

Minutes of the March 14, 1990 United States Sentencing Commission Business Meeting

The meeting was called to order at 9:12 A.M. by Chairman William W. Wilkins, Jr.

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

William W. Wilkins, Jr., Chairman  
Helen G. Corrothers, Commissioner  
George E. MacKinnon, Commissioner  
Ilene H. Nagel, Commissioner  
Paul Maloney, Deputy Assistant Attorney General  
Phyllis Newton, Staff Director  
John R. Steer, General Counsel  
Peter Hoffman, Principal Technical Advisor  
Paul Martin, Communications Director  
Roger Pauley, Criminal Division, DOJ

Staff Director Newton announced that a Computer Task Force had been established under her direction. She also announced that the Pilot Sentencing Institute would be held September 4-7, 1990, in Fort Worth, Texas. She reported that the Commission would be receiving a memorandum from the Probation Officers working group on the revocation guideline proposal and that the update of "Most Frequently Asked Questions" and the "Year-End Case Law Summaries" had gone to the printer. These materials will be distributed to the field shortly.

Motion made by Commissioner Corrothers to approve the minutes of the February 15 and 27, 1990, Commission meetings; seconded by Commissioner MacKinnon. Passed.

Chairman Wilkins announced that after the Public Hearing tomorrow the Commission will meet to hear a report on the Plea Negotiation Study by Commissioner Nagel and Professor Schulhofer and a report from the Practitioners' Advisory Group concerning proposed guideline amendments. Commissioner Nagel requested that DOJ send representatives from relevant divisions to hear the reports.

General Counsel Steer reported that the decision in United States v. Restrepo, 883 F.2d 781 (9th Cir. 1989) had been formally withdrawn and the petition for panel rehearing had been granted. He also reported that the petition for rehearing of United States v. Lee, 887 F.2d 888 (8th Cir. 1989) had been denied. He stated, however, that the 8th Circuit in United States v. Evidente, No. 88-5208 (8th Cir. January 29, 1990), seemed to be moving away from the stringent approach taken in Lee.

Peter Hoffman briefed the Commission in preparation for the public hearing on proposed guideline amendments for individuals. He discussed those proposals that would probably generate the most

controversy (e.g., robbery, child pornography, drug offenses in protected locations, criminal history, and acceptance of responsibility). He emphasized that the majority of the amendment proposals were technical in nature. He was directed to make a technical change in the guidelines at §2D1.1 as part of the amendment proposals package. Paul Martin commented that probably because of the concentration on the organizational sanctions proposals, public comment has been limited in the area of individual guidelines amendment proposals.

Commissioner Nagel requested a study comparing defendants in criminal history category VI (criminal history points 13-15) to those defendants whose criminal history points are 16+. She also requested a study of acceptance of responsibility to include an examination of past practice and an analysis of the extent to which courts granting acceptance were also sentencing at the bottom of the resulting guideline range.

Chairman Wilkins briefed the Commission on the process of addressing the amendment proposals for submission to Congress by May 1, 1990. He requested that Commissioners, in order to expedite the process, divide the proposals into three categories of 1) concur, 2) concur with comment, 3) defer for more deliberate discussion or future study. He circulated a tentative Commission meetings schedule to address the various categories and the issue of organizational guidelines. He also circulated an amendment process guide that should aid in an orderly consideration of proposed amendments.

Staff Director Newton informed the Commission that the working groups would continue to address guideline issues year-round. Commissioner Nagel requested that the working groups confer early in the process with individual Commissioners to ascertain problems Commissioners see in particular guidelines.

Chairman Wilkins adjourned the meeting into executive session at 10:22 A.M.