

Guide Lines



News from the U.S. Sentencing Commission

June 1995

Guideline Amendments Presented to Congress

Crime Bill, Crack Cocaine, and Money Laundering

The Sentencing Commission, operating at full strength for the first time in more than three years, on May 1 presented to Congress 27 amendments to the federal sentencing guidelines. Unless Congress takes action to the contrary, the amendments will take effect November 1.

The bulk of the amendments respond to congressional directives in the 1994 Crime Bill, including a directive to study federal sentencing policy as it relates to distribution of all forms of cocaine (see article on the Commission's February 1995 report to Congress, Cocaine and Federal Sentencing Policy, page 3). After nearly two years of study, the Commission found that the current 100-to-1 quantity ratio mandated by statute for powder and crack cocaine offenses should be reconsidered.

To implement the report's recommendations, the Commission forwarded an amendment that for guideline purposes equates base sentences for offenders distributing similar quantities of crack and powder cocaine. Similarly, the proposal would equate offense levels for simple possession of crack and powder cocaine. Also on May 1, the Commission presented to Congress proposed legislation that adjusts the mandatory minimum penalties for crack cocaine to the powder cocaine level.

As part of the crack/powder equalization amendment, the Commission added a number of enhancements to target the violent and predatory crime that is dis-

proportionately associated with crack cocaine trafficking. These sentence enhancements include significant penalty increases for drug offenders who use weapons, cause bodily injury, and use minors in their offenses. The net effect of these enhancements may make sentences for violent crack cocaine offenses even more severe than the current practice. Three commissioners dissented from the package of crack amendments, believing that the

See Amendments on page 2

Sentencings Drop by 2,000

The number of criminal cases sentenced in federal courts dropped last year by more than 2,000, the first decrease since sentencing guidelines took effect in 1987. The decline was fueled in large part by a reduction in drug sentences – primarily for powder cocaine – according to statistics from the Commission's recently released 1994 Annual Report.

Federal courts sentenced 39,971 cases under the guidelines in fiscal year 1994, compared to 42,107 the previous year. (See accompanying pie chart for distribution of 1994 cases by offense type.)

See Annual Report on page 4

Highlights of 1995 Amendments

- Authorizes an upward departure for repeat sex offenses.
- Equalizes guideline offense levels in the drug quantity table for trafficking in similar amounts of powder and crack cocaine.
- Eliminates the guideline distinction between simple possession of crack and powder cocaine.
- Provides enhancements for drug trafficking in “drug-free zones” and inside prisons.
- Repromulgates the “safety valve” guideline for qualified low-level offenders as a permanent amendment.
- Establishes a uniform 100-gram-per-plant standard for marijuana plants regardless of the number of plants.
- Adds a hate crime enhancement to the vulnerable victim guideline and consolidates civil rights guidelines.
- Revises the money laundering guidelines to tie the offense level more closely to the seriousness of the underlying conduct.
- Increases the base offense level for use of semiautomatic assault weapons.
- Adds a Chapter Three adjustment for international terrorism.
- Adds a Chapter Three adjustment for using a minor to commit a crime.

(Amendments from page 1)

sentencing enhancements were not adequate to address the increased harms they contended the Commission’s special report on cocaine sentencing found were connected with crack use and distribution. The majority, however, felt that the unfairness inherent in any ratio other than equalization outweighed those concerns.

In other action, the Commission resubmitted guideline 5C1.2 (the “safety valve” provision promulgated last September pursuant to emergency amendment authority). The safety valve allows for sentences below the other-wise-applicable mandatory minimum sentences for certain qualifying non-violent drug offenders. In amending §2D1.1, the Commission provided an additional two-level reduction in the offense level calculation for certain non-violent offenders meeting the criteria

in §5C1.2.

