

Minutes of the April 17 and 18, 1990 United States Sentencing Commission Business Meetings

The meeting was called to order at 9:40 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
Benjamin F. Baer, Ex Officio Member
Paul Maloney, Deputy Assistant Attorney General
Phyllis Newton, Staff Director
John R. Steer, General Counsel
Rusty Burress, Special Consultant
Sharon Henegan, Director of Training and Technical Assistance
Peter Hoffman, Principal Technical Advisor
Candace Johnson, Director of Monitoring
Jeff Lawrence, Special Counsel
Edward R. Becker, Chairman, Judicial Conference Committee on
Criminal Law and Probation Administration
Fred Bennett, Practitioners' Advisory Group
Paul Borman, Representative, Federal Public Defenders
Donald L. Chamlee, Chief, Probation Division, AO
Gina Lane, Representative, Parole Commission
Roger Pauley, Criminal Division, DOJ
Vicki Portney, Criminal Division, DOJ
Toby Slawsky, Representative, General Counsel's Office, AO

Commissioner Corrothers moved to approve the minutes of the April 10 and 11, 1990, Commission meetings; seconded by Commissioner MacKinnon. Passed.

Amendments

Chairman Wilkins stated that he would move each proposed amendment, request a second to the motion, and then proceed with discussion and a vote.

Item #12: §2B1.1 Larceny, Embezzlement, and Other Forms of Theft;
§2B4.1 Bribery in Procurement of Bank Loan and Other
Commercial Bribery; §2F1.1 Fraud and Deceit

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #16: §2D1.6 Use of a Communication Facility in Committing
Drug Offenses

Commissioner Corrothers seconded the motion to promulgate with the deletion of Application Note #1. Passed unanimously.

Item #44: S2P1.1 Escape, Instigating or Assisting Escape

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #27: S2J1.6 Failure to Appear by Defendant

Commissioner Nagel moved to promulgate with Base Offense Level 11 in (a)(1) and Specific Offense Characteristics (b)(1)(A) 5 levels and (b)(1)(B) 2 levels; seconded by Commissioner MacKinnen. Passed unanimously.

Chairman Wilkins stated that the issue of retroactivity regarding items #44 and #27 will be decided at a later date.

Item #31: S4B1.4 Armed Career Criminal

Deferred for consideration until data is presented on pre-guideline sentencing practices of armed career criminals. Commissioner Nagel voiced concern for the decay factor within criminal history.

Item #66: S5E1.2 Fines for Individual Defendants

Deferred with the possibility of a rewrite.

Item #74: S4B1.3 Criminal Livelihood

Commissioner Nagel seconded the motion. Passed unanimously.

Chairman Wilkins recessed the meeting at 10:25 A.M. The Commissioners will meet in Executive Session at 1:40 P.M. with the meeting on amendments reconvening at 2:00 P.M.

Chairman Wilkins reconvened the meeting at 2:07 P.M.

Judge Edward R. Becker, on behalf of the Judicial Conference Committee on Criminal Law and Probation Administration, presented to the Commission the Committee's concerns on the proposals for probation and supervised release revocation guidelines. He urged the Commission to table the proposed revocation guidelines pending further study, drafting, field testing, and public hearings. A discussion ensued. Chairman Wilkins asked for a commitment of assistance from Judge Becker's committee and from the Administrative Office of the U.S. Courts regarding field testing if the Commission decides to pursue that approach.

AmendmentsItem #31: §4B1.4 Armed Career Criminal

Commissioner Nagel seconded the motion to promulgate a revised Option D. (c)(3) would be changed from Category IV to Category V, and editorial changes would be made. The motion failed with only three votes cast.

Commissioner Corrothers moved to promulgate Option D as originally proposed, with editorial changes; seconded by Commissioner Nagel. Passed unanimously.

Commissioner Nagel requested that monitoring focus on this guideline and should problems be found that it be reconsidered in the next amendment cycle.

Item #66: §5E1.2 Fines for Individual Defendants

Commissioner Corrothers seconded the motion to promulgate page #1 of the proposed amendment with the deletion of §5E1.2(a) and the addition of new language. Passed unanimously.

Commissioner MacKinnon seconded the motion to promulgate page #2 of the proposed amendment with language changes. Passed unanimously.

Commissioner Corrothers seconded the motion to promulgate pages #3 and #4. Passed unanimously.

Chairman Wilkins announced that a Commission meeting will be held April 13, 1990.

Chairman Wilkins adjourned the meeting at 4:38 P.M.

April 13, 1990

Chairman Wilkins called the meeting to order at 9:37 A.M.

Chairman Wilkins announced that Gary Peters would be leaving the Commission to accept a position at the Office of National Drug Control Policy. Chairman Wilkins commended Mr. Peters for his work at the Commission.

Chairman Wilkins announced that the full text of the amendments passed will be ready for distribution to Commissioners and senior staff on April 23, 1990, with the final promulgation vote for submission to Congress to be taken at the Commission meeting on April 24, 1990. Submission to Congress should occur by April 27, 1990.

Commissioner Corrothers stated that this was the most efficient and productive amendment process the Commission has ever experienced and commended the staff. Commissioner Nagel commended Staff Director Newton for her outstanding job in organizing the work.

Item #69: Revocation of Probation and Supervised Release

Chairman Wilkins outlined a general approach for producing revocation guidelines. He suggested that the Commission: adopt either option #1 or #2 for the philosophical approach; submit written comments on the selected option to the staff director; assign Peter Hoffman and Sharon Henegan to produce a single draft incorporating these suggestions; test the draft with ten Probation Officers brought to the Commission with real cases; revise the draft as a result of the test; test the revised draft with additional Probation Officers; revise; submit the revisions to the Commission for consideration prior to issuing policy statements, effective August 1, 1990, and by May 1, 1991, submit to Congress for promulgation as guidelines.

Commissioner Nagel expressed agreement with this approach. Commissioner Corrothers noted her original hesitancy to issue guidelines on revocation during this amendment cycle, but said she was persuaded to do otherwise because of requests from the field stating their need for guidance. However, she believes that policy statements would meet the need for guidance at this time. Commissioner MacKinnon requested that the Commission inform Congress of the issuance of policy statements on revocation. Commissioner Baer and Gina Lane suggested that the Parole Commission test the proposed guidelines on actual parole revocation cases. Staff Director Newton will distribute a tentative calendar for this approach.

Commissioners Corrothers and Nagel seconded the motion to adopt Chairman Wilkins' previously stated approach for producing revocation guidelines, with the philosophy of option #1. Passed unanimously.

Sharon Henegan is to circulate the most recent draft of option #1.

Chairman Wilkins announced that a Commission meeting will be held on April 24, 1990.

Chairman Wilkins adjourned the meeting at 10:29 A.M.