



GuideLines

News from the U.S. Sentencing Commission

February 2000

New Commissioners Take Oath of Office

Chief Justice William H. Rehnquist, at an investiture ceremony held at the Supreme Court of the United States on January 5, administered the oath of office to the seven new members of the U.S. Sentencing Commission. The newly constituted Commission consists of Judge Diana E. Murphy (chair); Judge Ruben Castillo (vice chair); Judge William K. Sessions, III (vice chair); Mr. John R. Steer (vice chair); Judge Sterling Johnson, Jr.; Judge Joe Kendall; and Professor Michael O'Neill. These seven voting commissioners join ex-officio members Mr. Michael J. Gaines and Mr. Laird C. Kirkpatrick. The President appointed the slate of commissioners November 15, 1999. Prior to these appointments, the Commission had been without commissioners since October 31, 1998.

Chief Justice Rehnquist, United States Attorney General Janet Reno, Senator Strom Thurmond, and Commission Chair Diana E. Murphy all addressed the gathering of 125 guests, which included Supreme Court Justices Sandra Day O'Connor, Clarence Thomas, and Ruth Bader Ginsburg. A reception followed in the Supreme Court's East Conference Room.

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Seated (left to right):
Mr. John R. Steer
Judge Diana E. Murphy (chair)
Judge Ruben Castillo
Standing (left to right):
Mr. Laird C. Kirkpatrick (ex officio)
Judge Joe Kendall
Judge William K. Sessions, III
Judge Sterling Johnson, Jr.
Professor Michael O'Neill
Mr. Michael J. Gaines (ex officio)

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Message from the Chair

I know I speak for all the commissioners when I say that we are honored to have been chosen by the President and confirmed by the Senate to serve on this important commission. I am personally gratified that I will be working with such a distinguished group of commissioners, and I know the Commission, the federal court system, and the criminal justice community will benefit from their collective experience and talents.

Faced with a shortened amendment cycle this year, we at the Commission are working hard to make it a productive one. Since our November 15 appointment, we have met with the Criminal Law Committee of the Judicial Conference, have held two public Commission meetings, have formulated a working list of priorities for the amendment cycle, and have published for comment in the *Federal Register* our proposed priorities and amendment options regarding the No Electronic Theft Act, telemarketing fraud offenses, methamphetamine offenses, and identity theft. This is in addition to numerous meetings we have held with staff on topics such as congressional directives and circuit conflicts.

Because the Commission has been without members for more than a year, many tasks await our attention. This is going to be a busy time for the Commission, but please know that we are very much looking forward to working with and hearing from those who apply and use the guidelines. Your insights are integral to providing a sentencing system dedicated to fairness and justice, and we welcome your input. ■

—Judge Diana E. Murphy

Ninth Annual National Seminar on The Guidelines Set For May

Jointly sponsored by the Sentencing Commission and the Federal Bar Association, the Ninth Annual National Seminar on the Federal Sentencing Guidelines will be held May 3-5, 2000, in Clearwater Beach, Florida. The seminar is geared toward the experienced practitioner. Speakers will include sentencing commissioners, federal judges, senior members of the Commission's training staff, and other distinguished experts on the sentencing guidelines. The new commissioners will participate in a panel designed for them to receive input about the sentencing guidelines from seminar attendees. There will also be an opportunity for probation officers, defense attorneys, and prosecutors to meet in their respective groups to discuss issues of special concern.

For information about the seminar or to register, please contact Carol Weathersbee, program coordinator (813-754-3031), Karen McGarvey (813-754-3031), or Frank Larry, deputy director of the Commission's Office of Education and Sentencing Practice (202-502-4540). ■



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

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After the ceremony, Chair Murphy reflected on the Commission's upcoming agenda. "We are keenly aware that we are facing a truncated amendment cycle this year and we are hitting the ground running," she said. "During the period of commissioner vacancies, Congress passed legislation that includes directives to the Commission and new laws that require our study. We plan to address what we feel is an ambitious number of these items before May 1 of this year, which is our deadline for submitting new amendments to Congress. We also propose to resolve a limited number of conflicts among the circuit courts on guideline interpretation. Attention to this congressional action and set of circuit conflicts will be our first order of business. We look forward to the challenge."

