

Minutes of the February 14 and February 15, 1989 U.S. Sentencing Commission Business Meeting

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

The meeting was held in the library at the U.S. Sentencing Commission. The following Commissioners, staff members and guests participated.

William W. Wilkins, Jr., Chairman  
 Michael K. Block, Commissioner  
 Stephen G. Breyer, Commissioner  
 Helen G. Corrothers, Commissioner  
 George E. MacKinnon, Commissioner  
 Ilene H. Nagel, Commissioner  
 Steve Saltzburg, Ex Officio Member  
 Winston S. Moore, Staff Director  
 John R. Steer, General Counsel  
 David Anderson, Deputy General Counsel  
 Charles Betsey, Associate Director of Research  
 Peter B. Hoffman, Principal Technical Advisor  
 David Lombardero, Consultant - Guideline Drafting  
 Phyllis Newton, Director of Training  
 David Scheffman, Consultant - Research  
 Ronnie M. Scotkin, Guideline Development Analyst  
 Ronald Weich, Former Special Counsel  
 Jerry Block, Director of Environmental Crimes Unit, DOJ  
 Ray Mushal, Senior Attorney, Environmental Crimes Unit, DOJ  
 Roger Pauley, Representative from DOJ  
 Vicki Portney, Representative from DOJ

The Chairman noted that the first regional "Train the Trainer" conference will be held March 13 - 15, 1989, in Washington, D.C.

John Steer briefed the Commission on the circulated memo concerning emergency amendments.

-- Motion made by Commissioner Corrothers to promulgate past approved temporary amendments (effective June 15, 1988) as permanent amendments; seconded by Commissioner MacKinnon. Passed.

Chairman Wilkins recognized Jeff Standen, an attorney, and Jay Meyer, a former Probation Officer, both of whom are now working at the Commission.

-- Motion made by Chairman Wilkins to (1) publish the "off the shelf" or previously approved technical amendments plus the career offender, fraud, and bank robbery proposals; (2) obtain as much information and analysis as possible from the staff study groups; and (3) state the availability of data, reports, and any other

documents at the Commission; seconded by Commissioner Breyer. Passed.

The Commission considered the following proposed guideline amendments for publication in the Federal Register. (The numbers referred to are those used for listing the amendments in several packages circulated to the Commissioners prior to the meeting.)

Package #1

1. Anti-Drug Abuse Act (§§7303 and 6241) - Motion made by Commissioner Breyer to publish staff proposal; seconded by Commissioners Corrothers and MacKinnon. Passed.
3. Anti-Drug Abuse Act (§6215) - Motion made by Commissioner Corrothers to publish staff proposal; seconded by Commissioner Breyer. Passed.
4. Anti-Drug Abuse Act (§§6053, 6055, 6057) - Motion made by Commissioner Breyer to publish a general notice; seconded by Commissioner MacKinnon. Passed.
5. Anti-Drug Abuse Act (§6254(h)) - Motion made by Commissioner Nagel to publish a general notice; seconded by Commissioners Block and Breyer. Passed. Commissioner MacKinnon voted "no."
6. Anti-Drug Abuse Act (§647) - tabled for further staff consideration.
7. Anti-Drug Abuse Act (§7209) - tabled for further staff consideration.
8. Anti-Drug Abuse Act (§6474(a)) - Commissioners agreed to publish general notice.
9. Anti-Drug Abuse Act (§7305) - Motion made by Commissioner Breyer to adopt an amendment which combined the statement in package #1, item 9 and package #4, item 9; seconded by Commissioner Nagel. Passed. Commissioner Corrothers abstained. Commissioner Block was not present for this vote.
10. Anti-Drug Abuse Act (§6254(f)) - Motion made by Commissioner Block to publish levels (2), (1), and (0) and point out the anomaly that with this added language the sentence is higher than involuntary manslaughter; seconded by Commissioner MacKinnon. Passed. Commissioners Breyer and Nagel were not present for this vote.
11. §2H1.3 - Motion made by Commissioner Corrothers to publish staff proposal; seconded by Commissioner Block. Passed. Commissioners Breyer and Nagel were not present for this vote.

