

## U.S. Sentencing Commission Meeting

May 19, 1988

Chairman Wilkins called the Commission to order at 9:30 a.m.. Present were Commissioners Baer, Block, Breyer, Corrothers, Nagel, MacKinnon, and Gainer; guests Vicki Portney of the Justice Department and Bill Toney of the Bureau of Prisons; Staff Director Sid Moore and other members of the Sentencing Commission staff.

John Steer gave a status report on litigation. He indicated that, at the District Court level, approximately 68 judges have ruled the guidelines unconstitutional while 47 have upheld them. In terms of district courts, counting multiple judges as one court where the result is uniform in that district, 28 courts have invalidated the guidelines, while 22 courts have upheld them.

In addition, Mr. Steer reported that the Solicitor General's petition to the Supreme Court is expected to be filed on May 19th. Subsequent filings are expected to be made by the Public Citizen Litigation Group and also by the Sentencing Commission. The Solicitor General's office expects the petition to be considered by the Supreme Court during their mid-June conference. In the event this decision is favorable, briefing will occur over the summer with the argument in the early fall.

John Steer next reported on the status of sentencing legislation. The legislative package has been sent to the House and Senate.

Charles Betsey gave a status report on the Monitoring Project. While approximately 500-600 defendants have been sentenced under the guidelines, the Commission has received only some 325 reports. Mr. Betsey expects to complete a preliminary analysis of these cases by mid-July.

### Community Confinement

The Commissioners discussed the meaning of "community confinement" and, more specifically, whether "halfway" houses under contract to the Bureau of Prisons are sufficiently confining to be considered community confinement. Commissioner Corrothers pointed out that halfway houses were established to serve specific purposes and noted the impossibility of accurately evaluating current community facilities without also considering the purposes for which they were designed. Understanding the purposes of these facilities is critical to assessing the Commission's future needs. In addition, questions arose to who should decide the meaning of "community confinement" and its

application and whether the Commission should try to clarify the wording to emphasize the importance of exact equivalency between the time served in a community confinement and that served in a prison.

Motion #1 by Commissioner Block

To devote staff time to the production of a position paper on the Commission's meaning of "equivalency" in terms of community confinement.

Seconded by Commissioner Nagel. Motion passed.  
Voting Yea, 4: Block, Nagel, Corrothers, Wilkins  
Voting Nay, 2: Breyer, MacKinnon

Motion #2 by Commissioner Breyer

To include in the staff report, approved in Motion #1, a study on home detention and a determination of where it might be useful.

Seconded by Commissioner Block. Unanimously adopted.

Motion #3 by Commissioner Breyer

To devote staff study, and include in the report, recommendations concerning use of intensive probation.

Seconded by Commissioner MacKinnon.  
Voting Yea, 4: Wilkins, Breyer, MacKinnon, Corrothers  
Voting Nay, 2: Nagel, Block

Motion #4 by Commissioner Block

To amend Commissioner Breyer's motion to include sentencing "purposes" in the staff study.

Seconded by Commissioner Breyer. Unanimously adopted.

Motion #5 by Commissioner Nagel

To include in the staff study an examination of when probation is a viable sentence for punitive, deterrent and incapacitative functions.

Seconded by Chairman Wilkins.  
Voting Yea, 4: Wilkins, MacKinnon, Nagel, Block  
Absent, 2: Breyer, Corrothers

Eric Simon gave an update on the "expert" system, now formally known as "ASSYST." He reported that test copies would soon be ready to send to every district.

Commissioner Block gave a status report on organizational sanctions. He reported that: (1) the revised portion of the original paper by Mr. Parker is expected by May 19, and Mr. Parker would like any comments the Commissioners have; (2) a report on current practices will be available before the next Commission meeting; (3) a proposal will be presented, hopefully by next month, on simplifying the guidelines for organizations; and (4) Commissioner Nagel and Jack Coffee are working on an alternative proposal on probation.

Phyllis Newton reported on training. The two films by the FJC are now available for viewing in-house. Ms. Newton explained that the Sentencing Hearing film presents a potential concern in that it offers a worst case scenario. After some discussion by Commissioners, it was suggested that Commission training staff should write a script to be used as an introduction to the film, explaining that the film portrays an unusually difficult case rather than a typical proceeding. In addition, the Commission approved the concept of separate follow-up training programs for judges and probation officers due to the different types of problems each faces.

Motion #6 by Commissioner MacKinnon

To send softback guidelines books that include the new amendments to the field.

Seconded by Commissioner Wilkins. Unanimously adopted.