

Minutes of the January 16, 1990 United States Sentencing Commission
Business Meeting

The meeting was called to order at 9:19 A.M. by Chairman William W. Wilkins, Jr.

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

William W. Wilkins, Jr., Chairman
George E. MacKinnon, Commissioner
Ilene H. Nagel, Commissioner
Stephen Saltzburg, Ex Officio Member
Phyllis Newton, Staff Director
John R. Steer, General Counsel
Sharon Henegan, Director of Training and Technical Assistance
Peter Hoffman, Principal Technical Advisor
Jeffrey Lawrence, Special Counsel
Andy Purdy, Chief Deputy Counsel
Alan Chaset, Practitioners' Advisory Group
Roger Pauley, Criminal Division, DOJ
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins introduced Probation Officers Craig Saigh of the District of Nebraska and Ken Young of the Northern District of California, both on temporary detail to the Commission.

-- Motion made by Commissioner MacKinnon to approve the minutes of December 13, 1989, and the minutes of January 4, 1990 with a minor technical change; seconded by Commissioner Nagel. Passed unanimously.

Phyllis Newton reported on the Judicial Conference Committee on Criminal Law and Probation Administration meeting. She summarized agenda items relevant to the Commission. These items included a discussion on the Hofer report (working group formed to study the results of this report), a proposed independent evaluation of the sentencing guidelines, acceptance of resolution to the Commission regarding the removal of a presumptive fine from the guidelines, resolution to the Judicial Conference concerning mandatory minimums as inconsistent with the guidelines, redesign of the PSR facesheet due to the discontinuation of FPSSIS, task force to modify the presentence report format, committee position of Weis report recommendations (does not support making guidelines advisory, strongly supports repeal of mandatory minimums, supports change in Rule 35(b) to correct error in sentence within 120 days, suggested modification to additional recommendation for change to Rule 35(b) by strictly limiting new facts to those not discovered through due diligence and that make a material difference to the sentence, supports change to Rule 32(c) with condition that more precise language be used to ensure that unresolved facts make no material

difference to the sentence, took no position on advising parties of departure intent, oppose recommendation to include district judges on special panel to hear appeals on sentencing issues only, oppose recommendation that Congress be required to take affirmative action before amendments become effective), acceptance of the one-page form concept for the statement of reasons and probation officers to fill out the form, passed resolution to ask Commission to review 100% of the statement of reasons.

The Criminal History working group report was deferred until discussion of amendments #2 and #3.

Sharon Henegan summarized the Supervised Release and Probation Revocation Guidelines working group report. A discussion ensued concerning the comparison of the working group's option with that of the Hoffman option. Chairman Wilkins requested the record to reflect that Commissioner Corrothers requested both options to be published. As to other amendment proposals, Commissioner Corrothers reported no objection to publication.

-- Motion made by Commissioner Nagel to publish both options for public comment; seconded by Commissioner MacKinnon. Passed unanimously.

Amendments

Item 1: §3E1.1 - Acceptance of Responsibility

Staff directed to draft language for publication stating issues for comment including: 1) should a defendant always receive acceptance of responsibility for a guilty plea? and 2) should a defendant who does not plead guilty be precluded from receiving the adjustment? If not, in what types of cases should the adjustment be allowed even though the defendant exercises his right to trial? This item is to be brought back for reconsideration before publication.

Item 2: Chapter 5, Part A

General consensus to publish proposal showing a Criminal History Category VII beginning at 16+ points and to publish both options of the Career Offender guideline.

Item 3: §4A1.2 - Definitions and Instructions for Computing Criminal History

General consensus to tentatively approve for publication.

Item 4: §4A1.2 - Definitions and Instructions for Computing Criminal History

General consensus to tentatively approve with minor technical changes.

Item 5: §2M5.2 - Exportation of Arms, Munitions, or Military Equipment or Services without Required Validated Export License

General consensus to tentatively approve publication of option #1.

Item 6: §5E1.2 - Fines for Individual Defendants

Commissioner Nagel asked that this issue be deferred for further study. No motion was made to publish.

Item 7: §2L1.1 - Smuggling, Transporting, or Harboring an Unlawful Alien

General consensus to tentatively approve with a specific question concerning the alien table and 8 U.S.C. §§ 1182(a) (27), (28), (29), as well as consultation with the Department of Immigration and Naturalization.

Item 8: §3C1.1 - Willfully Obstructing or Impeding Proceedings

General consensus to publish amendment to the guideline but eliminate commentary instead providing examples asking for comment as to whether each constitutes obstruction of justice. Approval to change title of this guideline to Impeding the Investigation, Prosecution, and Sentencing.

Item 9: §2B1.1 - Larceny, Embezzlement, and Other Forms of Theft

§2F1.1 - Fraud and Deceit

§2B4.1 - Bribery in Procurement of Bank Loan and Other Commercial Bribery

General consensus to tentatively approve with level (24) and minor technical changes.

General consensus was to not change the Environmental guidelines during this amendment cycle.

Chairman Wilkins scheduled the next Commission meetings for January 22 at 2:15 P.M. and January 23, 1990, at 9:30 A.M.

Chairman Wilkins adjourned the Commission meeting at 1:05 P.M.