

Minutes of the November 13, 1990, United States Sentencing Commission Business Meeting

The meeting was called to order at 10:05 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
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 Maloney, Ex Officio Member
Phyllis J. Newton, Staff Director
John R. Steer, General Counsel
Peter Hoffman, Principal Technical Advisor
Jay Meyer, Training Coordinator
Pamela G. Montgomery, Staff Attorney
Richard Murphy, Special Counsel
Andy Purdy, Chief Deputy General Counsel
David Rauma, Associate Research Director for Evaluation
Ronnie M. Scotkin, Guideline Development Analyst
Fred Bennett, Representative, Practitioners' Advisory Group
Maggie Jensen, Representative, Probation Division
Vicki Portney, Criminal Division, DOJ

Chairman Wilkins recognized Harlen Penn from the Bureau of Prisons, Howard McLean and Jim Bradley from DEA, Tom Hutchison, representing the Federal Public Defenders, and Federal Public Defender A.J. Cremer from the District of Columbia. Chairman Wilkins also introduced Probation Officer Michael Curtis from the Eastern District of Michigan.

-- Motion made by Commissioner Mackinnon to adopt the minutes of the October 23, 1990, Commission meeting; seconded by Commissioner Nagel. Passed unanimously.

David Rauma presented a report from the Research Advisory Group. He stated that the Research Advisory Group approved the Evaluation staff's sampling strategy, suggested that the sample be augmented with additional districts if sufficient numbers of very large districts are not selected, and proposed using a survey of court personnel to address issues such as mandatory minimums. He reported that the Research Advisory Group was encouraged by the results of the pilot site visit and that Evaluation staff was preparing for future site visits in early December. The Research Advisory Group is preparing a letter for the Commission outlining their recommendations based on the October 30, 1990, meeting.

Chairman Wilkins requested that the Commissioners, in voting on staff recommendations for amendments, use a standard based on usefulness of the proposal in obtaining public comment. Commissioner Corrothers urged the Commission to be generous in its approval of proposed amendments for public comment.

Richard Murphy reported on the Drug Working Group report and proposals on listed chemicals. He stated that the Drug Working Group evaluated the Chemical Diversion Trafficking Act (21 U.S.C. § 841(d)) and would be reviewing the Crime Bill for amendments to the listed chemicals. A discussion ensued. Commissioner Corrothers complimented the Drug Working Group for their outstanding report.

-- Motion made by Commissioner Corrothers to publish both options and a question relating to laboratory production capacity yield for public comment; seconded by Commissioners MacKinnon and Mazzone. Passed unanimously.

Commissioner Carnes summarized the Criminal History Working Group's report and focused on the issue of reexamining the definition of "related cases," posing the question of whether the current definition is causing serious understatements of defendants' criminal history categories. Jay Meyer presented the group's options for amendments. A discussion ensued. Chairman Wilkins complimented the Criminal History Working Group for their outstanding report.

-- Motion made by Commissioner Nagel to publish the Criminal History Working Group options, Chairman Wilkins' proposed revision, and a series of questions. Motion amended by Chairman Wilkins to direct the working group to draft an option concerning the issue of departure for intervening arrest; seconded by Commissioner Gelacak. Passed unanimously.

Peter Hoffman discussed the proposed amendment on extortion and related issues. Commissioner Nagel commended Hoffman on his memorandum and requested that he meet with Art Levine of FDA on the issue of product tampering. Chairman Wilkins requested that Peter Hoffman take the Commissioners' suggestions and redraft options for an extortion amendment. Commissioner Maloney requested data on the number of heartland extortion cases with a single victim and the number of extortion cases with multiple victims.

General Counsel Steer reported on decisions from the Eighth and Eleventh Circuits relating to downward departure for substantial assistance absent a government motion as required by U.S.S.G. § 5K1.1 and a Third Circuit decision that required a higher standard of proof in certain very large departure cases. General Counsel Steer was directed to draft amendment language to clarify the motion requirement and related § 5K1.1 issues. Pam Montgomery discussed other caselaw decisions of interest. Chairman Wilkins

stated his desire to propose an amendment dealing with disparity in the area of departures for community service.

General Counsel Steer gave a preliminary analysis of the Crime Control Act of 1990. He stated that staff was executing relevant provisions for clarification of the changes. He stated that staff would move as quickly as possible in formulating amendment proposals pending receipt of the enrolled bill. Commissioner Corrothers commended General Counsel Steer and legal staff for their work on analysis of the Crime Bill.

Chairman Wilkins announced that a Commission meeting would be held at 10:00 a.m. on November 27, 1990.

Chairman Wilkins adjourned the meeting at 1:13 p.m.