

U.S. Sentencing Commission Public Meeting Minutes
September 18, 2008

Chair Ricardo H. Hinojosa called the meeting to order at 9:25 a.m. in the Commissioners' Conference Room.

The following Commissioners were present:

- Judge Ricardo H. Hinojosa, Chair
- Judge William K. Sessions, III, Vice Chair
- Dabney L. Friedrich, Commissioner
- Michael E. Horowitz, Commissioner
- Beryl A. Howell, Commissioner
- Edward F. Reilly, Jr., Commissioner Ex Officio
- Jonathan Wroblewski, Commissioner Ex Officio

The following Commissioner was present via teleconference:

- Judge Ruben Castillo, Vice Chair

The following staff participated in the meeting:

- Judith Sheon, Staff Director

Chair Hinojosa thanked those who sent public comment regarding the Commission's list of proposed priorities, which was published in the Federal Register. The Chair stated that the comment was helpful and appreciated by the Commission.

Chair Hinojosa called on Ms. Sheon for the Staff Director's report. Ms. Sheon reported that the Commission has posted on its website several items of data, including updated data on the retroactive application of the crack cocaine amendment promulgated in 2007, updated data with respect to sentencing practices after the Supreme Court's decisions in *Gall* and *Kimbrough*, and fiscal year 2008 third quarter data. Ms. Sheon thanked the Office of Research and Development for its work compiling this data.

Ms. Sheon stated that the Commission has sent the 2008 Guidelines Manual to the Government Printing Office and that the Manual will be forthcoming. Ms. Sheon thanked the Office of General Counsel, the drafters, and the publications department for their work on the Manual.

Chair Hinojosa asked if there was a motion to adopt the minutes of the August 28, 2008, public meeting. Commissioner Horowitz made a motion to adopt the minutes, with Commissioner Howell seconding the motion. Hearing no discussion, the Chair called for a vote, and the motion was adopted by voice vote.

Chair Hinojosa stated that the Commission has reviewed the public comment it received regarding the proposed priorities for the 2008-2009 amendment cycle, which were published in the Federal Register. Chair Hinojosa asked if there was a motion to adopt the proposed priorities, attached hereto as Exhibit A, as the final priorities. Commissioner Howell made a motion to adopt the proposed priorities as published as the final priorities for the 2008-2009 amendment cycle, with Commissioner Horowitz seconding the motion. The Chair asked if there was any discussion on the motion.

Commissioner Ex Officio Wroblewski stated that he was struck when reading the public comment on the proposed priorities how uniformly the public called for reform, and that, for many members of the public, that call was in regard to reducing the severity of the sentencing system. Commissioner Ex Officio Wroblewski stated the Department of Justice wants to ensure that unwarranted disparity does not creep back into the sentencing system and to bring more certainty and predictability into the system for litigants and victims. Commissioner Ex Officio Wroblewski added that the Commission's priorities will allow the Commission to do the background work, look at the macro issues, and lay the foundation for reform. Commissioner Ex Officio Wroblewski stated that the Department of Justice fully supports the proposed priorities for the 2008-2009 amendment cycle.

Vice Chair Sessions agreed with Commissioner Ex Officio Wroblewski and stated that the Commission has an opportunity not only to deal with issues of severity, but also to make changes to the structure of the sentencing system, working with the participants in the sentencing system, including the Department of Justice. Vice Chair Sessions stated that the federal criminal justice community understands the need for sentencing reform, and that the Commission should take the lead in studying such reform. Vice Chair Sessions added that he looks forward to working on these issues.

Hearing no further discussion, the Chair called for a vote and the motion was adopted, with the Chair noting that at least four commissioners voted in favor of the motion.

The Chair asked if there was any further business before the Commission and hearing none, asked if there was a motion to adjourn the meeting. Commissioner Horowitz made a motion to adjourn, with Vice Chair Sessions seconding. The Chair called for a vote on the motion, and the motion was adopted by voice vote. The meeting was adjourned at 9:32 a.m.

EXHIBIT A

BAC2211-01

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In August 2008, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2009. See 72 FR 46341 (August 8, 2008). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer,
Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission

promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. § 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2009. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2009. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2009.

As so prefaced, the Commission has identified the following priorities:

(1) Continuation of its work on federal sentencing policy with the congressional, executive, and judicial branches of the government, and other interested parties, in light of United States v. Booker and subsequent Supreme Court decisions, possibly including (A) an evaluation of the impact of those decisions on the federal sentencing guideline system, (B) development of amendments to the federal sentencing guidelines, (C) development of recommendations for legislation regarding federal sentencing policy, and (D) a study of statutory

mandatory minimum penalties;

(2) Consideration of alternatives to incarceration, including preparation and dissemination of information and materials from the "Symposium on Crime and Punishment in the United States: Alternatives to Incarceration," hosted by the Commission on July 14-15, 2008, in Washington, DC;

(3) Implementation of crime legislation enacted during the 110th or 111th Congress warranting a Commission response, including (A) the Court Security Improvement Act of 2007, Pub. L. 110-177; and (B) any other legislation authorizing statutory penalties or creating new offenses that requires incorporation into the guidelines;

(4) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled Cocaine and Federal Sentencing Policy, and to develop appropriate guideline amendments in response to any related legislation;

(5) A multi-year study of the definition of "crime of violence" used in both statutes and guidelines;

(6) Continuation of its efforts, in light of recent Supreme Court jurisprudence and

pursuant to the Commission's ongoing authority and responsibility under 28 U.S.C. § 995(a)(17), (18), and (21), to receive feedback and provide expanded training on the federal sentencing guidelines, including possibly holding regional public hearings;

(7) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. § 991(b)(1)(B) and Braxton v. United States, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts; and

(8) Consideration of miscellaneous guideline application issues regarding (A) offenses involving counterfeit bearer obligations of the United States, (B) application of §3C1.3 (Commission of Offense While on Release), and (C) other miscellaneous issues coming to the Commission's attention from case law and other sources.

AUTHORITY: 28 U.S.C. § 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo H. Hinojosa,

Chair