Judge Diana E. Murphy of Minneapolis, Minnesota, has served as a judge on the United States Court of Appeals for the Eighth Circuit since 1994. Judge Murphy has been on the federal bench since February 1980 when she was appointed to the United States District Court for the District of Minnesota. From 1992-1994, she served as that court's chief judge. She has worked with the federal sentencing guidelines since their introduction in 1987, first as a sentencing judge in the trial court and then as an appellate judge reviewing sentences imposed by other judges. Judge Murphy was a state district court judge from 1976-1978 and was with the firm of Lindquist & Vennum from 1974-1976.

Judge Murphy has served as national president of the Federal Judges Association, chair of the board of the American Judicature Society, and as a member of the board of the Federal Judicial Center. She is currently chair of the Judges Advisory Committee to the ABA Standing Committee on Ethics and Professional Responsibility. Judge Murphy received a B.A. degree from the University of Minnesota and a J.D. degree from the University of Minnesota School of Law. She attended the Johannes Gutenberg University in Mainz, Germany, on a Fulbright scholarship.

Judge Ruben Castillo of Chicago, Illinois, has served as a district judge for the Northern District of Illinois since 1994. From 1991-1994, he was a partner in the Chicago office of Kirkland & Ellis. He was the regional counsel for the Mexican American Legal Defense and Educational Fund from 1988-1991. Judge Castillo served as an assistant U.S. attorney for the Northern District of Illinois from 1984-1988 and was previously with the firm of Jenner & Block. He is an adjunct professor of trial advocacy at Northwestern University School of Law, where he has taught since 1988. Judge Castillo received a B.A. degree from Loyola University of Chicago and a J.D. degree from Northwestern University School of Law, where he served on the editorial board of the *Journal of Criminal Law and Criminology*. Judge Castillo has been involved with the criminal justice system since 1978 when he was appointed as a deputy clerk for the local criminal courts, a position he maintained throughout college and law school.

Judge Sterling Johnson, Jr. of Queens, New York, has served as a district judge for the Eastern District of New York since 1991. From 1975-1991,

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he was the special narcotics prosecutor for New York City. From 1974-1975, he was executive liaison officer for the Drug Enforcement Administration. From 1970-1974, he was executive director of the New York City Civilian Complaint Board. He served with the Office of the U.S. Attorney for the Southern District of New York from 1967-1970 as an assistant U.S. attorney. Judge Johnson received a B.A. degree from Brooklyn College and a J.D. degree from Brooklyn Law School.

Judge Joe Kendall of Dallas, Texas, has served as a United States district judge for the Northern District of Texas since 1992. From 1987-1992, he served as a state criminal district judge for the 195th Judicial District Court in Dallas. Previously, Judge Kendall was a private practice trial lawyer, an assistant district attorney in Dallas County, and a police officer for the Dallas Police Department. Judge Kendall has been a board-certified criminal law specialist in Texas since 1985. He received a Bachelor's degree from Southern Methodist University and a J.D. degree from the Baylor University School of Law.

Professor Michael O'Neill of Chevy Chase, Maryland, has served as an assistant professor of law at George Mason University School of Law since 1998. He is an expert in criminal law and criminal procedure. Previously, he has served as general counsel for the Senate Committee on the Judiciary, as a special assistant U.S. attorney in the Office of the U.S. Attorney for the District of Columbia, and as an appellate litigator in the Justice Department's Criminal Division Appellate Section. He clerked for U.S. Supreme Court Justice Clarence Thomas and for the Honorable David B. Sentelle, U.S. Court of Appeals for the District of Columbia Circuit. Professor O'Neill received a B.A. degree from Brigham Young University and a J.D. degree from Yale Law School.

Judge William K. Sessions, III of Cornwall, Vermont, has served as a district judge for the District of Vermont since 1995. From 1978-1995, he was a partner with the Middlebury firm of Sessions, Keiner, Dumont & Barnes. He previously served in the Office of the Public Defender for Addison County. He has served as a professor at the Vermont Law School. He currently serves on the Board of Trustees of the Vermont Law School. Judge Sessions received a B.A. degree from Middlebury College and a J.D. degree from the George Washington School of Law.