Other amendments approved by the Commission include a revamping of the money laundering guidelines. Following several years of study, the Commission revised its approach for dealing with money laundering offenses, providing increased penalties for the most serious forms of money laundering while tying less serious offenses to the underlying criminal activity associated with the illegal money transactions.

Also approved was an amendment that provides a standard weight of 100 grams per plant – regardless of the number of plants – for the calculation of penalties for marijuana offenses. The Commission chose to use 100 grams per plant for all marijuana offenses because it better approximates the actual average yield of marijuana plants.

Sentences for possession of a semiautomatic assault weapon and for selling or transferring a gun to a juvenile would increase under another Commission proposal. Finally, the Commission consolidated the civil rights guideline and provided an enhancement for hate crimes mandated by the 1994 Crime Bill. The amendments were published in Vol. 60, No. 90, Part IV, of the Federal Register, May 10, 1995. A “reader friendly” version of the amendments is available from *USSC OnLine*, the Commission’s new electronic bulletin board (*see* story on page 6).■

DOJ Opposes Commission Amendments

The Department of Justice on May 12 forwarded to Congress legislation to disallow two of the Commission’s guideline amendments – equalization of powder and crack cocaine base offense levels and revision of the money laundering guideline. The proposed legislation would leave intact the parts of the Commission’s drug guideline amendments that raise penalties significantly for weapons possession and use, bodily injury, and use of a minor, but would retain the current 100-to-1 powder/crack quantity ratio. The proposal would not affect the Commission’s guideline amendment to equalize treatment for simple possession of crack and powder cocaine. In addition, the Department’s legislation would completely disallow the Commission’s money laundering amendment. *As Guide Lines* went to press, the legislation had not been introduced in Congress.

Guide Lines

is published periodically by the
 United States Sentencing Commission
 One Columbus Circle, N.E.
 Washington, D.C. 20002-8002
 Richard P. Conaboy Chairman
 Michael S. Gelacak Vice Chairman
 A. David Mazzone Vice Chairman
 Wayne A. Budd Commissioner
 Julie E. Carnes Commissioner
 Michael Goldsmith Commissioner
 Deanell R. Tacha Commissioner
 Jo Ann Harris *ex officio*
 Edward F. Reilly, Jr. *ex officio*
 Public Information: (202) 273-4590
 Judge/P.O. Hotline: (202) 273-4545
 Attorney Hotline: (202) 273-4527
USSC OnLine (via modem speeds 9.6 or 14.4):
 (202) 273-4709

Please direct all inquiries and address changes to the Public Information Office at the above address.

Chairman's Four-Point Administrative Agenda

by Richard P. Conaboy

With the consent of the other commissioners, I have set a straightforward agenda for the United States Sentencing Commission during my tenure as Chairman. This four-point initiative involves: (1) continuity, (2) program evaluation, (3) simplification, and (4) organizational assessment.

First, the Commission will continue to meet its statutory responsibilities of advising Congress on sentencing policy, monitoring application of the guidelines to make appropriate modifications, conducting substantive research, training members of the court family, and serving as a clearinghouse on federal sentencing issues.

Second, the Commission will expand its program to measure the success of the guidelines process in fulfilling the congressional mandates of the Sentencing Reform Act. In addition, these evalua-

tion efforts will provide information useful for the Commission's guideline simplification project.

Third, as indicated, the Commission will embark on a comprehensive guideline simplification program. With seven years of experience and data on more than 225,000 sentenced defendants, the Commission is well-positioned to conduct a substantive review of the guidelines with an eye toward simplification.

Perhaps the greatest criticism of the guidelines I have heard – apart from their severity in certain drug cases, a result driven in large part by mandatory minimum statutes – is their complexity and rigidity. The Commission plans to address these criticisms through this simplification project by building on its own work of case monitoring, data analysis, case law review, and working group recommendations. In addition, the Commission will examine the ways in which state commissions have tackled some of

the tougher guideline issues, analyze suggestions for refinement offered by the Criminal Law Committee of the Judicial Conference and others, and draft several possible approaches and circulate them widely for comment from the judiciary, practitioners, and the public.

