

Minutes of the June 27, 1994,
United States Sentencing Commission Business Meeting

The meeting was called to order at 10:06 a.m. by William W. Wilkins, Jr. in the conference room of the United States Sentencing Commission. The following Commissioners, staff, and guest participated:

William W. Wilkins, Jr., Chairman
Julie E. Carnes, Commissioner
Michael S. Gelacak, Commissioner
A. David Mazzone, Commissioner
Gary Katzmann, Ex Officio Commissioner
Phyllis J. Newton, Staff Director
Peter Hoffman, Principal Technical Advisor
Susan Katzenelson, Director, Office of Policy Analysis
Kent Larsen, Director of Communications
Andy Purdy, Chief Deputy General Counsel
Win Swenson, Deputy General Counsel/Legislative Counsel
Gordon Waldo, Research Expert
Vicki Portney, Representative, Criminal Division, Department of Justice

Commissioner Ilene H. Nagel participated via telephone conference call.

Chairman Wilkins introduced Probation Officers Ellen S. Moore, (M.D. GA) and Walter P. Matthews (D. DE), both on temporary assignment to the Commission.

Motion was made by Commissioner Carnes to adopt the minutes of the May 3, 1994, meeting. Passed unanimously.

Commission Priorities for 1994-1995

Staff Director Newton reviewed her memorandum of June 9, 1994, containing a priority ranking of the Commission's suggested activities for 1994-1995. She stated that implementation of the 1994 crime bill directives and amending the drug guidelines are the projects with the highest priority. Most other priority projects listed, such as ASSYST, the Automated Judgment and Commitment Order programs, the Real Offense Conduct Module, and the Substantial Assistance Working Group, are well underway. She solicited comments and requests.

Commissioner Nagel made the following suggestions: contracting an independent study on crack cocaine to supplement the Commission's own required study; submitting a preliminary report on the just punishment study; submission of a preliminary report on the crime mix project; proposing a schedule for submission of preliminary reports to be used in the just punishment study; appointing task forces on geriatric offenders and food and drug offenses. Commissioner Nagel noted that the Cohen and Blumstein studies would be useful research

tools for examining criminal career trajectories, especially when preparing reports to Congress.

Motion made by Commissioner Mazzone to ratify the priorities as proscribed and submitted by staff as the 1994-1995 priorities for the Commission. Passed unanimously.

Crime Bill Update

Legislative Counsel Swenson, reporting on the Crime Bill, stated that Senator Biden and Representative Brooks have drafted a "Chairmen's Mark" as the vehicle for moving crime legislation forward. The present draft includes a required Commission study on crack, a safety valve provision, and revocation legislation. Also, other than the House version of a three strikes provision, the draft does not contain mandatory minimum provisions. Mr. Swenson stated that although the conferees have convened to reconcile differences between the House and Senate versions, only opening statements have been given. The Racial Justice Act appears to be a point of contention, stalling quick action on the Crime Bill. The conferees probably will not meet before mid-July.

Drugs Violence Task Force

Dr. Waldo reported on the Drugs Violence Task Force and distributed its agenda for the upcoming initial meeting. The Task Force's ex-officio members are Senator Edward M. Kennedy, Attorney General Janet Reno, Dr. Lee P. Brown, Director of the Office of National Drug Control Policy, Congressman Robert C. Scott, Peter B. Edelman, Counselor to the Secretary of the Department of Health and Human Services, and H. Talbot "Sandy" D'Alemberte, President of Florida State University. Most of the members of the Task Force will attend the Drugs Violence Task Force Meeting on June 29-30, 1994, to be held in the Thurgood Marshall Federal Judiciary Building.

Revised Commentary to §2D1.1

§2D1.1 Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

The proposed commentary amendment addresses the issue of upward departures for drug quantities in excess of that for level 38.

Chairman Wilkins suggested that the language "on the basis of an extraordinarily large quantity of controlled substance" and the brackets around "of up to 2 levels" be deleted in order de-emphasize quantity, focusing on the extraordinary case instead of the extraordinary amount. Commissioner Nagel recommended deleting the language "of up to 2 levels" in order to provide judges more discretion.

Motion made by Commissioner Nagel to pass the amendment as follows:

"19. In an extraordinary case, an upward departure above offense level 38 on the basis of drug quantity may be warranted. For example, an upward departure may be warranted where the quantity is at least 10 times the minimum quantity required for level 38."

Passed unanimously.

Informational Items

COMMISSION NEWSLETTER

The staff will submit a prototype newsletter for the Commissioners' consideration. Staff Director Newton stated that a newsletter would be created only when newsworthy items occurred, probably on a semi-quarterly basis. Director of Communications Larsen explained that the newsletter would contain information that otherwise would not be available in other Commission publications, such as a list of ongoing projects and working groups' progress. Chairman Wilkins suggested calling the publication a "Summary of Commission Activities." Approval was given to continue working on a prototype.

REPORT SUMMARY PROJECT

Staff Director Newton stated that the staff has been developing a model summary of working group and research reports in an effort to have the Commission's research work reach a wider audience. She solicited comments on the project. Approval was given to continue working on the model summary.

SENTENCING GUIDELINES IN SPANISH

Staff Director Newton presented a copy of the sentencing guidelines printed in Spanish.

RESEARCH REFERENCE CATALOG

Staff Director Newton presented a copy of the Commission's 1994 "Research Reference Catalog." The catalog lists and describes the Commission's available publications, data, and information services.

RETROACTIVITY

Staff Director Newton stated that issues of retroactivity need to be brought before the July Commission meeting. She asked whether Commissioners had research or other requests that the staff should consider in preparation for the July meeting.

Commissioner Nagel recommended that groups affected by amendments to the Commission's retroactivity policy be invited to submit comments. This group should include a representative from the Clinton administration to comment on President Clinton's position on retroactive application of the safety valve and other provisions.

With regard to retroactivity of the new level 38 provisions, Commissioner Nagel suggested that figures on the number and nature of cases affected by the proposed retroactivity amendments be distributed to interested parties. Staff Director Newton stated that staff

would distribute these figures and collect comments before the July 27, 1994, Commission meeting.

BOP/USSC Report

The Commissioners voted unanimously to submit to Congress the "Report to Congress on the Maximum Utilization of Prison Resources," a joint informational report prepared by the Commission and the Bureau of Prisons.

Chairman Wilkins thanked Margaret Smith for her in-depth memorandum on the commentary to USSG §2D1.1.

Chairman Wilkins adjourned the meeting into executive session at 10:54 a.m.