

United States Sentencing Commission Public Meeting Minutes
August 31, 2009

Acting Chair Ricardo H. Hinojosa called the meeting to order at 2:18 p.m. in the Commissioners' Conference Room.

The following Commissioners were present via telephone:

- Judge Ricardo H. Hinojosa, Acting Chair
- William B. Carr, Jr., Vice Chair
- Judge Ruben Castillo, Vice Chair
- Judge William K. Sessions, III, Vice Chair
- Dabney L. Friedrich, Commissioner
- Beryl A. Howell, Commissioner
- Jonathan J. Wroblewski, Commissioner Ex Officio

The following Commissioner was not present:

- Isaac Fulwood, Jr., Commissioner Ex Officio

The following staff participated in the meeting:

- Judith Sheon, Staff Director
- Kenneth Cohen, General Counsel

Acting Chair Hinojosa thanked the public for its comments regarding the Commission's proposed priorities. The Acting Chair noted that the comments reflect serious thought and time spent and greatly assist the commissioners. Acting Chair Hinojosa reported that the Commission will hold its next regional public hearing in Chicago, IL. The hearings are held in conjunction with the 25th anniversary of the passage of the Sentencing Reform Act of 1984. The Acting Chair expressed the commissioners' appreciation to the hearings' participants.

Acting Chair Hinojosa expressed the commissioners' sadness at the passing of Senator Edward Kennedy, one of the primary co-sponsors of the Sentencing Reform Act of 1984. The Acting Chair noted that over the years, Senator Kennedy provided advice, counsel, and direction to the Commission, as did Senator Strom Thurmond, another co-sponsor of the Sentencing Reform Act of 1984, and as has Senator Orrin Hatch. Acting Chair Hinojosa stated that Senator Kennedy dedicated a significant amount of time to the Sentencing Reform Act and the creation of the Sentencing Commission, for the purpose of creating a fairer sentencing system. The Acting Chair stated that it is the intent of the Commission to advance the system Senator Kennedy envisioned.

Ms. Sheon thanked staff for its work during the summer. She specifically recognized Janet

Henry and Tobias Dorsey for preparing the Guidelines Manual for publication and distribution by November 1, 2009.

The Acting Chair called on Mr. Cohen to advise the Commission on a vote to adopt the proposed policy priorities for the 2009-2010 amendment cycle.

Mr. Cohen stated that before the Commission was the notice of proposed priorities previously published in the Federal Register and on which the Commission received public comment. Mr. Cohen advised the commissioners that a motion to adopt the proposed policies as the final notice of priorities would be in order, with the staff being authorized to make technical and conforming changes if needed.

Acting Chair Hinojosa asked if there is a motion as suggested by Mr. Cohen. Vice Chair Castillo made such a motion, with Commissioner Howell seconding. The Acting Chair called for discussion on the motion. Vice Chair Castillo stated that the public comment was very helpful and convinces him that the Commission is on the right track with the proposed priorities. He added that he looks forward to working on the proposed priorities during the amendment cycle. Hearing no further discussion, the Acting Chair called for a vote. The motion was adopted with the Acting Chair noting that at least four commissioners voted in favor of the motion.

The Acting Chair called on Mr. Cohen to advise the Commission on a possible vote to amend the sentencing guidelines.

Mr. Cohen stated that the proposed amendment, incorporated herein as Exhibit A, makes various technical and conforming changes to the guidelines. First, it updates obsolete statutory guideline references in §§2A6.2 (Stalking or Domestic Violence); 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States); 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor); 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor); 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production); 2J1.5 (Failure to Appear by Material Witness); 3B1.2 (Mitigating Role); and, 3D1.5 (Determining the Total Punishment). Second, it makes clerical and stylistic changes to Commentary in §§2B1.1; 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information); and, 3D1.5 (Determining the Total Punishment). Third, it amends the application notes in §2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy) to ensure that its description of the various minimum offense levels is accurate. Finally, it amends Appendix A (Statutory Index) to ensure that the line

reference to subsection (e) of 50 U.S.C. App. § 527 (Maximum rate of interest on debts incurred before military service) is placed in the appropriate order. Mr. Cohen advised the commissioners that a motion to adopt the proposed amendment would be in order, with an effective date of November 1, 2009, and with the staff being authorized to make technical and conforming changes if needed.

Acting Chair Hinojosa asked if there is a motion as suggested by Mr. Cohen. Vice Chair Carr made such a motion, with Commissioner Howell seconding. The Acting Chair called for discussion on the motion and, hearing no discussion, the Acting Chair called for a vote. The motion was adopted with the Acting Chair noting that at least four commissioners voted in favor of the motion.

Acting Chair Hinojosa asked if there was any further business before the Commission and hearing none, asked if there was a motion to adjourn the meeting. Vice Chair Castillo made a motion to adjourn, with Commissioner Friedrich seconding. The Acting Chair called for a vote on the motion, and the motion was adopted by a voice vote. The meeting was adjourned at 2:25 p.m.