

Minutes of the December 13, 1988 U.S. Sentencing Commission
Business Meeting

The meeting was called to order at 9:36 A.M. by Chairman William W. Wilkins, Jr.

The meeting was held in the library at the U.S. Sentencing Commission. The following commissioners, staff members and guests participated:

William W. Wilkins, Jr., Chairman
Michael K. Block, Commissioner
Stephen G. Breyer, Commissioner
Helen G. Corrothers, Commissioner
Ilene H. Nagel, Commissioner
Winston S. Moore, Staff Director
John R. Steer, General Counsel
Charles Betsey, Senior Research/ Economist Associate
Rusty Burress, Special Consultant
Peter Hoffman, Principal Technical Advisor
Candace Johnson, Training Specialist
David Lombardero, Chief Counsel
Roger Pauley, Representative from DOJ
Vicki Portney, Representative from DOJ
Andy Purdy, Deputy General Counsel
Stephen Saltzburg, Deputy Assistant Attorney General
Melissa Selick, Assistant Training Specialist
Vicky Toensing, Attorney Corporate Sanction Working Group
Ronald Weich, Special Counsel

Chairman Wilkins recognized Justin Thornton, member of the Attorney Corporate Sanction Working Group. Joanne Coates, Steve Peterson, and Greg Hunt, probation officers on temporary detail to the Commission were also recognized.

Deputy Assistant Attorney General Stephen Saltzburg gave a presentation on organizational sanctions from the Department of Justice's perspective. Theories on corporate prosecutions as well as options available were discussed at length. The Department of Justice was commended for their hard work and for moving the debate on corporate sanctions forward. The Commission also requested that the DOJ, if willing, go back and prepare a revised draft based upon further consideration in areas such as probation, voluntary compliance, and national security.

Chairman Wilkins reported that the U.S. Supreme Court did not issue a decision on the constitutionality of the Commission as of yet. There was nothing new to report in litigation.

Rusty Burress reported on training plans. The training workshop that was scheduled for the latter part of January was rescheduled for February since the Mistretta decision was not issued. Rescheduling necessarily will continue to occur until a decision is handed down with an appropriate six-week interval between the

decision and the first regional training workshop. The Commission also discussed whether the Judiciary would want to participate in these workshops.

Charles Betsey reported on monitoring. He briefed the Commission on the updated (as of October 31, 1988) tables that provided information on guideline cases. Reports on approximately 5,700 cases have been received, with 5,300 being guideline cases. Projections through June 30, 1988 of the number of guideline-eligible cases (1,804) have been on the mark. Projections since then have been somewhat high. This does not necessarily reflect inaccuracies since not all of the cases sentenced to date are in FPSSIS.

The Commission considered the following proposed guideline amendments for later publication relating to the 1988 Anti-Drug Abuse Act.

A. Amendment to the Commentary to §2H1.4 (Interference with Civil Rights Under Color of Law) - tabled for further staff consideration.

B. §2B1.2 Receiving Stolen Property - motion made by Commissioner Corrothers to adopt option #2; seconded by Commissioner Breyer. Passed.

C. §5E4.3 Special Assessments - motion made by Commissioner Breyer; seconded by Commissioners Block and Corrothers. Passed. Commissioner Nagel was not present for this vote.

D. §1B1.9 Petty Offenses - motion made by Commissioner Breyer; seconded by Commissioner Corrothers. Passed.

E. §5D3.3 Conditions of Supervised Release - motion made by Commissioner Breyer; seconded by Commissioner Corrothers. Passed. Commissioner Nagel was not present for the vote.

F. §5E4.1 Restitution - motion made by Commissioner Breyer; seconded by Commissioner Block. Passed. Commissioner Nagel was not present for this vote.

G. Denial of Federal Benefits to Possessors or Traffickers of Controlled Substances - tabled for further staff consideration.

The Commission proceeded to consider a series of additional proposed guideline amendments for later publication.

ITEM 1: §1B1.3 Relevant Conduct (Factors that Determine the Guideline Range) - tabled for further staff consideration.

ITEM 2: §1B1.9 Petty Offenses - motion made by Commissioner Corrothers; seconded by Commissioner Breyer. Passed.

ITEM 3A: §2T1.1 Tax Evasion - motion made by Commissioner Nagel to adopt option #1; seconded by Commissioners Corrothers and Breyer. Passed.

ITEM 3B: Application Note 6 is not clear in its reference to §2F1.1(b)(2). Also, the wording of Application Note 2 in §2T1.2, Note 2 in §2T1.3, and Note 2 in §2T1.4 are not identical. motion made by Commissioner Nagel to delete "significantly" twice; seconded by Commissioner Breyer. Passed.

ITEM 4: Criminal History Category - motion made by Commissioner Nagel; seconded by Commissioners Block and Corrothers. Passed.

ITEM 5: Miscellaneous Minor Corrections/Clarifications - motion made by Commissioner Breyer; seconded by Commissioner Corrothers. Passed.

Chairman Wilkins raised the possibility of Staff looking at the Multiple-Count Rule. A discussion ensued on issues related to that topic.

Chairman Wilkins announced the next Commission meeting will be January 24 and 25, 1989.

Approval of the minutes of the previous meeting was deferred pending clarification of the record with respect to proposed revision of the Robbery Guideline.

Chairman Wilkins announced that the Commission's Christmas Party would be held December 13, 1988, at 3:00 P.M. on the 9th Floor of the National Place Building.

Chairman Wilkins adjourned the meeting into executive session at 12:47 P.M.