To this end, we have secured the services of John Kramer, Executive Director of the Pennsylvania Sentencing Commission, to act as an independent consultant to the Commission's simplification working group. Ultimately, the Commission envisions holding public hearings across the country on these and other important issues in an effort to hear directly from the people who apply or are affected by the guidelines.

Finally, we will take a hard look at the Commission's organizational structure to ensure that resources are being put to the best advantage as we enter a new phase in guideline sentencing.■

Cocaine Report Update

In the 1994 Crime Bill, Congress directed the Commission to study and report on the differing penalties for powder and crack cocaine offenses and to make recommendations regarding these differences. Currently, sentences for federal cocaine offenses are based on mandatory minimum penalties enacted by Congress in 1986 and 1988. These penalty statutes provide for longer sentences for crack cocaine offenses than for powder cocaine offenses, requiring 100 times more powder cocaine than crack cocaine to trigger the same five- or ten-year penalty.

On February 28, after nearly two years of study (much of it predating the Crime Bill directive), the Commission issued its report, Cocaine and Federal Sentencing Policy. Judge Richard P. Conaboy, Commission Chairman, said, "The Commission, as an independent agency in the Judicial Branch, undertook an impartial and thorough investigation of cocaine sentencing policy using the best available research. We are confident that the report will prove to be of significant value in addressing concerns over cocaine sentencing policy."

Among the report's conclusions were:

- while some aspects of crack's use and distribution may justify a higher penalty for crack than for powder

cocaine offenses, the current 100-to-1 quantity ratio is too great;

- the 100-to-1 quantity ratio produces unintended results by punishing low-level crack cocaine dealers far more severely than their high-level suppliers of powder cocaine;
- in cocaine offenses, quantity and form are just two factors for determining appropriate punishment; other characteristics (e.g., use of a firearm) can be equally or more important; and
- refinement of the guidelines rather than mandatory minimum penalties would be a better way to address the harms that prompted Congress to distinguish between crack and powder cocaine.

The report recommended that (1) the Commission establish methods within the guideline structure to deal with crimes of possession and distribution of both crack cocaine and powder cocaine; and (2) in light of the Commission's pending amendments, Congress revisit the 100-to-1 quantity ratio as well as the penalty structure for simple possession (see accompanying story on guideline amendments, page 1).

The House of Representatives Subcommittee on Crime has scheduled a hearing on cocaine sentencing policy for June 28, 1995. Copies of the report can be obtained by calling the Sentencing Commission's Public Information Office at (202) 273-4590.■

[Graphic Omitted in On-Line Version]

(Annual Report from page 1)

Drug cases decreased from 18,452 in 1993 to 16,700 in 1994. Looking at three-year trends, powder cocaine sentences dropped from 42.1 percent of all drug cases in 1992 to 30.6 percent in 1994; crack cocaine offenses increased during the same period from 14.6 to 21.2 percent. Marijuana offenses also rose from 25.9 percent in 1992 to 28.9 percent in 1994.

The report provides extensive information on federal criminal cases sentenced under the guidelines and describes the agency's varied research, training, and clearinghouse activities. Highlights include sentencing profiles of each judicial district, detailed information on guideline departures, plea and trial rates by district and circuit, appeals of sentencing decisions, and data on mandatory minimum sentences

and organizational defendants.

Drug Cases

Drug defendants sentenced in 1994 divided almost equally among three racial/ethnic categories, indicating a relationship between race/ethnicity and type of drug:

- methamphetamine and LSD cases were concentrated among White defendants (72.9% and 93.4% of these drug types, respectively);
- crack cocaine cases were concentrated among Black defendants (90.4% of crack cocaine cases); and
- powder cocaine, heroin, and marijuana cases were most likely to involve Hispanic defendants (42.8%, 48.9%, and 51.1% of these drug types, respectively).

