

**Minutes of the April 29, 2003
U.S. Sentencing Commission Public Meeting**

Chair Murphy called the meeting to order at 12:05 p.m. Members of the Commission participated via teleconference from Williamsburg, Virginia, while staff and the public participated from the Commissioners Conference Room.

The following commissioners and staff participated in the meeting:

Diana E. Murphy, Chair
Ruben Castillo, Vice Chair
William K. Sessions, III, Vice Chair
John R. Steer, Vice Chair
Michael E. O'Neill, Commissioner
Eric H. Jaso, Commissioner Ex Officio
Edward F. Reilly, Jr., Commissioner Ex Officio
Timothy B. McGrath, Staff Director
Charles Tetzlaff, General Counsel
Judith Sheon, Special Counsel

Chair Murphy began the meeting by welcoming members of the public. She stated that items on the agenda for today's meeting concerned a draft proposed supplement to the *Guidelines Manual*, resulting from the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the "PROTECT Act" or the "Act"). Chair Murphy asked General Counsel Charles Tetzlaff to describe the amendments and related motions.

By way of introduction, General Counsel Tetzlaff stated that the Commission is considering a draft proposed supplement to the *Guidelines Manual*. This draft consists of three parts. First, the PROTECT Act makes direct amendments to the *Guidelines Manual*, and these amendments become effective without the necessity of any action on the part of the Commission. However, Congress directed the Commission to distribute those amendments forthwith upon enactment of the Act. Therefore, it first would be appropriate to authorize staff to distribute those amendments to the federal judiciary and other users of the *Guidelines Manual*, in accordance with the requirements of the Act. Second, the Commission has authority, under section 401(m)(2)(c) of the PROTECT Act, to promulgate, pursuant to 28 U.S.C. § 994, any conforming amendments necessitated by the Act. It is recommended that the Commission waive the Administrative Procedure Act (5 U.S.C. § 553) requirements of notice and comment with respect to these conforming amendments based upon "good cause." Such notice and comment would be impracticable, unnecessary, and contrary to the public interest due to the necessity of making the conforming amendments effective contemporaneously with the effective date of the direct congressional amendments made by the PROTECT Act. Finally, the PROTECT Act requires specific amendments to the kidnapping guideline, effective 30 days after the date of the

enactment of the Act. Therefore, it is suggested that the Commission consider promulgating the amendments to the kidnapping guideline with an effective date of 30 days after the date of the enactment of the PROTECT Act.

General Counsel Tetzlaff recommended that all of the Commission's actions in today's public meeting be provisional and conditional upon the President's signing of the bill, which is anticipated on April 30, 2003. It is further recommended that another public meeting be held soon after the date of the enactment of the PROTECT Act for the purpose of ratifying whatever conditional action the Commission takes today.

Chair Murphy noted that all voting and nonvoting commissioners are present and requested that General Counsel Tetzlaff separately discuss each area of consideration.

General Counsel Tetzlaff stated that pursuant to section 401(j) of the PROTECT Act, the proposed draft supplement to the *Guidelines Manual* will need to be distributed forthwith to all federal courts and federal probation offices upon enactment of the PROTECT Act. Therefore, a motion would be in order to authorize staff to distribute forthwith the supplement to the *Guidelines Manual* upon the President's signing of the Act.

Vice Chair Steer moved to authorize staff to distribute the proposed draft supplement to the *Guidelines Manual*. Seconded by Vice Chair Castillo. The motion passed unanimously.

General Counsel Tetzlaff stated that a motion would be in order to waive the notice and comment period, including a public hearing, required under 28 U.S.C. § 994 and 5 U.S.C. § 553. This motion would be based on good cause due to the necessity of promulgating any conforming amendments contemporaneously with the direct congressional PROTECT Act amendments that become effective on the date of the enactment of that Act. The motion should include authorization for staff to make technical and conforming changes.

Vice Chair Steer moved to waive the notice and comment period for good cause and to authorize staff to make technical and conforming changes. Seconded by Commissioner O'Neill. The motion passed unanimously.

General Counsel Tetzlaff stated that a motion would be in order to promulgate, pursuant to section 401(m) of the PROTECT Act and 28 U.S.C. § 994, conforming amendments to the direct congressional PROTECT Act amendments. These conforming amendments are set forth in the proposed draft supplement to the *Guidelines Manual*. This would be provisional and conditional upon the President signing the PROTECT Act into law, and the proposed conforming amendments therefore would become effective on the date of the enactment of the PROTECT Act. The motion should include authorization for staff to make technical and conforming changes.

Commissioner O'Neill moved to promulgate conforming amendments to the PROTECT Act

amendments conditioned upon the President signing the Act into law, and to authorize staff to make technical and conforming changes. Seconded by Vice Chair Steer. The motion passed unanimously.

General Counsel Tetzlaff stated that a motion would be in order to specify that the conforming amendments become effective contemporaneously with the effective date of the direct congressional amendments made by the PROTECT Act. The motion should include authorization for staff to make technical and conforming changes.

Commissioner O'Neill moved to specify the effective date of the conforming amendments as the effective date of the amendments made by the PROTECT Act and to authorize staff to make technical and conforming changes. Seconded by Vice Chair Castillo. The motion passed unanimously.

General Counsel Tetzlaff stated that a motion would be in order to promulgate, pursuant to section 104 of the PROTECT Act, the proposed amendments to the kidnapping guideline, §4A1.4. This motion would be conditional and provisional upon the President signing the PROTECT Act into law. The motion should include authorization for staff to make technical and conforming changes.

Vice Chair Steer moved to promulgate the proposed amendments to the kidnapping guideline conditioned upon the President signing the Act into law and to authorize staff to make technical and conforming changes. Seconded by Commissioner O'Neill. The motion passed unanimously.

General Counsel Tetzlaff stated that a motion would be in order to specify that the effective date of the amendments to the kidnapping guideline would be 30 days after the date of the enactment of the PROTECT Act. The motion should include authorization for staff to make technical and conforming changes.

Commissioner O'Neill moved to specify the effective date of the amendments to the kidnapping guideline as 30 days after the date of the enactment of the Act and to authorize staff to make technical and conforming changes. Seconded by Vice Chair Castillo. The motion passed unanimously.

General Counsel Tetzlaff reiterated that because the Act has not yet taken effect, staff recommends that the Commission hold an additional public meeting upon enactment of the PROTECT Act in order to ratify its actions today. He added that because there is not an opportunity to provide the public with notice of such a public meeting, and waiving that notice would be appropriate in this instance, the chair may wish to announce that the Commission will hold a public meeting upon enactment of the PROTECT Act.

Chair Murphy stated that there will be a subsequent public meeting upon the signing of the PROTECT Act, which may take place as early as tomorrow, April 30, 2003. The purpose of the

meeting will be to ratify the Commission's actions today. Chair Murphy noted that because the President is expected to sign the Act into law very soon, the meeting likely will be held on Friday, May 2, 2003, but this is subject to the enactment of the PROTECT Act.

Chair Murphy thanked staff for their help with the PROTECT Act provisions.

Chair Murphy adjourned the meeting at 12:16 p.m.