

Minutes of the December 14, 17 and 18, 1990, United States Sentencing Commission Business Meetings

14 December 1990

The meeting was called to order at 9:30 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
Nolan Clark, Deputy General Counsel
Abraham Clott, Special Counsel
Joel Garner, Director of Research Studies
Sharon Henegan, Director of Training and Technical Assistance
Peter Hoffman, Principal Technical Advisor
Jay Meyer, Training Coordinator
Richard Murphy, Special Counsel
Winthrop Swenson, Deputy General Counsel
Vince Ventimiglia, Law Clerk
Tom Hutchison, Representative, Federal Public Defender
Maggie Jensen, Representative, Probation Division
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins recognized Probation Officer John Burns from the Western District of Arkansas and Charles Demsky and Steve Rubenstein from the Bureau of Alcohol, Tobacco and Firearms.

Nolan Clark briefed the Commission on environmental issues and a meeting with the Lands and Natural Resources Division of the Department of Justice and the Environmental Protection Agency. Commissioner Nagel requested comment from the Department of the Interior and the National Wildlife Association.

Richard Murphy summarized the Firearms and Explosive Materials Working Group report. Vicki Portney requested an amendment that would treat a prohibited person with a machine gun different than a non-prohibited person with a machine gun. Staff Director Newton assured Commissioner Corrothers that these proposals would be reviewed for proportionality with other guidelines.

-- Motion made by Commissioner Carnes to publish for public comment the Firearms and Explosive Materials Working Group report with attempted murder language to be drafted by Peter Hoffman, a question concerning deletion of sporting purpose, the bracketing of level 12 for transporting a firearm across state lines, and an amendment that would treat a prohibited person with a machine gun differently than a non-prohibited person with a machine gun; seconded by Commissioner Mazzone. Passed. Commissioners Corrothers and Gelacak were absent but had indicated agreement with the motion.

A discussion ensued on the feasibility of enacting an amendment to the Career Offender guideline (U.S.S.G. §4B1.1) that was concerned with time restrictions of prior convictions for purposes of criminal history determination. DOJ, Paul Borman, and Tom Hutchison were requested to draft language on this issue.

-- Motion made by Commissioner Mazzone to publish the proposed miscellaneous amendments to Chapter Four for public comment; seconded by Commissioner MacKinnon. Passed. Commissioner Nagel was absent but had indicated agreement with the motion.

A discussion on the proposed Public Corruption amendments occurred.

-- It was the consensus of the Commission to table discussion concerning the raising of the base offense level of U.S.S.G. §2C1.1 by 3 or 4 levels.

-- Motion made by Commissioner MacKinnon to publish the proposed amendment to U.S.S.G. §2C1.7 for public comment; seconded by Commissioner Carnes. Passed unanimously.

-- Motion made by Commissioner MacKinnon to publish the proposed amendment to U.S.S.G. §2C1.1 for public comment; seconded by Commissioner Carnes. Passed unanimously.

A discussion ensued on the proposed guidelines for fraud offenses that were derived from the Crime Control Act of 1990.

-- Motion made by Commissioner Corrothers to publish for public comment the proposed amendment incorporating section 2507 of the Crime Control Act with the deletion of the request for comment regarding statutory intent of the provision; seconded by Commissioner MacKinnon. Passed unanimously.

Peter Hoffman and Abe Clott were requested to draft a proposal in response to section 2510 of the Crime Control Act including consideration of specific offense characteristics.

Peter Hoffman and John Steer were given a standing instruction to update the Statutory Index automatically.

Commissioner Corrothers commented on Russell Burress' continuing enthusiasm and excellence reflected in his presentations on the guidelines. The continued enthusiasm makes him a very able goodwill ambassador.

Joel Garner briefed the Commission on the preliminary results of the research on recidivism of federal offenders. Commissioner Nagel requested that future data be broken down by similarly-situated offenders. A more extensive report on augmented 1985 FPSSIS data is expected to be completed within 9 to 12 months. Pursuant to Maggie Jensen's suggestion, the report will be retitled "Recidivism of Incarcerated Federal Offenders."

Commissioner MacKinnon stated that he finds no basis in the legislative history for policy statements for organizational sanctions. The legislative history references to policy statements relate to guidelines concerned with such areas as probation, restitution, and coordination of civil and criminal penalties.

Chairman Wilkins announced that the holiday celebration would be held today at 2:30 p.m.

Chairman Wilkins adjourned the meeting at 12:39 p.m.

17 December 1990

The meeting was called to order at 2:10 p.m. by Chairman William W. Wilkins, Jr.

Former Judges Norman Krivosha and Charles B. Renfrew commented on organizational sanctions. A discussion ensued.

There was discussion of the Youthful Offender guideline proposal. The staff will incorporate Commissioners' suggestions for reconsideration at the January 3rd meeting.

-- Motion made by Commissioner MacKinnon to publish for public comment the minor technical amendments and U.S.S.G. §2X1.1 as amended from "object" offense to "substantive" offense; seconded by Commissioner Nagel. Passed unanimously.

Chairman Wilkins adjourned the meeting at 4:02 p.m.

18 December 1990

The meeting was called to order at 9:39 a.m. by Chairman William W. Wilkins, Jr.

Ex Officio Commissioner Baer was also in attendance.

-- Motion made by Commissioner Corrothers to approve the minutes of the November 27, 1990, Commission meeting; seconded by Commissioner MacKinnon. Passed unanimously.

There was discussion on proposed options related to concurrent/consecutive issues.

