

COMMISSION MEETING

JANUARY 21, 1986

Minutes of the January 21, 1986 U.S. Sentencing Commission
Business Meeting

The meeting was called to order at 10:07 a.m. by Chairman William W. Wilkins, Jr.

The meeting was held in the conference room of the U.S. Sentencing Commission. The following Commissioners and staff members were present:

William W. Wilkins, Jr., Chairman
Benjamin F. Baer, Commissioner
Michael K. Block, Commissioner
Stephen G. Breyer, Commissioner
Helen G. Corrothers, Commissioner
Ronald L. Gainer, Commissioner
Ilene H. Nagel, Commissioner
Kay A. Knapp, Staff Director

Judge MacKinnon was attending the Criminal Law Committee Meeting of the Judicial Conference in Tucson, Arizona. Chairman Wilkins informed the Commissioners of an invitation received requesting the participation of the Commissioners at the Sentencing Institutes to be held 3/16-19/86 (Durham, North Carolina) and 4/20-23/86 (Phoenix, Arizona). Judge Tjoflat requested that if at all possible the members of the Commission attend the Sentencing Institutes in order to meet with the Judges from the Second, Sixth and Ninth Circuits and to participate in panel discussions. Chairman Wilkins stated that a visit to an institution is included in the agenda for the Sentencing Institutes.

Chairman Wilkins asked if there were any Commissioners interested in attending the Sentencing Institutes. Commissioner Breyer stated that there is a public relations aspect connected with Commissioners attending the Institutes. Commissioner Corrothers inquired if the usual format for the Sentencing Institute will be used. Commissioners Nagel and Breyer stated that they would like to have discussions regarding the guidelines and related matters. They also stated that they thought it would be good for the Commissioners to attend. Commissioner Baer stated that the format has already been set. He felt it would be good for the Commissioners to attend to see how the Judges think and work and for the Commissioners to use the opportunity to learn. Chairman Wilkins and Commissioner Gainer agreed that it would be valuable to go and attend and to listen.

Commissioner Block stated that he has never attended a Sentencing Institute and would like to attend. Commissioners Block, Corrothers and Nagel stated that they would like to attend the Sentencing Institute in April, but could possibly attend in March. Commissioner Baer will be attending the Sentencing Institutes representing the U.S. Parole Commission. Commissioner Gainer will be attending the April Sentencing Institute. Commissioner Robinson will plan to attend the March Sentencing Institute.

Chairman Wilkins reminded the Commissioners to be sure and submit their completed questionnaires for Dimensions Travel Agency to Elizabeth H. Williams. Elizabeth Williams will set up an account for travel arrangements with the Dimensions travel Agency as soon as all questionnaires are received.

At this time, Chairman Wilkins asked L. Russell Burress to come into the meeting and report to the Commissioners on the institutional trip being planned with the Federal Bureau of Prisons. Mr. Burress is handling the details for the trip and has been working closely with the Federal Bureau of Prisons staff. Mr. Burress stated that the trip will include visits to three institutions: USP, Lewisburg (level 5) and FPC, Allenwood (level 1) located in Pennsylvania, and FCI, Otisville (level 4) located in New York. A plane will be provided by the Coast Guard and will seat approximately 18 people. All the Commissioners and possibly a limited number of key staff members will be able to attend. The trip is scheduled for March 11, 1986, from 7 a.m. to 7 p.m.

Chairman Wilkins asked if there were any Commissioners that would not be able to attend or did not want to go. Commissioner Corrothers stated that because of her extensive familiarization with prisons, if there is a staff member that wishes to attend, she would be willing to give up her seat. Commissioner Gainer will be out of the country and will not be able to attend. All other Commissioners will be attending. Kay A. Knapp, Staff Director, will be attending.

Chairman Wilkins asked Ms. Knapp to make a list of the staff members who would like to attend. In the meantime, Mr. Burress will find out exactly how many seats are available to the Sentencing Commission. Chairman Wilkins stated that it would be a good idea to arrange for transportation for all Commissioners and staff from the office to the airport.

