

Minutes of the November 13, 1991, United States Sentencing Commission Business Meeting

The meeting was called to order at 9:39 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
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Carol Pavilack Getty, Ex Officio Commissioner
Paul L. Maloney, Ex Officio Commissioner
Phyllis J. Newton, Staff Director
John R. Steer, General Counsel
Nolan Clark, Deputy General Counsel
Peter Hoffman, Principal Technical Advisor
Andy Purdy, Chief Deputy General Counsel
Bruce Bellin, Representative, Environmental Protection Agency
Ray Mushal, Representative, Natural Resources and Environment Division, DOJ

Chairman Wilkins introduced Probation Officer Rodger Brisko, from the Southern District of Texas, on temporary assignment to the Commission.

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

Child Pornography Amendments -- §§2G2.2, 2G2.4, and 2G3.1

General Counsel Steer reported that H.R. 2622, Treasury, Postal Service and General Government Appropriation Act of 1992, was signed by the President on October 28, 1991 (Pub. L. No. 102-141). Section 632 of the law requires that the Commission promulgate superseding amendments for child pornography offenses, effective November 27, 1991. The Commission tentatively approved these amendments on October 23, 1991.

-- Motion made by Commissioner Carnes to formally adopt these amendments; seconded by Commissioner Mazzone. Passed unanimously.

Andy Purdy, summarizing the initial report from the Drugs/Role in the Offense Working Group, stated that the group was still reviewing cases with two goals: developing a reliable profile for each defendant receiving a minor or minimal role adjustment; and providing information for the Commission to use in determining whether the importance of drug quantity in determining an offender's base offense level results in inappropriate punishment for "less culpable" offenders. Commissioner Nagel questioned

reviewing the same cases used in the Mandatory Minimum Study sample and expressed concern that the results might be skewed. The working group will review a sample from the general population for the March deadline.

Nolan Clark presented the initial report of the Environmental Working Group. He stated that the environmental offenses were divided into two groups, pollutants and wildlife/plants. Presently, the working group has examined all guideline cases relating to the pollutant group (49, individual). The group has coded these cases with possible relevant factors to determine the resulting guideline range. The group is in the process of reviewing cases related to the wildlife/plants group. Mr. Clark noted that the departure rate was higher in the area of environmental cases, in part because the guidelines suggest departures for many specific offense characteristics. He also noted that the group was unable to determine if the departures were a result of misapplication of the guidelines or were guided departures without stated reasons. The working group has had a series of meetings with representatives from DOJ and EPA.

Chairman Wilkins reviewed the list of scheduled events during this amendment cycle. Meetings on December 13 and 17, 1991, have been tentatively scheduled, if needed.

Motion made by Commissioner Gelacak to remove from this amendment cycle's work list the specification of corporate guidelines for organizations convicted of environmental, food and drug, or other offenses not currently covered by the organizational guidelines presently in effect. Commissioner Nagel seconded this motion. Although no vote was taken on this motion, Chairman Wilkins implemented the motion by directing the Environmental Working Group to concentrate on the individual guidelines in the area of environmental offenses.

Chairman Wilkins appointed Commissioner Nagel to chair a group consisting of representatives from EPA, DOJ, the Practitioners' Advisory Group, and other interested parties to discuss corporate guidelines as they apply to environmental offenses.

Chairman Wilkins adjourned the meeting at 10:52 a.m.