Concluding Comments

Vice Chair John Steer: Commissioner Steer thanked all participants and faculty, with a special acknowledgement to the students and a lamentation that the Commission does not have the money to hire them on its staff. Steer further shared his interest in reading the papers presented at the symposium after listening to the proceedings with an eye for applying them to one of the Commission’s next projects. He then suggested that it might be helpful to situate the proceedings in “the pragmatic context [in which] we have to deal.” Congress has put on the Commission’s “plate” the Federal Election Campaign Act Amendments, more commonly known as the McCain-Feingold bill. The Commission’s task is “to come up with guideline penalties” after the preliminary determination that new guidelines are needed. The congressional directive gives the Commission the following considerations to take into account: magnitude of unlawful money; number of violations that have occurred; whether the violations involved appropriated funds; and whether the violations involved foreign contributions. Steer expressed optimism that fellow Commissioners will draw upon the principles discussed at the Symposium. Steer concluded by thanking all involved for a “valuable conference.”

Mr. Jaso reflected on the dual, and sometimes competing, sentencing goals of incapacitation and retribution. He described the oral argument at the Supreme Court on California’s “three-strikes” law, a primary goal of which is incapacitation, as spurred by an overwhelming public concern about recidivism. To the extent that incapacitation or retribution may motivate sentencing policy, to describe the philosophy of the sentencing Guidelines as utilitarianism “is true on its face” to Mr. Jaso. He suggested that from a utilitarian point of view, probation might be an adequate sentence for a white-collar criminal who is a pillar of the community. However, in extrapolating from this position, Mr. Jaso asked if you view utilitarianism as a philosophy that looks at the bigger picture, how would we have to deal with other CEOs if they see an earlier white-collar defendant not going to jail? Mr. Jaso argued that if you lose the general deterrent effect of incarcerating the first defendant, the result may be a net detriment to the community and therefore improper from a utilitarian perspective. Mr. Jaso finds discussions of the philosophy of the Guidelines interesting but ultimately unsatisfying. However, this Symposium was a “terrific way to spend a day” with excellent information and thoughtful presentations, and “it will have an influence on the DOJ.”

Notes
1 John R. Steer is Vice Chair of the U.S. Sentencing Commission. From 1987 until 1999 he served as general counsel of the U.S. Sentencing Commission, where he was responsible for advising the Commission on the statutory mandates and the application and amendment of the federal sentencing guidelines. Biography available at http://www.ussc.gov/general/commbios99.htm.
3 Eric H. Jaso serves as Counsel to the Assistant Attorney General for the Criminal Division at the U.S. Department of Justice and is the Department’s ex officio member of the Sentencing Commission. In addition, Mr. Jaso supervises the Criminal Division’s Office of Policy and Legislation. Biography available at http://www.ussc.gov/general/commbios99.htm.