

Commission Meeting - May 7, 1986

Chairman Wilkins called the meeting to order. The Chairman advised the Commission that the minutes from the April 29 meeting had not yet been revised into a final draft and suggested postponing approval of those minutes until the May 13 meeting. All Commissioners agreed.

Chairman Wilkins mentioned receiving a letter from Raymond Lee James, a prisoner presently serving a life sentence at the Lewisburg Penitentiary. The Chairman also stated that he, Commissioners Block and Corrothers, Kay Knapp, and Bill Rhodes met with Norm Carlson, Director of the Bureau of Prisons, and discussed the possibility of joint research projects and arrangements that will be made for the Commission's future printing requirements. The Bureau of Prisons has ample resources to assist the Commission in the printing of any final document, and has graciously volunteered those services to the Commission.

The subject of the Commission's June 10 hearing on organizational sanctions was addressed. Paul Martin had compiled a list of suggested candidates for that hearing which the Chairman presented for discussion.

It was decided that the following individuals or groups would be invited to testify, recognizing that substitutes may have to be found if some decline to participate.

John Coffee, Columbia University

Defense attorney in corporate defense work

Chamber of Commerce

Public Citizen (Ralph Nadar group)

Business Roundtable

AFL-CIO

Steven Trott, Department of Justice

National Association of Manufacturers

ABA section on anti-trust

National Federation of Independent Businesses

Chairman Wilkins stated that as a general rule he preferred not to receive testimony from an individual judge unless the individual represented a larger group within the judicial branch or was a part of the working group of judges who had offered to assist the Commission.

Commissioner Nagel suggested holding a separate hearing of government officials. Chairman Wilkins asked how many people she was proposing. Commissioner Nagel named the head of the Criminal Division at the Department of Justice, Inspector General, and others. She thought they would be groups who might like to express their opinion before the draft guidelines are introduced. She suggested a better forum may be an informal meeting, not a hearing. Chairman Wilkins agreed. Judge MacKinnon said the public hearing should balance both private and public views. Commissioner Nagel agreed, but noted that not all government representatives could attend the public hearing.

Commissioner Nagel asked whether anyone could testify. Chairman Wilkins said written comments could be submitted by anyone, but speakers would be limited to those invited, because

of the limited time available.

The Chairman stated that the just deserts and efficient crime control work groups had made significant strides towards the Commission's goal, and that there was general agreement to consolidate the two groups' efforts. He suggested by the June 10 hearing date, the development of a joint report to discuss the combination of the work of each group. Chairman Wilkins explained that briefings of the work of each group will be conducted over the next few weeks. Commissioner Nagel asked if the merger would affect the ongoing work of each group. Chairman Wilkins stated he would like to submit the guidelines to Congress three or four weeks before the April 13, 1987 deadline. To meet that goal, he would like to bring in judges and other persons to critique the guidelines by late summer. The best way to have a workable product for them is to begin merging the efforts now.

Commissioner Robinson stated he and Commissioners Block and Nagel had not yet had a chance to discuss the integration of ideas, but thought that submitting a joint proposal by June 10 would provide the Commission with a document with which to make comments. Commissioner Robinson said his group planned to continue their development efforts, but will focus on a joint document or integration plan. Commissioner Nagel said she was not sure if the integration could be done by June 10 since data for the ECC model was not yet available. Chairman Wilkins did not think lack of data would create a problem since he was more interested in setting a tentative format through which to take

each model.

Commissioner Robinson agreed that a plan in the form of a source document would provide a focus for those suggestions and that by June 10 the Commission would be presented a vehicle through which to discuss guidelines. Chairman Wilkins reserved the possibility that the Commission would reject the proposed format, but that the Commission should obviously make that decision as soon as possible. Chairman Wilkins stressed that format would be tentative and subject to change by Commission suggestions.

The impression of Commissioner Gainer, as an outsider, was that the original goals of the two groups were to formulate models on proper punishment and controlling crime. The first group had mechanically divided crime into categories, and is now looking at how to properly punish offenders. The ECC group had skipped over much of the mechanical elements and looked one step further at how to achieve crime control, which is more difficult since they are forced to rely more on human reactions rather than codified information. Any melding of the two would logically look at the mechanism of the just deserts group, insure the ECC material was properly factored in, and then make determinations on the efficiency of the entire project.

Commissioner Robinson elaborated that he had taken the purist view of just deserts and worked on a draft of it. The past week he had been able to step back from the model and had done some preliminary testing. He noticed during the process

that there is a natural overlap of the just deserts and crime control goals. The end product has strong elements of deterrence and incapacitation, and a format that lends itself to ECC goals. Chairman Wilkins stressed that, at this point, the vehicle was important so the public will have a draft document to critique by August.

