

News Release

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PANEL ON THE SENTENCING GUIDELINES FOR ORGANIZATIONS ISSUES FINAL REPORT

WASHINGTON, D.C. (October 8, 2003) – The Ad Hoc Advisory Group on the Organizational Sentencing Guidelines yesterday delivered its final report to the United States Sentencing Commission. This report is the culmination of an 18-month process to review the effectiveness of the organizational guidelines and solicit suggestions for their improvement. While the report concludes that the organizational guidelines have induced many organizations to focus on compliance and to create programs to prevent and detect violations of the law, it also recommends amending the existing organizational guidelines in order to reflect contemporary legislative, regulatory, and corporate governance requirements. Included in the proposed amendments are changes that -

- promote an organizational culture that encourages a commitment to compliance;
- require compliance training at all levels of the organization;
- define high-level personnel's responsibilities for compliance programs;
- require programs to provide anonymous reporting mechanisms for potential violations of law; and
- require ongoing risk assessments as an essential component of the design, implementation, and modification of an effective program.

Consistent with its original mandate from the Sentencing Commission, the Advisory Group focused considerable time and effort on the criteria for an effective program to ensure an organization's compliance with the law. Ultimately, the Advisory Group concluded that this set of issues should be given greater emphasis, proposing that the "Sentencing Commission promulgate a stand-alone guideline...that defines an 'effective program to prevent and detect violations of the law.'"

The group also recommended adding commentary regarding the role of waivers of privilege to the organizational guideline sections on cooperation and substantial assistance to authorities (§8C2.5(g) and §8C4.1).

"This report represents 18 months of dedicated study and informed deliberation that will be invaluable to the Commission as it examines the very important role the organizational sentencing guidelines play in the area of business compliance and ethics," said Commission chair, Judge Diana E. Murphy, in thanking the Advisory Group and its chair, B. Todd Jones, for the group's service to the Commission.

The organizational sentencing guidelines first became effective November 1, 1991. The guidelines provide incentives for organizations to report violations, cooperate in criminal

investigations, discipline responsible employees, and take the steps needed to prevent and detect criminal conduct by their agents. The guidelines mandate high fines for organizations that have no meaningful programs to prevent and detect criminal violations or in which management was involved in the crime. The guidelines take into account the potential range of organizational criminal culpability, from an inadvertent record-keeping violation to an organization created solely for criminal purposes.

The U.S. Sentencing Commission, an independent agency in the judicial branch of the federal government, was organized in 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines, which went into effect November 1, 1987, structure the courts' sentencing discretion to ensure that similar offenders who commit similar offenses receive a similar sentence. The Commission has ongoing responsibility to monitor and amend the guidelines.

The following are the members of the ad hoc advisory group:

Richard Bednar, Defense Industry Initiative on Business and Ethics
Conduct
Mary Beth Buchanan, U.S. Attorney, Western District of Pennsylvania
Paul Fiorelli, Xavier Center for Business Ethics and Social Responsibility
Richard Gruner, Whittier Law School
Eric H. Holder, Jr., Covington & Burling
Charles Howard, Shipman & Goodwin
Ron James, Center for Ethical Business Cultures
B. Todd Jones, Robins, Kaplan, Miller & Ciresi L.L.P. (Chair)
Lisa A. Kuca, Corporate Integrity Services L.L.C.
Jane Adams Nangle, St. Joseph's/Candler Health System
Julie O'Sullivan, Georgetown University Law Center (Reporter)
Edward S. Petry, Ethics Officer Association
Gary R. Spratling, Gibson, Dunn & Crutcher L.L.P.
Winthrop M. Swenson, Compliance Systems Legal Group
Gregory J. Wallace, Kaye Scholer L.L.P.

The report and proposed amendments are available on the U.S. Sentencing Commission web site at www.ussc.gov.