More than half (53.2%) of all

heroin distribution cases sentenced in 1994 involved non-U.S. citizens, the highest percentage of any of the six major drug types.

Approximately one-third of both marijuana (34.1%) and powder cocaine (33.0%) offenses involved non-U.S. citizens. On the other end of the spectrum, 99.1 percent of all LSD offenders were U.S. citizens. Crack cocaine cases showed the second-highest rate of U.S. citizen involvement at 92.7 percent.

Presence of a weapon varied widely among the drug types, ranging from a high of 29.6 percent for crack cocaine to a low of 3.4 percent for LSD offenses. After crack, methamphetamine traffickers were most likely to possess a weapon (23.7% of all cases).

Crack cocaine defendants received the longest sentences among all drug types (*see* accompanying bar chart) with mean and median sentence lengths at 133.4 months and 102 months, respectively. Marijuana defendants received the shortest average sentences with a mean of 46.5 months and a median of 30 months of incarceration.

Non-U.S. Citizens

More than one-fifth (22.3%) of all defendants sentenced under the guidelines in 1994 were not U.S. citizens. Almost half (48.9%) came from Mexico, 10.6 percent from Colombia, and 5.7 percent from the Dominican Republic; an additional 2,986 defendants were citizens of 68 other countries. The majority of non-citizen defendants were male (91.3% compared to 82.9% of U.S. citizens), Hispanic (74.9% compared to 10.4% of U.S. citizens), and without a high school education (62.3% compared to 32.7% for U.S. citizens).

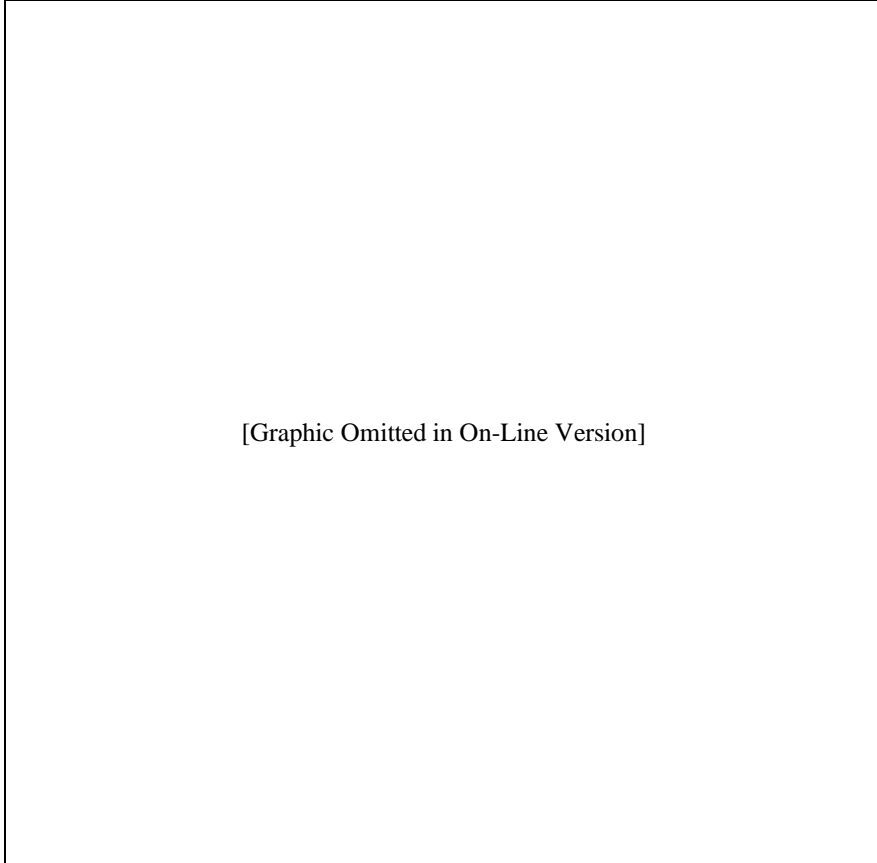
Forty percent of the Ninth Circuit's sentencing caseload involved non-U.S. citizen defendants

compared to seven percent in the Sixth Circuit (*see* accompanying bar chart for breakdown of defendant citizenship by circuit).

