

Final

Minutes of the February 24, 1994  
United States Sentencing Commission Business Meeting

The meeting was called to order at 9:04 am by Chairman William W. Wilkins, Jr. in the conference room at the Sentencing Commission. The following Commissioners and staff participated:

- William W. Wilkins, Jr., Chairman
- Julie E. Carnes, Commissioner
- Michael S. Gelacak, Commissioner
- A. David Mazzone, Commissioner
- Ilene H. Nagel, Commissioner
- Gary Katzmann, Ex Officio Commissioner
- Edward S. Reilly, Ex Officio Commissioner
- Phyllis J. Newton, Staff Director
- Paul K. Martin, Deputy Staff Director
- Frank Larry, Senior Technical Assistance/Training Specialist
- Bob Bensten, Research Associate

Chairman Wilkins introduced Vanessa D. Locke and Jerry E. Jones, two new staff members in the Office of Training and Technical Assistance. Chairman Wilkins also introduced Probation Officers Drew F. Thompson, from the Middle District of Pennsylvania, and Patricia A. Scrutchions, from the Western District of Michigan, both on temporary assignment to the Commission.

Motion made by Commissioner Mazzone to adopt the minutes of the January 28, 1994, meeting. Passed unanimously.

Frank Larry briefed the Commission on the progress of the Food and Drug Working Group. In its preliminary report, the group focused on fiscal years 1991 and 1992 monitoring data, including cross-reference issues, individual versus organizational sentences, and statutory maximum fines. He stated that although the report does not include input from the Department of Justice or the Food and Drug Administration, he hopes to involve those agencies in the study during the upcoming year.

Commissioner Gelacak expressed the need for the group to look at a wider variety of food and drug cases. He also questioned what findings the group has made regarding any distinguishing characteristics food and drug cases possess, compared to organizational cases in general, in determining the need for a separate guideline. Staff Director Newton asked the Commissioners for approval to direct the working group beyond the information-gathering stage into an examination of the issues surrounding development of organizational guidelines for food and drug violations. Commissioner Gelacak was the only Commissioner

to express doubts as to the necessity of further study. Commissioner Nagel asked whether the group's preliminary report will be available for public dissemination. Staff Director Newton stated that the preliminary report contains no individual case identifiers and would be made available with the permission of the Commission.

Gregory Wallance, a private defense attorney in attendance, asked whether there will be an opportunity for private organizations and interest groups to submit comments regarding the food and drug guidelines. Chairman Wilkins stated that such participation is welcomed and a proper forum will be established to receive such input.

Chairman Wilkins introduced Lyle Yurko, representing the Practitioners' Advisory Group.

Commissioner Mazzone, reporting on the Crime Bill hearings in which he participated, stated that Congressman Washington's bill, entitled "The Alternative Approach to Fighting Crime," seeks to repeal mandatory minimums as they relate to crack cocaine. The bill would mandate community-based aid and a national commission to study drugs and violence. He also reported that Senator Biden, who testified at the same hearing about his opposition to the current Senate crime bill, praised the Sentencing Commission, and pointed out that stiff penalties already exist under the guidelines for three-time offenders.

Chairman Wilkins noted that the Commission's analysis of the crime bill has been disseminated to Representatives Hughes, Edwards, and other members of Congress.

Chairman Wilkins introduced the Probation Officer Advisory Group and the chair of that group, Tommy Whiteside. Mr. Whiteside, reporting on the survey distributed among probation districts, stated that eight guideline issues regarding the proposed amendments were identified as most pressing. The Advisory Group reported that §5G1.3(c), as currently written, is too complicated and confusing to be applied effectively. The group proposed that §5G1.3(c) be rewritten to allow judges to choose between concurrent and consecutive sentences, and that some of the language in the application note be moved into the guideline. Commissioner Carnes asked for more examples of the §5G1.3 problem so that she may gain a better understanding of what measures should be taken.

The group reported that it also favors proposed amendments #5A, which would make the adjustments for value of the payment cumulative rather than alternative with respect to elected officials; #8B option 1, if §2D1.1 must be amended to add an additional enhancement for weapon use/assault; #12 B option 1, increasing the base offense level under §2B1.1 from four to six, making fraud and theft the same levels regardless of the loss; #26, raising the base offense levels of §2H2.1; and #11 regarding money laundering. The group suggests that if the language of §2B1.1 is amended to read "sophisticated planning" rather than "more than minimal planning," additional examples of what sophisticated planing means should be included. In addition, the probation officers support the clarification proposed on §2E1.1.

The Advisory Group opposes proposed amendments #28 option 3, increasing the base offense level for firearms under §2K2.2, and #30, regarding additional distinctions within §4A1.1.

Chairman Wilkins requested a summary of the Advisory Group's comments and thanked the probation officers for their diligent work.

Chairman Wilkins adjourned the meeting at 11:05 am.