

File 6/26/90
memo

Minutes of the June 18, 1990 United States Sentencing Commission Business Meeting

The meeting was called to order at 11:05 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
- Benjamin F. Baer, Ex Officio Member
- Phyllis Newton, Staff Director
- Sharon Henegan, Director of Training and Technical Assistance
- Paul Martin, Communications Director
- Win Swenson, Deputy General Counsel
- Fred Bennett, Representative, Practitioners' Advisory Group

Chairman Wilkins recognized Leonard Barnes, a probation officer from the Central District of California currently on detail to the Commission, and introduced Ron Everett, a new member of the research staff.

Commissioner Corrothers moved to approve the minutes of the June 12, 1990, Commission meeting; seconded by Commissioner MacKinnon. Passed unanimously.

Win Swenson summarized General Counsel Steer's memorandum regarding applicability of the 25-percent limit to guideline ranges of imprisonment ordered upon revocation of probation or supervised release. The finding was that while the statute may not constrain the Commission to the 25-percent rule, strong policy reasons exist for revocation guidelines adhering to the rule. Sharon Henegan reported that the staff has followed the 25-percent rule in drafting the revocation policy statements. Chairman Wilkins pointed out that it seems reasonable for the Commission to follow the 25-percent rule voluntarily.

Chairman Wilkins opened the discussion on revocation of probation and supervised release policy statements by asking the Commissioners to provide comments and preliminary approval on the matter at this time so that work in preparation for implementation can begin by the Probation Division, Federal Judicial Center, and the Commission's training and monitoring staffs. A final decision on policy statements will be deferred until the Commission has a full complement of members.

Sharon Henegan summarized the efforts of the Field Test Working Group and the staff's report on the policy statements. Each

recommendation of the group was discussed. The Commission requested that the staff prepare draft policy statements adopting the approach recommended and reflecting the views of the current Commissioners, especially in instances where they expressed a desire to see alternatives presented. The revised staff draft will include the following: (1) use of grades A, B, C, instead of Levels I, II, III; (2) violation levels will be based on actual criminal conduct; (3) the policy statements will not apply to supervision offenders convicted of petty offenses; (4) coordination with the Bureau of Prisons to ensure consistency with respect to crediting time for community confinement and home detention; (5) inclusion of the revised revocation table as recommended in the staff's written report; (6) provide a means to distinguish a separate imprisonment range, not as a departure, for the most serious offenses of Class A felons; (7) provide additional commentary with respect to offenders who were granted substantial departure from the appropriate guideline range on the original sentence due to substantial assistance or whose revocation violation involves misconduct similar to the offense for which they were originally sentenced; (8) provide commentary dealing with an additional period of supervised release after revocation for serious technical violations; (9) provide options deferring Level I violations, with one option using a specific list of conduct and the other using a not more than one year designation as Level I violation; and (10) commentary dealing with the problem of whether a positive drug test should be equated with simple drug possession, thus triggering both mandatory revocation and statutory minimum sentences; and (11) options to deal with the six points previously raised by Commissioner Nagel (in the May 4, 1990, Commission meeting) within the structure of the revised draft. Commissioner Corrothers commended the group for their diligence and the excellent job on this difficult assignment.

Paul Martin reported that a portion of the draft 1989 Annual Report has been circulated to Commissioners for comment and the remainder will be available this week. Comments are requested as soon as possible, because staff is anticipating an early July publication date.

Chairman Wilkins sought and received the approval of the other Commissioners to follow the approach outlined in the current draft of the Evaluation plan, limiting the use of resources to statutory requirements initially and moving into other areas as time and resources permit. He requested latitude to make some necessary changes in the document before the next Commission meeting on June 25, when the Commission will vote on the evaluation plan. He requested any additional comments from Commissioners by June 19. A brief discussion followed.

The Commission will meet Monday, June 25 at 2:00 p.m. to approve the Evaluation Plan.
The meeting was adjourned at 12:58 p.m.