

Minutes of the September 21, 1992,
United States Sentencing Commission Business Meeting

The meeting was called to order at 3:20 p.m. by Chairman William W. Wilkins, Jr. in the library of the Sentencing Commission. The following Commissioners, staff, and guests participated:

William W. Wilkins, Jr., Chairman
Julie E. Carnes, Commissioner
Michael S. Gelacak, Commissioner
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Paul L. Maloney, Ex Officio Commissioner
Phyllis J. Newton, Staff Director
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Marguerite Cephias, Staff Attorney
Sharon Henegan, Director, Training and Technical Assistant
Peter Hoffman, Principal Technical Advisor
Susan Kuzma, Judicial Fellow
Pamela Montgomery, Deputy General Counsel
Andy Purdy, Chief Deputy General Counsel
Winthrop Swenson, Deputy General Counsel
Susan Winarsky, Senior Training Specialist

Chairman Wilkins announced that a Commission meeting would be held on November 17, 1992, 10:00 a.m., and that a brief meeting will be held at 4:00 p.m., October 28, 1992, in Tallahassee.

Chairman Wilkins introduced Kent Larsen, who recently joined the Commission's staff as Director of Communications, and Barbara Hanbury, who recently joined as a Research Assistant for the Office of Policy Analysis. Chairman Wilkins also introduced Probation Officers Jim Dier (Kansas) and Donna Bailey (Hawaii), both on temporary detail to the Commission.

In response to a letter from Commissioner Peterson of the Internal Revenue Service to Congress concerning the impact of non-imprisonment sentences on tax offenses, the Commission expressed a resolution of good faith to seriously consider, this amendment cycle, any suggestions by the IRS to correct any problems that may have occurred because of earlier Commission action.

Motion made by Commissioner Carnes to adopt the minutes of the August 26 and July 1, 1992, meetings. Passed unanimously.

Working Groups

Mr. Purdy outlined the working group process. He stated that the first step was the submission of an objective written report, focusing on how the guidelines are working. This report would not be accompanied by amendment suggestions. Subsequently, each group will submit options, not necessarily amendments, that the Commission might want to consider. Mr. Martin added that for the first time, the working groups submitted purpose statements outlining the issue(s) to be studied and the resources/research envisioned.

Sharon Henegan outlined the questions to be researched concerning the re-examination of the structure of the drug guideline. A question was raised as to whether drug sentences are too high for minimal drug offenders. Commissioner Nagel stated that since the Commission had just last year examined the potential for an amendment to the role guideline or "caps" to address this problem, resources might be better expended searching for solutions to the problem other than through caps or an amendment to the "role" guideline. Ms. Henegan stated that revising role was not the primary mission of the group. Rather, a primary mission was to study the use of quantity as a factor that determines the offense level and whether the reliance on quantity should be blunted in some way, and whether other indicators exist that should be considered in determining the sentence. A brief discussion ensued on the use of "risk factor" in determining the sentence. Commissioner Nagel stated that in her judgment, Congress is not so concerned about an offender's role in the offense or the amount of drugs involved as it is about the public's fear of violence. She suggested that we explore the viability of a guideline structure that de-emphasizes the quantity of drugs and focuses more on indicia of risk of violence. Commissioner Gelacak expressed his determination to not tie the guidelines in any manner to mandatory minimum sentences. To do so, lends them credibility at a time when the Commission should be doing everything to eliminate them.

Susan Winarsky briefed the Commission on the working group established to examine the issues relevant to violent crime. She stated that for analysis purposes, the areas of study were divided into the subparts of violent offenses, firearms, and gangs. In relation to violent offenses, Ms. Winarsky stated that the group is focusing on Chapter Two, Part A offenses, such as murder and assault. The group wants to prepare an overview profile of these offenses by addressing the issues of whether the present Chapter Two, Part A penalties are appropriate and whether serious application problems exist. In relation to firearms, the group is responding to the Attorney General's submitted concerns following the 1992 publication of the Commission's firearm amendments. In relation to gangs, the group will attempt to determine the most significant issues that gang-related activities pose for crimes of violence and what are the implications of and recommendations for sentencing gang members under the guidelines. Commissioner Maloney stated that DOJ was working on a definition of "gangs."

Win Swenson briefed the Commission on the working group established to study the operation of the money laundering and structured transaction guidelines. Mr. Swenson stated that the issue of primary focus relates to the use or potential use of the money laundering and structured transaction statutes as a vehicle for prosecution in cases where the financial transaction appears to be incidental to a more serious underlying offense. He further stated that according to a preliminary examination of public comment and case law, the money laundering and structuring transaction statutes are very broad and current guidelines can be amended to better distinguish between degrees of offense seriousness.

Susan Kuzma briefed the Commission on the White Collar Working Group. She stated that initially the group would develop a profile of current sentencing practices for certain economic and regulatory crimes (fraud, theft, tax, and anti-trust). The group would then concentrate on the fraud and theft guidelines and tax offenses.

Pamela Montgomery briefed the Commission on the Juvenile Offenders Working Group. She stated that this group, established as a two-year project, would address the statutory directive of 28 U.S.C. § 995(a)(19), requiring the Commission to "study the feasibility of developing guidelines for the disposition of juvenile delinquents." Commissioner Gelacak questioned the establishment of this group in light of the Commission's decision last year not to promulgate guidelines for juvenile delinquents. Staff Director Newton stated that this was in response to a request from Commissioner Nagel for data relating to these cases. General Counsel Steer stated that the Commission might not have the authority to promulgate guidelines for juvenile offenders, but that the Commission was required to study the feasibility issue.

Marguerite Cephas briefed the Commission on the SRA Prison Working Group. She stated that the group would examine the statutory obligations of the Sentencing Reform Act of 1984 relating to penal or correctional matters that require action or response by the Commission.

Paul Martin briefed the Commission on the Substantial Assistance Working Group. Chairman Wilkins questioned the opposition of DOJ to the telephone surveys. Commissioner Maloney replied that DOJ is interested in determining the problems. DOJ, however, does not want to be unaware of sources of particular problems on guideline implementation.

General Counsel Steer briefed the Commission on some important *en banc* appellate decisions. Pam Montgomery will circulate the decisions this week.

Chairman Wilkins adjourned the meeting at 5:38 p.m.