At this time, Chairman Wilkins asked Denis J. Hauptly, General Counsel, to attend the meeting. Mr. Hauptly provided copies of a memorandum he prepared to Kay A. Knapp, Subject: Attorney Positions, dated January 17, 1986 to all Commissioners. The memorandum provided a brief background of each person being considered for attorney positions. He briefly discussed each person listed. At this time, there are three positions to be filled. Commissioner Gainer hoped there would be one position to fill with a person with extensive federal prosecutorial experience, possible at the GS 11 or 12 level. Commissioner Gainer will try to come forth with two or three names with prosecutorial experience.

Commissioner Breyer moved that the Commissioners give the Chairman the authority to move ahead in the hiring for these positions. Commissioner Corrothers seconded the motion. There

were no objections to the motion. Commissioner Robinson stated that he wanted people with criminal law experience and academic backgrounds. Some of the projects require those qualifications. Chairman Wilkins will act according to the motion and will do so on the advice of Kay Knapp and Denis Hauptly. Commissioner Gainer asked that Commissioner Robinson's ideas be kept in mind when making the decisions.

Chairman Wilkins asked the following staff members to join the meeting at this time (10:35 a.m.).

Alan Chaset, U.S. Parole Commission
 Mark A. Cohen, Senior Researcher
 Paul K. Martin, Communications Director
 David L. Tevelin, Deputy General Counsel
 Elizabeth H. Williams, Special Assistant to the Staff Director

Chairman Wilkins asked Commissioner Corrothers, as the head of the Office Administration Subcommittee, to give a report.

Commissioner Corrothers stated that she saw the involvement of the Subcommittee to assist in the effectiveness and efficiency of office operations. The extent of their involvement would be in conjunction with the Chairman and also in conjunction with the involvement of Kay Knapp. Commissioner Corrothers will discuss organizational management and managerial suggestions with the Commissioners. Commissioner Corrothers suggested two items for mini-projects for Ms. Knapp: (1) Obtain office procedures from other independent agencies regarding vacations and other matters relating to their office procedures. (2) Contact the Administrative Office of the U.S. Courts for the procedures currently utilized by the Judiciary to establish (or develop) and approve policies. Formats utilized should also be noted. This material should then be reviewed to see how other agencies establish and approve policies and see what formats are utilized. Commissioner Corrothers asked that after review of the material, recommendations be presented to the Commission.

Commissioner Corrothers asked Paul Martin to collect job descriptions from other agencies in relation to his position. This information should include what their reporting requirements are and what the basic job requirements are.

Chairman Wilkins stated that it is a good idea to have written policies. Commissioner Corrothers stated that we should make sure that we establish a grievance system early on which will eliminate future personnel problems.

Ms. Knapp stated that she appreciated Commissioner Corrothers assistance. Ms. Knapp stated that we should use existing policies to the extent they are applicable to us.

Ms. Knapp stated that one of the areas in which a policy needs to be written for leave - vacation and sick. She has checked with the Administration Office of the U.S. Courts and they do have a seniority system established. Four hours per pay period for sick leave is awarded for all employees; four hours per pay period for annual leave is awarded for up to three years service; six hours per pay period is awarded after three years; and eight hours per pay period is awarded after 15 years. Ms. Knapp would like to adopt this same system as soon as possible.

Chairman Wilkins suggested that Ms. Knapp and Commissioner Corrothers put together the policy for this Commission. He would support whatever is appropriate.

Commissioner Block agrees totally with whatever they come up with, however, would suggest that we not take the bad part of the federal system already established.

Commissioner Corrothers stated that we should develop policies on how we will run this office and staff. After the policies are drafted they will be presented to the Commissioners for review and discussion and be to be voted on. In the interim, Ms. Knapp and Commissioner Corrothers will make policy decisions regarding employees per Chairman Wilkins.

