

DRAFT

Commission Meeting - May 27, 1986

Chairman Wilkins called the meeting to order. He asked for additions or amendments to the May 13 meeting minutes. When no changes were proposed, Chairman Wilkins proposed to let the minutes stand approved. All Commissioners agreed.

Chairman Wilkins asked Paul Martin for an update on the Corporate Sanctions hearing. Paul stated he had received six positive responses to the mailing: Steve Trott, Assistant Attorney General; John Coffee, professor, Columbia University; Harvey Silets, a corporate defense attorney from Chicago specializing in tax matters; Mark Crane, president of the ABA Anti-Trust section (who will not be speaking on behalf of the ABA); William Brodsky, member of the ABA Sentencing Commission Liason Committee, (who will represent the ABA); and Ralph Nadar or his assistant from the Public Citizen.

Paul mentioned that several groups had declined to participate since their organizations had no official policy on the subject nor on speaking at public hearings. Those organizations were the Chamber of Commerce, National Association of Manufacturers, Business Roundtable, and the National Federation of Businesses. Chairman Wilkins thought the six positive responses were a workable number of speakers.

Paul agreed, but mentioned that this hearing did not have the representation from the business sector that the Commission had hoped for. As an alternative, he suggested contacting one of

the research centers in the area that particularly addresses corporations or corporate sanctions.

The topic of speeches for the sentencing options hearing to be held July 15 was briefly discussed. It was agreed that a number of groups represented similar perspectives and that Paul, Dave Tevelin, and Kay should recommend particular groups for oral testimony. It was determined that someone from the Probation Division of the Administrative Office should be invited to testify as well as someone from the American Civil Liberties Union. Commissioner Gainer was asked to explain the possibility of testimony from the Litigation Strategy Group in the Department of Justice.

The Chairman asked Kay Knapp for a report on the coding instrument for the sentencing practices study. Kay stated that the instrument will be pretested in the next week or two in Philadelphia or Baltimore. Peter Hoffman said the instrument reflected suggestions from staff. He added that he tried to get information to measure prison system impact as well as to obtain information needed for long term research goals. The instrument has been pretested with Commission staff and items that could not be reliably coded were eliminated. The instrument now takes about 25 minutes to complete; Kay noted that she would like that time reduced to 20 minutes. Part I is the case identifying information. The second part of the first page comes from FPSSIS data. If analysis indicates that the FPSSIS data are reliable, the second part of the first page can be eliminated. The

remaining questions strive to obtain information the Commission will need for its research. Kay added that the Administrative Office of the U.S. Courts would also look over the instrument to refine it further.

Judge Breyer asked if the questions were to be answered for each offense, or in multiple offense cases, if the information would be combined. Kay said the total offense behavior is considered. Judge Breyer clarified that when dealing with descriptions or number of victims, does the question apply to one offense or the total of all offenses. He thought the instructions should clarify whether the questions should be answered for each offense or for the combined total offenses. Peter said they were trying to maximize the use of FPIPSIS data and instructions. Some refinement of information will not be captured. That information, however, may be picked up on page two of the document, which asks the evaluator to check each appropriate box. Judge Breyer was interested in getting the answers to the descriptive question for each offense. Commissioner Gainer agreed that a degree of refinement was desirable in research for the guidelines, but practically speaking, not all degrees of refinement could be met. Peter Hoffman added that on complex issues, much information will be obtained from the narrative provided by the probation officer. Judge Breyer suggested explicitly telling the officers what to do so all answers will be uniform.

Chairman Wilkins mentioned that the research agenda is now Commission policy. He noted that if any Commissioners had any questions or suggestions for that agenda to notify him or address the matter at a Commission meeting so that any additional research projects could be incorporated. He noted that the Commission would not want to be in the position come September wanting information that is not available because it was not planned for.

Chairman Wilkins raised the subject of a sentencing philosophy meeting. Commissioner Nagel had compiled a list of possible names to invite. The Chairman asked about the appropriateness of such a discussion and who to invite. Judge MacKinnon stated that the Commission agreed to look into the possibility of such a meeting, and time is of the essence. Commissioner Corrothers added that Congress mandated that that specific topic be addressed. Chairman Wilkins said the subject is part of every discussion on sentencing. He was not sure a meeting on the subject would be very productive. Commissioner Gainer said he thought the meeting was to ask about reconciling different philosophies. Congress specifically mandated four purposes of sentencing and it is important to discuss the points at which those goals conflict. Commissioner Nagel agreed and held that she had compiled the list with that goal in mind. Commissioner Robinson said that although the list was a little lengthy, many proposed speakers may not have much to say about reconciliation of different philosophies, since it would be a

public acknowledgement of the values of different philosophies. Commissioner Nagel said it would be difficult to pre-judge which people would speak. She suggested that she and Kay review the list and narrow it down to five or six people. Commissioner Robinson asked about criteria. The only limitation came from Judge MacKinnon, who asked if federal judges were invited, that they have substantial sentencing experience. Judge Wilkins thought inviting any federal judges would lead to alienation of others who had offered their services, and suggested inviting no judges at this particular meeting. Chairman Wilkins asked the Commissioners to consider this issue, and if any one thought a federal judge should be included, to raise the issue at the next Commission meeting.

Judge MacKinnon suggested discussing the confidentiality of the proposed draft guidelines. Commissioner Robinson stated that he hoped that he and Commissioners Nagel and Block would have a draft to present to the Commission on June 10 for comment. Judge MacKinnon said he was handling the current document with the utmost confidentiality, and would be distressed if an unofficial document not sanctioned by the Commission ever reached the public. Chairman Wilkins agreed that the document should not be revealed to the public until it had been revised. Commissioner Corrothers stated that the Chairman had already directed the Commission to handle the draft discreetly. Commissioner Corrothers mentioned that Kay Knapp should insure that the staff

is fully aware of this mandate. Judge MacKinnon proposed the following resolution:

The preliminary draft sentencing guidelines will not be disclosed, except to Commission members and full-time staff, without the express consent of the Chairman, or without the express approval of the Commission.

Commissioner Nagel requested that the Commissioners be notified if the guidelines were to be discussed at length with outsiders. Chairman Wilkins said he will record any requests to disclose the guidelines in detail, but that broad concepts contained in the draft could be discussed. The proposal was voted on and passed.

The meeting was adjourned.