

For Immediate Release

May 21, 2002

SENTENCING COMMISSION'S ADVISORY GROUP ON CORPORATE COMPLIANCE PROGRAMS URGED TO OPEN MEETINGS TO PUBLIC

The Washington Legal Foundation (WLF) filed comments with the U.S. Sentencing Commission's recently established Advisory Group on Organizational Guidelines, urging it to open its meetings and to provide the public with an opportunity to submit further comments and testimony on specific issues that the Advisory Group will decide to study. In addition, WLF urged the Advisory Group to conduct thorough empirical research on the effectiveness of the criteria the Commission developed for corporate compliance programs, an issue which the Advisory Group intends to focus its attention. The corporate compliance programs determine the level of fines that a court may impose on a convicted business entity. In general, a more detailed and comprehensive compliance program should result in reduced fine levels for that company, should it be prosecuted and convicted. In that regard, WLF faulted the Commission for not selecting any in-house counsel or corporate executives with expertise in developing and administering compliance programs to serve on the advisory panel.

Earlier this year, the U.S. Sentencing Commission established the Advisory Group to review the Commission's controversial Organizational Guidelines which were adopted in 1991, and to make recommendations for improvement. While the mandate of the Advisory Group is broad, it will focus its attention on the criteria the Commission has developed for determining what is an effective corporate compliance program. Such a program is designed to encourage companies to engage in self-auditing, self-reporting, and protecting whistleblowers from retaliation. If a company is convicted of a criminal offense, the guidelines use a formula to determine by what percentage a base fine should be increased or decreased, depending upon the quality of its compliance program.

WLF urged the Advisory Group to open its proceedings to the public to facilitate a dialogue with the regulated community, and to dispel suspicions about the integrity of the group's work. In 1993, WLF filed suit against the Commission and its

Environmental Guidelines Advisory Group for failing to comply with the Federal Advisory Committee Act by holding secret meetings. The court of appeals ruled that since the Commission is technically within the judicial branch, its advisory committees need to comply with the law. *Washington Legal Foundation v. U.S. Sentencing Comm'n*, 17 F.3d 1446 (D.C. Cir. 1993). Nevertheless, WLF urged the newly formed Advisory Group to voluntarily open its meetings and deliberations, and to make its research publicly available.

WLF also expressed concern in its comments that the Commission's criteria for an effective compliance program may not be that effective in detecting and preventing violations. If they were effective, the corporation never would have been prosecuted and convicted in the first place. In other words, the Commission's criteria may have only a marginal effect, and may encourage companies to institute costly bureaucratic compliance programs that, in fact, do not work well.

"The Washington Legal Foundation will monitor the work of the Advisory Group on Organization Guidelines very closely, and provide additional input whenever appropriate," said Paul Kamenar, WLF's Senior Executive Counsel. "It's important that the corporate community be kept abreast of the Advisory Group's activities that can have a great impact on the modification of the organizational guidelines," Kamenar added. The Advisory Group is obligated to issue an interim report during its 18-month tenure.

WLF has long been active in the development of the organizational guidelines since 1991 when they were first promulgated. In addition, WLF has submitted comments and testified before the Commission on several occasions, particularly objecting to the environmental guidelines that provide for draconian prison terms for minor regulatory infractions where there has been no environmental damage. In addition, WLF's Legal Studies Division has published many analyses, studies, and reports on the Sentencing Commission's Organizational Guidelines and Corporate Compliance Programs.

* * * * *

For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302.

