

March 10, 1986

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SUMMARY OF THE U.S. SENTENCING COMMISSION  
AND COURT TASK FORCE MEETING

The meeting was called to order at 3:40 p.m. by Chairman William W. Wilkins, Jr. The following Commissioners, staff members and guests were present:

William W. Wilkins, Jr., Chairman	Edward R. Becker, U.S. Circuit Judge
Benjamin Baer, Commissioner	John D. Butzner, Jr. U.S. Circuit Judge
Michael Block, Commissioner	A. David Mazzone, U.S. District Judge
Helen Corrothers, Commissioner	William H. Orrick, Jr. U.S. District Judge
George MacKinnon, Commissioner	Gerald Bard Tjoflat, U.S. Circuit Judge
Ilene Nagel, Commissioner	Russ Wheeler, Federal Judicial Center
Paul Robinson, Commissioner	
Kay A. Knapp, Director	
Elizabeth Williams, Special Assistant	
Alan Chasset	

Judge Wilkins introduced and welcomed Judge Mazzone and

members of the committee to advise the Judicial Center on educational programs related to recent crime legislation.

Judge Mazzone introduced his Committee and explained that the members were appointed by the Chief Justice to assist the Federal Judicial Center with their third branch educational programs, specifically those educational programs that are affected by the new Comprehensive Crime Control Act of 1984. His Committee would like to know the plans and progress of the U.S. Sentencing Commission for the preparation of educational programs for all of the third branch personnel. Judge Mazzone is not asking the Sentencing Commission to inform his committee about every nuance of the guideline process, but would like to be kept abreast of the activities of the Commission.

Judge Tjoflat was introduced by Judge Mazzone to explain the relationship of the Probation Committee and the third branch educational process. Judge Tjoflat stated that the Probation Committee is charged with overseeing the operations of all federal probation officers. He explained that his Committee fashions tentative general training programs for all new officers in addition to their regional training programs. Judge Tjoflat added that the Probation Committee prescribes the format of the pre-sentencing investigative report which is the main instrument used by the Parole Committee in its Parole Review process.

In addition the Probation Committee fashions "supervision" monographs, i.e. a description of what type of offenders needs more supervision than others. Also the Probation Committee monitors the Drug-After-Care Program. And finally the Probation Committee organizes the Sentencing Institutes across the country.

At the Sentencing Institutes the participants discuss the evolution of sentencing and enact sentencing exercises. Judge Tjoflat suggested that during these exercises, the judges become more attuned to the idea of exactly how much time each individual is truly serving, which is for most judges, a dramatic concept.

Judge Tjoflat explained that that sort of exercise would be a part of the program at the Sentencing Institute in April and he was very interested in all of the Commissioners attending that Conference. As a footnote, he added that he has been concerned about the quality of sentencing for a long time and has been particularly concerned about the lack of data on the issue.

Judge Mazzone stated that one of the problems that he has noticed as a district judge is that he does not often see circuit judges at the Sentencing Institute. Judge Butzner added that it is very important that circuit judges also learn about sentencing since they will be responsible for reviewing sentences under the guidelines. Judge Mazzone agreed and added that not only judges,

but all third branch personnel should learn more about the sentencing process problems.

Judge Butzner stated that the sentencing guidelines may be the greatest revolution in the criminal process since the founding of the Republic. He stressed the importance of educating not only judges, but also lawyers. He suggested the possibility of organizing a liaison between CLE and the Federal Judicial Center for educational programs, and further noted that perhaps the Federal Judicial Center could set up a mock sentencing hearing.

Judge Wilkins said that he fully appreciated the great need for educational programs and the Sentencing Commission accepts the committee's offer of assistance.

Judge MacKinnon added that the "policy" of the Commission is in the statute. It is the Commission's problem to pull out that policy from the bill and its legislative history. To the extent that particular problems and questions arise from that procedure, the Sentencing Commission has a barrage of experts ready to discuss those particular issues. Much of the legislative intent is hidden in the congressional report, the hearings and the act itself and is not easy to discern. Therefore, the Sentencing Commission cannot tell the committee the definitive process of the Commission until later in the year. The concern of the

Sentencing Commission is to remain in touch with the Congress, the representatives of the court, academia and the public.

