

Minutes of the January 3, 1991, United States Sentencing Commission
Business Meeting

The meeting was called to order at 10:12 a.m. by Chairman William W. Wilkins, Jr.

The meeting was held at the library of the United States 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
David Anderson, Deputy General Counsel
Nolan Clark, Deputy General Counsel
Abraham Clott, Special Counsel
Sharon Henegan, Director of Training and Technical Assistance
Peter Hoffman, Principal Technical Advisor
Tracy Leeber, Law Clerk
Richard Murphy, Special Counsel
Andy Purdy, Chief Deputy General Counsel
Ronnie M. Scotkin, Guideline Development Analyst
Fred Bennett, Representative, Practitioner Advisory Group
Al Blumenthal, Anti-Trust Division, DOJ
Samuel Buffone, Practitioners' Advisory Group
Tom Hutchison, Representative, Federal Public Defenders
Roger Pauley, Criminal Division, DOJ
Vicki Portney, Criminal Division, DOJ
Neil Roberts, Anti-Trust Division, DOJ

-- Motion made by Commissioner Corrothers to pass the minutes of the December 14, 17 and 18, 1990, Commission meetings; seconded by Commissioner Gelacak. Passed unanimously.

-- Motion made by Commissioner Nagel to delete the conspiracy recommendation from the Statutory Penalty Review Project; seconded by Commissioner Corrothers. Passed unanimously.

A staff working group will be formed to review the Alternatives to Imprisonment report in the context of reviewing options related to youthful offenders, role in the offense, and criminal history. Commissioner Corrothers, speaking for the Alternatives Advisory Committee, said that they supported publication of the report as soon as possible but believed that a timely comprehensive review of these issues was desirable. Chairman Wilkins asked that the proposed youthful offender guideline be postponed and be considered in conjunction with the Alternatives work.

The proposed amendments for environmental offenses (U.S.S.G. §§2Q1.1, .2, and .3) failed for lack of a motion.

The Commission unanimously approved for public comment the proposed money laundering amendments (U.S.S.G. §§2S1.1, .3, .4).

-- Motion made by Commissioner Nagel to publish for public comment the American Bar Association Section on Criminal Justice's proposals #1, rewritten in question form, #4 and #5; seconded by Commissioner Corrothers. Passed unanimously.

The Commission unanimously approved for public comment the proposed amendment for prior sentence definition under criminal history (U.S.S.G. §4A1.2(a)(4)).

The Commission unanimously approved for public comment the proposed amendments involving fraud offenses from the Crime Control Act of 1990, with the deletion of "the guideline sentence shall be" and inserting instead "apply U.S.S.G. §5G1.1(b)."

The Commission unanimously approved for public comment proposed option #2 of U.S.S.G. §2D1.7 as amended.

The Commission unanimously approved for public comment the use of "actual" instead of "pure" in U.S.S.G. §2D1.1(c).

The Commission approved for public comment the proposed amendment to U.S.S.G. §2D1.1 concerning Schedule I and II depressants.

The Commission approved for public comment DOJ's options concerning "smokable crystal methamphetamine."

The Commission approved for public comment the proposal concerning controlled substance equivalencies.

The Commission approved for public comment the proposed amendment to U.S.S.G. §2D1.1, commentary (Application note 1) concerning multiple schedule drug offenses.

There was a discussion on the proposed Anti-Trust amendments (U.S.S.G. §2R1.1). Commissioner Gelacak stated that he did not support changing guidelines that appear to be working currently on the basis of a problem that arose in a single case or a limited number of cases.

-- Motion made by Commissioner Nagel to publish for public comment only those amendments concerned with individual anti-trust violators; seconded by Commissioner Mazzone. Passed.

The proposed amendment to U.S.S.G. §1B1.1 (Application note 1(f)) concerning more than minimal planning failed for lack of a motion.

The proposed amendment to U.S.S.G. §1A4(d) concerning aberrant behavior under the probation and split sentences section failed for lack of a motion. Commissioner MacKinnon stated that the guideline was originally adopted in order to allow probation at the higher offense levels.

The Commission unanimously approved for public comment the proposed amendment to U.S.S.G. §1B1.8 concerning use of certain information.

