

Minutes of the September 12, 1989 United States Sentencing Commission Business Meeting

The meeting was called to order at 9:18 A.M. by Chairman William W. Wilkins, Jr.

The meeting was held in the conference room at the United States Sentencing Commission. The following Commissioners, staff members and guest participated:

William W. Wilkins, Jr., Chairman
Stephen G. Breyer, Commissioner
Helen G. Corrothers, Commissioner
George E. MacKinnon, Commissioner
Ilene H. Nagel, Commissioner
Stephen Saltzburg, Ex Officio Member
John R. Steer, Staff Director/General Counsel
Peter Hoffman, Principal Technical Advisor
Roger Pauley, Criminal Division, DOJ

Chairman Wilkins introduced AUSA Jeff Lawrence and Probation Officer Fred Smith, both on temporary detail to the Commission.

Peter Hoffman addressed the policy statement on amendment retroactivity. This policy statement is pursuant to a congressional directive found in 28 U.S.C. 994(u). The Commission deferred action on amendments # 48, 50, 112, and 200 until the afternoon.

-- Motion made by Commissioner Mackinnon to adopt staff proposals (A), (B) and, with annotated changes, (C) of the clarifying revisions to the Guidelines Manual in connection with the amendments effective November 1, 1989; seconded by Commissioner Nagel. Passed unanimously.

-- Motion made by Commissioner Corrothers to adopt staff proposals (D), (E) and with additional changes, (F) of the clarifying revisions to the Guidelines Manual in connection with the amendments effective November 1, 1989; seconded by Commissioner Mackinnon. Passed unanimously.

-- Previous motion is amended to also include staff proposal (G); Passed unanimously.

-- Motion made by Commissioner Corrothers to adopt corrected version of Continuing Criminal Enterprise (CCE); seconded by Commissioners MacKinnon and Nagel. Passed unanimously.

Commissioner Nagel requested that her September 8, 1989, memorandum on the adoption of the bank robbery amendment be entered into the record.

Chairman Wilkins raised the issue of how to deal with the adverse United States v. Restrepo, 883 F.2d 781 (9th Cir. 1989) decision.

-- Motion made by Commissioner Corrothers for Chairman Wilkins to write, on behalf of the Commission, a letter to the Solicitor General requesting corrective action on the Restrepo decision; seconded by Commissioner Nagel. Passed unanimously.

-- Motion made by Chairman Wilkins to affirm guidelines previously promulgated and those changes adopted today; seconded by Commissioner MacKinnon. Passed unanimously. Commissioner Saltzburg was present for this vote.

The Commission discussed the revised draft on corporate sanctions. Commissioners Breyer and Nagel asked that issues or provisions previously raised by Commissioners be included in the staff draft. Commissioners Nagel and Corrothers also asked that a number of the approaches used in the DOJ draft be incorporated. Staff from DOJ and the Commission will work jointly to complete the drafting.

John Steer gave a status report on Jeff Standen's September 8, 1989, memorandum on the Penalties Review Project.

Chairman Wilkins announced that John Steer will continue to be the acting staff director until the position is filled. The application deadline is September 29, 1989.

Chairman Wilkins recessed the meeting for a break and reconvened at 2:08 P.M.

The Commission continued discussion on retroactivity of guideline amendments on the deferred items. Commissioner Corrothers, for the record, voiced her concern on what the rationale and criteria were for inclusion or deletion of items on the list submitted to the Commission for consideration. She requested information on how many additional guidelines where there was a reduction in the sanction had been identified originally. She suggested that the Commission should review all items and set criteria for use in determining when retroactivity is appropriate. The staff could then use the Commission's established criteria to put forward recommendations to the Commission. John Steer and Peter Hoffman explained the process and the criteria used; they will draft a memorandum on this issue and circulate it to the Commissioners.

-- Motion made by Commissioner Nagel to delete amendments # 48, 50, 112 and 200; seconded by Commissioner MacKinnon. Passed unanimously.

-- Motion made by Commissioner Nagel to adopt the change on page 2 as annotated; seconded by Commissioner MacKinnon. Passed unanimously.

-- Motion made by Commissioner MacKinnon to adopt the complete retroactivity proposal, as amended; seconded by Commissioner Nagel. Passed unanimously.

Chairman Wilkins adjourned the Commission meeting at 2:34 P.M.