Mr. John R. Steer of Fairfax Station, Virginia, served since 1987 as the general counsel of the United States Sentencing Commission, where he was responsible for advising the Commission on the statutory mandates and the application and amendment of the federal sentencing guidelines. From 1986-1987, he served as deputy general counsel to the Commission. Previously, Mr. Steer had a long career with the United States Senate, including service as legislative director for U.S. Senator Strom Thurmond and counsel for the Senate Judiciary Committee from 1979-1985 and as administrative assistant to Senator Thurmond from 1985-1986. He received B.S. and M.S. degrees from Clemson University and a J.D. degree from the University of South Carolina School of Law. ■

Commission Announces Priorities

Due to the protracted period of time during which the Commission had no voting members, the incoming commissioners face the task of promulgating guideline amendments to implement a significant backlog of crime and sentencing-related legislation enacted by the 105th Congress in a shortened amendment cycle, which ends May 1, 2000. As a result, the Commission has made a preliminary determination to limit its policy agenda for the current amendment cycle to implementing legislative directives and other high priority crime legislation. The Commission published a notice of its priorities in the *Federal Register* on December 8, 1999, in which the Commission expressed its intent to attempt to address the following items this amendment cycle:

- The No Electronic Theft Act of 1997 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 Digital Theft Deterrence and Copyright Damages Improvement Act of 1999, signed by the President on December 9, 1999, requires the Commission to respond to the NET Act directives by April 6, 2000.
- In response to the Telemarketing Fraud Prevention Act of 1998, the previous Commission adopted a temporary emergency amendment to the sentencing guidelines that provides increased penalties for offenses involving telemarketing fraud. Specifically, the amendment built upon an amendment submitted to Congress in May 1998, by expanding the enhancement for “sophisticated concealment” to cover all forms of sophisticated means and by providing an enhancement if the offense impacted large numbers of vulnerable victims. This amendment became effective November 1, 1998. The Commission must repromulgate the amendment as permanent during this amendment cycle or it will expire.
- The Wireless Telephone Protection Act of 1998 directs the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for offenses involving the fraudulent cloning of wireless telephones.
- The Identity Theft and Assumption Deterrence Act of 1998 directs the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for each offense under 18 U.S.C. § 1028 relating to fraud in connection with identification documents.

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Tentative Sentencing Commission Meeting Calendar

Washington, D.C., Commission meetings are held at the Thurgood Marshall Federal Judiciary Building.

Meeting dates are tentative, and are subject to change. For updated information, meeting agendas and materials, Internet subscribers may access the Commission's web site: www.ussc.gov

March 23, 2000 — Public Hearing

April 4, 2000 — Public Meeting

April 21, 2000 — Public Meeting

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- The Protection of Children from Sexual Predators Act of 1998 directs the Commission to provide a number of specified sentencing enhancements for various sexual offenses involving children.
- Congress enacted legislation to (1) prohibit certain aliens who are lawfully present in the United States under a non-immigrant visa from possessing a firearm; and (2) amend 18 U.S.C. § 924(c) to prohibit “possession” of a firearm in furtherance of a drug trafficking or violent crime (in addition to using or carrying a firearm during and in relation to such crime). This latter law also creates a tiered system of sentencing enhancement ranges, each with a mandatory minimum and presumed life maximum, in lieu of the former, fixed penalty of five years.
- The Methamphetamine Trafficking Penalty Enhancement Act of 1998 increased the 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.

The Commission also proposes to resolve a limited number of conflicts among the circuit courts on sentencing guideline interpretation. The Commission hopes to work with the Criminal Law Committee of the Judicial Conference, the United States Department of Justice, and other interested participants in the federal criminal justice system to identify which circuit conflict issues the Commission should resolve this amendment cycle, with the goal of enhancing the consistency with which the guidelines are applied.

On December 15, 1999, the newly constituted Commission conducted its first public meeting. In its initial step toward accomplishing its priorities, the Commission voted 7-0 to publish for comment in the *Federal Register* three options for implementing temporary emergency amendments to implement the directives contained in the No Electronic Theft Act. The Commission also voted 7-0 to publish a notice of intent to repromulgate as permanent the emergency amendments promulgated in response to the Telemarketing Fraud Prevention Act of 1998. Finally, the Commission received a briefing on a number of circuit conflicts at the Commission meeting.

