

COMMISSION MEETING  
MARCH 1, 1988

MINUTES

The Chairman called the meeting to order at 10:07 a.m.

Sid Moore introduced Mike Rahill who has joined the Commission as special assistant to the Director.

Linda Clemons outlined a plan to convert the hearing room into a library, conference room and extra office. After discussing alternatives the Commission agreed that Ms. Clemons and the staff should pursue the best use of space.

Amendments to the Guidelines

The Chairman discussed proposed amendments to the guidelines and whether amendments should be submitted to Congress this May or delayed a year. Commissioner Corrothers asked that the staff review all areas of the guidelines without restriction and submit a list of amendments including the effect that a one year delay would have. Commissioner Block stated that there was insufficient time for the staff to review the entire guidelines in a responsible manner and insufficient field data to determine what were problem areas.

Chairman Wilkins suggested that no conceptual changes be made, rather, the amendments should clarify problems found on the hotline that the Commission could agree on by the deadline. Judge Breyer agreed to review amendments, but noted that he had not yet seen any proposed amendments that could not wait until next year.

Commissioner Nagel proposed that the staff prepare a guidelines manual with all possible amendments highlighted and time could be set aside to review all these changes and determine which the Commission feels are most important. Judge MacKinnon expressed his reluctance to make technical changes when there is much substantive work to be done.

Commissioner Corrothers moved to direct the staff to identify possible amendments providing reasons why a change is needed and what effects a delay would have. Judge Breyer and Commissioner Nagel seconded the motion. The motion passed by a vote of 5-0. Commissioner Block abstained.

#### Status of Litigation

Chairman Wilkins discussed the current status of litigation involving the constitutionality of the guidelines. He stated that he had received assurance from Mr. Burns that the Justice Department will concede that the Commission could survive as a judicial agency if necessary to maintain its constitutionality.

John Steer distributed and discussed Judge Enright's February 29 opinion finding the Commission constitutional. Judge Breyer asked Paul Martin to contact major newspapers concerning the opinion. Commissioner Nagel recommended that the legal staff concentrate on countering the numerous minor arguments raised in Alan Morrison's brief.

John Steer summarized the outcome of litigation so far and discussed the issue of expedited review to the Supreme Court. He stated that Professor Bator and the Department of Justice support

expedited review. Judge Breyer moved to have the Commission write letters to the Solicitor General and the Attorney General encouraging expedited review. Judge MacKinnon and Commissioner Nagel seconded the motion. The motion passed by a vote of 6-0. Judge Breyer stated that he would look into an alternate statutory method of expedited review.

#### Legislative Amendments

Chairman Wilkins discussed various proposals for legislative amendments. The first amendment would eliminate the need for a judge to submit written reasons for choosing a specific sentence within the guideline range for purposes of data collection. Bill Rhodes noted that Judge Becker had requested this change. Judge MacKinnon stated that the amendment would only serve to lessen the workload of the court clerk, not the judge.

Chairman Wilkins noted that the second proposal concerning the standard of appellate review had been discussed at an earlier meeting and approved. He then discussed the third proposal concerning the Commission's authority to hire outside counsel. Ron Weich stated that the rationale for the proposal could either be seen as providing the Commission with authority to defend itself from constitutional challenges, or with the authority to hire outside counsel. The Commission agreed to approve the proposal with a revised rationale.

Chairman Wilkins noted that the sixth proposal was a technical change and discussed the seventh proposal concerning conditions of supervised release. Judge Breyer asked that the

seventh proposal be clarified.

Commissioner Nagel moved to approve legislative proposals 1, 2, 3, 6 & 7 and to send them on to the Administrative Office of the Courts and the Department of Justice for comment. Judge Breyer seconded. The motion passed by a vote of 6-0.

#### Field Experience

Charles Betsey reviewed the amount of data collected from the field. He also discussed a draft of the Model Statement of Reasons for Imposing Sentence developed for Judge Becker's Committee on Criminal Law and Probation. Commissioner Block expressed his desire to see more field data and discussed reasons for why the amount of data received was so much lower than the amount projected. Judge Breyer moved to approve the staff draft of a memorandum concerning the documents to be sent to the Commission with an amendment changing "reasons should be prepared by the Judge's staff" to "reasons should be prepared by the court." Commissioner Block seconded the motion. The motion passed by a vote of 6-0.

#### Other Matters

Bill Rhodes presented the Commission with an update on the Expert System. He stated that a demonstration was being given today in Philadelphia to Judge Becker with hopes of gaining approval for full-scale testing.

Chairman Wilkins reminded the Commission about the public hearing to be held March 22nd in the ceremonial courtroom. Paul Martin distributed a copy of the witness list to the Commission.

### Commission Minutes

Chairman Wilkins discussed the Commission's process of taping and producing minutes of the meetings. Judge Breyer stated that Appellate Courts he had spoken with retain tapes of meetings for no more than six months or until the case has been finally disposed. He noted that the purpose of tapes was only to serve the court and were maintained only as long as the court needed. Commissioner Corrothers suggested that each meeting begin by approving the minutes of the prior meeting. Judge Breyer moved to preserve tapes of meetings until the minutes are written and approved, but in no event less than six months from the date they were recorded, unless there is special reason to preserve them longer. Commissioners Nagel and Block seconded. The motion passed by a vote of 6-0.