

Minutes of the September 29, 1988 U.S. Sentencing Commission
Business Meeting

The meeting was called to order at 9:30 A.M. by Chairman William W. Wilkins, Jr.

The meeting was held in the library at the U.S. Sentencing Commission. The following Commissioners and staff members were present:

William W. Wilkins, Jr., Chairman
Benjamin F. Baer, Commissioner
Michael K. Block, Commissioner
Stephen G. Breyer, Commissioner
Helen G. Corrothers, Commissioner
Ronald L. Gainer, Commissioner
George E. MacKinnon, Commissioner
Ilene H. Nagel, Commissioner
Winston S. Moore, Staff Director
John R. Steer, General Counsel
David Anderson, Deputy General Counsel
Charles Betsey, Senior Research/ Economist Associate
Peter Hoffman, Principal Technical Advisor
Mary Hogya, Director of Administration
Candace Johnson, Training Specialist
Paul K. Martin, Communications Director
Phyllis Newton, Director of Training
Ronald Weich, Special Counsel

Chairman Wilkins congratulated the USSC Running Team for taking first place in the Best Name category.

Commissioner Corrothers moved to approve the minutes of the last meeting. Commissioner Block seconded the motion. The minutes were approved unanimously.

Ronald Weich gave a report on the Technical Amendments Bill which had passed unanimously in the Senate and was pending in the House. The Senate Drug Bill, which also contained our proposals plus a number of penalty provisions, was scheduled to be introduced today.

John Steer informed the Commission that the FY 1989 Appropriation Bill, which contained slightly less than the amount of funding the Commission had requested, was on its way to the President; also, the bill concerning the construction of the new Judiciary Building was on its way to the President. Steer also informed Commissioners that oral arguments at the U.S. Supreme Court will be on 5 October 1988 at 1:00 p.m.

Phyllis Newton spoke on the success of the probation officers training workshop. She also stressed that the Commission needed to decide upon what kind of training investment it wanted to make

and what should be done to accomplish this. Commissioner Nagel supported expansion of the training program, not only for the judges and probation officers, but also for U.S. Attorneys, their assistants, and the Federal Defenders; everyone agreed to the expansion of the training program.

A discussion ensued concerning the lack of understanding of the Guidelines by judges and others. Chairman Wilkins believed that the Federal Judicial Center was going to have to help with training. Commissioner Gainer put forward the idea of possibly forming an informal subcommittee (composed of the judicial members) to supply information to judges. It was suggested that correspondence from the Chairman to judges who had erroneously applied the guidelines was preferable.

A discussion ensued on Sid Moore's suggestion of video or audio tapes as training tools. Phyllis suggested the use of twenty-minute videos on multiple counts since longer tapes were not as likely to be used. Phyllis would provide an outline for this.

Charles Betsey provided a report on monitoring in which he stated that we had received reports on some 3200 cases. He further stated that a high proportion of these were immigration cases and single-count drug cases. Therefore, the present sample was probably atypical of what we would receive in the future. Sixty percent of the reports received contained all the needed information with the others usually lacking the statement of reasons. Chairman Wilkins suggested that a form letter be developed which could be sent back to the probation officers requesting statement of reasons or other missing information.

Candace Johnson presented a report on departures. A request was made by Commissioner Nagel that the proposed departure coding form be distributed to all Commissioners for their input and also to make sure that all the information each Commissioner would need was covered on it.

A discussion ensued concerning the extent of our knowledge to date about use of the guidelines in connection with plea agreements and Department of Justice policies in respect to plea negotiations. Several Commissioners emphasized the importance of our monitoring efforts being able to determine the types of plea agreements negotiated and whether departures were involved.

Phyllis stated that by the end of October a trial system of the permanent monitoring system should be in place. Each monitoring staff person would be responsible for a specific area (e.g., plea agreements). Feedback on the coding forms was requested.

Chairman Wilkins reminded the Commission and staff of the October 11 New York public hearing on Organizational Sanctions. Paul Martin provided additional details. Commissioner MacKinnon

suggested that the final hearing in Washington, D.C. should be after the decision by the Supreme Court was rendered.

David Anderson, working with Peter Hoffman, discussed the possibility of drafting new environmental guidelines. David proposed that we work with the DOJ, the EPA, and the Interior Department in the revision of these guidelines. After some discussion, it was generally agreed that the staff should proceed with external contacts on an informal basis.

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

- ITEM 1: Interpolation- tabled for further staff consideration.
- ITEM 2: §2A3.4 (Abusive Sexual Conduct...)- tabled for further staff consideration. Option #3 was preferred.
- ITEM 3: §§ 1B1.1; 1B1.2 (Application Instructions)- motion made by Commissioner Corrothers; seconded by Chairman Wilkins; Passed.
- ITEM 4: §1B1.2 (Applicable Guidelines)- motion made by Commissioner Breyer; seconded by Commissioner Corrothers; Passed.
- ITEM 5: §2B1.3 (Property Damage or Destruction...)- tabled for further staff consideration.
- ITEM 6: Organized Criminal Activity- tabled for further staff consideration. Chairman Wilkins' and Commissioner Corrothers' proposals are attached.
- ITEM 7: §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity)- motion made by Commissioner Corrothers; seconded by Commissioner Nagel; Passed.
- ITEM 8: §2E5.5 (Failure to maintain and Falsification of Records Required by L.M.R.D.A.)- motion made by Commissioner Breyer; seconded by Commissioner Corrothers; Passed with option #3.
- ITEM 9: §2T1.9 (Conspiracy to Impair, Impede, or Defeat Tax)- motion made by Commissioner Breyer; seconded by Commissioner Corrothers; Passed.
- ITEM 10: §2X1.1 (Attempt, Solicitation, or Conspiracy...)- motion made by Commissioner Breyer; seconded by Commissioner Corrothers; Passed.
- ITEM 11: §2X1.1 (Attempt, Solicitation, or Conspiracy...)- motion made by Commissioner Breyer; seconded by Commissioner Corrothers; Passed with option #1.
- ITEM 12: §2X1.1 (Attempt, Solicitation, or Conspiracy...)- motion

made by Commissioner Breyer; seconded by Commissioner Corrothers;
Passed with option #1.

ITEM 13: §3E1.1 (Acceptance of Responsibility)- motion made by
Commissioner Nagel; seconded by Commissioner Corrothers; Passed
with deleting "unusually" and inserting "extraordinary".

ITEM 14: Miscellaneous Minor Corrections/Clarifications
(A-H) - motion made by Commissioner Breyer; seconded by
Commissioner Corrothers; Passed.

(I) - motion made by Commissioner Nagel; seconded by
Commissioner MacKinnon; Tabled before a vote was taken.
Commissioner Corrothers' proposal is attached.

Chairman Wilkins adjourned the meeting into executive session at
1:10 P.M.