

Minutes of the January 10, 1995,
United States Sentencing Commission Business Meeting

The meeting was called to order at 1:37 p.m. by Chairman Richard P. Conaboy in the training rooms of the Thurgood Marshall Federal Judiciary Building. The following commissioners and staff participated:

Richard P. Conaboy, Chairman
Michael S. Gelacak, Vice Chairman
A. David Mazzone, Vice Chairman
Wayne A. Budd, Commissioner
Julie E. Carnes, Commissioner
Michael Goldsmith, Commissioner
Deanell R. Tacha, Commissioner
Edward F. Reilly, Jr., Ex Officio Commissioner
Phyllis J. Newton, Staff Director
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Mary E. Didier, Staff Assistant for Legal and Legislative Affairs
Sharon Henegan, Director, Office of Training and Technical Assistance
Susan Katzenelson, Director, Office of Policy Analysis
Linda Maxwell, Senior Research Associate
Pamela Montgomery, Deputy General Counsel
Lou Reedt, Senior Research Associate
Win Swenson, Deputy General Counsel

Chairman Conaboy welcomed Elizabeth McGrath, who recently joined the Commission as the Director of Monitoring, and Linda Wernery, law clerk for Commissioner Tacha. He introduced probation officers Michael Hudson (W.D. AK) and Leroy Washington (W.D. WA), both on temporary assignment to the Commission.

Motion made by Commissioner Budd to adopt the minutes of the December 8, 1994, meeting; seconded by Commissioner Tacha. Passed unanimously.

Special Reports to Congress

General Counsel Steer stated that the recently passed crime bill (Pub. L. No. 103-322) requires the Commission to issue three reports, as specified below, by March 13, 1995.

Fraud Against the Elderly

Mary Didier stated that the Elderly and Child Victims' Working Group was currently reviewing legislative history, operation of the guidelines, case law, and monitoring data in response to the congressional directive requiring the Commission to review its guidelines to see if they provide adequate penalties for defendants who commit fraud offenses against victims over the age of 55 years. A draft report will be submitted for consideration at the

February 21 Commission meeting.

Sex Offenses

Lou Reedt stated that the Sex Offenses Working Group was reviewing state laws, literature, and monitoring data in response to the congressional directive requiring an analysis of federal sex offense cases, including analysis of penalties for offenders whose victim was known or unknown to the offender, comparative review of sentences in federal territories and surrounding states, ensuring that federal penalties are commensurate with state penalties, and general issue of recidivism. A draft report will be submitted for consideration at the February 21 Commission meeting.

HIV Study

Lou Reedt stated that the HIV Working Group was reviewing literature and monitoring data regarding willful exposure to the Human Immunodeficiency Virus through sexual activity. A draft report will be submitted for consideration at the February 21 Commission meeting.

General Counsel Steer, reporting on pending crime legislation, discussed some of the more relevant provisions, such as the proposed penalty changes to 18 U.S.C. § 924(c) firearm offenses, selling drugs to minors, and revisions of the recently enacted safety valve provision.

Just Punishment Study

Linda Maxwell stated that, in an effort to address one of the statutory purposes of sentencing (just punishment), the Commission was investigating public perceptions about appropriate levels of punishment for various federal offenses. A final report, which will include analysis of 1,737 interviews with randomly selected individuals across the nation, will be published in 1995.

Substantial Assistance Study

Susan Katzenelson and Pamela Montgomery stated that staff recently completed site visits to eight judicial districts as part of its study of substantial assistance departures. Interviews with judges, prosecutors, defense attorneys, and probation officers, together with written surveys and empirical analysis of the variation in rate and degree of departures among districts, will be part of the report to be issued in late summer.

Training Calendar

Sharon Henegan reviewed the Commission's extensive training schedule, which includes guideline application sessions with probation officers, new judges, assistant U.S. attorneys, defense attorneys, and other practitioners in the federal criminal justice system. Multiple sessions are scheduled every month of the year at sites across the nation. Commissioner Gelacak stated that the Commission ought to consider holding public hearings across the

country to receive feedback on the guidelines.

Environmental/Food & Drug Guidelines

Commissioners Mazzone and Tacha stated that they hoped to build on the concepts and structure in Chapter Eight of the Guidelines Manual in expanding the guideline provisions for fines to encompass environmental as well as food and drug offenses committed by organizations. Both commented on the large volume of helpful public comment received by the Commission on these topics to date and encouraged interested groups and individuals to continue to participate in the process.

Symposium on Organizational Guidelines

On behalf of Commissioners Budd and Goldsmith, Win Swenson discussed the Commission's second symposium in its series on Crime and Punishment in the United States. Scheduled for September 7-8, 1995, the symposium will focus on changes in corporate and business culture since sentencing guidelines for organizational offenders became effective in 1991.

Drug Guideline and Cocaine Report

Commissioner Gelacak indicated that the Commission's comprehensive examination of federal cocaine sentencing policy is nearing completion and that the report will be submitted to Congress by March 1. Commissioner Gelacak also reported that the Commission anticipates substantial feedback from its Federal Register request for public comment on options for revising the drug trafficking guideline.

Guideline Simplification

Commissioner Carnes, noting general comments from various observers that the guidelines were too complicated, outlined her ideas for a long-term, comprehensive examination of ways to simplify guideline application. In addition to examining the Commission's substantial empirical resources in this effort, Commissioner Carnes said that she expected to solicit extensive public comment.

Staff Director Newton stated that the Commission was working on various projects such as the Annual Report, releasing a user-friendly version of the Federal Register, and updating the money laundering report. She also stated that the Commission was beginning the processing of actual drug cases through the drug proposals, and that the Office of Monitoring was beginning to code indictment information. She further stated that she was working with state sentencing commissions in developing a clearinghouse function for sentencing information.

Chairman Conaboy stated that the next Commission meeting would be held on February 21, 1995, at 1:00 p.m. He adjourned the meeting at 3:04 p.m.