12. §56A1.1, 6A1.3 - Motion made by Commissioner Corrothers to publish staff proposal; seconded by Commissioner Block. Passed.
13. §2B5.1 - Motion made by Commissioner Nagel to publish A, B, D and delete C; seconded by Commissioner Breyer. Passed.
14. §2L1.1 - tabled for further staff consideration.
15. §3C1.1 - tabled for further staff consideration.
16. §4B1.1 - Motion made by Commissioner Nagel to publish staff proposal amended by adding extortion and extension of credit to the list and taking out "voluntary" to make it cover all manslaughter; seconded by Commissioner Block. Passed.
17. §5G1.3 - Motion made by Commissioner Nagel to publish only (a); seconded by Commissioner Breyer. Passed.
18. §5K1.1 - Motion made by Commissioner Nagel to publish staff proposal; seconded by Commissioner Corrothers. Passed.
19. §5K1.1 - Motion made by Commissioner Nagel to take no action; seconded by Commissioner Block. Passed. Chairman Wilkins and Commissioner Corrothers voted "no" as an indication of their preference for publishing the proposal.
20. §52K2.1-2K2.3 - Motion made by Commissioner Block to publish a general statement of the issue with the staff proposal as an example of a solution; seconded by Commissioners Corrothers and MacKinnon. Passed.
21. §2E5.2 - Motion made by Commissioner Corrothers to publish staff proposal; seconded by Commissioner MacKinnon. Passed.
22. §2B3.1 - Motion made by Commissioner Corrothers to publish staff proposal; seconded by Commissioner Nagel. Passed.
23. §5C2.1(●) - Motion made by Commissioner Block to publish staff proposal; seconded by Commissioners Corrothers and Nagel. Passed.
24. §5K2.15 - Motion made by Commissioner Corrothers to publish staff proposal with deletion of the definition of terrorism in parenthesis; seconded by Commissioner Nagel. Passed.
25. §2P1.1 - Motion made by Commissioner MacKinnon to have staff redraft proposal to: (1) address the three-level Bureau of Prison reduction suggestion; (2) make the distinction between nonsecure and secure with voluntary return; (3) address issue of limiting nonsecure custody reduction to inmates other than those convicted of violent or drug offenses; and (4) make the distinction between those who return voluntarily within the first 96 hours after escape. Passed by general consensus.

**-- Package #2**

1. §2Q1.2, §2Q1.3 - tabled for further staff consideration.

**-- Package #1**

27. §2D1.1 - Motion made by Commissioner MacKinnon to publish staff proposal; seconded by Commissioner Block. Passed. Commissioner Breyer was not present for this vote.

28. §2D1.1 - Motion made by Commissioner MacKinnon to publish staff proposal; seconded by Commissioner Block. Passed. Commissioner Breyer was not present for this vote.

29. 21.1 - Motion made by Commissioner MacKinnon to publish staff proposal; seconded by Commissioner Block. Passed. Commissioner Breyer was not present for this vote.

30. §2B1.1 - Motion made by Commissioner Nagel to adopt option #2; seconded by Commissioner Block. Passed.

31. Anti-Drug Abuse Act (§6468) - Motion made by Commissioner Corrothers to publish staff proposal; seconded by Commissioner MacKinnon. Passed. Commissioner Nagel voted "no."

**Package #2**

16. §1B1.5 - Motion made by Commissioner Breyer to publish staff proposal; seconded by Commissioner Corrothers. Passed.

15. §2D1.1 - Motion made by Commissioner Breyer to publish staff proposal; seconded by Commissioner Corrothers. Passed.

14. §2D1.1 - Motion made by Commissioner Breyer to publish staff proposal; seconded by Commissioner Corrothers. Passed.

6. §2H1.4 - Motion made by Commissioner Breyer to publish section (a) only; seconded by Commissioner Corrothers. Passed.

