

Probation Officers Advisory Group to the United States Sentencing Commission
February 6 - 7, 2001 Meeting
Minutes

Probation Officers Advisory Group members in attendance were: Chair, Ellen Moore (11th Circuit); Vice-Chair, Joseph J. Napurano (3rd Circuit); Kathy Battistelli (1st Circuit); Colleen Rahill-Beuler (2nd Circuit); Betsy Ervin (4th Circuit); Pat Hoffman (5th Circuit); David Wolfe (5th Circuit); Rex Morgan (7th Circuit); Craig Saigh (8th Circuit); Sue Sorum (9th Circuit); Kathy Ismail (9th Circuit); Debbie Marshall (10th Circuit); Ray Owens (11th Circuit); and Cynthia Easley (FPPOA Ex-Officio). Absent from the meeting were: Theresa Brown (DC Circuit) and Phelps Jones (6th Circuit).

February 6, 2001

The agenda for this meeting was formulated by the Office of Education and Sentencing Practices of the United States Sentencing Commission.

Welcoming Comments by Ellen Moore, POAG Chair, and the Introduction of Two New Members, David Wolfe, 5th Circuit; and Colleen Rahill-Beuler, 2nd Circuit

Ellen advised that Theresa Brown, DC Circuit Representative, was unable to attend as a result of a conflict. Phelps Jones telephoned Ellen earlier and reported that due to family illness, he would not be able to attend. In addition to POAG members, Jay Meyer will be joining us during our meeting at the request of Judge Murphy.

Tim McGrath - Staff Director:

Mr. McGrath introduced Pamela Montgomery, Director of the Office of Education and Sentencing Practices; Charles Tetzlaff, who is newly appointed General Counsel for the United States Sentencing Commission; and Jay Meyer, Deputy Chief from Minnesota, who is currently serving a three-month temporary duty assignment at the Sentencing Commission. Mr. McGrath referenced a chart that details Commissioners' upcoming votes, projects, and time frames for completion. He addressed the importance for Commission staff to maintain consistent, reliable, effective communication with key political figures in forming good policies and advising reasonable time frames for approaching different issues. In this regard, with the change of administration and Senate/Congressional committees not fully yet formed, the United States Sentencing Commission is not sure who the key players are with whom dialog needs to be initiated. Mr. McGrath is of the opinion that the best approach for the Probation Officers Advisory Group is to give their point of view as practitioners of the guidelines, addressing issues such as: are the newly developed changes to the guidelines clear; are they practical; are they reasonable; and can they be easily implemented. Mr. McGrath noted that the Commissioners' next meeting is scheduled for February 13 - 17, 2001, at which time a vote will be taken with regard to emergency amendments. All other items will be voted on in March.

Charles Tetzlaff - General Counsel

Mr. Tetzlaff greeted POAG and spoke about the importance of POAG's advice and guidance. He welcomed personal contact and noted that he has an open-door/open-phone policy.

Pamela Montgomery - Director, Office of Education and Sentencing Practices

Pam welcomed POAG and noted that next week's emergency votes will be on methamphetamine amendments and resolving some of the circuit conflicts. POAG's first position paper, due immediately for the Commissioners' review, should be on the methamphetamine emergency amendments as well as circuit conflict emergency amendments. The second position paper should focus on issues the Commission will consider for vote at their March meeting. It was decided that the first position paper would be submitted by February 12, 2001, and the second position paper would be submitted by March 9, 2001. Mrs. Montgomery discussed the Commission's intent in implementing circuit training programs and asked for our input. Mrs. Montgomery identified various amendments she believed should be POAG's focus.