On January 6, 2000, the Commission conducted its second public meeting. The Commission voted 7-0 to publish for comment in the *Federal Register* two options for implementing a guideline amendment responding to the Methamphetamine Trafficking Penalty Enhancement Act of 1998 as well as a number of issues for comment. The Commission also voted 7-0 to publish two options for promulgating an amendment responding to the Identity Theft and Assumption Deterrence Act of 1998 along with a number of issues for comment. The Commission also received at the meeting a briefing on a number of circuit conflicts. ■

Commission Honors Its First Two Chairs With Portrait Dedication Ceremonies

The U.S. Sentencing Commission honored its former chairs, Judge William W. Wilkins, Jr. and Judge Richard P. Conaboy, in two portrait dedication ceremonies held at the Thurgood Marshall Federal Judiciary Building.

Judge Wilkins was the Commission's first chair, serving two terms from 1985-1994. Under his leadership, the Commission accomplished its initial statutory mission of delivering to Congress by the April 1987 statutory deadline the nation's first set of federal sentencing guidelines. "The task that he faced when he accepted that job was formidable indeed, for there was no road map to guide him and the other first commissioners in developing a workable, effective set of guidelines that would cover all major federal crimes," said Senator Strom Thurmond at the ceremony held for Judge Wilkins September 30, 1999. The numerous accomplishments of Judge Wilkins's tenure also include — issuing the initial set of federal sentencing guidelines for organizational defendants; sponsoring the Commission's Inaugural Symposium on Crime and Punishment in the U.S.; and conducting studies on such topics as mandatory minimum sentencing and the operation of the sentencing guidelines system's short-term impacts on disparity in sentencing.

Among others participating in the portrait dedication ceremony were U.S. Supreme Court Associate Justice Stephen G. Breyer; Senator Ernest Hollings; former commissioners, Judge A. David Mazzone and Judge Julie Carnes; and current Commission chair, Judge Diana E. Murphy.

Portraits *Continued on page 8*

Photo by Sweet Memories

Judge William W. Wilkins, Jr. and Mrs. Debra Dill Wilkins are pictured with the portrait painted by artist Janet Flemings Smith.

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Judge Richard P. Conaboy of Scranton, Pennsylvania, serves as a United States district judge for the Middle District of Pennsylvania. He was nominated chair of the Sentencing Commission by President Clinton and was confirmed by the Senate on October 6, 1994. He resigned his post effective October 31, 1998, to give the President the opportunity to appoint a new, full slate of commissioners. At the time he resigned, the terms of the other six sentencing commissioners had all expired and the positions were waiting to be filled.

During his tenure, Judge Conaboy stressed greater communication with Congress, criminal justice agencies, and the public. He also oversaw (1) Commission guideline amendments, including many that responded to crime bill provisions; (2) two special reports to Congress on cocaine and federal sentencing policy; (3) sponsorship of a national symposium on the impact of the sentencing guidelines that apply to corporate crime; (4) a survey of 1,700 citizens who were asked to share their thoughts on punishment and crime seriousness; (5) a study of assistance provided by a defendant to the government in the prosecution of others; and (6) an internal assessment of the way in which the Commission operates.

The portrait dedication ceremony for Judge Conaboy was held April 19, 1999. Senator Joseph Biden, a Scranton resident for the first 13 years of his life, delivered the keynote address and Monsignor Andrew J. McGowan of the Scranton Diocese gave the invocation. Judge Conaboy's wife, Marion, and several of his children were in attendance.

The portrait of Judge Wilkins was painted by Janet Flemings Smith of Taylors, South Carolina. The portrait of Judge Conaboy was painted by Jeffrey Martin of Port Trevorton, Pennsylvania. Both paintings hang prominently in the Commission's Public Conference Room. ■

Judge Richard P. Conaboy and Mrs. Marion Conaboy admire the portrait painted by artist Jeffrey Martin.

Photo by Sweet Memories