7. §2T1.1, §2T1.3 - Motion made by Commissioner Breyer to publish a general notice; seconded by Commissioner Nagel. Passed.

8. §2D1.1 - Motion made by Commissioner Nagel to publish general notice; seconded by Commissioner Breyer. Passed.

5. §3A1.2 - Motion made by Chairman Wilkins to publish staff proposal; seconded by Commissioner Nagel. Passed. Commissioner Breyer was not present for this vote.

Chairman Wilkins adjourned the meeting at 5:09 P.M. until February 15, 1989.

Chairman Wilkins resumed the meeting on February 15, 1989, at 9:46 A.M.

Phyllis Newton reported on training. A discussion ensued on the most appropriate means of accommodating requests for training judges who wish to attend one of the conferences.

A discussion ensued concerning the procedure on substantive amendments and obtaining information from staff study groups.

Chairman Wilkins adjourned the meeting into Executive Session and a break at 10:29 A.M. It was resumed at 11:47 A.M.

Package #2 (continued)

2. §2F1.1, §2F1.2 - Motion made by Commissioner Breyer to publish a general statement; seconded by Commissioners Corrothers and Nagel. Passed.

-- Package #1

2. Major Fraud Act of 1988 - This was disposed of through the motion of Package 2, #2 - §2F1.1 and §2F1.2.

-- Package #2 (continued)

3. §2L1.2 - Motion made by Commissioner Block to publish staff proposal as an example; seconded by Commissioners Corrothers and Nagel. Passed.

-- Motion made by Commissioner Breyer to conform all immigration guidelines to the Specific Offense Chart; seconded by Commissioner MacKinnon. Passed.

4. Anti-Drug Abuse Act (§6479) - Motion made by Commissioner Nagel to publish general notice with examples; seconded by Commissioners Breyer and Corrothers. Passed.

9. §4B1.1 - disposed of by earlier motion.

10. §2B3.1 - Motion made by Commissioner Breyer to publish staff proposal; seconded by Commissioner MacKinnon. Passed.

11. §4B1.3 - Motion made by Commissioner Corrothers to publish staff proposal (Package #4, item 2); seconded by Commissioner Breyer. Passed. Commissioner Nagel abstained.

12. Chapter 5, Part A - Motion made by Commissioner MacKinnon to publish staff proposal; seconded by Commissioner Breyer. Passed.

13. §2A2.1 - Motion made by Commissioner Breyer to table and to have further staff consideration after current guideline amendments projects are completed; seconded by Commissioner Nagel. Passed. Chairman Wilkins voted "no."

-- Package #1

26. §2C1.1, 2C1.2 - Motion made by Commissioner Breyer to publish general notice and use option #1 as an example; seconded by Commissioner Nagel. Passed.

Package #4

1. Anti-Drug Abuse Act (§6454, §6458, and §6459) - Motion made by Commissioner Corrothers to publish as a general statement and to use as an example, page 2 of the staff proposal; seconded by Commissioner MacKinnon. Passed.

2. §4B1.3 - disposed of by earlier motion.

3. §2F1.2 - withdrawn from consideration.

4. Loss Tables - withdrawn from consideration.

5. §2F1.1 - withdrawn from consideration.

6. §4B1.1 - withdrawn from consideration.

7. §3C1.1 - withdrawn from consideration.

8. §2F1.1 - withdrawn from consideration.

9. §5F5.2 - withdrawn from consideration.

10. General Adjustments - withdrawn from consideration.

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 -- Motion made by Commissioner Corrothers to establish a study group to review general adjustments after the work on current amendment proposals is completed; seconded by Commissioner Nagel.

-- Motion made by Commissioner Corrothers to pass the minutes of the January 24, 1989, U.S. Sentencing Commission Business Meeting; seconded by Commissioner Breyer. Passed.  
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Chairman Wilkins commended the staff for their outstanding work.

Chairman Wilkins adjourned the meeting at 1:25 P.M.