

Minutes of the May 23, 1989 United States Sentencing Commission
Business Meeting

The meeting was called to order at 9:37 A.M. by Chairman William W. Wilkins, Jr.

The meeting was held in the library at the United States 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
Benjamin F. Baer, Ex Officio Member
Steve Saltzburg, Ex Officio Member
Winston S. Moore, Staff Director
John R. Steer, General Counsel
Charles Betsey, Associate Research Director
Nolan Clark, Deputy Chief Counsel
Peter Hoffman, Principal Technical Advisor
Candace Johnson, Director of Monitoring
Phyllis Newton, Associate Research Director
Barbara Nienstedt, Director of Evaluation
Gary Peters, Special Counsel
Joseph diGenova, Attorney Working Group on Organizational Sanctions
Victoria Toensing, Attorney Working Group on Organizational Sanctions
Bert Rein, Attorney Working Group on Organizational Sanctions
Winthrop Swenson, Attorney Working Group on Organizational Sanctions
Justin Thornton, Attorney Working Group on Organizational Sanctions

Chairman Wilkins welcomed Commissioner MacKinnon back from his recent surgery.

Chairman Wilkins introduced Hubert Alfaro, a probation officer from the eastern district of Texas, and Lauren McFarlane, a summer intern working with the Technical Assistance Service and the Case Review Project.

Mr. Joe diGenova recognized members of the Attorney Working Group on Organizational Sanctions and Commission staff members who assisted the working group.

Mr. diGenova summarized the report from the working group describing the complexity of the process, issues, and the elements involved in developing recommendations on organizational sanctions.

The working group came to a consensus on core principles and recommended that the Commission not issue formal guidelines now, but instead, issue informal guidelines (policy statements). A discussion ensued on the content of the report.

Commissioners unanimously expressed appreciation and commendation to the Attorney Working Group for their efforts.

Chairman Wilkins recessed the meeting for a break to celebrate Commissioner MacKinnon's homecoming and then reconvened the meeting at 10:55 A.M.

Chairman Wilkins announced that the next Commission meeting would be May 31, 1989, at 9:30 A.M.

Commissioner Nagel requested that the Commission obtain 1988 and 1989 cases on organizational defendants for analysis in the development of information on organizational sanctions.

Chairman Wilkins again commended the training staff for their tremendous efforts, noting that compliments are still being received from the field. Phyllis Newton reported that approximately four-hundred twenty people were trained at the training sessions and that future plans include training the District of New Mexico, the District of New Jersey, and the judges and staff of the Fourth Circuit Court of Appeals.

-- Proposed Emergency Amendments Regarding Cocaine Base: Motion made by Chairman Wilkins to publish in the Federal Register for a thirty-day public comment period the amendments to §2D2.1 and §2D1.1, with editorial changes, and to state that the Commission is soliciting information concerning these issues from DEA and DOJ; seconded by Commissioner Corrothers. Passed unanimously.

Commissioner Nagel requested that a representative from either DEA or DOJ be invited to make a presentation to the Commission on various controlled substances.

-- Proposed Emergency Amendments Regarding Obscene Materials Motion made by Chairman Wilkins to publish multiple options for base offense level up to level (16) and options for specific offense characteristics in §2G3.1; seconded by Commissioner MacKinnon. Passed unanimously. Commissioner Breyer was not present for the vote.

Chairman Wilkins summarized the memorandum on priorities for the Commission. A discussion ensued on these priorities (e.g., statutory maxima, monitoring, evaluation, criminal history, prison impact) and the possible addition of others, such as possible regional commission meetings and the development of guidelines for the revocation of probation and supervised release. Mr. Moore commented that this discussion was useful for staff in determining

those projects that need to be completed first. Mr. Moore was directed by general consensus of the Commission to prepare a memorandum stating the means for implementation of the Commission priority areas. Commissioner Nagel requested more information be presented to the Commission in various areas. Chairman Wilkins requested the Commission to think about possible speakers to be invited to Commission meeting for informational purposes.

-- Motion made by Chairman Wilkins that staff will prepare a memorandum on the Commission's priority areas and that resources will not be directed to other projects without Commission approval; seconded by Commissioner MacKinnon. Passed unanimously.

A discussion ensued on funding subscriptions to the Federal Sentencing Reporter or other similar service for Federal judges and possibly probation officers.

-- Motion made by Chairman Wilkins to authorize him to pursue the legal and financial feasibility of funding Federal Sentencing Reporter subscriptions for federal judges; Passed. Commissioner MacKinnon voted "no."

Barbara Nienstedt reported on the Evaluation Project. Ms. Nienstedt stated that the project was specifically directed at the areas mandated by statute, such as the impact of the guidelines on prosecutorial discretion. Interim data reports are planned via monitoring.

Chairman Wilkins directed Phyllis Newton to submit to the Commission a possible list of members for the research advisory group to review the monitoring effort and assist with the planning for the evaluation.

Candace Johnson reported on monitoring. She summarized the variables under consideration for possible elimination from the monitoring coding data. A discussion ensued on these variables. This issue will be deferred until the next Commission meeting. Meanwhile, the monitoring staff will continue to collect the data.

Chairman Wilkins adjourned the meeting at 2:00 P.M.