

2/24 Comm. & Sten

Minutes of the July 23, 1991, United States Sentencing Commission
Business Meeting

The meeting was called to order at 10:10 A.M. by Chairman William W. Wilkins, Jr., in the library of the U.S. Sentencing Commission. The following Commissioners, staff, and guests participated:

William W. Wilkins, Jr., Chairman
Julie E. Carnes, Commissioner
Helen G. Corrothers, Commissioner
Michael S. Gelacak, Commissioner
George E. MacKinnon, Commissioner
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Carol Pavilack Getty, Ex Officio Commissioner
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Nolan Clark, Deputy General Counsel
Susan Katzenelson, Senior Research Associate
Pamela Montgomery, Staff Attorney
David Rauma, Director of Evaluation
Win Swenson, Legislative Counsel
Susan Winarsky, Senior Training Specialist
Samuel Buffone, Practitioners Advisory Group
Tom Hutchison, Federal Public Defenders
Maggie Jensen, Probation Division
Gina Lane, Parole Commission
Roger Pauley, Criminal Division, DOJ
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins introduced new staff members Michael Greene, Senior Research Associate, and Pamela Rigby, Research Assistant, who recently joined the research studies group. He also recognized Leslie Cory, from the Eastern District of Tennessee, and Catherine Becker, District of Maryland, who are on temporary assignment to the Commission.

-- Motion made by Commissioner Corrothers to adopt the minutes of the June 18, 1991, Commission meeting; seconded by Commissioner Carnes. Passed unanimously.

Deputy Staff Director Martin introduced status reports of staff working groups, a regular feature of Commission meetings beginning this amendment cycle. Susan Winarsky, head of the Acceptance of Responsibility Working Group, explained the approach to examining the current 2-level reduction, including work done in the last amendment cycle, the proposals of the Judicial Conference Subcommittee on Guidelines, concerns and issues raised by Commissioners, and an analysis of pre- and post-guideline sentencing data. Commissioner MacKinnon pointed out that determining the adequacy of the reduction should be based on whether it is fair for what the offender is doing, and not the extent to which it induces individuals to plead guilty.

Pamela Montgomery reported that the Child Sex Offenses Working Group will focus on providing the review called for in the 1990 Crime Bill of whether guideline sentences on such offenses are adequate. Chairman Wilkins asked that the working group heads schedule meetings with ex officio members, as well as Commissioners. Roger Pauley suggested a comparison of average time served for such offenses in selected states to time served under federal sentences to help focus on the adequacy of punishment.

Susan Katzenelson, head of the Criminal History Working Group, outlined how the staff will focus on career offenders, category I, and possibly "category VII." Chairman Wilkins requested that the group examine the feasibility of prohibiting departures from the career offender guideline based on adequacy of criminal history. Commissioner Nagel asked the group to examine whether first offenders in criminal history category I include a significant number of serious drug offenders. She also asked that the group look at whether there is evidence of a discrepancy in the outcome of plea bargaining under category I when an offender in a minor drug offense has prior criminal history, as compared to a serious drug offender with no prior criminal history.

Deputy Staff Director Martin reported that working groups will have final reports to the Commission in November and December.

Commissioner Carnes reported that the Role in the Offense Working Group is focussing on drug issues, including whether the role adjustments in drug offenses are working properly and whether use of drug quantities as determinants results in overpunishing offenders in peripheral roles.

David Rauma reported on progress toward the statutory evaluation report due to the GAO on December 1, 1991. He reported that work is on schedule and the Commission will receive a preliminary report in September. Chairman Wilkins and Commissioner Nagel asked about coordination with GAO and the data they are using to evaluate the impact of the guidelines. Chairman Wilkins indicated he will discuss the data being used and availability of early results with the new GAO project leader.

Nolan Clark reported on the Fines/Environmental Working Group, noting that EPA's designation of a staff member to work on this project is imminent.

Commissioner Mazzone reported that the Mandatory Minimum Working Group is currently checking data, and a report should be circulated to the Commission for comment prior to the August 6 meeting.

Paul Martin reported that the Alternatives Working Group is conducting program and operational assessments of recommendations made by Commissioner Corrothers' Advisory Group and by the Judicial Conference Committee on Criminal Law and Probation Administration.

Sam Buffone reported that the Practitioners Advisory Group has already made arrangements to provide input to the working groups.

Chairman Wilkins requested that Commissioners review and comment on the current draft of the Supplementary Report on Organizational Guidelines, which will be sent to Congress by the middle of August.

Commissioner Corrothers asked that the record show that the reports of the working groups were appreciated for being informative, appropriately focused, and well coordinated.

Pamela Montgomery reported on two cases, one in which the Supreme Court will review whether guidelines for adults apply as the maximum for sentencing juveniles under the Juvenile Delinquency Act and one in which a 6th Circuit panel contends that the Commission did not follow the Sentencing Reform Act in setting up sentencing sequence and the manner for applying the guidelines.

General Counsel Steer reported on the provisions of the recently-passed Senate Crime Bill, referencing a summary prepared by legal staff. Leaving aside the death penalty, exclusionary rule, and habeas corpus provisions, he reviewed 15 provisions the Commission would have to implement in the form of new or enhanced mandatory minimums, as well as pointing out inconsistencies and problematical directives. The Commission's recommendations regarding statutory maximums and revocation of probation and supervised release have been included in the bill. Chairman Wilkins commended the legal staff for the report on the Crime Bill provisions.

Commissioner Nagel requested that General Counsel Steer provide a report and recommendations as to whether there is a conflict between the exclusionary rule and the guidelines regarding illegally-seized evidence and use of acquitted conduct. She also suggested that Commissioners take note of recent independent research finding that the guidelines have reduced disparity.

Chairman Wilkins announced that the supplementary report on organizational guidelines and the mandatory minimum report will be topics for the August 6 Commission meeting agenda. The meeting was adjourned at 11:40 A.M.