

Minutes of the January 30, 1990 United States Sentencing Commission  
Business Meeting

The meeting was called to order at 9:08 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  
Helen G. Corrothers, Commissioner  
George E. MacKinnon, Commissioner  
Ilene H. Nagel, Commissioner  
Phyllis Newton, Staff Director  
John R. Steer, General Counsel  
David Anderson, Deputy General Counsel  
Pam Barron, Deputy General Counsel  
Nolan Clark, Deputy Chief Counsel  
Sharon Henegan, Director of Training and Technical Assistance  
Peter Hoffman, Principal Technical Advisor  
Candace Johnson, Director of Monitoring  
Jeffrey Lawrence, Special Counsel  
Andy Purdy, Chief Deputy Counsel  
Ronnie M. Scotkin, Guideline Development Analyst  
Jeffrey Standen, Deputy General Counsel  
Dean Stowers, Staff Attorney  
Al Blumenthal, Anti-Trust Division, DOJ  
Charles Dempsey, Bureau of Alcohol, Tobacco and Firearms  
Maggie Jensen, Probation Division Representative  
Jack Patterson, Bureau of Alcohol, Tobacco and Firearms  
Roger Pauley, Criminal Division, DOJ  
Vicki Portney, Criminal Division, DOJ  
Neil Roberts, Anti-Trust Division, DOJ  
Gene Thirolf, Office of Consumer Litigation, DOJ

Amendments:

-- Motion made by Commissioner Nagel to amend item #9 from the meeting of January 23, 1990, to make §2A2.1(b)(2) 4 levels instead of the previously approved 6 levels; seconded by Commissioner Corrothers. Passed unanimously.

-- Motion made by Commissioner Corrothers to approve for publication all previous tentatively approved amendments; seconded by Commissioner Nagel. Passed unanimously.

Package #1

Item 5: §2K2.6 Armed Career Criminal (New Guideline) and §2K2.1 Unlawful Receipt, Possession or Transportation of Firearms or Ammunition

Deferred for further staff and DOJ consideration.

Item 4: §2K1.4 Arson; Property Damage by Use of Explosives

Motion made by Commissioner Nagel to approve for publication with the substitution of "scheme" for "planned" in (a)(3), language changes in (a)(2)(B), and the deletion of Application note 3; seconded by Commissioner Corrothers. Passed unanimously.

Package #2

Item 5: §2R1.1 Bid-Rigging, Price Fixing or Market-Allocation Agreements Among Competitors

No motion was made to publish.

Item 1: Proposal to Make Permanent Emergency Amendments (§2D2.1-Crack and §5F1.6- Denial of Federal Benefits

Motion made by Commissioner Nagel to make emergency amendments §2D2.1 and §5F1.6 permanent; seconded by Commissioner Corrothers. Passed. Commissioner Nagel was not present for this vote.

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

General consensus to consider this amendment last.

Item 3: Clarification to Commentary of §1B1.3 and §3D1.2

Motion made by Commissioner Corrothers to publish with Commissioner MacKinnon's insertion of "The multiple count guidelines are not intended to limit the scope of §1B1.3(a)(2)"; seconded by Commissioner MacKinnon. Passed. Commissioner Nagel was not present for this vote.

Item 4: Chapter Five, Part H

Motion made by Commissioner MacKinnon to publish; seconded by Commissioner Corrothers. Passed. Commissioner Nagel was not present for this vote but was in favor of the proposal.

Item 6: §2P1.1 Escape

Motion made by Commissioner Nagel to publish with the deletion in the second paragraph of the last two sentences, the deletion of "he" in the second sentence of the third paragraph with the insertion of "the defendant;" seconded by Commissioner Corrothers. Passed unanimously.

Item 7: Misdemeanor or Petty Offense Conviction for "Insufficient Funds Check"

Motion made by Commissioner Nagel to publish with minor language changes; seconded by Commissioner Corrothers. Passed unanimously.

Item 9: §2D2.1 Unlawful Possession

Motion made by Commissioner Nagel to publish; seconded by Commissioner MacKinnon. Passed unanimously.

Item 10: §2G2.2 Transporting, Receiving or Trafficking in Material Involving the Sexual Exploitation of a Minor

Motion made by Commissioner MacKinnon to publish proposal with specific offense characteristic (b)(2) "somasochistic" to be separated into "sadistic" and "masochistic" conduct; seconded by Commissioner Nagel. Passed unanimously.

