

United States Sentencing Commission
Meeting Minutes
March 25 - 26, 2003

March 25

Chair Murphy opened the meeting at 9:08 a.m. in the commissioners conference room. She reported that the Senate Judiciary Committee held a hearing on March 12 regarding the President's nominees for new commissioners, Judge Ricardo Hinojosa and Michael Horowitz. She added that a vote on the nominees has been placed on the Committee's schedule. Chair Murphy noted that the minutes from the January public meeting and the February meeting had been distributed and asked that any additions or corrections be mentioned during the meeting. Vice Chair Steer provided two corrections to the public meeting minutes.

Chair Murphy reported that the House Appropriations subcommittee is expected to hold a hearing on March 27, 2003, regarding appropriations for the judiciary and related agencies. She distributed copies of her testimony for that hearing and added that the Commission's request this year is the same as last year and is roughly 10 percent more than the current appropriation. This is in line with the judiciary requests.

Chair Murphy updated the Commission on recent inquiries regarding downward departures. Judge Rosenbaum has asked the Commission to give him data on his downward departures and application of the safety valve in drug cases over a period of four years. Congressman Sensenbrenner broadened the request to the General Accounting Office (GAO) to cover downward departure and safety valve sentencing data for all federal district court judges in the country for a three year period. GAO subsequently requested related data from the Commission including names of individual judges, defendants, and file numbers. After several conversations it modified its request to eliminate identifying information. This request presented no problem in respect to the Commission's Memorandum of Understanding with the Administrative Office. Chair Murphy added that the Judicial Conference is very interested in this subject and that she had included it in her report to the Conference the previous week. She then asked Charles Loeffler to present some new graphs on departure rates. Vice Chair Castillo asked the Chair to announce at the public meeting that we are studying departures as part of the 15-year review.

Chair Murphy reported that the ad hoc advisory groups are both progressing well. Chief Judge Piersol has submitted an excellent interim report on behalf of the Native American issues advisory group, and the Commission will hear from Todd Jones on the interim report of the organizational guidelines group at our April meeting.

Commissioner O'Neill reported that he had been talking with people on the Hill regarding a possible oversight hearing in the Senate Judiciary subcommittee. Chair Murphy stated that she had not been contacted about such a hearing.

Tim McGrath reported that the Probation Officers Advisory Group held a meeting at the Commission on March 5 - 6. The Native American issues advisory group met in Phoenix on February 28, and the Organizational Guidelines Advisory Group met at the Commission on March 13. Tim also reported that staff had responded to Judge Rosenbaum's request with a list of cases in which he had departed downward or applied the safety valve. Staff are ready to move forward with the Internet policy and the judges survey report, both of which were distributed to the commissioners for review in February. A new issue of the *Guidelines Newsletter* has been released, and the Commission's website has been redesigned. Tim also reported that Congressman Coble's staffer, Jay Apperson, has requested background information on how sentencing data are submitted to the Commission and staff are preparing this information for him.

Tom Brown reported that the Commission had received no additional public comment on the proposed permanent amendment on campaign finance offenses and could vote to make the emergency amendment permanent the next day. He recommended that the Commission consider the draft recommendations to Congress on the statutory penalty scheme for these offenses after staff have had an opportunity to meet with the Public Integrity Section of the Department of Justice regarding its suggested expansions of the Commission's draft. The Commission agreed to address this subject at the next meeting.

Lou Reedt reviewed a slight modification to the proposed oxycodone amendment and reported that both the Department of Justice and the pharmaceutical company that manufactures oxycontin support the proposed amendment. Ex Officio Commissioner Jaso added that the Department will work with the Commission to monitor the impact of the amendment on sentences for offenses involving Percocet and other similar prescription drugs in which the weight of the oxycodone component accounts for a very small proportion of the total weight of the pill.

Pam Barron updated the Commission regarding the proposed terrorism amendments. The Commission discussed the language in preparation for a vote to promulgate the amendments the next day.

Charles Tetzlaff briefed the Commission regarding proposed miscellaneous amendments, proposed amendments related to §5G1.3, and proposed body armor amendments. The Commission asked staff to make several modifications to the amendment language and to prepare all three for a vote to promulgate at the public meeting.

The Commission reviewed the comment received on the proposed manslaughter amendment, including the interim report of the Native American issues advisory group. Kevin Blackwell provided the Commission with a sentencing impact analysis related to manslaughter offenses.

Ken Cohen and Courtney Semisch updated the Commission regarding proposed permanent corporate fraud amendments, including the impact of possible changes to the loss table or the base offense level in §2B1.1. The Commission also discussed several issues related to the

specific offense characteristics in the emergency amendment promulgated in January.

Pam Montgomery briefed the Commission on proposed amendments related to immigration. The Commission discussed several policy areas that require further clarification and analysis.

Lisa Klem updated the Commission on proposed amendments related to cybercrime and described several issues Commission staff have discussed with staff from the Department of Justice. The Commission asked staff to proceed with refining the amendment as currently drafted.

Vice Chair Castillo reported that outside groups have expressed an interest in community confinement issues and suggested that the Commission may wish to consider placing this subject on its 2004 agenda. Pam Montgomery added that the Probation Officers Advisory Group is also interested in this issue and has expressed concern about a perceived lack of flexibility.

Paul Hofer updated the Commission on the progress of the 15-year review.

Chair Murphy adjourned the meeting at 2:45 p.m. in preparation for the public hearing.

March 26

Chair Murphy opened the meeting at 9:08 a.m. Charles Tetzlaff updated the Commission on modifications to the proposed amendments that resulted from the previous day's discussion. The meeting was adjourned at 9:30 a.m.