



Guidelines

News from the U.S. Sentencing Commission

October 2002

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Commission Sets Priorities for 2002–2003 Amendment Cycle

On August 28, 2002, the Sentencing Commission adopted its policy priorities for the amendment cycle ending May 1, 2003. Recent crime legislation passed by Congress is a high priority for the Commission. Last amendment cycle, the Commission responded quickly to the USA PATRIOT Act and passed several amendments in response. This year, the Commission plans to consider further amendments to give full effect to that legislation, as well as address the Public Health and Security and Bioterrorism Preparedness and Response Act of 2002. This recently passed legislation creates several new terrorism offenses and amends statutory provisions to provide for the protection of the nation’s food, drug, and water supply.

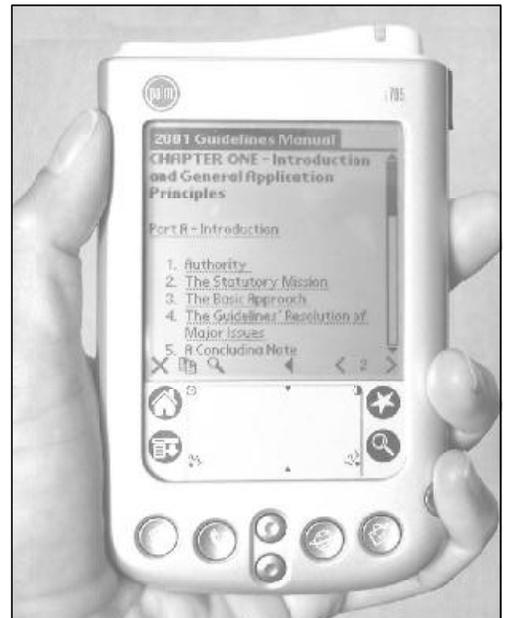
In the wake of several recent large-scale corporate frauds, Congress recently passed the Sarbanes-Oxley Act of 2002. The Act requires the Commission to implement within 180 days (by January 25, 2003) several emergency directives dealing with securities, accounting, and pension fraud; obstruction of justice offenses; and fraud offenses involving officers and directors of public corporations, among others.

Priorities *Continued on page 3*

2001 Guidelines Manual Now Downloadable to Palm™ PDAs

The Commission’s complete 2001 *Guidelines Manual* can now be downloaded onto Palm™ handheld devices. With the addition of iSilo™ v3.1 document reader software, which is not furnished by the Commission, a Palm™ PDA can hold the entire text of the manual, and users can navigate the document, search for text, and locate guideline information with greater convenience. The software reader required to use the electronic manual must be purchased from iSilo™. Single- or multiple-user software licenses are available directly from the iSilo™ online store: www.isilo.com/purchase.htm. The iSilo™ company also offers online technical support, tutorials, and reference manuals to help users get started.

The Commission’s information systems specialists will continue to refine the process of developing new ways to advance the exchange of Commission information electronically. Those who take advantage of this new electronic format are welcome to contact Joyce Routt, information systems manager, joyce@ussc.gov to provide feedback on the innovation. Also, don’t forget that you may “opt in” to the Commission’s e-mail “broadcast” system, which serves as a supplement to the Commission’s web site. This system sends electronic mails to interested persons about *Federal Register* notices, meetings and public hearings, and other significant news about the guidelines and the Commission. Interested persons may sign up on the Commission’s web site at www.ussc.gov. ■



Message from the Chair

The Commission has recently had the pleasure of receiving a considerable amount of positive feedback. Our work on corporate crimes has been recognized by the Attorney General, members of Congress, and the media. Especially noted have been the establishment of the advisory group on the organizational sentencing guidelines and our November 2001 amendments increasing sentences for the more serious economic crimes. A recent *New York Times* article noted that the Commission had “drastically increased sentences for white collar crime, with special emphasis on frauds involving many millions of dollars.” Since the Commission’s release of its thorough report on cocaine sentencing policy and our testimony before Senator Biden’s Judiciary Subcommittee on Crime and Drugs, we have received many compliments and inquiries from Congress and the public. We are grateful that our recommendations are proving to be of assistance to lawmakers.

