

**U.S. Sentencing Commission Public Meeting Minutes
September 21, 2006**

Chair Ricardo H. Hinojosa called the meeting to order at 10:04 a.m. in the Commissioners' Conference Room.

The following Commissioners were present:

- Judge Ricardo H. Hinojosa, Chair
- Judge Ruben Castillo, Vice Chair
- Judge William K. Sessions, III, Vice Chair
- John R. Steer, Vice Chair
- Michael E. Horowitz, Commissioner
- Beryl Howell, Commissioner
- Michael Elston, Commissioner Ex Officio

The following staff participated in the meeting:

- Judith Sheon, Staff Director
- Paula Desio, Deputy General Counsel, Office of the General Counsel

Chair Hinojosa announced that he had no report to make and called on the Staff Director, Ms. Sheon, for her report. The Staff Director reported that the new edition of the Guidelines Manual will be available for November 1. She thanked the staff for its work in this regard.

The Chair called for a motion to adopt the minutes of the August 30, 2006, public meeting. Commissioner Howell made the motion to adopt the minutes, with Vice Chair Castillo seconding the motion. Hearing no further discussion, the Chair called for a vote. The motion was adopted by a unanimous vote.

The Chair called on Ms. Desio to inform the Commission on a possible vote to adopt the list of priorities as published in the Federal Register on August 4, 2006, for the amendment cycle ending May 1, 2007. Ms. Desio noted that the list (see attached Exhibit A) before the Commission for a possible vote included the following proposed priorities:

- (1) implementation of crime legislation enacted during the 109th Congress warranting a Commission response, including (A) the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248; (B) the Stop Counterfeiting in Manufactured Goods Act, Pub. L. 109-181; (C) the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109-177; (D) the Trafficking Victims Protection Reauthorization of 2005, Pub. L. 109-164; (E) the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162; (F) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59; and (G) other legislation authorizing statutory penalties,

creating new offenses, or pertaining to victims, that requires incorporation into the guidelines;

(2) continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States v. Booker*, including any appropriate guideline changes in light of the Commission's 2006 report to Congress, Final Report on the Impact of *United States v. Booker* on Federal Sentencing, and continuation of its analysis of post-*Booker* data, case law, and other feedback, including reasons for departures and variances stated by sentencing courts;

(3) continuation of its policy work regarding immigration offenses, specifically, offenses sentenced under §§2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States) and implementation of any immigration legislation that may be enacted;

(4) continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy, including holding a hearing on this issue and reevaluating the Commission's 2002 report to Congress, Cocaine and Federal Sentencing Policy;

(5) beginning of a guideline simplification effort to develop and consider possible options that might improve the overall effectiveness of the sentencing guidelines;

(6) continuation of its policy work, in light of the Commission's prior research on criminal history, to develop and consider possible options that might improve the operation of Chapter Four (Criminal History);

(7) continuation of its policy work to implement 28 U.S.C. § 994(t), specifically regarding the development of further commentary to §1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons); and

(8) resolution of a number of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. § 991(b)(1)(B) and *Braxton v. United States*, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

Ms. Desio stated that a motion to adopt the list of priorities was in order.

The Chair asked if there was a motion to adopt the priorities. Vice Chair Castillo made such a motion, with Commissioner Horowitz seconding the motion. The Chair asked if there was any discussion on the motion.

Vice Chair Castillo stated that the identified priorities comprise the most ambitious and proactive set of priorities taken up by the Commission in his seven years on the Commission. He

cited the priorities concerning immigration offenses, cocaine sentencing, policy work on the criminal history section of the sentencing guidelines manual, and guidelines simplification as particular examples. He added that the proposed priorities concerning reduction in a term of imprisonment as a result of a motion by the Director of the Bureau of Prisons and resolving circuit conflicts are two issues he hopes the Commission will be able to address. He concluded by applauding his fellow Commissioners for their willingness to undertake the identified priorities.

Vice Chair Steer stated that the implementation of the substantial amount of crime legislation enacted by the Congress is itself a major undertaking that may limit the Commission's ability to devote resources to the other priorities. He added that additional legislation may be forthcoming since Congress is still in session. Nevertheless, he stated that he supported the Commission's ambitious agenda and reminded the public that they could be very helpful in shaping the proposals the Commission develops as it addresses the priorities.

Vice Chair Sessions stated that he was pleased that the Commission intends to address cocaine sentencing and criminal history.

The Chair noted that some of the priorities may take more than one amendment cycle to complete. He invited all interested parties to offer suggestions on how to address the various priorities. The Chair offered a staff briefing for members of the public present at the meeting on recent legislation to be held later that afternoon.

Hearing no further discussion, the Chair called for a vote on the motion to adopt the list of priorities. The motion was adopted by a unanimous vote.

The Chair asked if there was any further business before the Commission and hearing none, called for a motion to adjourn the meeting. Commissioner Horowitz made such a motion, with Vice Chair Steer seconding the motion. The Chair called for a vote and the motion was adopted unanimously. The meeting was adjourned at 10:21 a.m.

EXHIBIT A

BAC2210-40/2211-01

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In August 2006, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2007. See 77 FR 44344 (August 4, 2006). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer,
Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an

independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. § 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2007, and possibly continuing into the amendment cycle ending May 1, 2008. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2007. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2007.

As so prefaced, the Commission has identified the following priorities:

(1) implementation of crime legislation enacted during the 109th Congress warranting a Commission response, including (A) the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109–248; (B) the Stop Counterfeiting in Manufactured Goods Act, Pub. L. 109–181; (C) the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109–177; (D) the Trafficking Victims Protection Reauthorization of 2005, Pub. L. 109–164; (E) the Violence

Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109–162; (F) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109–59; and (G) other legislation authorizing statutory penalties, creating new offenses, or pertaining to victims, that requires incorporation into the guidelines;

(2) continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to United States v. Booker, including any appropriate guideline changes in light of the Commission’s 2006 report to Congress, Final Report on the Impact of United States v. Booker on Federal Sentencing, and continuation of its analysis of post-Booker data, case law, and other feedback, including reasons for departures and variances stated by sentencing courts;

(3) continuation of its policy work regarding immigration offenses, specifically, offenses sentenced under §§2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States) and implementation of any immigration legislation that may be enacted;

(4) continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy, including holding a hearing on this issue and reevaluating the Commission’s 2002 report to Congress, Cocaine and Federal Sentencing Policy;

(5) beginning of a guideline simplification effort to develop and consider possible options that might improve the overall effectiveness of the sentencing guidelines;

(6) continuation of its policy work, in light of the Commission's prior research on criminal history, to develop and consider possible options that might improve the operation of Chapter Four (Criminal History);

(7) continuation of its policy work to implement 28 U.S.C. § 994(t), specifically regarding the development of further commentary to §1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons); and

(8) resolution of a number of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. § 991(b)(1)(B) and Braxton v. United States, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

AUTHORITY: 28 U.S.C. § 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo H. Hinojosa,

Chair