Commissioner Nagel advised the Commissioners that she met with Elizabeth Williams and Janet Fitzpatrick regarding the setting up of the library for the Commission. Commissioner Nagel asked the Commissioners to communicate their desires about the library, computers, etc., to her within the next two weeks.

Commissioner Breyer stated that he will give the Hoffman material, which he has in his office in Boston, to the Commission as long as the Commission provides for the transportation of the material.

Commissioner Block introduced David A. Lombardero, Special Counsel, and Mark A. Cohen, Senior Researcher, to the Commissioners.

Chairman Wilkins asked Commissioner Breyer to give a report on the Offense Characteristics Subcommittee. Committee Breyer passed out a handout to all Commissioners (copy attached). This information comes from a meeting held with a large number of people from outside groups. The purpose was to make them aware of the fact that we want their input and explain that we are asking for that contribution. We do not want consensus but want information that is useful. Copies of the list of attendees were given to each Commissioner (copy attached).

Commissioner Robinson has joined the Offense Characteristics Subcommittee.

Commissioner Breyer first discussed approaches. There are four tasks to offense rating (1) naming; (2) grouping; (3) ranking; and (4) deciding.

Denis Hauptly feels there is a fifth task - between grouping and ranking and that is data gathering. Dave Tevelin put together the Comparative State Offense Severity Ranking and Mr. Hauptly provided all Commissioners copies (copy attached).

Commissioner Robinson feels that Commissioner Gainer's system is cleaner, more analytical and will cover anything that comes down the road. However, it is harder to do at this time.

Denis Hauptly asked if the consensus is that cleaning up the offenses is appropriate as long as judgments about seriousness are awarded. No objections were voiced.

Commissioner Gainer feels that his efforts and the efforts of Commissioner Breyer could go on simultaneously.

Commissioner Breyer asked if it was the consensus in the room to: (1) Clean up offenses - to state names properly and (2) Develop a memorandum with a list of elements.

Commissioner Robinson suggested that all irrelevant material be removed then proceed to simplify: (1) commonality of elements; (2) seriousness of offense. Commissioner Breyer named five tasks: naming, grouping, data gathering, ranking and dividing.

Commissioner Gainer requested that on the large sheets (for the benefit of the non-lawyers and lawyers) defining the state crimes such as Murder I and II. Dave Tevelin suggested a table be added to the sheets with these definitions.

Commissioner Robinson stated that the Commission would need to know what the distinctions are between the offenses Murder I and II because if it was important for the state to break down the different charges then it is important to the Commission to know the difference. Commissioner Breyer suggested that they proceed on the literature search. Commissioner Nagel suggested that the Commission obtain evaluation of the state guidelines by the prosecutors.

Commissioner Robinson would like to start thinking about how the five sources are going to generate a ranking. He stated the Commission must rank the sources - objective sources plus input. Commissioner Nagel stated that the Commission should stay away from information ranking the sources be level of trust, reliability, or validity. Commissioner Corrothers liked the idea of ranking according to the different information sources.

Commissioner Breyer stated the timetable for the next meeting will be to have generated the elements chart, literature search (may need another person), cleaning process, looking at actual sentences served. Chairman Wilkins will ask for a report at the 2/11 Commission meeting.

Commissioner Breyer stated when we are finally going to classify we need to have the prosecutor's practical experience. Possibly a two-day conference with Section Chiefs from Department of Justice and probably other agencies. This conference should take place sometime in March. Chairman Wilkins mentioned that Paul Martin is putting together a list of defenders. Chairman Wilkins asked if we need to include other groups such as District Judges, Circuit Judges? Commissioner Gainer asked if they should be brought in all at the same time or in different groups. Chairman Wilkins asked that Commissioner Breyer and Paul Martin get together to decide on the groups.

Commissioner Nagel would like to get with Department of Justice Sections Heads and Executive Office of the U.S. Attorney's Advisory Committee in order to educate the Commission and staff.

Ms. Knapp stated that it would be a good idea to keep the number down - probably one or two prosecutors, one judge, etc.- approximately five people per group. At this time, it would be better that the Commission meet with small groups instead of a 50 people member meeting. Chairman Wilkins wants coordination with Paul Martin at the time people are being invited to the conference.