The proposed amendment to U.S.S.G. §2B1.1 concerning definition of market value failed for lack of a majority.

-- Motion made by Commissioner Carnes to publish for public comment proposed amendment U.S.S.G. §2D1.8(a)(2) concerning renting or managing a drug establishment and an option stating that the base offense level is the level from U.S.S.G. §2D1.1 or 16, whichever is greater; seconded by Commissioner Nagel. Passed.

Chairman Wilkins recessed the meeting until 2:15 p.m.

The proposed amendment to U.S.S.G. §2H1.1 concerning conspiracy to interfere with civil rights failed for lack of a motion.

The Commission approved for public comment the proposed amendment to U.S.S.G. §2J1.6 concerning failure to appear by defendant.

The Commission approved for public comment the proposed amendment to U.S.S.G. §2J1.10 concerning harboring a fugitive with U.S.S.G. §§2J1.10(3)(A), (B), (C), and (D) written with each offense level having a possible range increase of three levels.

The Commission unanimously approved for public comment the proposed amendment to U.S.S.G. §2T1.6 concerning failing to collect tax.

The Commission unanimously approved for public comment the proposed amendments to U.S.S.G. §2T3.1 and .2 concerning smuggling.

The proposed amendments to U.S.S.G. §2X3.1 and §2X4.1 concerning accessory after the fact and misprision of felony failed for lack of a motion.

The Commission unanimously approved for public comment the proposed amendment to U.S.S.G. §2X5.1 concerning other offenses.

-- Motion made by Commissioner MacKinnon to publish for public comment the proposed amendment to U.S.S.G. §5E1.1 concerning restitution; seconded by Commissioner Corrothers. Passed unanimously.

The proposed amendment to U.S.S.G. §5F1.4 concerning notice to victims failed for lack of a motion.

The Commission approved publication for public comment the proposed amendment to Chapter Five, Part H, concerning specific offender characteristics with the deletion of "blindness, deafness, or severe heart disease," wherever it may appear.

The Commission approved publication for public comment the proposed amendment to U.S.S.G. §5K1.1 concerning substantial assistance to authorities with language changes in U.S.S.G. §5K1.1, commentary (Application note 1).

The Commission approved publication for public comment the proposed new policy statement U.S.S.G. §5K2.15 concerning restitution prior to discovery of the offense.

The Commission approved publication for public comment the proposed new policy statement to U.S.S.G. §5K2.16 concerning voluntary disclosure of offense.

The Commission approved publication for public comment the first sentence of paragraphs #1 and #2 of the proposed amendment to U.S.S.G. §6A1.3 concerning resolution of disputed factors.

The proposed amendments to the Career Offender guideline failed for lack of a motion. Commissioner Carnes recommended reviewing these proposals in the comprehensive study of the criminal history working group.

The Commission unanimously approved publication for public comment the proposed amendment to U.S.S.G. §2A3.2(b) concerning criminal sexual abuse of a minor.

The proposed amendment to U.S.S.G. §2D2.3 concerning operating a common carrier under the influence of alcohol or drugs failed for lack of a motion. Commissioner Nagel requested that a working group review the issue.

The Commission unanimously approved publication for public comment the proposed amendment to U.S.S.G. §2C1.1 concerning offering, giving, soliciting or receiving a bribe.

The Commission approved publication for public comment the proposed amendment to U.S.S.G. §2L1.2 concerning unlawfully entering or remaining in the U.S. with (b)(2) bracketed as [6-20].

The Commission approved publication for public comment the proposed amendment to U.S.S.G. §2L1.1 concerning smuggling, transporting, or harboring an unlawful alien with (a)(1) bracketed as [12-20]. Passed. Chairman Wilkins requested a past practice study concerning these amendments.

-- Motion made by Commissioner Mazzone to publish for public comment in the Federal Register all proposed amendments tentatively approved by the Commission; seconded by Commissioners Carnes and MacKinnon. Passed unanimously.

A brief discussion occurred on organizational sanctions. Commission staff and staff from the Department of Justice will meet to discuss pertinent issues and rationales in their respective organizational sanctions drafts.

Chairman Wilkins adjourned the meeting into Executive Session at 4:27 p.m.