

COMMISSION MEETING

DECEMBER 16, 1987

The following persons attended the U.S. Sentencing Commission Meeting on Wednesday, 16, 1987.

Commissioners

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

Staff

David Lombardero
Peter Hoffman
John Steer
David Anderson
Sylvia Voreas
Phyllis Newton
Charles Betsey
Ronald Weich
Bill Rhodes
Camille Williams
Alan Chaset
Paul Martin
Alta L. Cook

Guest

Roger Pauley
Department of Justice

Chairman Wilkins called the meeting to order at 10:00 A.M.

The Commission discussed a proposed Agreement between the **Administrative Office** of the United States Courts and the United States Sentencing Commission concerning a working arrangement for implementation of the Guidelines for Sentencing recently published by the Commission.

The Agreement was then discussed and during the discussion, Commissioner Wilkins asked if there was approval for signing the Memorandum of Understanding.

A motion was made by Judge MacKinnon that Chairman Wilkins sign the Agreement with the Administrative Office on behalf of the Commission. The motion was seconded by Commissioner Corrothers and was unanimously approved by a vote of 6-0. Judge Breyer was not present for the vote.

Telephones

A motion was made by Commissioner Nagel to change the telephone system. The motion was seconded by Commissioner Block and was unanimously approved by a vote of 6-0. Judge Breyer was not present for the vote.

New Staff

Mr. John Steer, General Counsel introduced to the Commission Mr. Ron Weich, formerly of the District Attorney's Office in New York, who has joined the legal staff of the Commission.

Budget

The Chairman called upon Mr. Steer to discuss various aspects of the Commission's budget.

Mr. Steer told the Commission that the budget for Fiscal Year 1988 remained unsettled pending passage of an appropriations bill by the Congress of the United States. He informed the Commissioners that the Commission had spent approximately \$3 million in FY 1987, and that in conversations with the House Appropriations Committee staff he had stressed need for an increase, rather than a cut in the Commission's budget for FY 1988 to accomplish guidelines implementation, including training. The Commission requested the preparation of a summary of expenditure on training for the past fiscal year. Mr. Steer estimated expenditures at \$750,000. However, Judge Wilkins stated that the Federal Judicial Center's estimates are higher. It was agreed that the Commission review any proposal for FY 1989 before it is submitted to the AO.

Data on Guideline Sentencing

Mr. Steer reported that the number of defendants sentenced under the guidelines to date is not yet available. A lengthy discussion ensued on how information on sentencing is to be transmitted to the Commission. It was generally agreed that information required by the Commission would be readily available from the AO in all but the smallest minority of cases. There was discussion as to the means of obtaining the data in the exceptional situation, especially transcripts of the judgment in the district court, and the court's findings of fact. Charles Betsey and Bill Rhodes discussed some of the problems involved in gathering the data. Judges Breyer and MacKinnon volunteered to assist in working out any difficulties with the AO.

Expert System

Mr. Rhodes reported that the Commission has provided the Expert System to people who have requested it, principally in the public sector--mostly probation officers and judges. He recommended that the Commission continue to enlist the assistance of probation officers and judges to refine and improve the system. He stated that the Federal Judicial Center is going to put together a session with the Regional Directors and Probation Officers, and that the Commission will participate fully with them.

AO Implementation of New Reporting System

Mr. Rhodes reported on the AO's Implementation of a new reporting system, stating that some tentative agreements have been established so that the Commission can track the appeals concerning the guidelines and also be aware of any written opinions that come out of those appeals.

There followed a long discussion among several of the Commissioners and Bill Rhodes on the procedures by which the Research Staff planned to collect information on how the guidelines are being implemented. Several Commissioners expressed strong interest in being certain that the correct documents were collected.

Letter from Michael Quinlan, Bureau of Prisons

The Chairman asked John Steer to brief the Commission on a letter which had been received from Michael Quinlan, Director of the Federal Bureau of Prisons, regarding Community Confinement and Intermittent Confinement. Mr. Steer noted that the Bureau has interpreted Intermittent Confinement in a way that seems to cause no problem under the guidelines, but that their

interpretation of Community Confinement may cause a problem. He recommended that the Community Confinement issue be resolved at the next scheduled Commission meeting. The Chairman directed Mr. Steer to prepare a recommendation and distribute it to the Commissioners.

Annual Report

Mr. Steer reported that the Commission is required by law to issue an annual report to the Congress. Although no date is specified, the Commission's prior practice has been to submit the document in late January or early February. Paul Martin is coordinating the project. The majority of the report is generally taken up with fiscal data, but the Commission agreed that this year the report should provide substantive information on the work of the Commission.

Update on Training and the Hot Line

Phyllis Newton reported that she had prepared a calendar of training assignments to help determine which districts might need additional assistance. She reported that most in-district training will be completed this week, and that a few more sessions would be held in January. She stated that the Commission staff would be meeting all day on January 4, 1988, to set training priorities. She also stated that they are going to send out a survey on the effectiveness of prior training sessions. She promised that she would have a full report for the Commission in January discussing past training efforts and future training needs. Ms. Newton also added that Ms. Candace Johnson had been hired for the hot line and that two or three additional staff would be hired.

There was a general discussion of the public hearings planned for March 22-23. The meeting stood in recess at 11:45 for an Executive Session. It was resumed at 2:00 p.m. for discussion of proposed emergency amendments to the guidelines.

§§ 2L1.1 and 2L1.2

Peter Hoffman explained that there was a problem from the Commission's standpoint in the disparity between 2L1.1 (Smuggling, Transporting or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States), which is not in keeping with the gravity of the offenses as Congress described them. §2L1.1 results from the 1986 Immigration Act and addresses a five year felony for a first offense for each alien the statute specifies. The statutes covered in §2L1.2, are two year felonies for the second offense. The guidelines reverse this severity and give a greater base