Judge Mazzone reemphasized that his committee appreciated just meeting with the Sentencing Commission. He stated that his committee would like to organize the educational programs whenever it is possible for the Sentencing Commission to render the necessary information. Judge Mazzone added that he would like to know if he might be able to call on the Sentencing Commissioners and staff to assist with his educational programs as they develop.

Judge Butzner stated that one important factor in the education process will be the ability to sell the guidelines to those who will administer the policy, and convey the inherent value of it. He emphasized that these individuals must be convinced that the new guidelines are the very best. Therefore, the committee will need the Sentencing Commission staff to assist in the educational process to explain how and why certain things occurred in the sentencing guidelines formulation process.

Russ Wheeler suggested that The Third Branch is an excellent vehicle for disseminating information to judges and other court personnel.

Alan Chasset added that in the past The Third Branch has allowed special bordered areas of the paper to be denoted for one particular area of news, and suggested that such an area be denoted for the U.S. Sentencing Commission. Judge Wilkins agreed that that was a very good idea.

Judge Tjoflat said that he knew that the Sentencing Commission may not want to advertise all of their work in The Third Branch, since a great deal of it would not be final, but the manner in which the Commission is going about its business and the individuals that the Commission is consulting with would be appreciated by all interested readers.

Judge Wilkins then suggested a possible title for this kind of information: "An update on the work of the U.S. Sentencing Commission" and asked if Mr. Wheeler could assist the Commission with the submission of the updates to The Third Branch.

Judge Wilkins added that the Commissioners were very interested in attending the Sentencing Institute in April and that all except possibly one commissioner are planning to attend.

Judge Tjoflat stated that he believed it a good idea for representatives of the Sentencing Commission to attend Judicial Conferences. He added that he was not sure of the value of the Judicial Conferences to the educational process, but it's

possible that the Commissioners could speak for a brief period during the Executive Session of the Conference.

Judge MacKinnon stated that whatever the Commission or the committee does there is a real problem of receiving the support of certain judges. He noted that the transition to imposing realistic sentences will not be an easy one for judges to make.

Judge Mazzone asked if there was a theoretical basis for Sentencing Guidelines. Mr. Baer replied that equity, disparity, and certainty were the main issues. Judge Becker then stated that may be true, but no judge ever believes his sentence is disparate, only sentences imposed by other judges.

Judge Tjoflat suggested that the real problem may be that some may be very involved and very interested in the sentencing guidelines process and some may be involved but not very interested and many that are in between those two positions on the scale. Therefore, he advises that the Commission be careful as to the information that it disseminates to the public.

Judge Orrick stated that at the Sentencing Institute in April, the Commission could announce its progress thus far.

Judge Becker then noted that it is possible that the newer federal judges from the state court system may have been influenced positively by their respective state guideline systems.

Judge Tjoflat agreed but added that sometimes state guideline systems are a charade such as in Florida where the defender and prosecutor arrange a deal in which a camel comes out looking like an elephant.

Judge MacKinnon agreed, but added that Congress was specific in their intent with the Commission's legislation to not allow the U.S. Attorney's actions circumvent the guidelines.

Judge Tjoflat stated that one must rely on the district judges to enforce the sentencing guidelines and make them effective. That is why one must ensure that the judges are generally agreeable to the whole sentencing guidelines process. He suggested that a definitive policy statement might be the answer.

Judge Wilkins closed the meeting at 5:00 p.m. by thanking all that were present and suggested that the committee and the Sentencing Commission keep the lines of communication open.



Judge Mazzone reiterated his committee's willingness to assist the Sentencing Commission in whatever way possible and the importance of being informed as the Commission's progress.

Judge Mazzone asked that the minutes of the days meeting be circulated.