

Minutes of the October 23, 1990, United States Sentencing Commission Business Meeting

The meeting was called to order at 10:26 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
Julie E. Carnes, Commissioner
Michael S. Gelacak, Commissioner
George E. MacKinnon, Commissioner
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Paul L. Maloney, Ex Officio Member
Phyllis J. Newton, Staff Director
John R. Steer, General Counsel
Nolan Clark, Deputy Chief Counsel
Linda Clemons, Special Assistant to Staff Director
Peter Hoffman, Principal Technical Advisor
Richard McNeil, Research Associate, Monitoring
Winthrop Swenson, Deputy General Counsel
Fred Bennett, Representative, Practitioners' Advisory Group
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins introduced Probation Officer Debra Speas from the Southern District of Florida and AUSA Richard Murphy from the Northern District of Iowa, both on detail to the Commission. He also introduced Gretchen Van Ness, Commissioner Mazzone's law clerk, and announced that William Jetton joined the Evaluation Unit as a Research Assistant. General Counsel Steer mentioned that Federal Public Defender Abe Clott from the Southern District of New York is also on detail to the Commission but is presently arguing a case in New York.

-- Motion made by Commissioner Carnes to adopt the minutes of the September 25, 1990, Commission meeting; seconded by Commissioner MacKinnon. Passed unanimously.

Linda Clemons reported on the ASSYST program. She stated that the updated program sent to the field on October 16 incorporated the 1989 and 1990 amendments. Function keys were updated with 1990 text and commentary, and a new function key for case law was added. Current projects include making variables in ASSYST compatible with the monitoring system's guideline application module and beginning a test of automated data transfer at two sites. Additionally, a program is being written that will create a PSR shell from ASSYST. Chairman Wilkins complimented Ms. Clemons on the ASSYST projects and requested comments on the program from probation officers in the field.

Commissioner Gelacak reported that the Alien Working Group has begun to examine the areas in guidelines Chapter 2L that deal with immigration violations and aliens. A site visit in Texas, consisting of interviews with Immigration officials, U.S. Attorneys, probation officers, judges, and Federal Defenders has been completed; another site visit is scheduled for late November in Southern California. Preliminary findings indicate that the guidelines do not adequately address the problems of smuggling organizations, inhumane treatment or the profiteering related to bringing in illegal aliens. Commissioner Gelacak stated that the best method to address these concerns and to appropriately punish the higher level individuals in the smuggling organizations has not been determined; the working group will attempt to have a proposal during this amendment cycle.

General Counsel Steer reported on the House and Senate Crime bills. He reported that House and Senate staff have been working through the minor issues but that major issues such as the death penalty provisions were delaying action. Conferees may meet later today. He noted that the need for the Commission's proposals in relation to revocation of probation and supervised release has increased with recent court decisions.

Rich McNeil reported on monitoring information available on cases sentenced since the Supreme Court's decision in Mistretta through June 30, 1990. Commissioner Nagel requested comparisons to pre-guideline cases on data related to race and gender. Chairman Wilkins requested data on the percentage of cases sentenced at the mandatory minimum. Commissioner Maloney requested data on the percentage of cases in which the criminal history category is seven or more points or more. McNeil stated that more Chapter Two analysis would be done and a new table on departures would be added. Chairman Wilkins commended McNeil on the excellent report, which contains valuable information for use during this amendment cycle.

Chairman Wilkins requested suggestions regarding the most recent staff draft on organizational sanctions in order to publish the draft for public comment. Various suggestions were submitted, with general approval by the Commission. Commissioner Gelacak suggested that the staff draft, incorporating Commissioner Nagel's suggested changes, and DOJ's draft be published for public comment. He stated, however, that he had problems with the direction the Commission was taking on loss, on mitigators, and on the application of the draft guidelines to organizations other than corporations. Commissioner Gelacak reiterated his agreement with the general principles and the philosophy of the draft, as well as the importance to publish for comment but observed that in certain areas it was not compatible with actual practice in corporate America.

-- Motion made by Commissioner MacKinnon, at the request of Commissioner Maloney, to publish, simultaneously with the Commission's draft, DOJ's Organizational Sanctions draft although its contents are not sanctioned by the Commission; seconded by Commissioner Mazzone. Passed unanimously.

-- Motion made by Commissioner MacKinnon to publish the Commission's working draft for public comment; seconded by Commissioner Carnes. Passed unanimously.

Chairman Wilkins, on behalf of the Commission, will arrange the logistics for a possible future public hearing on Organizational Sanctions.

Discussion ensued concerning the proposed amendment for the grouping of perjury counts. Peter Hoffman will take Commissioners' suggestions and redraft the perjury proposal.

Staff Director Newton summarized the compressed work schedule that will be implemented on a trial basis beginning November 5, 1990.

Chairman Wilkins adjourned the meeting at 1:45 p.m.