



GuideLines

News from the U.S. Sentencing Commission

May 2000

Penalties Increased for Internet Pirates and Identity Thieves

Sentences for Methamphetamine Offenses, Phone Cloning, and Child Sex Offenses Also Increased

The U.S. Sentencing Commission on May 1, 2000, sent to Congress several amendments to the federal sentencing guidelines that will significantly increase penalties for a number of serious crimes. The commissioners' action comes less than six months after their appointment on November 15, 1999.

Many of the newly enacted guideline provisions are in response to congressional concerns and address such serious crimes as the improper use of new technology in copyright and trademark violations, sexual offenses against children, methamphetamine trafficking, identity theft, cell phone cloning, telemarketing fraud, and firearms offenses. "We set as our number one priority addressing the backlog of legislative directives that had accumulated during the 13-month absence of commissioners," said Commission Chair Diana E. Murphy. "I am very pleased with how quickly and thoughtfully we have been able to respond." Judge Murphy also indicated that the newly constituted Sentencing Commission hopes to proactively address further sentencing guideline changes in the upcoming

Amendments Continued on page 4

What's Inside

Message from the Chair	2
Fred W. Bennett Honored with Commission Resolution.	2
Commission Training Expands Reach Through Video Productions.	6
Commission Names Staff Director and Executive Assistant to Chair . . .	7
In Memoriam	7

Vice Chair Ruben Castillo (U.S. district judge for the Northern District of Illinois) and Chair Diana E. Murphy (judge, U.S. Court of Appeals for the Eighth Circuit) listen intently to testimony regarding the sentencing guidelines presented by witnesses during the Commission's recent public hearing.

Photos not available in on-line version of this document. A copy of GuideLines can be requested by calling (202) 502-4568.

Message from the Chair

I am pleased to report that on May 1 the Commission submitted to Congress a package of sentencing guideline amendments that respond to the backlog of legislative directives that had accumulated during the 13-month absence of commissioners. In addition to the guideline amendments, the Commission also resolved a number of circuit conflicts. We are all pleased that we were able to set our priorities and work well together to accomplish them within the short period of time we had this amendment cycle. Now that this cycle is complete, we are beginning to look forward to next year and our short- and long-term goals for the Commission. Before we set our agenda for this next amendment cycle, we will spend some time examining our work this year, what we think worked well, and what we would like to change.

We did not reach our goal alone. We have many people to thank for their input. The Practitioners' Advisory Group provided the defense bar's perspective on the amendments we were considering. The Probation Officers Advisory Group, consisting of federal probation officers from every circuit, explained how the amendments would or would not work in court. We also learned a great deal from those who submitted public comment and testified at our public hearing. We have appreciated the insights of the Criminal Law Committee and other judges. As a Commission, we want to encourage continued dialogue with those groups who have an interest in the sentencing guidelines.

I would like to take this opportunity to thank the Commission staff who worked tirelessly throughout this amendment cycle, first to help us get up and running, and then to develop and revise the proposed guidelines until they were in finished form for submission to Congress. They are an intelligent and dedicated staff who work well together under the steady leadership of Tim McGrath, our new staff director. ■

—Judge Diana E. Murphy

Commission Honors Fred W. Bennett for Service as PAG Chair

At its public hearing on March 23, 2000, the Commission passed a resolution in which it publicly recognized the outstanding contributions of Maryland attorney Fred W. Bennett. The resolution observed that Mr. Bennett had served with distinction as chair of the Practitioners' Advisory Group (PAG) from 1993 to 2000 (during the tenure of three different chairs and commissions) and had served the Commission, the defense bar, and the public-at-large with a deep sense of responsibility and commitment to the cause of justice. The honor followed Mr. Bennett's relinquishment of his position as chair of the Practitioners' Advisory Group.

Bennett Continued on page 3

Honorable Diana E. Murphy, chair of the United States Sentencing Commission; judge, United States Court of Appeals for the Eighth Circuit

Guidelines

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Bennett *Continued from page 2*

Fred Bennett began his association with the Commission soon after its creation in 1987. At that time, he was serving as the Federal Defenders' liaison to the Commission. PAG was created when the Commission decided to formalize its relationship with the defense bar as a whole, including Federal Defenders and private defense counsel. At that time, it was also decided that a private defense attorney would serve as the group's chair, and Sam Buffone was the first to serve in this capacity. In 1993, after leaving the Federal Defender system, Fred Bennett began his service as PAG chair.

