

Minutes of the August 28, 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
George E. MacKinnon, Commissioner
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Paul L. Maloney, Ex Officio Member
Phyllis J. Newton, Staff Director
John R. Steer, General Counsel
Nolan Clark, Deputy General Counsel
Peter Hoffman, Principal Technical Advisor
Andy Purdy, Chief Deputy General Counsel
Sam Buffone, Representative, Practitioners' Advisory Group
Maggie Jensen, Probation Division Representative
Frank Lawson, GAO
Victoria Toensing, Representative, Practitioners' Advisory Group

Chairman Wilkins introduced Kevin Blackwell, a research assistant who recently joined the Evaluation staff; John Scalia, a research assistant who is on the Research Studies staff; Susan Katzenelson, who has joined the Monitoring staff as Senior Research Associate; and David Wolfe, U. S. probation officer on detail from the Middle District of Louisiana.

-- Motion made by Commissioner MacKinnon to adopt the minutes of the August 21, 1990, Commission meeting; seconded by Commissioner Mazzone. Passed unanimously.

Chairman Wilkins called for general comments on the proposed changes in commentary for the new guidelines manual, that, barring no action by Congress, will become effective November 1, 1990.

-- Commissioner MacKinnon made a motion to approve the proposed addition to Commentary on Armed Career Criminal, Section 4B1.4, with the deletion of the last sentence in application note 1. Commissioner Corrothers seconded. Passed unanimously.

There was discussion of changes to Commentary on Reckless Endangerment During Flight, Section 3C1.2. Commissioner Nagel requested that consideration of the change be deferred until the next Commission meeting.

Chairman Wilkins opened discussion on a set of general principles to be used in drafting guidelines on organizational sanctions and suggested a public hearing on draft guidelines in Washington, D.C., in late November or early December. He indicated that staff would be collecting and analyzing additional past practice data on sentencing organizations, including average and median fine data for organizations with the ability to pay and by offense level, with frequency distributions by offense level. There was discussion of having experts come in to talk with the Commission about guidelines for organizations before or after the drafting stage, as well as discussion of the relationship between mitigators and aggravators, the weight to be given such mitigating factors as compliance programs and self-reporting, punitive fines, restitution, incentives to corporations, corporate probation, reliance on a fine table, recidivism, and deterrence. Staff was instructed to turn its attention to obtaining further information on past practice and to begin drafting based on the 15 principles and today's discussion of them. Representatives of the Practitioners' Advisory Group, academia, U.S. Attorneys, the Securities and Exchange Commission, and other agencies or groups will be invited to present their viewpoints. The Commission will discuss this topic further at its next meeting. Commissioner Nagel asked that data analysis identify what percentage of cases have a fine lower than the harm and what percentage of cases involve conviction of an individual as well as the corporation.

Chairman Wilkins announced that he will circulate a proposed master calendar for the remainder of the year to include Commission meetings, a public hearing, outreach meetings, and a meeting with experts on organizational sanctions.

Regarding the proposed Introduction to new Chapter 7, Violations of Probation and Supervised Release, Chairman Wilkins asked Commissioner Carnes to incorporate the concerns and issues raised by Commissioners and circulate a draft this week for discussion in Fort Worth next week.

Chairman Wilkins announced that the first Commission Outreach meeting is scheduled for September 26 in Alexandria, VA, where there will be roundtable discussions with probation officers, defense attorneys, U.S. Attorneys, and judges on how the guidelines are working and how their operation might be improved. Commissioner Corrothers commented on the importance of emphasizing that the Commission is not presenting training, so that participants will not have expectations of bringing questions and receiving answers. While the Commission will be responsive, it must be emphasized that the primary purpose of the meeting is for the Commissioners and staff to listen to the concerns of the people who are using the guidelines.

Chairman Wilkins reminded the Commissioners to plan to restrict spending in October, due to the possible Gramm-Rudman-Hollings sequester of funds, in order to avoid furloughing staff. He announced a briefing to prepare for the upcoming Sentencing Institute at 9:00, August 29, and the next Commission meeting on September 11. The meeting adjourned at 4:00 p.m.