

Minutes of the November 27, 1990, United States Sentencing Commission Business Meeting

The meeting was called to order at 10:15 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
Helen G. Corrothers, 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
David Anderson, Deputy General Counsel
Abraham Clott, Special Counsel
Sharon Henegan, Director of Training and Technical Assistance
Peter Hoffman, Principal Technical Advisor
Candace Johnson, Director of Monitoring
Paul Martin, Communications Director
Jay Meyer, Training Coordinator
Richard Murphy, Special Counsel
Roger Pauley, Criminal Division, DOJ
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins introduced Probation Officer Timothy Kozak, who is on detail from the Eastern District of Michigan, and Susan Ericson, who recently joined the USSC staff as Personnel Management Specialist.

-- Motion made by Commissioner MacKinnon to adopt the minutes of the November 13, 1990, Commission meeting; seconded by Commissioner Corrothers. Passed unanimously.

Abraham Clott summarized the report and options for amendments related to the issue of concurrent/consecutive sentences. A discussion ensued. Chairman Wilkins requested that the working group draft an option to deal with the issue of whether to impose a concurrent sentence on a defendant convicted of a state charge who, while waiting to be imprisoned on the state charge, commits a federal offense, as well as an option requiring imposition of a consecutive sentence under the same circumstances. The Criminal History working group was requested to give input on the proposed amendment as it relates to "related cases." Commissioner Nagel requested a question be placed in the proposal that asks if the amendment unduly constrains the district court's discretion. Mr. Clott will circulate to Commissioners Carnes and Corrothers the Hot Line's list of questions and pertinent case law. The

concurrent/consecutive report and proposed amendment will be placed on the agenda for the next meeting.

-- Motion made by Commissioner Nagel to extend the public comment period on organizational sanctions until January 10, 1991; seconded by Commissioners Corrothers and Mazzone. Passed unanimously.

Peter Hoffman reviewed the proposed amendments for extortion and tampering. A discussion ensued. General consensus was to publish for comment the extortion and tampering guidelines as discussed, with Commissioner Carnes' suggestions and a specific offense characteristic in the extortion guideline for consumer product tampering.

Peter Hoffman reviewed the proposed amendment for perjury. A discussion ensued. General consensus was to publish for comment options 1 and 2, as amended by Commissioner Carnes to delete U.S.S.G §2J1.3(d)(1)(A) and (B) in option #1.

Abraham Clott summarized the report and proposed amendment relating to steroids. A discussion ensued. Chairman Wilkins requested that the Penalties Review project address the issue of the interpretation of 21 U.S.C. § 845b. General consensus was to publish for comment with the section "Questions for Public Comment" formatted to conform to Federal Register language, the reference to age deleted, and a statement in the commentary referencing the fraud guideline.

Richard Murphy summarized the report and proposed amendment related to precursors. General consensus was to publish for comment with 8-15 bracketed instead of 8-10 in U.S.S.G. §2D1.13(a)(2).

Jay Meyer summarized the report and proposed amendments on criminal history. A discussion ensued on the issue of proposed Criminal History Category VII. Commissioner MacKinnon requested a prison impact projection on this proposal. A discussion ensued on the issue of proposed Criminal History Category O. General consensus was to prepare a Criminal History Category VII proposal for public comment and revisit the issue of Criminal History Category O on January 3, 1991, after Commissioner Corrothers' Alternatives to Imprisonment project report and recommendations are completed.

David Anderson summarized the supplementary Penalties Review Project report to be submitted to Congress. The report recommends changes to penalties available in civil rights, assault, organized crime, conspiracy, and involuntary manslaughter statutes. These statutes were recommended for change because they generally inhibit sentencing reform since the penalty range that each provides is insufficiently broad to allow full consideration of the guidelines as they relate to the defendant's conduct. A discussion ensued. Commissioner Corrothers stated her rationale and requested two

changes in the Civil Rights section of the report: deletion of the language restricting threatened use to actions "against persons or property" and that the Commission recommend consistency among the civil rights statutes and that we advocate the use of the term "bodily injury." Mr. Anderson was directed to incorporate these and other suggestions and draft executed versions of the legislative proposals as an appendix. Commissioner MacKinnon pointed out that an incipient conspiracy should not receive the same penalty as a completed conspiracy. The Penalties Review report will be added to the list of December agenda items in order to send the report to Congress before the end of the year.

Paul Martin announced that a Judges' Working Group on Organizational Sanctions will be held on December 17, 1990, from 10:00 a.m. - 1:00 p.m.

Chairman Wilkins adjourned the meeting into executive session at 1:13 p.m.