

Minutes of the January 22, 1991, United States Sentencing Commission Business Meeting

The meeting was called to order at 3:34 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 Commissioner
Phyllis J. Newton, Staff Director
Paul K. Martin, Deputy Staff Director
Samuel Buffone, Practitioners' Advisory Group
Steve Cowen, Practitioners' Advisory Group
Mark Goldstein, Practitioners' Advisory Group
John Ong, Representative of Business Round Table
Victoria Toensing, Practitioners' Advisory Group

Representatives from the Practitioners' Advisory Group commented on fine structure, flexibility, and probation in relation to organizational sanctions. The representatives agreed with the "carrot and stick" approach developed within the Commission draft but stressed the need for maximum flexibility and standards. The representatives stated that the fine proposal being advocated by the Department of Justice, through the incorporation of the Commissions' fraud table, produced a high increase in fines in many cases. They requested the Commission to revisit the issue of corporate probation because of the uncertainty of repercussions to a corporation. They reiterated their position that the Commission is not required to issue guidelines for corporate sanctions. The Practitioners' Advisory Group strongly favors a delayed period of implementation, maximum flexibility, and an indication of areas not adequately considered for departure purposes. Chairman Wilkins thanked the representatives for their comments.

John Ong, speaking on behalf of the Business Round Table, stated that the whole process of issuing restrictive guidelines for sentencing in the case of organizational offenders is problematic due to the diversity of fact patterns and the various degrees of culpability that exist in the case of corporations convicted of crimes. This arises from the implied vicarious liability that tends to suggest an equation between the culpability of an individual employee or agent and the culpability of the corporation. This is a fundamental problem with the hierarchical approach, the central feature of the current Justice Department draft. Mr. Ong stated that the idea of mitigation is important but

that the emphasis should be placed on pre-offense conduct as opposed to post-offense conduct. The Business Round Table believes there is much merit in issuing policy statements because of the lack of meaningful statistics and because the Commission has the authority to issue corporate sanctions but is not statutorily mandated to do so. Mr. Ong further stated that the prospective guidelines pose a serious matter from the point of view of the business community and its welfare and its future competitiveness. The Business Round Table favors issuing policy statements and then implementing a monitoring program for some period of years. Chairman Wilkins thanked the representatives for their comments.

Chairman Wilkins adjourned the meeting at 4:40 p.m.