

Minutes of the November 17, 1992,
United States Sentencing Commission Business Meeting

The meeting was called to order at 10:07 a.m. by Chairman William W. Wilkins, Jr. in the conference room of the Sentencing Commission. The following Commissioners, staff, and guests participated:

William W. Wilkins, Jr., Chairman
Julie E. Carnes, Commissioner
Michael S. Gelacak, Commissioner
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Paul L. Maloney, Ex Officio Commissioner
Edward J. Reilly, Ex Officio Commissioner
Phyllis J. Newton, Staff Director
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Susan Katzenelson, Director of Policy Analysis
Susan Kuzma, Judicial Fellow
Pamela Montgomery, Deputy General Counsel
Ronnie Scotkin, Guideline Development Analysis
Mary Incontro, Deputy Chief, Terrorism and Violent Crimes Section, Criminal Division
Patrick Hansen, Criminal Division, Northern District of Indiana
Tom Zeno, AUSA, District of Columbia

Chairman Wilkins welcomed Edward Reilly, Chairman of the Parole Commission, as an ex officio commissioner. Chairman Wilkins also introduced Probation Officers Daniel Barron (S.D. TX) and S. Fred Fortenberry (M.D. FL.), both on temporary detail to the Commission.

Motion made by Commissioner Carnes to adopt the minutes of the September 21 and October 20, 1992, meetings; seconded by Commissioner Nagel. Passed unanimously.

Ms. Incontro, Mr. Hansen, and Mr. Zeno, DOJ personnel, led a discussion concerning gang-related issues and activities. Mr. Hansen emphasized that, at least in the Northern District of Indiana, local and state police departments and prosecutors are looking to the Federal government for leadership, assistance, and support. A discussion ensued concerning the definition of a gang, gang affiliation, and the penalization of it. Commissioner Carnes stated that it would be helpful to know the areas where the guidelines are deficient given the cases that are arising.

Susan Kuzma, highlighting the major areas of the White Collar Working Group report, stated that the report was divided into two categories: fraud and theft guidelines and tax

guidelines. The issues presented under the fraud and theft guidelines were reliance on loss as a chief determinant of offense severity, definition of loss, treatment of more than minimal planning, the configuration of loss tables, and consolidation. In the tax area, the group considered the impact of the expansion of non-prison alternatives and the consolidation of the tax guidelines. Ms. Kuzma also reported that the group was reviewing the abuse of trust enhancement as applied to embezzlement cases and the treatment of illegally derived income in tax cases. Ms. Kuzma noted that the group was still reviewing the letter submitted by the IRS concerning the tax guidelines, since it was not received until after the report was virtually completed. She also noted that the comments received from the probation officers were extremely helpful.

Sharon Henegan, reporting on the Drug/Role/Harmonization Working Group, stated that its purpose was to re-examine the structure of the drug guideline in light of anecdotal and empirical evidence suggesting that sentences for certain drug-trafficking defendants may be over punitive. She stated that the group's emphasis has been on the examination of the current quantity-driven drug guideline. Commissioner Nagel requested a break down of the 71.3 percent of the drug trafficking cases involving defendants with some prior criminal involvement reported in the presentence report to see the number of defendants who had prior arrests, prior arrests with a conviction for drugs, prior arrests with a conviction for a violent offense, prior arrests with a conviction for DUI. Commissioner Nagel also requested a distribution that showed the type of drug, criminal history, and the average sentence (mean, medium, and mode). Commissioner Nagel further requested a table, like Table I, showing a distribution after downward departures, with §5K1.1 departures separate. Commissioner Gelacak requested Table 6b be broken out in terms of race and gender. Commissioner Carnes requested that a proposal be drafted concerning undercover operations. Andy Purdy stated that he would circulate the information concerning the 1,400 drug cases that were reviewed last year.

Pamela Montgomery, reporting on the Juvenile Offenders Working Group, stated that a preliminary analysis of extant data has been completed. She further reported that the group has begun to gather and analyze source documents showing the current sentencing practices under the Juvenile Delinquency Act, and to review literature on theories of juvenile sentencing. Ms. Montgomery also brief the Commission on the implication of *United States v. RLC*, 112 S. Ct. 1329 (1992). She stated that RLC does not require plenary application of the guidelines to juvenile proceedings.

Chairman Wilkins announced that the next Commission meeting would be held on December 7, 1992.

Chairman Wilkins adjourned the meeting at 12:40 p.m.