

**Minutes of the February 15, 2005  
United States Sentencing Commission  
Public Meeting**

Chair Hinojosa called the meeting to order at 1:43 p.m. in the Judicial Conference Center, Thurgood Marshall Federal Judiciary Building.

The following Commissioners and staff participated in the meeting:

Ricardo H. Hinojosa, Chair  
Ruben Castillo, Vice Chair  
William K. Sessions, III, Vice Chair  
John R. Steer, Vice Chair  
Michael E. Horowitz, Commissioner  
Beryl Howell, Commissioner  
Deborah Rhodes, Commissioner Ex Officio  
Edward F. Reilly, Jr., Commissioner Ex Officio  
Timothy B. McGrath, Staff Director  
Charles R. Tetzlaff, General Counsel  
Judith Sheon, Special Counsel

Chair Hinojosa called the meeting to order and announced he would save the Chair's Report for his opening remarks at the public hearing at 2 p.m.

Chair Hinojosa then asked if there was a motion to adopt the January 27, 2005 minutes. Vice-Chair Steer made the motion, which was seconded by Vice-Chair Sessions. The motion passed unanimously.

Chair Hinojosa called on Charles Tetzlaff, General Counsel, to present the proposed amendments and issues for comment for a possible vote to publish in the Federal Register.

General Counsel Tetzlaff stated that the first proposed amendment implements the Identity Theft Penalty Enhancement Act, which creates two new offenses for aggravated identity theft. The Act provides for mandatory consecutive penalties for use of false identification documents in eleven categories of fraud offenses. A conviction carries a mandatory two-year consecutive sentence. A mandatory five-year consecutive sentence is required for use of false identification in a federal crime of terrorism.

The proposed amendment creates a new guideline at §2B1.6 (Aggravated Identity Theft) and sets the guideline sentence as the term of imprisonment required by statute. The proposed amendment also responds to the directive in section 5 of the Act and amends §3B1.3 (Abuse of Position of Trust or Use of Special Skills) to ensure that an adjustment under this guideline applies to a defendant who uses his or her position in order to unlawfully obtain any means of identification.

Finally, the proposed amendment seeks to simplify the identity theft enhancement at §2B1.1(b)(10) by changing it from an enhancement based on relevant conduct to an enhancement based on the offense of conviction. There is also one issue for comment.

General Counsel Tetzlaff stated that a motion to publish the proposed amendment and issue for comment was in order. The motion to publish should include a reduction of the usual 60 day comment period set out in Rule 4.4 of the Commission Rules of Practice and Procedure to 30 days because the 60 days is not practicable as a result of the impact on the Commission during this amendment cycle of the Blakely and Booker decisions. Finally, the motion should provide staff with the authority to make technical and conforming changes if necessary.

Chair Hinojosa asked if there was a motion to that effect. Vice-Chair Steer so moved, and Vice-Chair Sessions seconded the motion. The motion passed unanimously.

General Counsel Tetzlaff stated that the second proposed amendment is in response to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, which increased both the fines and statutory maximum terms of imprisonment under the Sherman Antitrust Act. The maximum term of imprisonment under the Act was raised from 3 years to 10 years.

The proposed amendment provides for a base offense level of either level 12 or level 14 under antitrust guideline, §2R1.1. The proposed amendment also eliminates the one-level increase for bid rigging cases at §2R1.1(b)(1) on the basis that the majority of cases reviewed involve bid rigging, and that factor can be incorporated into the new base offense level. There are two issues for comment.

General Counsel Tetzlaff stated that a motion to publish the proposed amendment and issues for comment was in order. The motion to publish should include a reduction of the usual 60 day comment period set out in Rule 4.4 of the Commission Rules of Practice and Procedure to 30 days because the 60 days is not practicable as a result of the impact on the Commission during this amendment cycle of the Blakely and Booker decisions. Finally, the motion should provide staff with the authority to make technical and conforming changes if necessary.

Chair Hinojosa asked if there was a motion to that effect. Commissioner Castillo so moved, and Commissioner Howell seconded the motion. The motion passed unanimously with some discussion. Commissioner Castillo commented that in light of the Act passed by Congress and the Commission's work on public corruption and white collar offenses, he believes the increase is justified for this particular category of offenses and will push for the highest penalties.

General Counsel Tetzlaff stated that the third proposed amendment is comprised of seven miscellaneous issues. One is a proposed issue for comment in response to a directive from Congress to review and consider amending the guidelines to provide for increased penalties for offenses involving anabolic steroids. The issue for comment seeks general comment on how the Commission should implement the directive and specifically whether the Commission should amend the Drug Equivalency Tables and/or the Notes to the Drug Quantity Table in §2D1.1 to provide a heightened marijuana equivalency for anabolic steroids and if so, what should be the amended equivalency rate.

The remaining miscellaneous amendments were not specifically discussed as many were of a technical and conforming nature.

General Counsel Tetzlaff stated that a motion to publish the proposed miscellaneous amendments was in order. The motion to publish should include a reduction of the usual 60 day comment period set out in Rule 4.4 of the Commission Rules of Practice and Procedure to 30 days because the 60 days is not practicable as a result of the impact on the Commission during this amendment cycle of the Blakely and Booker decisions. Finally, the motion should provide staff with the authority to make technical and conforming changes if necessary.

Chair Hinojosa asked if there was a motion to that effect. Vice Chair Steer made the motion but amended it to publish the proposed issue for comment relating to anabolic steroids separately from the other miscellaneous amendments. Commissioner Horowitz seconded the motion as amended. The amended motion passed unanimously.

There being no further matters for consideration, Vice-Chair Steer moved to adjourn, and Vice-Chair Sessions seconded the motion. The motion passed unanimously, and Chair Hinojosa adjourned the meeting at 1:53 p.m.