The meeting adjourned at 12:45 p.m. to resume at 1:30 p.m. for Commissioner Block's Subcommittee report.

The meeting was called to order at 1:35 p.m. by Chairman Wilkins.

The following Commissioners and staff members were present:

William W. Wilkins, Jr. Chairman
Benjamin F. Baer, Commissioner
Michael K. Block, Commissioner
Stephen G. Breyer, Commissioner
Helen G. Corrothers, Commissioner
Ronald L. Gainer, Commissioner
Ilene H. Nagel, Commissioner
Paul H. Robinson, Commissioner
Kay A. Knapp, Staff Director
Denis J. Hauptly, General Counsel
L. Russell Burress, U.S. Probation Officer on Assignment to
Commission

(member present continued)

Alan Chaset, U.S. Parole Commission
Mark A. Cohen, Senior Researcher
David A. Lombardero, Special Counsel
Paul K. Martin, Communications Director
David I. Tevelin, Deputy General Counsel
Elizabeth H. Williams, Special Assistant to the Staff
Director

Chairman Wilkins asked Commissioner Block for his comments on the Subcommittee for Offender Characteristics. Commissioner Corrothers stated that she would like to serve on more committees, and, if possible, scheduling to be coordinated in such a way that she could attend all meetings. Commissioner Block suggested that schedules be given to Kay Knapp so that days and times could be scheduled.

In terms of setting out tasks in conjunction with the Committee, Commissioner Block held a meeting last week and has discussed with various staff: (1) enumerate all of the potential categories - should be as inclusive as possible; (2) group categories; (3) generate information for these -- what offender characteristics are used in other guidelines -- what are the relevance of various characteristics; (4) the limitation on the use of characteristics; and (4) selection of the characteristics. The purpose being enough information and structure as a whole for the Commission.

Commissioner Block handed out the following: (1) Offender Characteristics Part I (from the black book); and (2) Supplementary List - Organizational Offender Characteristics.

Commissioner Block asked Commissioner Robinson to summarize how the offender characteristics at which are contained in the black book were developed.

Commissioner Robinson stated that brainstorming sessions were held with Department of Justice personnel, Peter Hoffman, Rusty Burrell, and Marion Metcalf. There was an attempt to organize the offender characteristics. The characteristics were then documented; a more elaborate description was prepared along with general comments. They also took this list and categorized the offenses into larger groups. Deterrence and incapacitation characteristics may not all be included. Commissioner Block encouraged staff to add to the offender characteristics list. Commissioner Nagel suggested taking the Administrative Office of the U.S. Courts code book data and research on judicial sentencing practices in order to obtain other offender characteristics.

Discussion issued over what constitutes an offense versus an offender characteristic. Chairman Wilkins stated that offense

characteristics are characteristics which could contribute to the offense (anyone could have); offender characteristics would only be unique to the offender. Commissioner Block stated offense characteristics would be the seriousness of the harm. Commissioner Nagel stated that it could be that there are some that would be listed under offense and offender characteristics and would have to explain the definition.

Commissioner Robinson stated that it would be good to take into account all characteristics and note that is not a relevant factor. Adequate consideration should be given to all characteristics. A possible policy statement could be established leaving it up to the judges' discretion. David Lombardero suggested that we might want to specify that these factors are so unusual that we have not included them into the guidelines but leave it up to the discretion of the judge.

Commissioner Block asked for other sources is building this list. Commissioner Breyer suggested that people who run prisons should be asked about offense characteristics - Wardens. Chairman Wilkins and Commissioner Corrothers both thought that this would be a good idea and should be dealt with early on. Commissioner Breyer suggested a letter be sent asking: What particular offense characteristics should judges take into account (and anything else). Mailing should cover Wardens (in all regions).

Chairman Wilkins stated that prior records should be in the letter for an example of an offense characteristic. Commissioner Corrothers suggested that the letter also be sent to the Chief U.S. Probation Officers.