Departures

Defendants were sentenced within the applicable guideline range in 71.7 percent of the cases sentenced in 1994. This “within-range” figure has dropped steadily over the past few years, in direct proportion to the increase in downward departures pursuant to a government motion that the defendant has provided substantial assistance in the investigation or prosecution of another person.

The rate of departures above and below the guideline range varied markedly by district. Eastern Pennsylvania had the highest departure rate of any of the 94 judicial districts at 53.6 percent of its cases (more than 90 percent of these were downward departures based on defendant substantial assistance). New Hampshire, Connecticut, Western North Carolina, Western Missouri, Nebraska, Arizona, and Northern Florida all



[Graphic Omitted in On-Line Version]

had departure rates above 40 percent. Conversely, Eastern Virginia, Western Arkansas,

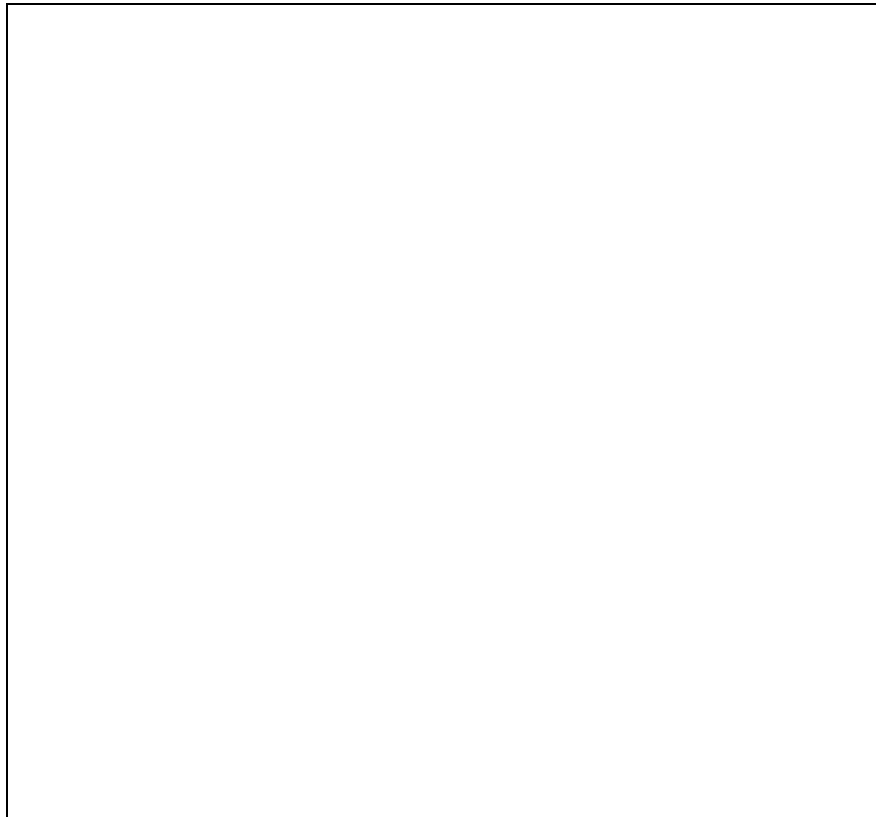
Eastern Oklahoma, and the Virgin Islands had departure rates below ten percent (*see* accompanying graph for substantial assistance departure trends since 1989).

Sentencing Appeals

The Commission tracks appellate review of sentencing decisions as part of its comprehensive monitoring of the guideline system.