Money Laundering Amendment Proposal -- Briefed by Paula Desio and Ken Cohen

The United States Sentencing Commission has been studying the problems with money laundering guidelines since 1991. In 1995, the proposed amendment was sent to Congress with recommended changes; however, the proposal was rejected possibly because it was tied to the crack cocaine amendment package. In general, the proposed amendment for money laundering was deemed to be too lenient. In 1997, a report was submitted to Congress suggesting various revisions. The Department of Justice agreed on many of the suggestions but not all areas of revisions. POAG's task is to comment on the clarity and practicality of the suggested revisions. The proposed amendment consolidates §2S1.1 and §2S1.2 and ties the money laundering offense level more closely to the underlying criminal conduct. The revision distinguishes two groups of money launderers: (1) direct money launderers – commit the underlying offense and launder their own money as opposed to (2) indirect or third-party money launderers – in the business of money laundering or at least, laundering money in this particular instance. A discussion followed this briefing with respect to our opinion of how this revision will affect DOJ charging practices. A voiced concern was that this may give the false impression that certain offenses, i.e., drug cases, are decreasing when, in fact, they are just being charged under a different statute.

Immigration Amendment Proposal – Briefed by Ken Cohen

Mr. Cohen reported that the proposal provided for more graduated sanctions based on the seriousness of the prior aggravated felony conviction as a 16-level enhancement seems to be too drastic. He noted that the proposed amendment is meant to provide proportionate punishment. POAG was asked to comment if there were any other ways, other than the proposal, to graduate the 16-level enhancement and to comment on the concurrent proposal suggestion that “actual time served” should be used in determining the graduated increases. POAG expressed immediate concern with respect to the “actual time served” approach and identified a number of obstacles. POAG first identified that such approach was inconsistent

with Chapter Four and it would be very impractical to obtain release dates, particularly from other states. POAG is not opposed to a graduated approach but strongly opposed the “actual time served” proposal.

Economic Crime Package Amendment Proposal – Briefed by Andy Purdy

Mr. Purdy reviewed various components of the Economic Crime Package. There is a plan to combine §2B1.1 and §2F1.1 under one guideline; however, implementation of a common table and common definitions may eliminate the need to consolidate the two guidelines. The specific offense characteristic at §2B1.1(b)(2)(A) obviates the need to determine exact number of victims by allowing a determination that the offense involved mass marketing. Specific offense characteristic (b)(7) will not be included in the recommendation and Mr. Purdy noted that specific offense characteristic (b)(14), Option Two, will be the recommendation of the United States Sentencing Commission. Mr. Purdy noted that most changes in §2B were suggested in an attempt to resolve circuit conflicts. Given the number of issues that are to be addressed in this amendment package, Mr. Purdy would like POAG to focus on our recommendation with respect to the loss table.

Sexual Predators Act Amendment Proposal – Briefed by Pamela Montgomery

Accord to Mrs. Montgomery, this amendment is based on congressional directive. Furthermore, it is the Commission’s suggestion to Congress that the term of supervised release for these types of offenses be increased. Mrs. Montgomery would like POAG to focus their recommendation with respect to the implementation regarding “pattern of activity” directive.

Afternoon Session

Pam Montgomery/Rusty Burris – USSC

Pam Montgomery introduced Margaret Olaghere, the training coordinator for scheduling circuit district training. Rusty discussed the Commission’s desire for circuit-wide training on guideline issues for probation officers. The benefits of circuit-wide training allows the USSC staff to develop a guideline training program for officers at a higher level of instruction than would be available if a program was combined with other members of the court family. USSC requested ideas as to program topics, how often the programs should be held, the need for commitment by chief U.S. probation officers for the success of this type of program, and the possibility of conducting the training more than one time in some of the larger circuits. Additionally, it was recognized that this type of training program offers different opportunities and a level of instruction different from that at the national guideline training. POAG suggested that USSC staff make this information known to the Chiefs Advisory Group and orientation for new chiefs.

A discussion was entered into regarding POAG’s role at the national training to be held in Palm Springs, California, in May. Mrs. Montgomery advised that POAG had been extended an invitation to provide a block of training for the probation officers which will be from 2:45 p.m. to 4:15 p.m. on May 18, 2001.

Members suggested that POAG does not want to set itself up as “experts” in guideline application; therefore, it was discussed that our training program should address process orientation issues and possibly focus on the addendum and dispute resolution process. It was further noted that this would be a good opportunity for POAG to present the mission of our group, our function, introduce our web site, and respond to questions from the audience. Some members were concerned about the best practices suggestion due to the differences in ways districts deal with these issues. Other members suggested we showcase “best practices” from around the country and allow different individuals from various districts to present their information. Members commented that perhaps we could use this time to be proactive and ask the audience what issues officers would like POAG to address. Mrs. Montgomery noted that she would like time to discuss with the probation officers various training needs and assistance the staff could provide. Mrs. Montgomery reported that John Hughes with the AO has also asked for part of this time period to address the probation officers.

