

Minutes of the March 12, 1991, United States Sentencing Commission  
Business Meeting

The meeting was called to order at 11:07 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 L. Maloney, Ex Officio Commissioner  
Phyllis J. Newton, Staff Director  
Paul K. Martin, Deputy Staff Director  
John R. Steer, General Counsel  
Nolan Clark, Deputy General Counsel  
Joel Garner, Director of Research Studies  
Sharon Henegan, Director of Training and Technical Assistance  
Peter Hoffman, Principal Technical Advisor  
Pamela Montgomery, Staff Attorney  
Ralph Ardito, President, Federal Probation Officers'  
Association  
Samuel Buffone, Practitioners' Advisory Group  
Fred Bennett, Representative, Practitioners' Advisory Group  
Tom Hutchison, Representative, Federal Public Defenders  
Roger Pauley, Criminal Division, DOJ  
Vicki Portney, Criminal Division, DOJ  
Earl Silbert, Representative, Practitioners' Advisory Group

Chairman Wilkins introduced Federal Public Defender Deborah De' Lambert and Probation Officers Walt Meyers (W.D.WA), Danny Sorrey (W.D.LA), and Chuck Harris (N.D.OK), all on temporary detail to the Commission. He also welcomed Michael Courlander as the Public Information Specialist for the Commission.

Representatives from the Practitioners' Advisory Group commented on various aspects of the Commission's work and proposed individual guideline amendments. Mr. Buffone emphasized five general areas of concern: 1) critical need for Defense Bar training; 2) the Advisory Group's consensus that congressional action of increasing statutory maxima did not necessarily mandate Commission action; 3) the need to study prosecutorial discretion; 4) the need for a uniform policy regarding cross references; and 5) appreciation for Commission work in reducing penalties for marginal defendants. Chairman Wilkins requested a specific proposal regarding training and promised that resources and materials would be made available. Mr. Silbert and Mr. Bennett commented on various proposed

amendments to individual guidelines, including bribery, antitrust, criminal history, criminal sexual abuse, kidnapping, bank robbery, extortion, and related cases. Chairman Wilkins thanked the representatives for their comments and continued efforts.

Chairman Wilkins recessed the meeting at 12:21 p.m. until 2:00 p.m.

Chairman Wilkins reconvened the meeting at 2:06 p.m.

Representatives from the Federal Probation Officers' Association brought three general concerns to the Commission. First, they expressed a need for more specific training related to the extensive, developing case law and its relation to application of guidelines. General Counsel Steer stated that the U.S. Sentencing Commission Sentencing Application Decisions publication could be better tailored to suit the needs of probation officers. Steer also reported that the training staff is developing a potential program in this area. Second, the representatives requested clarification of the definition of community confinement, noting that courts use different definitions across the various jurisdictions. A discussion ensued regarding Commission definition and Bureau of Prison statutory authority. Finally, the representatives voiced concern with respect to the Commission's legislative proposal regarding revocation of probation and supervised release. Chairman Wilkins thanked the representatives for their comments and reiterated the Commission's support to federal probation officers.

-- Motion made by Commissioner Carnes to adopt the minutes of the January 3 and 22, 1991, Commission meetings; seconded by Commissioner Nagel. Passed.

-- Motion made by Commissioner Corrothers to defer for further study the following proposed amendments until the next amendment cycle: (Item #1) §2A3.2 Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts; (Item #11) Request for comment concerning reliance on drug quantity in punishing drug offenders; (Item #15) §2D1.8 Renting or Managing a Drug Establishment; (Item #35) §5K1.1 Substantial Assistance to Authorities (Policy Statement); and (Item #37B) Request for comment concerning stipulations; seconded by Commissioner Mazzone. Passed unanimously.

Commissioner Gelacak stressed the need for the Commission to be selective in its adoption of amendments.

Joel Garner presented an interim report on prison impact.

Chairman Wilkins recessed the meeting at 3:49 p.m. until 9:30 a.m. on March 13, 1991.

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Chairman Wilkins commenced the meeting at 9:39 a.m.

Pamela Montgomery summarized pertinent case law concerning issues such as departures and suppressed evidence.

Discussion ensued on the latest organizational sanctions draft.

-- Motion made by Commissioner Mazzone to have a group of probation officers apply the draft to cases and submit written comments and direct Nolan Clark to write special rules for food and drug and environmental offenses; seconded by Commissioner Gelacak. Passed. Commissioner Nagel voted "no." The staff was directed to take the most recent draft and make every effort to simplify from an application perspective.

Commissioner Gelacak stated that he had a problem understanding the position DOJ took on loss blockers.

Chairman Wilkins adjourned the meeting at 11:26 a.m.