

Minutes of the May 4, 1990 United States Sentencing Commission
Business Meeting

The meeting was called to order at 10:00 A.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, Ex Officio Member
Phyllis Newton, Staff Director
John R. Steer, General Counsel
Rusty Burress, Special Consultant
Sharon Henegan, Director of Training and Technical Assistance
Peter Hoffman, Principal Technical Advisor
Andy Purdy, Chief Deputy General Counsel
Fred Bennett, Representative, Practitioners' Advisory Group
Maggie Jensen, Probation Division Representative
Gina Lane, Parole Commission Representative
Roger Pauley, Criminal Division, DOJ
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins introduced Mary O'Neill, a probation officer on detail from the Eastern District of Pennsylvania.

In compliance with the statutory requirement that agencies respond to all GAO reports, Chairman Wilkins noted that on April 27, 1990, the GAO requested that the Commission respond to its March 7, 1990, testimony. The Commissioners will receive a draft version of the Commission's response, with the final version to be submitted to various Congressional committees.

Chairman Wilkins announced that the Committee on the Judiciary, Subcommittee on Criminal Justice, chaired by Congressman Schumer, was holding a hearing on Organizational Sanctions on May 17, 1990.

Chairman Wilkins reported that the amendments promulgated this amendment cycle were submitted to Congress on April 26, 1990, to go into effect November 1, 1990.

Commissioner MacKinnon moved to approve the minutes of the April 24, 1990, Commission meeting; seconded by Commissioner Corrothers. Passed unanimously.

John Steer reported on recent themes and trends in appellate court decisions. He reported that the Commission was faring uniformly well in the areas of due process and statutory compliance issues. He reported however, that the circuits were split on the issue of consecutive/concurrent sentences. He stated that the Commission might want to address the issue of related cases.

Revocation Policy Statements/Guidelines

Chairman Wilkins reported that a probation officer from each circuit and representatives from the Parole Commission, Probation Division, and the General Counsel's Office of the Administrative Office would be participating in a revocation testing program at the Commission on May 30, 1990. Sharon Henegan outlined the testing program.

Commission discussion ensued related to the policy statement to be tested. Commissioner Corrothers noted that she had already provided her recommendations in writing but wished to reiterate her three principles concerning the proposed revocation policy statements/guidelines: 1) violators of technical conditions should be separated from and treated differently from those who commit new criminal conduct; 2) greater distinction should exist between different types of offenders; and 3) greater sanction should be afforded the more serious offenders. Commissioner Nagel listed her six points of concern: 1) whether there should be separate guidelines for supervised release and probation; 2) incorporation of criminal history through an increase in a offenders' criminal history category by one level upon violation, as opposed to a recalculation of criminal history; (points #1 and #2 have been incorporated into the proposed draft in the form of questions) 3) technical violations which result in harm to an individual should allow for departure availability; 4) §7A1.3(c) and (d) - does not make sense to consider community confinement or home detention as an option; 5) separate technical violations from class one violations without lowering the tables; 6) determination of reason for defendant receiving probation (such as, guideline provision, downward departure, §5K1.1 departure); Staff Director Newton reported that Monitoring is presently conducting this study. Commissioner Maloney voiced the Department of Justice's concern: How difficult is it in practice to recalculate criminal history upon revocation? He stated that, in §7A1.4, Application Note 2, it does appear appropriate to have the decay factor apply. Fred Bennett commented on his written proposal that had just been provided to the Commissioners.

Discussion ensued concerning Commissioners Corrothers' and Nagel's comments, as well as others, on the proposed revocation draft. Chairman Wilkins stressed that all comments, if not already considered, would be considered by staff after testing the proposed draft.

Staff Director Newton was directed to obtain data on the numbers and nature of the violations from the various proposed categories.

General Counsel was directed to prepare a legal memorandum on 28 U.S.C. §994(b)(2) related to the 25% range of discretion as applicable to revocation.

Chairman Wilkins adjourned the meeting into Executive Session at 11:59 A.M.