During his seven-year tenure as the PAG chair, Mr. Bennett attended approximately 50 PAG meetings and 100 formal Commission meetings. Reflecting upon his work with PAG and the Commission, he remarked, "The Commission has been very receptive, over the 13 years I have been involved, to the input of the defense bar; and the Commission has gone out of its way to make the defense bar feel a part of the process."

Fred Bennett was appointed Federal Defender for the District of Maryland in 1980. He left that office in 1992 and joined the faculty of Catholic University Law School. In 1998, he left full-time teaching and entered private practice. He is a partner in the Greenbelt, Maryland, criminal defense firm of Bennett & Nathan, L.L.P. Mr. Bennett continues to teach at Catholic University Law School on a part-time basis. He also serves on the Maryland Criminal Pattern Jury Instructions Committee. ■

At the March 23, 2000, public hearing, Chair Diana E. Murphy presents Fred W. Bennett with a resolution honoring him, recognizing his significant contributions during a seven-year tenure as chair of the Practitioners' Advisory Group.

Vice Chairs John R. Steer and William K. Sessions, III (U.S. District Court judge, Vermont) carefully weigh testimony regarding modifications to the sentencing guidelines.

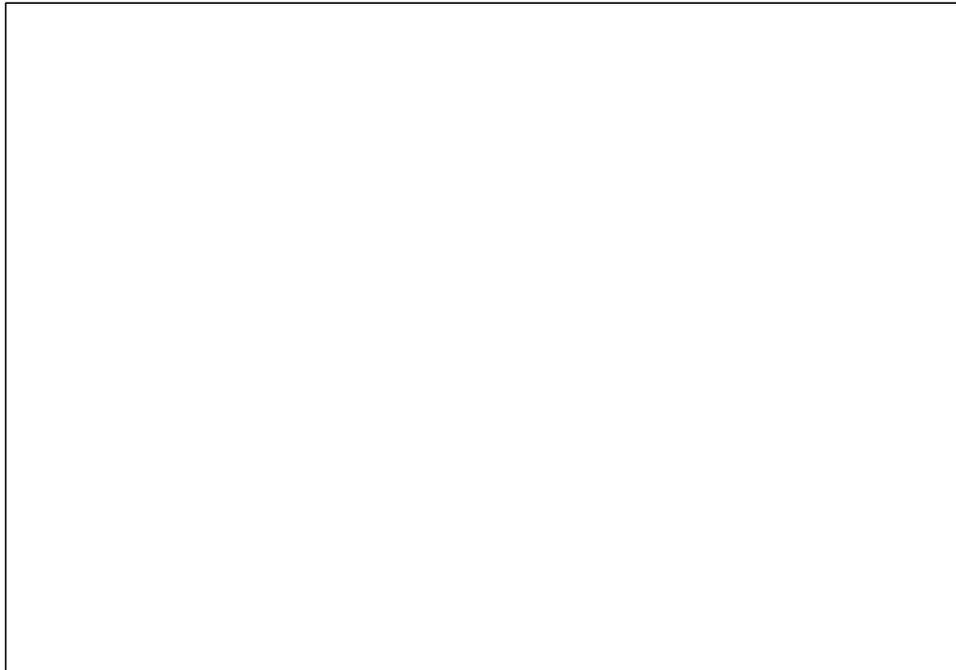


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Amendments *Continued from page 1*

years to insure that the federal criminal justice system operates in a fair and efficient manner.

Intellectual Property Offenses to Receive Greater Penalties

Congress recognized how new technology – in particular, the Internet – has been used to violate copyright and trademark laws and responded by passing the No Electronic Theft Act of 1997 (the “NET Act”). The Act directs the Commission to ensure that (1) the guideline penalties for intellectual property offenses are sufficiently stringent to deter those crimes; and (2) the guidelines pertaining to intellectual property offenses provide for consideration of the value and quantity of infringed upon items. The Commission implemented the provision of the NET Act by substantially increasing penalties for copyright and trademark violations.

The Commission specifically targeted for harsher sentences offenders who manufacture, import, or upload counterfeit or pirated items because these defendants cause the most harm to copyright and trademark owners. Of particular concern were reports by law enforcement officials about increased activity by organized crime in this area. To address this, the Commission provided for increased penalties should elements of organized crime be involved in the offense. The new guideline provides increased sentences based upon the quantity of counterfeit infringing items and, in most cases, the retail value of the legitimate infringed-upon item.

Examples of offense behavior the Commission was concerned about include –

- the offender who uploads to an illegal web site thousands of pirated copies of computer software, thereby making the software instantly available for downloading by others throughout the world;
- the offender who palms off imitation baby formula as the genuine formula, thereby putting babies’ health at risk.