In our new cycle, the Commission is again taking on an ambitious policy agenda, shaped in no small part by recent developments related to corporate crime, terrorism, and campaign finance reform. Ongoing implementation of the USA PATRIOT Act, along with new legislation on bioterrorism, requires the Commission to develop innovative and timely approaches to respond to the many different kinds of illegal activity involved. The Commission also must implement new statutory directives on corporate crime on an emergency basis, which means a much shorter timetable than normal. A similar abbreviated time frame applies to amendments that we must promulgate this fall on new campaign finance offenses. You may wish to take a look at the accompanying article in this newsletter on the priorities set by the Commission for 2002-2003.

Our second ad hoc advisory group is considering possible improvements regarding the application of the federal sentencing guidelines to Native Americans who come under the Major Crimes Act. It is chaired by Chief Judge Lawrence Piersol and held its first meeting on June 18, 2002. The members had a lively and wide ranging discussion about their mission and how best to get input from Indian tribes.

Over the summer, commissioners spent time in the field speaking before many different groups. I spoke on sentencing philosophy at the Eighth Circuit Judicial Conference, and Vice Chair William Sessions and Commissioner Michael O’Neill appeared on a panel at the Second Circuit Judicial Conference moderated by Judge Jon Newman. Vice Chair John Steer and Commissioner Joe Kendall spoke at the Federal Judicial Center’s program for federal defenders, and Vice Chair Steer also participated in a panel called “Sympathy for the Devil: Do the Federal Sentencing Guidelines Ever Get Anything Right?” at the annual conference of the National Association of Sentencing Commissions.

This year we also are focusing our energy on developing and implementing new technology to improve our responsiveness and services to the field. This issue of *GuideLines* highlights several such efforts that are currently under way. ■

—Judge Diana E. Murphy

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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Priorities *continued from page 1*

New guideline provisions also will have to be developed for a number of new offenses.

The Bipartisan Campaign Finance Reform Act of 2002 also requires the Commission to pass emergency amendments. By February 4, 2003, the Commission must promulgate guideline provisions to cover several offenses that were previously classified as misdemeanors. The Act also directs the Commission to consider a number of factors such as contributions from foreign sources, and the number and amount of illegal contributions. As part of its review in this area, the Commission may also consider some modifications to the public corruption guidelines for implementation in the 2003-2004 cycle.

The Commission plans to respond to the recent increase in oxycontin trafficking. In addition, some modifications to the acceptance of responsibility guideline may be considered. The Commission also intends to continue its research, policy work, and possible guideline amendments relating to Chapter Four (Criminal History and Criminal Livelihood). On a longer time frame, the Commission is studying the area of compassionate release.

In addition to this ambitious policy agenda, the Commission plans to continue working on its 15-year study. As the guidelines approach their 15th anniversary, the Commission hopes to complete a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act.

Finally, the Commission will continue to provide its assistance to Congress and the Administration with respect to the Commission's report to Congress, *Cocaine and Federal Sentencing Policy*, which was submitted in May 2002. The official notice of priorities can be found on the Commission's website at www.ussc.gov/notice.htm. ■

Advisory Group on Organizational Guidelines Seeks Public Comment, Plans Hearing

The Advisory Group on Organizational Guidelines has published a list of issues upon which it is seeking public comment and has announced that it will hold a public hearing on these issues in the Federal Judicial Center Auditorium on Thursday, November 14.

Details of the issues under consideration are available on the Commission's website at www.ussc.gov/corp/pubcom8_02.pdf.

Commission Meeting Schedule

(Dates are tentative. All meetings will take place in Washington, DC, unless otherwise noted. For details, please visit www.ussc.gov/meeting.htm.)

- October 30, 2002
- November 20, 2002
- December 3, 2002
- January 8, 2003
- February 26, 2003
- March 26, 2003
- April 11, 2003

Native American Ad Hoc Advisory Group Members

Front (L to R):

Tom Peckham, Robert Ecoffey, Chief Judge Lawrence Piersol (chair), Kevin Washburn, Chief Judge Donald W. Molloy.

