

Minutes of the December 12 and 18, 1991, United States Sentencing Commission Business Meetings

The meeting was called to order at 9:38 a.m. by Chairman William W. Wilkins, Jr., 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
Michael S. Gelacak, Commissioner
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Carol Pavilack Getty, Ex Officio Commissioner
Paul L. Maloney, Ex Officio Commissioner
Phyllis J. Newton, Staff Director
John R. Steer, General Counsel
Sharon Henegan, Director, Training and Technical Assistance
Peter Hoffman, Principal Technical Advisor
Susan Winarsky, Senior Training Specialist
Fred Bennett, Representative, Practitioners' Advisory Group
Barry Boar, Representative, New York Counsel of Defense
Lawyers
Paul Borman, Representative, Federal Public Defenders
Alan Chaset, Representative, National Association of Criminal
Defense lawyers
Tom Hutchison, Representative, Federal Public Defenders
Maggie Jensen, Representative, Probation Division

Chairman Wilkins introduced probation officers Belinda English, from the Eastern District of Michigan, Dee Howard, from the Western District of Texas, and Julie Belt, from the District of Minnesota, all on temporary assignment to the Commission.

Motion made by Commissioner Carnes to adopt the minutes of the November 13 and 27, 1991, Commission meetings; seconded by Commissioner Mazzone. Passed unanimously.

Proposed Amendments for Publication

Acceptance of Responsibility

The Commission unanimously agreed to publish in the Federal Register Options 2, 6, 8 and Option 5, with the deletion of "18" and "19" and the insertion instead of "29" and "30".

Alternatives to Imprisonment

Motion made by Commissioner Mazzone to publish for comment the entire package; seconded by Commissioner Nagel, with the addition of the following four questions: (1) Whether the options proposed affect the Commission's method of drafting and the logic behind offense categories; (2) How the options will affect logic and commitment made to past practice; (3) How the options affect the Commission's treatment of white collar crime; and (4) If an

offense-category-by-offense-category approach is taken, which categories should have the base offense levels changed to permit alternatives and why. Chairman Wilkins proposed the addition to Option 7 of a sentence informing the public that the specific references made to former Commissioner Corrothers' Report may be obtained from the Commission. Passed unanimously.

Criminal History

Motion made by Commissioner Carnes to publish for comment Options 1-6, 8-10, 14 and questions 12 and 13; seconded by Commissioner Mazzone. Passed (4-1). Commissioner Nagel voted "no."

Environmental Offenses

Motion made by Commissioner Gelacak to publish for comment §2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification), §2Q2.1 (Specially Protected Fish, Wildlife, and Plants; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants), and a question as to whether an additional specific offense characteristic providing for a two-level increase should be added to §2Q2.1 for more than minimal planning. Passed unanimously.

Drugs/Role

Motion made by Commissioner Carnes to publish for comment the entire package with a proposed amendment from Chairman Wilkins that states, "If the defendant was a minimal participant decrease by four levels, and in no event may the offense level exceed 32"; seconded by Commissioner Mazzone. Passed (4-1). Commissioner Nagel voted "no," commenting that the Commission is encouraging Congress not to pass mandatory minimums and proposing caps might encourage Congress to pass more mandatory minimums, in addition to narrowing judicial discretion when applied to role in the offense.

Child Sex Offense Guidelines

Motion made by Commissioner Nagel to publish for comment the entire package. Passed unanimously.

Environmental Offenses

Chairman Wilkins moved to publish a request for comment as to whether the Commission should make changes in the structure and specific offense characteristics of §2Q1.3 consistent with any changes in §2Q1.2. Passed (4-1). Commissioner Gelacak voted "no." Commissioner Maloney stated that DOJ has substantial difficulty with the amendment and questions whether there is a double-counting problem.

Additional Amendments

Chairman Wilkins moved to publish for comment the entire package with the deletion on page 29 of the word "formally" and a general question concerning whether advanced age should be a mitigating factor for cases in which the defendant poses little risk of recidivism. Passed unanimously.

Motion made by Commissioners Gelacak and Mazzone to publish for comment DOJ-submitted proposals. Passed unanimously.

Commissioner Nagel, as Co-Chair of the Environmental Advisory Group, announced that the proposed questions from the Practitioners' Advisory Group submission would be placed on the Environmental Advisory Group's agenda.

Motion made by Commissioner Mazzone to publish for comment the Practitioner Advisory Group's proposed amendments, as submitted by Fred Bennett, with Chairman Wilkins' alternative to Exhibit D "[prior to a Rule 11 plea colloquy]". Passed unanimously.

Motion made by Commissioner Mazzone to publish for comment the Judicial Conference-submitted proposals. Passed (4-1). Commissioner Carnes voted "no."

Chairman Wilkins adjourned the meeting at 12:05 p.m.

December 18, 1991

Chairman Wilkins, Commissioners Carnes, Gelacak, Nagel, General Counsel Steer and Deputy Staff Director Martin were present.

The consensus was to publish for comment in the Federal Register a question concerning revision to §3C1.2 (Reckless Endangerment During Flight) and a proposed revision to §5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment).

The Commission unanimously approved moving forward with Chapters Four, Five, and Six of the Evaluation Report. Although Commissioner Mazzone was in Court at the time of this vote, he had earlier expressed his approval.