Amendments *Continued on page 5*

Amendments *continued from page 4*

Penalties Toughened for Sexual Predators Who Target Children

The Commission also increased penalties in a number of guidelines in response to the Protection of Children from Sexual Predators Act of 1998. Commission actions included increasing penalties for distributing pornography to minors and for using the Internet to lure minors to engage in criminal sexual activity. The Commission was particularly concerned about sexual predators who “troll” the Internet (using its anonymity and large number of “chat rooms” intended for children) to contact and sexually exploit children.

Methamphetamine Penalties Conformed to Statute

Consistent with the Methamphetamine Trafficking Enhancement Act of 1998, the Commission voted to increase penalties for manufacturing, importing, or trafficking in methamphetamine by reducing by one-half the quantity of methamphetamine required to trigger the various mandatory minimum sentences in drug statutes.

Penalties Modified for Identity Theft and Phone Cloning

In response to the Identity Theft Assumption and Deterrence Act of 1998, the Commission voted to increase penalties for criminals who steal another person’s means of identification and then use that stolen document to commit additional crimes, such as obtaining fraudulent loans or credit cards. In so doing, the Commission recognized that the individual whose identity is stolen is also a victim of the fraud, just as is the bank or credit card company. In the same amendment, the Commission also increased penalties for the cloning of wireless telephones in response to the Wireless Telephone Protection Act of 1998.

The Commission responded to the Telemarketing Fraud Prevention Act of 1998 by repromulgating what was previously a temporary emergency amendment to the sentencing guidelines that provided increased penalties for offenses involving telemarketing fraud. Specifically, the amendment expands the enhancement for “sophisticated concealment” to cover all forms of sophisticated means and provides an enhancement if the offense impacts large numbers of vulnerable victims.

Guidelines for Firearms Offenses Reflect New Statutory Penalties

The Commission also conformed the guidelines to reflect newly enacted legislation that increased statutory penalties for offenders convicted of firearms offenses.

Except for the amendment implementing the NET Act, the amendments will take effect November 1, 2000, unless Congress disapproves them during a six-month review period. The NET Act amendment took effect May 1, 2000, pursuant to emergency authority provided by the Act.€

Available on the Commission’s website at www.ussc.gov:

- [Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary \(May 2000\)](#).
- [Highlights of the Amendments to the Federal Sentencing Guidelines Effective November 1, 2000](#).
- [Supplement to the 1998 Guidelines Manual \(May 1, 2000\)](#). This supplement incorporates the emergency guideline amendment to §2B5.3 (Criminal Infringement of Copyright or Trademark), effective May 1, 2000.
- [Federal Register Notice Regarding New Amendments and Request for Public Comment \(May 9, 2000\)](#).

Commission Training Expands Reach Through Video Productions

In addition to its traditional training and education efforts, the Commission is increasing its involvement in programming on the Federal Judicial Television Network (FJTN) by working collaboratively with the Federal Judicial Center (FJC).

In 2000, the Commission and the FJC will produce several programs for the FJTN on the sentencing guidelines and related sentencing issues. The first program aired in March. This was a widely viewed live broadcast on the topic of departures that featured staff from the Commission.

Another program is scheduled for broadcast on August 17 and will provide viewers with the opportunity to meet the new commissioners and will feature an in-depth interview with the Commission's chair, Judge Diana E. Murphy. The final broadcast in the series is scheduled for November 16 and will focus on application of the relevant conduct guideline.

Guideline Application Video is Available from Commission

The Commission is also pleased to announce the availability of an instructional video on basic guideline application entitled "Federal Sentencing Guidelines." The video is an hour and a half long and is an ideal resource for those who have little or no experience with the sentencing guidelines.

The Commission is pleased that it is able to expand the reach of its training and education effort through video productions. The Commission invites members of the federal court family to tune into the FJTN to watch the broadcasts and re-broadcasts of its programs. For more information about the Commission's training resources or to borrow any of the aforementioned programs on videotape, please contact Jeremy Schuhmacher at (202) 502-4540.

You may also wish to visit the Commission's Internet web site at www.ussc.gov to obtain the latest training documents and related materials. ■

Commission To Participate in Annual ABA Meeting in New York City

On Saturday, July 8, the members of the U.S. Sentencing Commission will participate in the American Bar Association's Annual Meeting in New York City. Commissioners will speak on a panel entitled "U.S. Sentencing Commission: New Commissioners, New Directions, New Challenges."

