

Minutes of the June 14, 1989 United States Sentencing Commission  
Business Meeting

The meeting was called to order at 9:38 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  
Charles Betsey, Associate Research Director  
Julie Carnes, Special Counsel  
Nolan Clark, Deputy Chief Counsel  
Peter Hoffman, Principal Technical Advisor  
Bruce Kobayashi, Senior Research Associate  
Phyllis Newton, Associate Research Director  
Andy Purdy, Deputy General Counsel  
Vicki Portney, Criminal Division, DOJ  
Victoria Toensing, Attorney Working Group on Organization  
Sanctions

Chairman Wilkins introduced Ross Andrews, Chief Probation Officer from the Eastern District of Tennessee, who is developing training materials.

Julie Carnes discussed the memorandum from the staff working group on Organizational Sanctions. An extensive discussion ensued to provide the staff working group with feedback on principles that should assist the group in their drafting function.

In reference to criminal and civil proceedings involving corporations, Commissioners MacKinnon and Corrothers made the following comments for the record:

MacKinnon: Well, let me say this. That is one of the points I was going to make here. There hasn't been any realization, I don't think, as to the order that these cases are handled in. When you have a criminal case against a corporation it takes precedence over the civil matter. And, the Department [of Justice] drops the civil matter pretty much until the criminal matter is disposed of. Now consequently, when you get through with the criminal matter, you've got to impose a fine. You have absolutely no realization as to what is going to happen on the civil side. Anything could happen. They could settle it. And the same goes for restitution. You don't know how

much you are going to get for restitution. Consequently, I don't think there's any possibility but that the fine has to be determined solely and completely on the basis of the offense at that time, disregarding what you might expect to get out of some civil penalty or some restitution or something down the line. And I'll say this too again, this is one of the admonitions that I got from my judges on the district court here. They say, don't believe anything that is going to happen afterwards. You've just got to sentence them according to the way it happens now. And I know from handling cases--one of the first cases I ever handled was a case where I collected a million dollars--nine-hundred sixty-thousand dollars fee/fine in a criminal case. And it was five or six years before the civil case got handled through Justice. In my opinion, there isn't any question but that you just have to determine the fine on the basis of the criminal offense. Now, if the other things are going, they can adjust in the civil matters for the fine rather than having to go on speculation to begin with and fine on the civil matter.

Corrothers: The statute requires it.

The staff working group was commended for their excellent job to date. Commissioner Saltzburg summarized the Department of Justice position on Organizational Sanctions as being that they prefer guidelines. The Anti-Trust Division of DOJ will give a presentation on June 27, 1989.

A Commission meeting has tentatively been scheduled for July 10 or 11, 1989.

Chairman Wilkins commended John Steer and Rusty Burrell for their good work in training the Fourth Circuit judges and for the excellent court opinion summaries which received much praise for their helpfulness.

John Steer outlined the process and goals of tracking court decisions on guidelines application issues. He also requested reaction to this process.

Charles Betsey summarized the Prison Impact Projections and Model Assumptions memorandum. A discussion ensued. Commissioner Nagel requested that this be placed on the agenda of the research advisory group for a presentation to them by Charles Betsey, Bruce Kobayashi, and Eric Simon.

Phyllis Newton reported on the status of the monitoring modules stating that the departure module would be pre-tested on June 15, 1989. A report should be available by the next Commission meeting. Also, the cooperation rate of the field for the statement of

reasons is thirty-nine percent. A memorandum will be circulated to the Commission concerning the research advisory group.

The Drug Enforcement Agency will give a presentation to the Commission on June 15, 1989, at 9:30 A.M.

A discussion ensued concerning a memorandum relating to proposed changes in the President's Anti-Crime bill. The consensus of the Commission was that Chairman Wilkins should write a letter to the Office of Management and Budget concerning the memorandum and making clear that the Commission always speaks through the Chairman on matters of legislative policy.

Chairman Wilkins adjourned the meeting into Executive Session at 12:50 P.M.