Commissioner Nagel said she had been optimistic all along that the ECC model would include many blameworthiness characteristics. She cautioned that the ECC model would still be lacking much of the required substantive information in June. She wanted an understanding that the vehicle could be modified after that point.

Chairman Wilkins assured the Commission that after the vehicle was determined and as new information becomes available, suggestions for changes will be welcome. Commissioner Robinson added that "numbers" will remain up-for-grabs for months. Commissioner Gainer added that the format and structure would, at this point, largely, come from the just deserts work group, so he had expected modifications to it. Commissioner Nagel said she had envisioned formatting the guidelines by element category. Alan Chaset asked if the format structure included a decision on whether the Commission will grade the offense of conviction or the total offense behavior. Commissioner Robinson said it had been tentatively agreed that total offense behavior would be the focus of the format.

Chairman Wilkins turned the meeting over to Bill Rhodes to

explain the research agenda. Bill said he had distributed copies but would modify the agenda according to the previous discussion as he went along and added that he invites comments on the research agenda. (See Attachment 1, Research Agenda).

One modification he wanted to make is that if judges will apply tentative draft guidelines in a simulated exercise in August, the Research staff and Commissioners should go through the same process first to work out problems. Chairman Wilkins agreed. Bill asked that as Commissioners derive theories about what the guidelines should look like, to please share that information with the research staff so they can give feedback. Bill said the research plan should also be modified after examining the merger on June 10.

Commissioner Gainer stated that to the extent that the offense characteristics descriptions could be informed by PSI's, it would be useful to use the same nomenclature from the PSI so comparisons can be made. He also expressed concern that, while explaining past practices was important, little was being researched on how to make sentencing more effective. He suggested the research concentrate more on effectiveness and how to achieve just deserts and efficient crime control, and explain the impact of the guidelines on the present system afterwards. Chairman Wilkins said both types of research will be needed. Commissioner Gainer agreed, but stressed that the past practices study could be put off until a later time, but Congress would want to know how the guidelines got their form and the results of

those guidelines first.

Bill explained that the research agenda provided for three items: 1) support development of guidelines, 2) provide an impact model, and 3) collect data. To support the development of guidelines, the research staff will create two data files, the past practices study and a post-conviction supervision file. The offense and criminal record data would come from the FPIPSIS data set and information from Probation Officers and PSI's. Kay interjected that they had not spoken to Don Chamlee about this and therefore it is subject to revision.

The result of the past practices study would yield an English language system that would provide information to Commissioners about the guidelines, allow them to make the guidelines more specific, and answer sophisticated questions regarding the differences between proposed guidelines and past practices.

The Impact model would have a guidelines scheme with future projection, and would be able to handle questions on the impact of proposed guidelines. The concentrations would be in plea negotiations, offense seriousness, fines, sentencing options and cost of crime. Chairman Wilkins asked about research priorities. Bill said data collection on current practices should be first. The Chairman asked about Commissioner Gainers' concerns. Bill said the past practices study was definitely needed to inform the guidelines, whereas Commissioner Gainer was suggesting a new study devoted to the guideline process. Commissioner Nagel

thought Commissioner Gainer meant more data accumulation effort should be devoted to the writing of the guidelines. Commissioner Nagel suggested that it is unlikely that the Commission can write guidelines without researching the numbers, and is more unlikely that at the current rate, Bill will be unable to present the numbers before July. The Chairman said arbitrary numbers would be assigned first. Commissioner Nagel said the first priority must be the drafting of the guidelines, therefore it might be necessary to achieve less accuracy and less detail in the past practices study. Chairman Wilkins said that since the numbers were bound to change anyway, the first numbers in the guideline blanks will be "data" that is an accumulation of moral judgment of the Commission. Bill said the data needed to be in a useful form. If it was, it could inform the guidelines process. Commissioner Nagel asked about resources. She thought Bill should be allocated enough staff to accomplish everything needed for informing both processes.

Chairman Wilkins mentioned that the Research Advisory Committee will have recommendations on these and other matters. He also said the tentative plan will provide a concrete method to obtain input from the RAC.

Judge MacKinnon asked if there was any study examining regional aspects of sentencing. Bill said the past practices study took regional differences into account. Commissioner Nagel asked if Denis had done a similar study regarding the regional differences via the statute. Chairman Wilkins said legislation



is not the answer to the problem of regional disparity, but the guidelines could be drafted to take this factor into consideration. Dave Lombardero suggested looking at state and local statistics for information on regional differences.

Bill Rhodes indicated that he had an additional candidate for the research staff. While he had not yet interviewed her, she came highly recommended. Commissioner Nagel asked if Bill could forward copies of her resume to her and Commissioner Block. Chairman Wilkins asked if everyone agreed that Bill could hire his candidate if he and Kay felt she was qualified. All agreed.

The meeting was adjourned.