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Minutes of the March 9, 1993,  
United States Sentencing Commission Business Meeting

The meeting was called to order at 10:01 a.m. by Chairman William W. Wilkins, Jr. in the conference room of the Sentencing Commission. The following Commissioners and staff participated:

William W. Wilkins, Jr., Chairman  
Julie E. Carnes, Commissioner  
Michael S. Gelacak, Commissioner  
A. David Mazzone, Commissioner  
Ilene H. Nagel, Commissioner  
Roger Pauley, Acting 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 Kuzma, Judicial Fellow  
Pamela Montgomery, Deputy General Counsel  
Andy Purdy, Chief Deputy General Counsel  
Winthrop Swenson, Deputy General Counsel  
Vince Ventimiglia, Staff Attorney

Chairman Wilkins introduced Probation Officer Kevin Jones (N.D. CA), on temporary assignment to the Commission.

Chairman Wilkins reported that the March 8 Judicial Working Group was very productive and informative, dealing with proposed amendments in a practical as well as substantive manner.

Motion made by Commissioner Mazzone to adopt the minutes of the February 16, 1993, meeting. Passed unanimously.

Vince Ventimiglia briefed the Commission on the purpose statement for the Probation/Supervised Release Violation working group. He stated that the working group would monitor legal and legislative developments relevant to Chapter Seven and identify any obvious inconsistencies in application of the revocation policy statements that should be addressed immediately; however, the group believes additional working group activity should be postponed until legislative changes have been enacted. A discussion ensued on the best way to get the Commission's revocation legislation passed and enacted into law. Sharon Henegan stated that she would circulate AO data compiled from all districts concerning how districts apply the policy statements.

Vince Ventimiglia briefed the Commission on the purpose statement for the Public Corruption working group. He stated that the working group would profile the categories of defendants, offense conduct, and sentencing practices under the public corruption

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guidelines, determine the areas of concern in applying the public corruption guidelines, and would determine whether revisions to the public corruption guidelines addressing these concerns should be considered. A discussion ensued concerning the bribery guideline and past practice. Andy Purdy commended the Department of Justice for their quality assistance and the field survey relating to the issue of public corruption.

Susan Kuzma briefed the Commission on the purpose statement of the Food and Drug working group, which was created to establish organizational guidelines for offenses covered by U.S.S.G. §2N2.1 (Food, Drugs, and Agricultural Products). She stated that the working group would review pertinent statutes, contact relevant agencies for information, compile statistics regarding U.S.S.G. §2N2.1 and Chapter Eight and individual §2N2.1 cases, review caselaw and TAS and Attorney Hotline questions, and request input from various outside groups, such as the Probation Officers' Advisory Group and the Practitioners' Advisory Group.

Commissioner Nagel proposed convening an advisory group, similar to the one established for environmental offenses, to study the Food and Drug issues. Commissioner Nagel stated that the process for the Environmental Advisory Group worked extremely well and that the Commission would benefit from their product.

Win Swenson briefed the Commission on the purpose statement for the Computer Fraud working group. He stated that the working group's objective would be to provide a detailed analysis of a Department of Justice proposal that would promulgate a new §2F guideline to address harms that are either nonmonetary or otherwise not covered by U.S.S.G. §2F1.1's definition of loss. He stated that the working group would review public comment, data, caselaw, TAS and Attorney Hotline questions, and consult with interested parties. Commissioner Nagel requested information on the number of cases in which 1) the offenders are youthful hackers and 2) there was a willful injection of a computer virus into a system in order to attain private information.

Pamela Montgomery briefed the Commission on current case law, such as the *en banc* decision of the Eleventh Circuit, stating that U.S.S.G. §3A1.1 (Vulnerable Victim) does not apply to bank tellers absent extenuating circumstances. A discussion ensued concerning rape in prison as it relates to physical characteristics.

Chairman Wilkins announced that the Commission would hold a public hearing at the Ceremonial Courthouse on March 22, 1993, at 9:00 a.m. Paul Martin reported that because of the increased interest this year in our public hearing (27 people will testify), the length of the hearing has been extended, running from 9:00 a.m. to 5:00 p.m.

Chairman Wilkins reminded Commissioners that Commission meetings have been scheduled for March 23, April 6 and 20, 1993.

Commissioner Nagel reported on Judge Marcus' (S.D. Florida) suggestions for tightening the policy statement §5K1.1. A discussion ensued concerning the drafting of guidelines for U.S.S.G. §5K1.1 departures.

Chairman Wilkins adjourned the meeting into executive session.