

The following persons attended the U.S. Sentencing Commission Meeting on Wednesday, June 10, 1987.

Commissioners

William W. Wilkins, Jr., Chairman
Michael Block
Stephen G. Breyer
Helen G. Corrothers
George E. MacKinnon
Ilene H. Nagel
Paul H. Robinson

Staff

Suzanne Conlon, Executive Director
Marguerite Abbruzzese
Charles Betsey
Rusty Burrese
Doug Cox
Peter Hoffman
Debbie Lister
David Lombardero
Paul Martin
William Rhodes
Sharon Turner
Camille Williams
Michael Zoeller

Commission Meeting Minutes - June 10, 1987

Chairman Wilkins called the meeting to order at 1:15 p.m., on Wednesday, June 10, 1987.

The Chairman stated that blank worksheets and illustrated cases will be mailed out today using the same distribution list as the guidelines.

Judge Wilkins stated that Judge David Mazzone, Chairman of the Education Committee of the Judicial Center, and representatives of the Federal Judicial Center met with the Commission on June 8 for the purpose of a preliminary discussion on training probation officers and judges. These programs must be conducted in a relatively short period of time after the guidelines go into effect in November. The Judicial Center and Judge Mazzone's Education Committee reported that a number of alternatives were under consideration.

The Judicial Center representatives proposed that a packet be prepared which would include various documents, such as worksheets, instruction sheets, illustrative cases, and a step-by-step approach to the use of the guidelines, accompanied by an instructional video tape. The packet would be mailed to each judicial district throughout the country. Before the packet is used, a representative from each judicial district (most likely a probation officer) would be trained on use of the guidelines. This is a "train-the-trainer" approach. The idea is that the trained person would be there to assist in any explanation during training. This person could walk the judges and probation officers through the guidelines. The initial training would be an intensive two-day workshop, followed up by training programs at the various judicial workshops as they are scheduled.

Judge Wilkins stated that if the Commission approved the concept of this approach, it would be a joint effort with the Federal Judicial Center. The Commission would use Judicial Center resources and would have input and authority to object to any particular approach if the Commission did not think it appropriate. If approved, the Commission needs to commit in principle to an expenditure of financial resources to pay for this. The Judicial Center would use its resources for production costs and related expenses, but the Commission would be responsible for mailing the packets and the considerable travel expenses of the trainers and program participants.

Judge Wilkins stated that he had talked with Russ Wheeler of the Judicial Center Staff on June 9, 1987, who had estimated the cost of the Commission's involvement in the training program at \$868,000 or possibly less.

The Commission discussed the cost of the training effort, the available funding in the Commission's budget, the alternative programs, the timing involved, and other aspects of the proposed cooperative effort with the Federal Judicial Center.

Judge MacKinnon emphasized the need for ongoing instruction.

Judge Wilkins stated that the Judicial Center is producing a thirty-minute video tape using Rusty Burress giving step-by-step instructions on the worksheets. This tape will be mailed out to all probation offices around the country. In addition, Suzanne Conlon is coordinating a testing program using probation officers and Commission staff. This effort will involve probation officers from around the country and will have training benefits.

Judge Breyer moved to approve \$868,000 as a ceiling for the Judicial Center to operate the training program. No vote was taken.

The Commissioners discussed their role in the Judicial Center's development of the training program, the cost and adequacy of the program, as well as other concerns related to training.

Judge MacKinnon moved to approve \$868,000 as a rough estimate of costs. No vote was taken.

Judge Wilkins stated that the Commission will not spend \$868,000 without knowing the nature of the expenditures and emphasized the ongoing consultation the Judicial Center is to maintain with the Commission.

Commissioner Nagel suggested that problems may arise if the Commissioners did not participate in the development and implementation of the training plan.

Commissioners Block and Nagel suggested a joint development with the Judicial Center for expenditures up to \$868,000. The Commission would provide funds as necessary. Commissioner Nagel encouraged the Commission not to commit itself to a plan that was not sufficiently detailed unless it retained some control.

Judge Breyer moved that the Commission approve in principle the development of teaching and implementation programs for the sentencing guidelines by the Federal Judicial Center, working with the Commission, understanding that:

- (1) The programs may cost up to an estimated \$868,000.

- (2) The programs and their implementation will be developed as a joint venture by the Commission and the Center.
- (3) The Commission will supply information, expertise, and personnel as necessary.
- (4) The Commission will retain power of approval and disapproval over individual programs, their details and their implementation.
- (5) The Commission will authorize expenditure of funds only after reviewing and approving the individual programs.
- (6) The Chairman will be the liaison.

Judge MacKinnon seconded the motion, which was unanimously adopted.

Judge Wilkins stated that the Commission will meet next Tuesday, June 16, at 10:00 a.m. The Chairman stated that he received a letter marked confidential and he assumes that some of the Commissioners have received this letter. He stated that this is a personnel matter and he suggested discussing the matter at the next meeting. He would ask Carol Sefren, the acting personnel officer, to attend the meeting. The Chairman further stated that he would ask Ms. Sefren, who has been working with Suzanne Conlon on personnel matters, to give the Commission a report on the status of her work in developing personnel policies and recommendations for the Commission.

Commissioner Corrothers asked if personnel matters and an executive session were definite items on the agenda. Judge Wilkins stated that was not definitely planned, but if a Commissioner requests, the Commission will meet in executive session.

Judge MacKinnon stated that the Commission should have an outside opinion on the constitutionality of the statute creating the Commission. Commissioner Nagel and Judge Breyer supported the idea. Judge Wilkins stated that suggestions for outside counsel be submitted by Tuesday, June 16.

Commissioner Block submitted a new table for review in connection with Chapter Seven of the Supplementary Report (Prison Impact). (See attached).

In response to a question from Commissioner Nagel, Judge Wilkins discussed the timetable for Commissioner comments on the supplementary report. He suggested that Commissioners give comments to David Lombardero. There will be an understanding that if the comments are editorial in nature, or do not change substance, that Mr. Lombardero is given authority to make the change. Furthermore, if there is no objection from Commissioners on the substance of the report, David Lombardero may start the finalization process by the end of the week. This procedure would permit the staff to put the package together over the weekend, assuming there was no objection to substantive matters. The report could then go to the printer.

Judge Breyer proposed that a footnote be added to Chapter 7 concerning how many person-years there are likely to be in community treatment centers or in intermittent confinement, compared with the present.

Commissioner Block commented on the prison impact draft. He encouraged Commissioners and staff to comment on areas where Chapter Seven should be clarified.

Commissioner Block further suggested that staff members should be thanked in the report. He commended Bill Rhodes and all staff for their hard work.

Commissioner Corrothers suggested that all Commission staff be named in the report in recognition of their hard work.

Judge Wilkins agreed that all Commission staff be included, and also consultants such as John Shadegg, Professor Schulhofer and others. Commissioner Block moved that names of all personnel involved in working on the guidelines project be listed in the report. Commissioner Nagel seconded. The motion passed with a unanimous vote of 7-0.

Judge Wilkins emphasized that all comments are due by Friday, June 12.

Commissioner Block stated that GAO representatives are calling about the prison impact study. Commissioner Block informed them today, June 10, 1987, that the summary of the prison impact study was being presented to the Commission today. GAO requested a copy after the study was presented to the Commission. Judge Wilkins stated that David Lombardero was authorized to send the GAO a photocopy of the draft report instead of waiting until publication.

Judge Wilkins stated that there will be a Commission meeting next Tuesday, June 16, 1987 at 10:00 a.m. The meeting was then adjourned.