

Minutes of the May 13, 1992
United States Sentencing Commission Business Meeting

The meeting was called to order at 11:15 a.m. by Chairman William W. Wilkins, Jr. in the library of the U.S. Sentencing Commission. The following Commissioners, staff, and guests participated:

Commissioner Nagel was unable to attend this meeting.

William W. Wilkins, Jr., Chairman
Julie E. Carnes, Commissioner
Michael S. Gelacak, Commissioner
A. David Mazzone, Commissioner
Paul L. Maloney, Commissioner
Phyllis J. Newton, Staff Director
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Winthrop Swenson, Legislative Counsel
Fred Bennett, Representative, Practitioners' Advisory Group
Vicki Portney, Criminal Division, DOJ
Steve Salky, Representative, American Bar Association

Judge Roger Wollman of the Eighth Circuit Court of Appeals, whose name has been sent to Congress for confirmation to fill a judge vacancy on the Commission, attended the meeting.

Motion made by Commissioner Carnes to adopt the minutes of the April 14 and 28, 1992, Commission meetings. Passed unanimously.

The Commission discussed establishment of priorities for fiscal year 1993. Commissioner Gelacak expressed his desire to keep amendments to an absolute minimum. The Commission outlined the major areas of concern it would like to focus on in fiscal year 1993: white collar crime, environmental offenses, violent crimes, money laundering, role in the offense, departures, substantial assistance, and issues raised in the Sentencing Reform Act related to prisons. The white collar crime umbrella includes fraud (overpunishing at the lower offense levels and underpunishing at the higher offense levels; questions of more than minimal planning; over-reliance on loss, look at gain), tax, antitrust, and embezzlement (meaning of abuse of trust and questions about more than minimal planning).

The Department of Justice expressed agreement with the April 16, 1992, memorandum outlining possible areas of consideration, but also expressed the desire to study areas such as computer fraud, public corruption, and most importantly, firearms and gang-related activity. Chairman Wilkins suggested adding these to the proposed priority listing. He agreed with Commissioner Gelacak that it is important to target areas, such as public corruption and substantial assistance, not necessarily for amendments but for in-depth analysis.

There was general consensus to preliminarily adopt for fiscal year 1993 priority areas, the April 16 memorandum, with the additions proposed by the Department of Justice, as well as continuation of the departure and prison capacity studies and providing in-depth analysis of public corruption and substantial assistance. Senior staff will take this priority listing on their planning retreat and determine availability of resources.

Commissioner Mazzone requested that the Federal Defenders and Practitioners' Advisory groups submit to the Commission their priority requests.

Staff Director Newton stated that the Office of Training and Technical Assistance would like to conduct a systematic examination of the guidelines.

There was general discussion concerning the publication process.

General Counsel Steer updated the Commission on pertinent legislation. He stated that the Crime bill, which incorporates the supervised release and probation revocation proposals, was being closely monitored, because of the divergent appellate interpretation. He also stated that S. 1963, a non-controversial bill extending Commissioners' terms when successors have not taken office, would be brought to the House floor shortly. Further, staff is in the final stages of finishing a required report to be submitted to Congress concerning sentencing under the revised child pornography guidelines.

Legislative Counsel Swenson stated that regular meetings are being held with congressional staff of the House and Senate Judiciary Committee members. He stated that the meetings generally consist of educating staff on the history of the Sentencing Reform Act, the history of the guidelines and how they operate, mandatory minimums in general, and the operation of mandatory minimums within a guidelines system. He stated that the meetings appear to be productive and the interest great.

The Commission meeting adjourned to Executive Session at 12:47 p.m.