

Minutes of the August 6, 1991, United States Sentencing Commission Business Meeting

The meeting was called to order at 10:11 a.m. by Chairman William W. Wilkins, Jr., 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
Vince Fechtel, Parole Commission Representative
Vicki Portney, Department of Justice Representative
Phyllis J. Newton, Staff Director
John R. Steer, General Counsel
James Beck, Senior Research Associate
Nolan Clark, Deputy General Counsel
Peter Hoffman, Principal Technical Advisor
Susan Katzenelson, Senior Research Associate
Pamela Montgomery, Staff Attorney
Andy Purdy, Chief Deputy General Counsel
David Rauma, Director of Evaluation
Susan Winarsky, Senior Training Specialist
Stephen Cribari, Federal Public Defender
Tom Hutchison, Federal Public Defender

Commissioner Corrothers was unable to attend the meeting as she was chairing an American Correctional Association national meeting.

Parole Commissioner Fechtel was representing Ex Officio Commissioner Getty.

Chairman Wilkins introduced Mullen Dowdal, law clerk for Commissioner Nagel, Probation Officers Gennine Hagar, from the District of Columbia, Debra La Doucer, from the Southern District of West Virginia, and Reynardo (Bobby) Adame, from the Southern District of Texas, all on temporary assignment to the Commission. He also recognized Judge Mark Wolf, District of Massachusetts.

-- Motion made by Commissioner Carnes to adopt the minutes of the July 23, 1991, Commission meeting; seconded by Commissioner Mazzone. Passed unanimously.

Jim Beck reported that the Alternatives to Imprisonment Working Group had divided into three subgroups concerned with program accessment, operational impact, and statistical modeling. The working group is scheduled to visit a halfway house in Baltimore, MD. This group expects to finish its work in October and report to the Commission in November or December.

David Rauma reported that the Office of Evaluation is making progress in analysis and writing of its report. He mentioned the possibility of employing an outside contractor for data archiving purposes. He also stated that the Research Advisory Group would meet in October, and that it is being offered the possibility of completing additional projects for incorporation into the Evaluation report.

Andy Purdy, reporting on the Drug Working Group, stated that the Office of Monitoring, DEA, and Customs are processing their requests for data. He stated that input is being gathered from DOJ and Judge Wolf's committee, as well as from 1990-91 public comment on guidelines.

Nolan Clark, reporting on the Environmental Working Group, stated that the Department of Justice is reviewing all environmental cases sentenced under the guidelines and that EPA has named its representative to work with the group.

Pamela Montgomery, of the Child Sex Offenses Working Group, reported that they are reviewing literature related to child sex offenses and awaiting data from Monitoring.

Susan Winarsky reported that the Acceptance of Responsibility Working Group is meeting with Commissioners and establishing contact with pertinent outside groups, such as the Practitioners' Advisory Group, the Administrative Office of the U.S. Courts, and probation officers. She also stated that an emerging issue from case law relates to the scope of conduct for which a defendant must accept responsibility in order to receive the reduction.

Susan Katzenelson, reporting on the Criminal History Working Group, stated that the first sample of data related to narrowing prior convictions is in the coding stage and that the population for the second sample, relating to the decay factor, has been identified. Also, the working group has generated numbers for first offenders and possible criminal history category VII and is contacting outside groups for their input.

General Counsel Steer reported on pending crime legislation. He reported that the Crime and Criminal Justice Subcommittee of the House Committee on the Judiciary marked up crime legislation and reported it out to the full Committee last week. He outlined provisions of the bill that are of interest to the Commission.

Chairman Wilkins commended staff for their work on the Mandatory Minimum Study and the Supplementary Report on Organizational Sanctions. There was general consensus to have Commissioners submit to the Chairman changes for incorporation in the draft on organizational sanctions, with substantive changes to be brought to the attention of all Commissioners.

Chairman Wilkins recognized that a tremendous amount of work (nights and weekends) has been done by staff on the Mandatory Minimum Report to Congress. Commissioner Mazzone suggested deferring distribution of the report until further restructuring and editing has been completed. There was general consensus for Commissioners to submit to Commissioner Mazzone changes for incorporation in the draft, with all substantive changes to be brought to the attention of all Commissioners. Vicki Portney requested additional information about cases where charges may not have been brought.

Amendments to Commentary

Item #3 §1B1.2 Applicable Guidelines

Deferred until the next meeting with request for legal memorandum.

Item #4 §1B1.3 Relevant Conduct (Factors that Determine the Guideline Range)

Motion made by Commissioner Mazzone to adopt; seconded by Commissioner MacKinnon. Passed by 5 votes; Commissioner Gelacak abstained.

Item #5 §1B1.3 Relevant Conduct (Factors that Determine the Guideline Range)

Motion made by Commissioner Nagel; seconded by Commissioner Mazzone. Passed unanimously.

Item #6 §2C1.1 Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right

Deferred until the next meeting.

Item #7 §2D1.1 Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)

Deferred until the next meeting. Commissioner Nagel requested data concerning the incidence of small drug growers.

Item #8 §2J1.7 Commission of Offense While on Release

Deferred until next meeting. Commissioner Nagel requested that the relevant statutes be attached to the amendment.

Item #9 §2L1.2 Unlawfully Entering or Remaining in the United States

Motion made by Commissioner MacKinnon to adopt; seconded by Commissioner Mazzone. Passed unanimously.

Item #10 §2N2.1 Violations of Statutes and Regulations Dealing with any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product

Deferred until next meeting.

Item #11 §2T1.3 Fraud and False Statements Under Penalty of Perjury

Motion made by Commissioner Mazzone to adopt; seconded by Commissioner Nagel. Passed by 5 votes. Commissioner MacKinnon voted "no."

Item #12 §4B1.2 Definitions of Terms Used in Section 4B1.1

Deferred until the next meeting.

Item #13 §6A1.2 Disclosure of Presentence Report; Issues in Dispute (Policy Statements)

Motion made by Commissioner MacKinnon to adopt with the cite to Burns changed to the U.S. cite; seconded by Commissioner Nagel. Passed unanimously.

Item #14 §1B1.1 Application Instructions

Motion made by Commissioner Nagel to adopt; seconded by Commissioners MacKinnon and Mazzone. Passed unanimously.

Item #1 §1B1.10 Retroactivity of Amended Guideline Range (Policy Statement)

Motion made by Commissioner Carnes to adopt two additional amendments for applicability of retroactivity; seconded by Commissioner Nagel. Passed unanimously.

Motion made by Commissioner Nagel to adopt commentary; seconded by Commissioner Carnes. Passed unanimously.

Item #2 §5F1.7 Shock Incarceration Program

Motion made by Commissioner MacKinnon to adopt with the deletion in the last sentence of the word "will be" and the insertion of "is" and with the correction of the relevant statute to 18 U.S.C § 4046; seconded by Commissioner Carnes. Passed unanimously.

Commissioner Nagel offered congratulations to Commissioner Carnes on her recent nomination to a district court judgeship in the Northern District of Georgia.

Chairman Wilkins adjourned the meeting at 12:30 p.m.