

Minutes of the September 1, 1994,
United States Sentencing Commission Business Meeting

The meeting was called to order at 10:01 a.m. by 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
Jo Ann Harris, Ex Officio Commissioner
Edward F. Reilly, Jr., Ex Officio Commissioner
Gary Katzmann, Representative, Department of Justice
Phyllis J. Newton, Staff Director
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Peter Hoffman, Principal Technical Advisor
Fred Bennett, Representative, Practitioners' Advisory Group
Tom Hutchinson, Representative, Federal Public Defenders
Julie Stewart, Representative, Families Against Mandatory Minimums

Chairman Wilkins welcomed Jo Ann Harris, Assistant Attorney General of the Criminal Division, as the newly designated ex officio member to the Commission.

Chairman Wilkins introduced AUSA Roger Haines and Probation Officers James Patelis (D. MT) and Carla Coopward (E.D. VA.), all on temporary assignment to the Commission. He also introduced Gail Sneed, who recently joined the Office of Administration as the Commission's Office Manager.

Chairman Wilkins announced that Alf Olson, Director of Monitoring, would be leaving the Commission in early September. On behalf of the Commission, he thanked Mr. Olson for his contributions to the Commission.

Motion made by Commissioner Mazzone to adopt the minutes of the July 26, 1994, meeting. Commissioner Reilly requested that the minutes be revised to reflect that Richard K. Preston represented Commissioner Reilly at the July 26 meeting. Passed unanimously.

General Counsel Steer, reporting on the crime bill as passed by Congress, stated that the bill contained 17 specific directives to the Commission. Although not all of the directives require guideline changes, they do require the Commission to consider changes to the guidelines. The bill also requires that the Commission issue reports regarding aggravated sexual abuse, sentencing practices related to crack cocaine and powder cocaine, and victim related adjustments for fraud offenses against elderly victims. In addition, the bill contains numerous new offenses and changes in statutory penalties. General Counsel Steer reported that under the direction of the Staff Director, staff assignments to review the provisions have

begun.

General Counsel Steer, reporting on the implementation of the crime bill's "safety-valve" provision for low level, nonviolent drug defendants, stated that the provision would take effect ten days after enactment of the crime bill. The bill provides the Commission temporary emergency amendment authority to immediately promulgate and put into effect guideline and policy statement amendments implementing the safety-valve provision. Staff Director Newton stated the Commission was meeting today to get a sense of what the Commission will do, which would later be ratified when the bill is signed, so staff can begin preparation of the amendments for *Guidelines Manual* purposes and for distribution to judges prior to the effective date.

Part One §5C1.2 Limitation on Applicability of Statutory Minimum in Certain Cases

Part One incorporates into the *Guidelines Manual* the text of the safety valve provision, with the addition of application notes to the guidelines that define terms contained in the provision.

Chairman Wilkins moved adoption of revised (August 31) Part One; seconded by Commissioners Carnes and Mazzone. Passed unanimously.

Part Two §2D1.1 Unlawful Manufacturing, Importing, Exporting, or Trafficking (including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

Part Two provides for a two-level reduction if the base offense level from the Drug Quantity Table is level 26 or greater and the defendant meets the criteria set forth in §5C1.2.

Motion made by Commissioner Mazzone to adopt. Commissioner Mazzone voted in favor, with Commissioners Carnes, Gelacak, and Wilkins voting against. Failed, 1-3.

Mr. Katzmann stated that he enjoyed representing the Department of Justice in his capacity as an ex officio commissioner and was grateful for the tremendous work efforts put forth by the Commission and its staff. Commissioner Wilkins and Ex Officio Commissioner Harris thanked Mr. Katzmann for his significant contributions to the Commission while representing the Department.

Commissioner Carnes, on behalf of the Commission, acknowledged and expressed appreciation to Chairman Wilkins for his leadership.

Chairman Wilkins adjourned the meeting at 11:47 a.m.