Back (L to R):

Tracy Toulou, Celia Rumann, Marlys Pecora, Diane Humetewa, Jon Sands.

(*Not pictured:* Kevin Gover, Phil Hogen, Magdeline Jensen, Thomas LeClaire, Elsie Meeks, and Richard Monette.)



Enhanced Data Collection Efforts Underway

On July 29, 2002, staff at the Sentencing Commission invited several chief probation officers to react to proposals to enhance data collection and the tracking of case files that are submitted to the Commission. This review was undertaken to fulfill the Commission's responsibility to secure and maintain this extensive database without unduly burdening the operation of federal probation offices. The three-point program, proposed by Commission staff and reviewed by the chief probation officers, included the following:

① Automated Data Matching Program

The Commission will complete development of a customized software program that will more accurately compare criminal case data maintained by the Administrative Office of the United States Courts (AO) with the data maintained by the Sentencing Commission (USSC). This automated program will "match" case files in the AO and USSC datasets and produce a list of "missing" cases that are in one database, but not the other. In addition, before any notice of a "missing" case is sent to the probation office, the results of the automated data match will be hand checked against the USSC file system to ensure that the documents are not already in house. Finally, starting in FY 2003, should the database be available from the AO, the Commission will run a data match on a quarterly timetable.

② Return Receipt/Transmittal Letter

The Commission will request the use of a standard transmittal letter for a limited number of high volume districts in which the Commission has traditionally had a problem tracking cases. A draft of this letter has been developed and is available for distribution to all interested parties for their comments. It was agreed that smaller and medium-sized districts that do not appear to have a wide discrepancy in the data match process can continue to use their internal tracking system (*e.g.*, file memo with attached U.S. Postal Service Return Receipt Notification). In addition to soliciting comments on the proposed draft of the transmittal letter, the Commission is interested in receiving brief descriptions of various districts' routine practices, explaining how cases are internally tracked and routed to the Commission.

③ Electronic Case Filing/Electronic Mail

The Commission will coordinate with participating probation offices the use of an electronic case filing system to receive cases. Using existing automation systems, an administrative protocol will be designed in which a "package" of documents (*i.e.*, Indictment, Plea Agreement, Presentence Report, Judgment and Commitment Order, and Statement of Reasons) is assembled by the probation office and then e-mailed to the Commission. An automated return receipt will then be generated by the Commission and sent back to the probation office.

The Commission will continue to look to the advice and expertise of probation offices across the country so that it can successfully and accurately report the significant amount of work being done in the area of guideline sentencing in the federal courts. Special thanks is extended to those chief probation officers who graciously consented to participate in our program. Any comments or suggestions on this topic should be sent to J. Deon Haynes, acting director of the Office of Monitoring, at dhaynes@ussc.gov. ■

Commission Participates in Annual Meeting of NASC

The National Association of Sentencing Commissions (NASC) held its annual meeting in Williamsburg, Virginia, from August 4 through August 6. The United States Sentencing Commission, with 15 attendees, had the largest contingency at the conference.

Commission presentations were given by Vice Chair John Steer and Paul Hofer, senior research associate in the Office of Policy Analysis, on the panel, "Sympathy for the Devil: Do the Federal Sentencing Guidelines Get Anything Right?" and by Lou Reedt, acting director of the Office of Policy Analysis, on the panel, "Sentencing Reform and Its Impact on Warranted and Unwarranted Disparity." Miles Harer, senior research associate in the Office of Policy Analysis, moderated the panel, "Culpability, Deterrence, and Recidivism: Revisiting the Role of Criminal History in Sentencing."

On another note, Kevin Blackwell, senior research associate in the Office of Policy Analysis, was elected vice president of NASC. For the past two years, he had served as the organization's secretary. ■

Judge Murphy on ABC's Nightline Program

On August 22, 2002, ABC's *Nightline* was devoted to the issue of penalties for crack and powder cocaine offenses. The feature, "Cocaine Wars," was narrated by Ted Koppel and featured Sentencing Commission Chair Diana E. Murphy, Senators Patrick Leahy (D-Vermont) and Jeff Sessions (R-Alabama), and U.S. District Court Judge Terry Hatter. ■