the affirmative, with Commissioners Kendall and Sessions voting against. Passed 4 - 2.

### Stipulations

This proposed amendment addresses whether admissions made by the defendant during his guilty plea hearing, without more, can be considered "stipulations" for purposes of §1B1.2(a).

Motion made by Commissioner Castillo to publish in the *Federal Register* for comment Option 1; seconded by Commissioner Steer. Passed unanimously. Commissioner Kendall invited comment on potential Appendi impact.

### Fraudulent Misrepresentation

The proposed amendment addresses the scope of the enhancement in §2F.1.1(b)(4)(A) for misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency.

Motion made by Commissioner Castillo to publish in the *Federal Register* for comment;

seconded by Commissioner Johnson. Passed unanimously.

Ken Cohen reported on the new congressional directives to the Commission relating to ecstasy, methamphetamine, college scholarship fraud, and human trafficking.

Chair Murphy adjourned the meeting into executive session at 2:26 p.m.