

Minutes of the February 15, 1990 United States Sentencing  
Commission Business Meeting

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

William W. Wilkins, Jr., Chairman  
Helen G. Corrothers, Commissioner  
George E. MacKinnon, Commissioner  
Stephen Saltzburg, Ex Officio Member  
Phyllis Newton, Staff Director  
John R. Steer, General Counsel  
Nolan Clark, Chief Deputy Counsel  
Peter Hoffman, Principal Technical Advisor  
Sam Buffone, Practitioners' Working Group  
Steve Cowen, Practitioners' Working Group  
William Jeffress, Practitioners' Working Group  
Victoria Toensing, Practitioners' Working Group

Members of the United States Sentencing Commission met with members of the Practitioners' Working Group to discuss organizational sanctions. The working group stressed the need for more flexibility to be reflected in the corporate sanctions guidelines and the need for a distinction to be made between large publicly-held corporations and smaller corporations. Some concern was expressed on the effect that the proposed guidelines might have on corporate behavior. Attorneys stated that the regulatory atmosphere has become much more sanction-oriented in the past decade, and corporations are working hard to comply. However, because it is sometimes difficult to tell whether a violation has actually occurred, voluntary disclosure may not take place.

The working group also discussed reasons (increase production, decrease costs, make an impression on superiors, kickbacks) as to why corporate employees violate the law. While the group felt that corporations have to be held liable for their employees' actions, they made the point that in some instances, full cooperation with the authorities should weigh as heavily as voluntary disclosure. The Commission questioned the working group on how to structure the guidelines to provide incentives for corporations to cooperate. Chairman Wilkins stated that the first goal of the guidelines should be to provide sufficient incentives so that self-policing becomes a reality. He suggested the Commission investigate the possibility of beginning with a presumptive high fine range and work downward to zero for a "good citizen" corporation. Chairman Wilkins thanked the working group for their thoughts and comments. The consensus of the Commissioners was that staff should develop draft guidelines to reflect self-policing through economic incentives as a possible alternative to the current options.