

Minutes of the August 21, 1990, U. S. Sentencing Commission
Business Meeting

The meeting was called to order at 2:10 P.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
Julie E. Carnes, Commissioner
Helen G. Corrothers, Commissioner
Michael S. Gelacak, Commissioner
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Benjamin F. Baer, Ex Officio Member
Paul L. Maloney, Ex Officio Member
Phyllis J. 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
Fred Bennett, Representative, Practitioners' Advisory Group
Maggie Jensen, Probation Division Representative
Roger Pauley, Criminal Division, DOJ

Chairman Wilkins introduced Pamela Montgomery, a staff attorney who recently joined the General Counsel's staff; Robert Stein, who has rejoined the staff as a law clerk; and Joe Lopez, U. S. probation officer on detail from the Northern District of California. Commissioner Gelacak introduced Tracey Leeber, who is working as his law clerk.

-- Motion made by Commissioner Nagel to adopt the minutes of the July 24-25, 1990, Commission meetings; seconded by Commissioner Corrothers. Passed.

Chairman Wilkins called for general comments from Commissioners and guests regarding the August 14, 1990, draft of proposed Probation and Supervised Release Revocation Policy Statements, saying that additional introductory material is being drafted and will be circulated this week, along with any changes made at this meeting, and a final vote on the matter will occur at the August 28 Commission meeting. A discussion ensued regarding the following issues raised by various Commissioners and by Fred Bennett: which Grade C violations probation officers will report to the court; consecutive and concurrent sentencing; credit for time served in pretrial detention; whether there is clear statutory authority for imposing a further sentence of supervised release after revocation of supervised release; whether revocation of probation should be treated differently than revocation of supervised release in some instances; and, when multiple violations

should serve as a basis for upward departure.

-- On page 7 of the draft, there was no motion to either modify or adopt application note 5; therefore, application note 5 is deleted.

-- Also on page 7, Commissioner Nagel made a motion to adopt application note 4, including the bracketed material; Commissioner Mazzone seconded. Passed unanimously.

-- Commissioner Mazzone moved the adoption of all highlighted material not previously voted and to allow John Steer to draft language referring to 18 U.S.C. section 3584 on concurrent sentencing; Commissioner Nagel seconded. Passed unanimously.

John Steer reported that the caselaw summaries for the first half of 1990 are at the printer and will be distributed to the field soon. He discussed briefly six cases which he believed were of interest to the Commission. The case decisions will be circulated to the Commission. Commissioner Nagel asked that the Criminal History Working Group look at how the decay factor works in relation to career offenders. In response to a 2nd Circuit decision, she asked that the Departure Working Group look at the issue of vulnerability. General Counsel Steer also reported that drafting of additional commentary is in process regarding one of the new guidelines and will be presented to the Commission at its next meeting.

The Commission discussed a recent 11th Circuit decision relating to revocation of probation and whether to seek a statutory amendment regarding this issue.

-- Commissioner Corrothers made a motion to proceed with drafting a legislative proposal; Commissioner Nagel seconded. There was a consensus to proceed with drafting.

Chairman Wilkins reminded Commissioners that they should provide Staff Director Newton with their ideas regarding areas of the guidelines in possible need of amendment. These ideas will be incorporated into forthcoming Working Group Reports, which are on the agenda for the Commission's September 25 meeting. He announced that the next Commission meeting will begin at 2:00 on August 28 and distributed a memorandum regarding general principles for proceeding with the development of guidelines for sentencing organizations to be discussed at that meeting.

Staff Director Newton announced that a briefing by FBI agents regarding investigation of bank robberies has been arranged at the Commission's offices at 11:00 A.M., August 28.

Chairman Wilkins adjourned the meeting at 4:25 P.M.