

Minutes of the July 10, 1990, U.S. Sentencing Commission Business Meeting

The meeting was called to order at 9:36 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 guest participated:

William W. Wilkins, Jr., Chairman
Helen G. Corrothers, Commissioner
Michael Gelacak, Commissioner
George E. MacKinnon, Commissioner
Ilene H. Nagel, Commissioner
Benjamin F. Baer, Ex Officio Member
Paul Maloney, Ex Officio Member
Phyllis Newton, Staff Director
John R. Steer, General Counsel
David Anderson, Deputy General Counsel
Peter Hoffman, Principal Technical Advisor
Candace Johnson, Director of Monitoring
Paul Martin, Communications Director
Andy Purdy, Chief Deputy General Counsel
Dean Stowers, Staff Attorney
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins introduced Michael Gelacak of the McNair Law firm of Washington, D.C., as a recently appointed member of the U.S. Sentencing Commission.

Chairman Wilkins introduced Mike Fisher, a U.S. probation officer on detail from the Western District of Texas.

Chairman Wilkins announced the impending departure of Dr. Charles Betsey, who has accepted the position as Chairman of the Economics Department at Howard University, Washington, D.C.

Chairman Wilkins introduced several interns and law clerks who will be working at the Commission this summer.

Motion made by Commissioner Corrothers to approve the minutes of the June 25, 1990, Commission meeting, subject to the addition of Paul Maloney's name to the list of attendees; seconded by Commissioners MacKinnon and Nagel. Passed unanimously.

David Anderson reported on the reconstitution of the Penalties Review project. He stated that the working group would focus on statutes that provide an impediment to guideline sentencing, with the objective of producing a follow-up report for submission to Congress this Fall. He envisioned that the report would advance a limited number of proposals that, if enacted, would produce identifiable improvements in federal guideline sentencing, consistent with the structure of the guidelines. It was also

suggested that the Commission may want to make recommendations to Congress concerning legislative procedures for the enactment of criminal penalty legislation. The consensus among Commissioners was to reject this suggestion, as it might be viewed as an encroachment on legislative prerogatives. Commissioner MacKinnon requested that the working group review a Supreme Court decision on prosecutorial discretion. A brief discussion of mandatory minimum penalties and whether they should be included in this report followed. Chairman Wilkins reported that the Senate version of the new Crime Bill contains several new mandatory provisions. Staff Director Newton stated that both houses of Congress are working more closely with the Commission on pending legislation.

General Counsel Steer and Peter Hoffman discussed the issue of retroactivity as applicable to pending amendments to U.S.S.G. §§ 2J1.6 and 2P1.1. Data from the Monitoring staff indicate that approximately 28 offenders would be affected by retroactive application of amended § 2J1.6 and 244 offenders would be affected by retroactive application of amended § 2P1.1.

-- Motion made by Commissioner MacKinnon to make the two amendments to § 2J1.6 and § 2P1.1, respectively, retroactive; seconded by Commissioners Corrothers and Nagel. Passed unanimously.

Chairman Wilkins submitted a letter, dated June 28, 1990, to Senators Joseph Biden, Chairman of the Committee on the Judiciary and Strom Thurmond, Ranking member of the Committee on the Judiciary, outlining the Commission's views on the issue of mandatory minimum penalties.

-- Motion made by Commissioner Corrothers to adopt the June 28, 1990, letter as reflecting the general view of the Commission; seconded by Commissioner MacKinnon. Passed unanimously.

General Counsel Steer and Dean Stowers updated the Commission on relevant guidelines application decisions. Steer addressed some possible concerns with two Second Circuit decisions that raised the issue of legitimate reasons for a downward departure and the acceptance of responsibility guideline and its possible conflict with the Fifth amendment. He also addressed a Ninth Circuit decision concerning revocation of supervised release. Dean Stowers addressed the possible problem of application of the career offender provision to a defendant who barely missed that classification and the Eighth Circuit case that authorized departure from the career offender guideline pursuant to §4A1.3. Commissioner Nagel requested data on the issue as to whether the decay factor should kick in for career offenders. In the view of Mr. Steer and Mr. Stowers, overall, the appellate courts are rendering decisions that interpret and apply the guidelines in the manner the Commission intended.

Chairman Wilkins stated that Staff Director Newton circulated a staffing plan for priority working groups who will focus on the assigned topics which were prioritized by the Commissioners at the June 12, 1990, Commission meeting. Staff Director Newton stated that she and Andy Purdy assigned staff to these twelve "Begin Immediately But Allow for Gradual Development" working groups with the objective of diversity among the members. Staff Director Newton responded to the question of the Commission's involvement in the area of prison capacity, indicating that the statute directed the Commission to study that issue. A discussion followed concerning the breadth of the Commission's mandate with respect to recommendations touching upon correctional resources and policies, the relationship of Commission involvement in this area to prison capacity, the relevance of accreditation standards, and the need for close cooperation with the Bureau of Prisons in pursuing these matters.

Staff Director Newton requested Purdy to devise an agenda and work plan for the September outreach program.

General consensus was expressed among the Commissioners to schedule another public hearing on organizational sanctions.

Chairman Wilkins stated that Staff Director Newton met with representatives of the AO to discuss means of avoiding unnecessary duplication in data collection. Newton commented that the Commission would coordinate and cooperate with the AO on all automation efforts of mutual concern so as to not duplicate efforts especially on the part of field personnel.

Paul Martin announced that the formal swearing-in of the new Commissioners would be held at the East Conference Room of the Supreme Court on July 24, 1990, at 11:00 A.M. Following the Commission meeting at 2:00 P.M., there will be a wine and cheese reception at the Commission.

Chairman Wilkins adjourned the meeting into executive session at 11:40 A.M.