Timothy B. McGrath and Susan Hayes Named to High-Level Staff Positions

The U.S. Sentencing Commission has announced the appointments of Timothy B. McGrath as its staff director and Susan Hayes as its executive assistant to the chair.

“We welcome these two fine professionals to the staff of the Sentencing Commission,” said Commission Chair Diana E. Murphy. “Both Tim and Susan bring to our agency a wealth of administrative experience in the federal judiciary, and we are pleased that the Commission will be a beneficiary of their talents.”

McGrath Had Aably Served Commission as Interim Staff Director

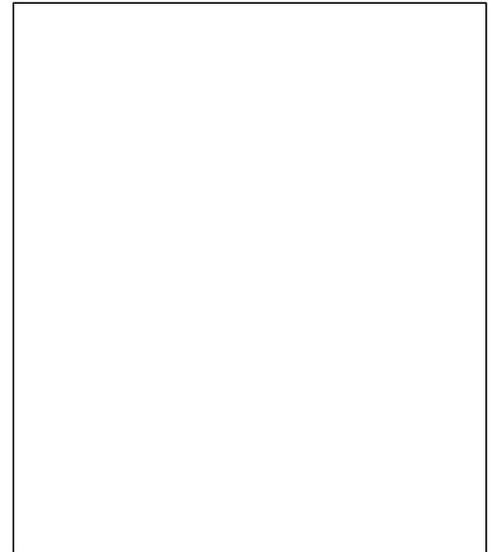
Mr. McGrath had served as the Commission’s interim staff director for the 18 months prior to his appointment. For 12 of these months, he served while the Commission awaited the appointment of all seven of its new commissioners. Prior to becoming interim staff director, Mr. McGrath worked for three years at the Commission as the executive assistant to the chair. Before coming to the Sentencing Commission, Mr. McGrath served as deputy circuit executive for the U.S. Judicial Council for the Third Circuit in Philadelphia. The Office of the Circuit Executive serves as the business manager for the U.S. Court of Appeals and Circuit Judicial Council.

Mr. McGrath received his B.A. *magna cum laude* from the University of Scranton in 1984, where he was ranked first among Public Administration/Accounting majors. In 1987, he received his law degree from Temple University School of Law in Philadelphia.

Hayes Brings Distinguished Legal and Administrative Background

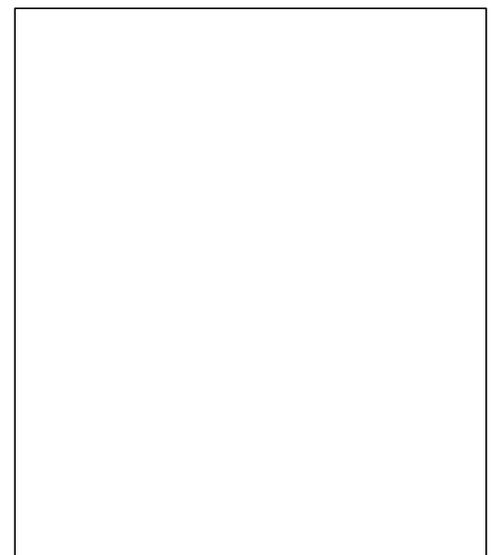
Susan Hayes comes to the Commission from the Administrative Office of the U.S. Courts (AO) where she served as deputy chief and senior attorney for the Court Administration Policy Staff. Prior to that, she served as an attorney in the policy branch of the AO’s Court Administration Division. She has also worked as staff attorney for the United States Court of Appeals for the District of Columbia and the District of Columbia Court of Appeals; associate general counsel for the U.S. Sentencing Commission; associate for the law firm of Bridgeman and Urbanczyk in Washington, D.C.; and law clerk to Judge Warren R. King of the Superior Court of the District of Columbia.

Ms. Hayes received her B.S. *summa cum laude* from Pennsylvania State University in 1968 and her J.D. *summa cum laude* from American University’s Washington College of Law in 1981. ■



Timothy B. McGrath has been named staff director, following 18 months of serving as interim staff director.

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Susan Hayes is the executive assistant to Honorable Diana E. Murphy, chair of the United States Sentencing Commission.

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In Memoriam

Luci Slattery Reilly, wife of Edward F. Reilly, Jr. (U.S. parole commissioner and former member of the U.S. Sentencing Commission), passed away on February 18, 2000, after an extended illness. Contributions may be sent to the Mount Saint Scholastica Academy, in care of the Barnett-Larkin-Brown Funeral Home, 6th and Olive Sts., Leavenworth, KS 66048. Our most heartfelt thoughts and prayers are with Commissioner Reilly and his family.

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