Based on the 3,923 cases in the 1994 appeals database that raised sentencing issues, 76.8 percent of the cases were affirmed, 10.4 percent were affirmed in part/dismissed in part, 9.8 percent were reversed, and 3.0 percent were dismissed. The five most frequently appealed guidelines by defendants were (1) drug trafficking; (2) relevant conduct; (3) acceptance of responsibility; (4) departures; and (5) aggravating role in the offense. Prosecutors most often appealed

(*See Annual Report on page 6*)



(*Annual Report* from page 5)

cases involving (1) departures; (2) drug trafficking; (3) acceptance of responsibility; (4) relevant conduct; and (5) adequacy of criminal history. On average, Hispanics are less likely to appeal their guideline sentences than Whites or Blacks. Offenders facing lengthier prison terms – those in Criminal History Category VI or defendants facing gun or drug mandatory minimum sentences – appeal their sentences at a higher rate than offenders facing lesser sentences.

The mean sentences of appealed cases was 128.2 months (median 96 months) compared to 65.9 months (median 36 months) for all district court cases sentenced in 1994.■

National Sentencing Association's Annual Meeting Slated for July

No matter how different their criminal justice systems and political landscapes, states that have adopted sentencing guidelines are wrestling with strikingly similar issues. In an effort to share strategies for addressing these questions, representatives from 17 states and the federal government will meet in Boston July 24-25, 1995, at the second annual meeting of the National Association of Sentencing Commissions (NASC).

The two-day meeting will address topics such as “non-incarcerative sentencing options,” “evaluation of sentencing guidelines,” and “judicial and prosecutorial discretion.” At the conclusion of the session, the group will adopt bylaws to establish a formal organization that will serve as a national clearinghouse for information on structured sentencing.

To receive a brochure or more information about the NASC's annual meeting, contact Ms. Cynthia Kempinen at the Pennsylvania Commission on Sentencing at P.O. Box 1200, State College, PA 16804-1200, or call (814) 863-2797.■

New Electronic Bulletin Board Brings USSC On-Line

The U.S. Sentencing Commission is merging onto the information superhighway with *USSC OnLine*, its new public access electronic bulletin board.

Beginning July 1, 1995, a variety of Commission materials will be available through *USSC OnLine*, including:

- guidelines manuals
- special reports to Congress
- catalog of Commission publications and datafiles
- Commission meeting calendar, agenda, and minutes
- proposed guideline amendments
- working group reports
- Most Frequently Asked Questions about the Sentencing Guidelines (Vol. VII)
- case law updates
- ASSYST guideline application software

Most documents will be stored in WordPerfect 5.1 and ASCII DOS text formats; a few will be stored in WordPerfect 6.0 for Windows to preserve their graphics. Each file will contain a format description to facilitate downloading the version compatible with the user's system. For best results, use modem speeds of 9.6 or 14.4.

Users can call **(202) 273-4709** to access *USSC OnLine* and download Commission documents. Those connected to the circuit court's CC:Mail system can send electronic mail to the Sentencing Commission at AOHUBPO.

Questions or problems should be directed to Durward Womack, the *USSC OnLine* operator, at (202) 273-4583.■

Corporate Crime Symposium Takes Shape

Interest is high for the Sentencing Commission's early autumn symposium, "Corporate Crime in America: Strengthening the 'Good Citizen' Corporation," to be held at the Capitol Hilton in Washington, D.C., September 7-8, 1995. As *Guide Lines* went to press, registration materials had just been mailed to the several hundred interested persons who have requested information about attending.

The symposium will examine the ways in which companies, industries, and enforcement officials have responded to the "carrot and stick" incentives, outlined in the organizational guidelines, to establish strong compliance programs and take other crime-controlling measures. One highlight of the program will be a discussion of results from Commission-sponsored research on corporate compliance practices.