-- Motion made by Commissioner Nagel to publish as proposed with the addition in U.S.S.G. §5G1.3(a) of "or while on bail or other release status" and the insertion of "separate" prosecution instead of "independent" prosecution; seconded by Commissioner Corrothers. Passed unanimously.

Commissioner Mazzone commented that the guidelines are in good shape and that most judges now accept them as sound, rational, and constitutional. He recommended that the Commission concentrate only on those items that require amendments. All Commissioners shared this sentiment with Commissioner Corrothers urging staff efforts to continue in order to allow future comprehensive examinations.

Stef Cassella commented on the issue of money laundering.

David Anderson and Win Swenson reviewed the proposed amendments that respond to the kidnapping and sex-related provisions of the Crime Control Act of 1990.

-- Motion made by Commissioner MacKinnon to publish for public comment U.S.S.G. §1B1.1(h) as amended; seconded by Commissioner Corrothers. Passed. Commissioner Gelacak abstained.

-- Motion made by Commissioner Corrothers to publish for public comment proposed U.S.S.G. §2A4.1(b)(5); seconded by Commissioner Carnes. Passed.

-- Motion made by Commissioner Nagel to publish for public comment U.S.S.G. §2A4.1(b)(6) with levels 3 and 5 bracketed; seconded by Commissioner Gelacak. Passed.

-- Motion made by Commissioner Corrothers to publish for public comment U.S.S.G. §2A4.1(b)(7); seconded by Commissioner MacKinnon. Passed.

-- Motion made by Commissioner Mazzone to publish for public comment the proposed commentary to U.S.S.G. §2G2.2; seconded by Commissioner Carnes. Passed unanimously.

-- Motion made by Commissioner MacKinnon to publish for public comment proposed U.S.S.G. §2G2.4; seconded by Commissioner Corrothers. Passed unanimously. Commissioner Nagel requested feedback from experts who handle these types of cases.

-- Motion made by Commissioner MacKinnon to publish for public comment proposed U.S.S.G. §2G2.5; seconded by Commissioner Corrothers. Passed unanimously.

-- Motion made by Commissioner MacKinnon to publish U.S.S.G. §2G3.1 and all other conforming amendments to those just approved; seconded by Commissioner Nagel. Passed unanimously.

There was a discussion on section 321 of the Crime Control Act of 1990. David Anderson and Win Swenson were directed to draft a guideline for section 322 of the Crime Control Act of 1990.

-- Motion made by Commissioner Corrothers to publish for public comment proposed U.S.S.G. §§2A3.1, 2, and 4; seconded by Commissioner Mazzone. Passed.

-- Motion made by Commissioner Corrothers to publish for comment proposed U.S.S.G. §2A4.1; seconded by Commissioner Carnes. Passed.

-- Motion made by Commissioner MacKinnon to publish for comment proposed U.S.S.G. §3A1.1; seconded by Commissioner Corrothers. Passed. Commissioner Nagel was not present.

-- Motion made by Commissioner MacKinnon to publish for public comment proposed U.S.S.G. §2G1.2; seconded by Commissioner Mazzone. Passed. Commissioner Nagel was not present.

-- Motion made by Commissioner Corrothers to publish for public comment U.S.S.G. §2G1.2; seconded by Commissioner Carnes. Passed.

Chairman Wilkins announced that Jay Meyer would be leaving the Commission to resume his duties as a probation officer in Minnesota. On behalf of the Commission, he thanked Meyer for his many contributions. Commissioner Carnes stated that she had high regard for his professionalism and enjoyed working with him on a Commission project.

Chairman Wilkins recessed the meeting until 2:05 p.m.

David Anderson reviewed the Executive Summary of the Statutory Penalty Review Project.

-- Motion made by Commissioner Corrothers to use "bodily" injury and not "serious" bodily injury in the recommendations concerning sections 242, 245, and 247 of title 18; seconded by Commissioner Mazzone. Passed. Commissioners Carnes and Gelacak were not present.

Commissioner Corrothers distributed the Executive Summary pertaining to the Alternatives to Imprisonment Project. She recognized and commended various people, including the Advisory Committee, for their assistance. Commissioner Corrothers presented an overview of the project mentioning areas such as the purpose, exclusions and concerns that did not result in recommendations. She discussed the Committee's recommendations to the Commission as well as the impact of the proposal (attached). Commissioner MacKinnon stated that it was an excellent summary and commended Commissioner Corrothers for touching all bases in this project.

-- Motion made by Commissioner Corrothers to adopt the Statutory Penalty Review Project except for the conspiracy recommendation; seconded by Commissioner Mazzone. Commissioner MacKinnon moved to amend the motion to exclude aggravated sexual assault from the life imprisonment penalties in the civil rights recommendation. Amendment failed for lack of a second. Motion passed. Commissioner MacKinnon voted "no."

-- Motion made by Commissioner Mazzone to approve the conspiracy recommendation of the Statutory Penalty Review Project; seconded by Commissioner Carnes. Commissioner MacKinnon voiced strong opposition for inclusion of this section in the report. Discussion ensued. Motion passed. Commissioner MacKinnon voted "no."

A discussion on the Bank Robbery Working Group report occurred.

-- Motion made by Commissioner Corrothers to publish for public comment questions on whether to raise the specific offense characteristic by 2 for a financial institution, increase under 4 levels for use of a weapon, and the proposed amendment to U.S.S.G. §2B3.1(c)(1); seconded by Commissioner Carnes. Passed.

Chairman Wilkins announced that the next meeting was scheduled for January 3, 1991.

Chairman Wilkins adjourned the meeting at 4:10 p.m.