Offenses Related to Methamphetamine, Ecstasy, and Amphetamine – Briefed by Louis Reedt, Director of the Office of Policy Analysis

Mr. Reedt reported that in the Methamphetamine Anti-Proliferation Act of 2000, Congress directed the Commission to provide for increased penalties for trafficking in List I chemicals to correspond to the quantity of controlled substance that reasonably could have been manufactured. The proposed amendment appeared to present no application issues. Information was presented regarding amphetamine and methamphetamine and the lack of any significant distinction between the two. Members agreed that adding amphetamine to the drug quantity table would reduce math conversions, etc. involved in drug calculations. Mr. Reedt provided a summary of the findings involved in the directive and POAG agreed that an increase in penalties was needed. Information was presented regarding eliminating the restriction of Level 26 at the Chapter Two drug guideline for Safety Valve consideration. Last year, approximately 3,000 individuals would have qualified for a lower sentence if no floor level existed. There is a possibility that this amendment will be made retroactive if passed by the Commission and adopted by Congress.

Anhydrous Ammonia is now criminalized and referenced at §2D1.12. The Department of Justice originally agreed this was the most appropriate guideline. However, they are now requesting that the substance appear in the table at §2D2.11. The question was raised as to whether this drug is amenable to a quantity calculation. A summary was also presented regarding the “date rape legislation” and the proposed guideline changes which may be implemented.

Web Site

Ray Owens, 11th Circuit Representative, provided the group with an update on the POAG web site. The web site will appear as a link to the United States Sentencing Commission’s web site. Discussion was held regarding the information which should be present on POAG’s web page and it was decided to include a list of POAG members with their various addresses including e-mail addresses, the minutes of our meetings, and any position papers. Initially, a hypertext link was mentioned as a way for officers to leave messages

for our group. However, it was decided that if we listed our names and various addresses, this would not be needed.

Other Issues

A brief discussion was held regarding whether district representatives were still needed with the advent of the web site. It was decided to maintain the district representatives. David Wolfe, Fifth Circuit Representative, volunteered to write an article about our meeting for News and Views.

February 7, 2001

Meeting opened by Ellen Moore, Chair. Discussion was held with respect to the issues that were presented to us the previous day. Discussions focused on POAG's recommendation with respect to the Sexual Predators Act amendment, money laundering amendment, immigration amendment, Economic Crime Package: Loss Table; Safety Valve amendment; immigration amendment; circuit conflicts; Proposed Emergency Amendment One – Ecstasy; Proposed Emergency Amendment Two – Amphetamine; and Proposed Emergency Amendment Three – Trafficking in List I Chemicals.

Assignments were made to various members who will be responsible for summarizing our position and submitting this information to Ellen Moore by the designated date. Ellen will prepare the position papers and will be responsible for submitting them in a timely manner.

Assignments	
Debbie Marshall	Sexual Predators
Sue Sorum	Money Laundering
Cathy Battistelli	Drug-Related Emergency Amendments
Betsy Ervin/Cindy Easley	Economic Crime: Loss Table
Craig Saigh	Immigration
Cathy Ismail	Circuit Conflicts

At the conclusion of our discussion, Pam Montgomery joined the group and suggested that we provide a time frame that would be amenable for our next meeting. She would prefer that POAG meet again prior to the Commissioners' summer retreat. Considering everyone's schedule, it appears the week of June 25, 2001, would be the best time to schedule a meeting. Prior to the adjournment of the meeting, Ellen noted that Craig Saigh and Pat Hoffman advised her that their terms had expired. Ellen has prepared certificates of appreciation which will be forwarded to them at a later date.

Meeting adjourned, 3:20 PM.

Based on this meeting, two position papers were submitted to the Commissioners. The first paper, dated February 9, 2001, addressed emergency amendments. The second paper, dated March 5, 2001, addressed proposed amendments that were published in the *Federal Register*, January 26, 2001.