

Minutes of the November 28, 1989 United States Sentencing Commission Business Meeting

The meeting was called to order at 9:14 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 and guests participated:

William W. Wilkins, Jr., Chairman
Helen G. Corrothers, Commissioner
George E. MacKinnon, Commissioner
Ilene H. Nagel, Commissioner
Steve Saltzburg, Ex Officio Member
Phyllis Newton, Staff Director
David Anderson, Deputy General Counsel
Nolan Clark, Deputy Chief Counsel
Sharon Henegan, Director of Training and Technical Assistance
Peter Hoffman, Principal Technical Advisor
Maggie Jensen, Probation Division Representative
Candace Johnson, Director of Monitoring
Paul Martin, Communications Director
Ronnie M. Scotkin, Guideline Development Analyst
Jeff Standen, Consultant
Dean Stowers, Law Clerk
Roger Pauley, Criminal Division, DOJ
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins introduced Probation Officer Sarah Harvey, who is on temporary detail to the Commission and reported on the 5th Circuit Judicial Conference.

Chairman Wilkins and Staff Director Newton described the restructuring and new staffing patterns of the research office, training, legal, and guidelines staffs, which reflect the increased demands on the Commission and budget considerations. The Training and Technical Assistance Unit is now a separate office headed by Sharon Henegan. The Guidelines Drafting Unit will become part of the General Counsel's office. Andy Purdy will become Chief Deputy General Counsel and will coordinate the efforts of working groups and other special projects. The Research Office will be divided into three units, headed by Associate Research Directors for Studies, Monitoring, and Evaluation.

-- Commissioner Corrothers moved to approve the minutes of March 15, 31; April 18, 19, 25, 28; May 23, 31; June 14, 26, 27; July 10, 11, 18, 25; and August 1 and 22, 1989. Seconded by Commissioner MacKinnon. Passed unanimously.

Candace Johnson updated the Commission on the status of redesign and implementation on various monitoring system modules. She

reported that data would be entered into the first module today. The second module should be in place within two weeks and the third module in several weeks. She reported that all coding for the compliance study was completed; a written report is expected next week.

Commissioner Nagel mentioned that some judges believe the statements of reasons are not being read. There was a discussion on whether to inform the judges of the disposition of their submitted statements of reasons. General consensus was to draft a letter stating the various purposes for which the Commission uses the statements of reasons, as well as reiterating that the statute requires its submission.

David Anderson updated the Commission on the revised interim public access policy. This revision incorporated changes in response to comments received from the June 21, 1989, publication in the Federal Register. Also included in the revised draft was the Commission's agreement with the Administrative Office concerning the confidentiality of certain sentencing information. Staff recommended adoption of the revision as an interim policy.

-- Motion made by Commissioner MacKinnon to approve the revised interim public access policy; seconded by Commissioner Corrothers. Passed unanimously.

Jeff Standen updated the Commission on the Penalties Review project. He reported that the Commission now had all materials for the area of violent crimes. Discussion ensued on priority areas for this project. General consensus was to focus on three areas: (1) statutory maxima adversely impacting on operation of the guidelines; (2) statutory maxima where there is conflicting or inconsistent language in various statutes which cause underlying structural problems or place this aspect of sentencing in the hands of the charging authority in relation to the guidelines; (3) statutory maxima which are too close to the guideline range and do not allow sufficient range for departure. The project staff will also submit conviction statistics for each statute. The Penalties Review staff was commended for their work.

Amendments

Item 1: §2B1.1 - Larceny, Embezzlement, and Other Forms of Theft
Motion made by Commissioner Nagel to tentatively approve;
seconded by Commissioner Corrothers. Passed unanimously.

Item 2: §2B1.3 - Property Damage or Destruction (other than by Arson or Explosives)
Motion made by Commissioner Nagel to tentatively approve;
seconded by Commissioner Corrothers. Passed unanimously.

- Item 3: §2B3.1 - Robbery
Deferred for further staff consideration.
- Item 4: §2B3.2 - Extortion by Force of Injury or Serious Damage
Deferred for further staff consideration.
- Item 5: §2M4.1 - Failure to Register and Evasion of Military Service
General consensus to tentatively approve with minor changes.
- Item 6: Chapter Two - Part B
(A) - §2N1.1 - Motion made by Commissioner Corrothers to tentatively approve; seconded by Commissioner Nagel. Passed unanimously.
- Chapter Two - Part B
(B) - §2N1.2(a) - General consensus to tentatively approve.
- Chapter Two - Part B
(C) - §2N2.1 commentary - Deferred for future consideration.
- Item 7: §2X3.1/2X4.1 - Accessory After the Fact/Misprision of Felony
Deferred for future consideration.
- Item 8: §2X5.1 - Other Offenses
General consensus to defer for future consideration.
- Item 9: §5E1.1 - Restitution
General consensus to tentatively approve with minor changes.
- Item 10: §5F1.4 - Order of Notice to Victims
General consensus to defer for further staff consideration.

Chairman Wilkins announced that Peter Hoffman had received the Distinguished Alumnus Award from the State University of New York at Albany.

Chairman Wilkins announced that the next Commission meetings were tentatively scheduled for December 13, 1989, January 3, 16, and 23, 1990.

Chairman Wilkins adjourned the meeting into Executive Session at 11:57 A.M.