-- General consensus to conform relevant amendments and to amend Application Note 1 to indicate that the base offense level applies to offenses under 18 U.S.C. §2252(a)(2) (receipt of materials).

Item 11: §2G3.1 Importing, Mailing or Transporting Obscene Materials

Motion made by Commissioner Nagel to publish with (b)(2) amended as in item #10; seconded by Commissioner MacKinnon. Passed unanimously.

Item 12: Statutory Index

Motion made by Commissioner Nagel to publish; seconded by Commissioner MacKinnon. Passed unanimously.

Item 8: §2D1.11 Unlawfully Importing, Exporting, Possessing or Distributing Listed Chemicals

Motion made by Commissioner Corrothers to publish with the deletion in (a)(1) of the three levels and the deletion of (a)(2) with a question regarding a possible alternative; seconded by Commissioner Nagel. Passed unanimously.

Package #1:Item 1: Chapter Two, Part H

Motion made by Commissioner Corrothers to publish her proposal, as reflected in her January 29, 1990, memorandum, in question format with the deletion of question #2 and referencing question #4 to the general adjustments; seconded by Commissioner Nagel. Passed unanimously.

Chairman Wilkins recessed the meeting at 12:25 P.M. and reconvened at 1:32 P.M.

Item 2: §2J1.6 Failure to Appear by Defendant

Motion made by Commissioner MacKinnon to publish only the cross reference and technical changes; seconded by Commissioner Nagel. Passed unanimously.

Item 3: §2B3.1 Robbery

Motion made by Commissioner Nagel to publish both proposals without the reference to the 30, 60, 90 days; seconded by Commissioner MacKinnon. Passed unanimously.

Item 5: §2K2.6 Armed Career Criminal (New Guideline) and §2K2.1 Unlawful Receipt, Possession or Transportation of Firearms or Ammunition

Motion made by Commissioner Nagel to publish §2K2.1 with Hoffman language changes and to address the provisions of 26 U.S.C. §5845(a) in the commentary; seconded by Commissioner MacKinnon. Passed unanimously.

Item 6: Chapter Three, Part B

Motion made by Commissioner Nagel to publish the role in the offense proposal and provision that severs exclusion of role from abuse of trust and pertinent questions regarding the abuse of trust enhancement; seconded by Commissioner Corrothers. Passed unanimously.

Item 7: §2N2.2 Distributing or Possessing with Intent to Distribute Anabolic Steroids

Motion made by Commissioner Nagel to publish in question format; seconded by Commissioner MacKinnon. Passed unanimously.

-- DOJ will provide data on past practice.

-- Relevant Commission staff will alert athletic associations and college coaches of this issue in order to solicit comment.

Item 8: §2D1.1 (LSD)

No motion was made to publish.

Item 9: §4A1.2 Definitions and Instructions for Computing Criminal History

Motion made by Commissioner Nagel to publish with language changes; seconded by Commissioner Corrothers. Passed unanimously.

Item 10: §2D1.2 Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals

Motion made by Commissioner Nagel to publish with change in title, the deletion of the last sentence in the second paragraph; seconded by Commissioner Corrothers. Passed unanimously.

Item 5: §2K2.6 Armed Career Criminal (New Guideline)

Motion made by Commissioner Nagel to publish staff proposal with accompanying questions and DOJ proposal, with authority to Staff Director Newton to work out the details; seconded by Commissioner MacKinnon. Passed unanimously.

Package #2:Item 2: §5E1.2 Fines for Individual Defendants

Motion made by Commissioner MacKinnon to publish with language changes; seconded by Commissioner Corrothers. Passed. Commissioner Nagel abstained.

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Chairman Wilkins, on behalf of the Commission, gave general approval for the direction and format of the Penalties Review project.

Chairman Wilkins announced that Jeff Standen would be leaving the Commission to return to private practice. On behalf of the Commission, Chairman Wilkins expressed appreciation for Standen's contribution to the Commission.

Chairman Wilkins announced that the Research Advisory Group would be meeting February 12, 1990.

Chairman Wilkins announced that the next Commission meeting would be held February 13, 1990, with the Public Hearing on Organizational Sanctions on February 14, 1990.

Chairman Wilkins announced that he would be testifying on drugs and guideline issues to Senator Hollings subcommittee on Commerce, Justice, and State, The Judiciary, And Related Agencies of the Appropriations Committee.

Chairman Wilkins adjourned the meeting at 4:15 P.M.