

**Minutes of the March 15, 1989 U.S. Sentencing Commission Business Meeting**

The meeting was called to order at 9:11 A.M. by Chairman William W. Wilkins, Jr.

The meeting was held in the library at the U.S. Sentencing Commission. The following Commissioners, staff members and guests participated.

William W. Wilkins, Jr., Chairman  
Michael K. Block, Commissioner  
Helen G. Corrothers, Commissioner  
George E. MacKinnon, Commissioner  
Ilene H. Nagel, Commissioner  
Benjamin F. Baer, Ex Officio Member  
Winston S. Moore, Staff Director  
John R. Steer, General Counsel  
Charles Betsey, Associate Research Director  
Peter Hoffman, Principal Technical Advisor  
Dennis Murphy, Researcher  
Paul K. Martin, Communications Director  
Phyllis Newton, Associate Research Director  
Roger Pauley, DOJ Representative  
David Scheffman, Consultant - Research

Chairman Wilkins introduced a new member of the legal staff, Pamela Barron, formerly a staff attorney with Judge Walter Cox of the U.S. Court of Military Appeals, and Rhonda L. Ray, a Probation Officer on temporary assignment to the Commission.

Phyllis Newton reported that comment concerning the recent training session in D.C. was positive. Participants generally felt the program was well-organized and thorough. A discussion ensued regarding the possibility of once again using an advisory committee consisting of one judge from every circuit to obtain ideas on training and technical assistance materials.

David Scheffman reported that the working group on robbery had four major projects in process to determine how past practices compare to how the guidelines are working in bank robbery cases. Dennis Murphy discussed the robbery projects in more detail. A discussion ensued regarding whether defendants are receiving a reduced sentence for a plea to unarmed robbery as well as a reduction for acceptance of responsibility, how cases involving gun charges are being treated, and the percentage of career offenders involved.

Chairman Wilkins announced the next Commission meeting would be held at 9:00 A.M on March 31, 1989, and that material from the robbery working group would be distributed before that meeting.

Commissioner Block asked for information about the distribution of fraud cases above and below \$5 million and whether there has been an increase in the number of large cases since implementation of the guidelines. Chairman Wilkins asked for a written report prior to March 31.

Charles Betsey reported that the fraud working group was in the process of identifying and coding cases in the monitoring files (approximately four hundred cases). The working group also planned to use updated Bureau of Prisons information to study past practices for fraud and to contact other investigative and regulatory agencies involved in prosecuting major fraud cases.

David Scheffman reported on the Career Offender study that the group was in the data-gathering stages and there was no progress yet on determining whether there is a critical age factor involved. Commissioner Nagel stated her view that the Career Offender study, as currently outlined, was biased. Commissioner Nagel requested that a study plan be approved by the full Commission. Information sought should include: 1) amount and type of crimes committed by persons who had two prior convictions for drugs or violent offenses (characteristics reported in a recent National Academy of Sciences study); and 2) research on career offender patterns under \*p1960~~1960~~ present habitual offender state statutes.

The Staff Director assured the Commission that all available information on career offender would be submitted to the Commission prior to the March 31, 1989, Commission meeting, at which time the Commission will decide what additional tasks the study group should perform.

John Steer circulated summaries of guideline application case law concerning departures, relevant conduct and acceptance of responsibility that were used at the "Train the Trainer" sessions. Steer also reported that Steve Saltzburg had arranged for the criminal appellate division at DOJ to keep the Commission informed of cases approved and rejected for appeal.

John Steer commented on feedback received from Chief Probation Officers at several sessions he had addressed. A discussion ensued regarding the collection of statements of reasons for monitoring purposes. Steer noted that although the Chief Probation Officers appreciated the support given by the Commission, more help was needed in obtaining the statements of reasons from the judges. The possibility of developing a short form for judges to complete was discussed.

Chairman Wilkins announced that the Public Hearing would be held at 9:00 A.M. on April 7, 1989, at the Courthouse in Washington, D.C. Paul Martin reported that invitations to testify at the public hearing had been sent. Several Commissioners asked that invitations be sent to a number of additional interested parties.

-- Motion made by Commissioner MacKinnon to pass the minutes of the February 14 and 15, 1989 meetings; seconded by Commissioner Block. Passed. Commissioner Corrothers was absent for this vote.

-- Motion made by Commissioner Corrothers to place selected proposed guideline amendments (list II attached) in congressional format subject to final ratification; seconded by Commissioner Block. Passed.

Commissioner Corrothers stated her comments on the record: (1) page 13, amendment #17 - The Commission should put forth the effort to clearly and specifically define "specific characteristics." Also, move this proposed amendment from list I to list II; (2) page 22, amendment #33 - The use of more than one proposal to accomplish an increase in the severity of the penalty would create the perception in the field that the Commission was being deceptive; and (3) page 45, amendment #77 - Sufficient information was provided throughout the guidelines concerning the court's opportunity to depart. Therefore, the reason for this amendment was not clear.

-- Motion made by Commissioner Corrothers to defer until later proposed amendments #99, #100, and #153; seconded by Commissioner Nagel. Passed. (See Commissioner Corrothers' memo attached.)

Future Commission meeting dates have been reserved for 9:00 A.M. on March 31, 2:00 P.M. on April 6, and 9:00 A.M. on April 18, 1989. April 19 and 26, 1989, are tentative dates for Commission meetings.

Chairman Wilkins adjourned the meeting at 12:33 P.M.