

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

The meeting was called to order at 2:19 P.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 guests 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
Gary Peters, Assistant Project Director, Alternatives to
Imprisonment Study
Fred Bennett, Practitioners' Advisory Group
Paul Borman, Practitioners' Advisory Group
Joe Brown, Chairman, Attorney General Advisory Committee
Samuel Buffone, Practitioners' Advisory Group
Stephen Schulhofer, Consultant
Benson Weintraub, Practitioners' Advisory Group

Commissioner Nagel and Professor Schulhofer briefed the Commission on the Plea Negotiations study. Commissioner Nagel stressed the fact that this interim report was concerned with the pre-Mistretta pilot study, whose purpose was to explore the relationship between the federal sentencing guidelines and plea negotiation practices. Professor Schulhofer outlined the research design of the study. He stated that the pre-Mistretta pilot study consisted of four non-randomly selected jurisdictions and the post-Mistretta study consisted of ten jurisdictions selected to produce a variation and a balance in region of the country, size of the jurisdiction, size of the caseload, and mix of the caseload.

Professor Schulhofer continued the briefing with a discussion of the preliminary findings. He reported that compliance with the guideline system was the predominant pattern, although some circumvention of the guidelines occurred through date bargaining, charge bargaining, fact bargaining or guideline factor bargaining. He emphasized that some of this circumvention was because of a perceived lack of plea incentives, AUSAs not understanding the concept of offense "levels" deriving from the guidelines, perceived severity of the applicable sentences, prosecutors' view of their role during the sentencing hearing, and the problem of proof. Commissioner MacKinnon stressed that this was a Department of Justice problem and that it was their duty to see that plea negotiations within the guideline system work. Commissioner Nagel

urged the Commission to continue working with DOJ. Professor Schulhofer stressed that these findings are tentative, especially because of the changes since the Mistretta decision, and that they expect to report to the Commission in August of 1990, with some additional findings from the post-Mistretta study.

Members of the United States Sentencing Commission met with members of the Practitioners' Advisory Group to discuss proposed guidelines amendments. Generally, the advisory group representatives emphasized that the Commission should proceed slowly in the amendment process. They continued by giving specific recommendations on various proposed amendments. Commissioner Nagel requested that Mr. Bennett send the Commission data on extortion cases. Chairman Wilkins stated that he was impressed with the reasons the group cited for urging a cautious approach to adopting many of these proposed amendments but that the Commission would have to address some of these issues. The advisory group will submit their written report by March 30, 1990.

Chairman Wilkins adjourned the meeting at 5:45 P.M.