Symposium presentations also will address topics and policy issues raised in the wake of the organizational guidelines' new emphasis on effective compliance programs, including:

- the government's ideal role in fostering "good corporate citizenship";
- whether and when compliance practices should be protected from disclosure;
- new models and proposals for evolving compliance standards;

- corporate experiences in developing "effective" compliance programs;
- whether and how overlapping enforcement schemes might be more effectively coordinated; and
- views and experiences of the enforcement community.

Senator Edward M. Kennedy, an original sponsor of the Sentencing Reform Act of 1984, will present the keynote address, discussing ways in which the organizational sentencing guidelines contribute to sound sentencing policy. Symposium presenters will include Steven A. Herman, the top enforcement official at the U.S. Environmental Protection Agency; Eleanor Hill, Inspector General at the Department of Defense; senior Department of Justice officials from the environmental, criminal, antitrust, and civil divisions; in-house experts from major companies; members of the academic community; and other compliance experts along with members and staff of the Sentencing Commission.

Anyone desiring to attend the symposium who has not requested registration materials can call (800) 227-5210 or (301) 654-2346. Because capacity is limited, preference will be given by date of registration. ■

Two New Reports Available Working Group Update

The Commission annually convenes interdisciplinary staff working groups to study priority issues as part of its continuing analysis of the sentencing guidelines. During the recently completed amendment cycle, the Commission received reports on money laundering and food and drug offenses.

The Money Laundering Working Group updated a report presented in October 1992 when the Commission first comprehensively reviewed application of this guideline. The revised report reviews the history of the Commission's consideration of the money laundering guidelines, summarizes findings of the earlier

report, and updates case law and monitoring data. Commissioners reviewed the report prior to adopting an amendment that revises and consolidates the money laundering guidelines to better reflect the relative seriousness of the underlying criminal conduct.

The Food and Drug Working Group also reported to the Commission during the past amendment cycle on §2N2.1, the guideline covering offenses involving food, drug, and agricultural products. The group's report includes an overview of the most commonly prosecuted offenses sentenced under §2N2.1, an analysis of food and drug cases involving

individuals sentenced under the guideline in 1991-1993, and a description of food and drug cases involving organizational defendants sentenced under pre-guidelines law. Additionally, the report examines relevant case law and analyzes application issues under §2N2.1 that need to be addressed prior to developing fine guidelines for organizational offenders.

[Copies of these working group reports can be found on the Commission's web page under the category *Research/Reports*.] ■

“Patching” ASSYST

The Sentencing Commission’s extensively redesigned ASSYST software (Version 2.0), released in November 1994, has been enthusiastically received by probation officers and others (see story in February edition of *Guide Lines*). This ASSYST version runs on a network, features pull-down menus with “Windows™-like” appearance, and provides additional flexibility to the user. Responding to suggestions from its users, the Commission has improved the program through a “patch” (software update) released in April. The improved program is Version 2.0A.

This patch: (1) resolved problems with the memory limitations of various personal computers; (2) modified the way the system flowed, providing the user with more flexibility in screen handling; (3) changed various elements to the proper default options; and (4) made the criminal history screen easier to operate.

Anyone interested in obtaining a copy of the improved ASSYST program (2.0A) or the patch (which updates the 2.0 version) should contact the Commission at (202) 273-4500 and the receptionist will direct the call. The 2.0A version can also be downloaded from *USSC OnLine*, the Commission’s electronic bulletin board. ■

SENTENCING COMMISSION CALENDAR

Generally, the Commission meets in public session the second Monday of each month.

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

7/13/95	Commission Meeting, Boston MA
9/6/95	Commission Meeting, Washington, D.C.
9/7-8/95	Symposium on Corporate Crime, Capitol Hilton, Washington, D.C.
10/10/95	Commission Meeting, Washington, D.C.
11/13/95	Commission Meeting, Washington, D.C.
12/11/95	Commission Meeting, Washington, D.C.

Guide Lines

Public Information Office
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002