Chairman Wilkins adjourned the meeting until 9:30 a.m. on 1/22.

Chairman Wilkins brought the meeting to order at 10:40 a.m. This meeting is a continuation of the Offender Characteristics meeting of 1/21/86.

The following Commissioners and staff members were present:

William W. Wilkins, Jr. Chairman
Benjamin F. Baer, Commissioner
Michael K. Block, Commissioner
Stephen G. Breyer, Commissioner
Helen G. Corrothers, Commissioner
Ronald L. Gainer, Commissioner
Ilene H. Nagel, Commissioner
Paul H. Robinson, Commissioner
Kay A. Knapp, Staff Director
Denis J. Hauptly, General Counsel

(members present continued)

L. Russell Burress, U.S. Probation Officer on Assignment to the Commission
Alan Chaset, U.S. Parole Commission
Mark A. Cohen, Senior Researcher
Paul K. Martin, Communications Director
David I. Tevelin, Deputy General Counsel
Elizabeth H. Williams, Special Assistant to the Staff Director

Commissioner Nagel stated that it would be a good idea to obtain copies of the sentencing guidelines from Wisconsin, New York, etc. Commissioner Block stated that he is distributing copies of the Minnesota Sentencing Guidelines to all Commissioners.

In continuing the discussion of yesterday about the letters to the Wardens regarding the conference which will be set up -- Chairman Wilkins again stated any letters generated to groups should be generated through Paul Martin.

Chairman Wilkins stated that the Commission has received statements from a number of judges saying that they would like to contribute their expertise and experience to the Commission in developing the guidelines. Commissioner Breyer stated that we need a victim's probation's, and correction's person to add to his list of 12 people which will bring the total to 15 members. Commissioner Nagel suggested that we have two lists-- Commissioner Breyer's list and a list of all associations. Commissioner Breyer stated that for some time we have been developing a list of people to help us. The list of 12 is a small list of people who wanted to help us. Judges have written in and stated that they also want to assist. Don Chamlee has prepared a list of probation people throughout the country who would be good for us to use.

Commissioner Breyer stated that when you want input from a certain group - call at least the name on the list and whoever else you want. In addition, there will be a list of everyone shown on both lists. Chairman Wilkins stated that any meetings to be set up with outside people that the information must be run through Paul Martin. The list of Probation Officers will not be more than 25 and not less than 20. This will be a manageable size group. The point of contact for judges will be Chairman Wilkins. The "at least" list will not be a monopoly and will not have special power. This is just a list of people who should be called at least and other people can be contacted if it is felt necessary. Commissioner Block would like to have the list prepared for the next Commission meeting.

Commissioner Block stated during the next week the work schedule for offender characteristics subcommittees will be to:
(1) make the list as large as possible; (2) categorize; (3) work

on examples; (4) deciding the best measures. Commissioner Nagel stated that this work will take approximately six weeks due to hiring staff and for staff to be able to go and research and read all the literature. Three weeks from now there should be a discussion regarding generic characteristics. Commissioners Block and Robinson will work out an agenda for the next meeting and a list of generic characteristics which will be discussed at the next meeting. This will be a general discussion and will be lacking hard data.

Commissioner Robinson suggested that they come up with five questions for each factor for the research person to answer when researching the list of offender characteristics. Such as: Where is it already in the real world? What sort of limitations? When do we use it? What affect - does it aggravate; does it mitigate?

Commissioner Block stated that the procedure for next week will be a general discussion on how the characteristics would be used as opposed to where they would be used. Commissioner Nagel asked how much information the Commission would like to have on public perceptions. Commissioner Corrothers feels that the question-how is it used in the real world - is a very good question.

Commissioner Nagel stated that Dick Burk and Peter Rossi could do a public perception study for us. She asked what the Commissioners wanted the public to tell them about their perceptions of offender characteristics. There is a whole series of questions that could be addressed in a public survey. The question is how much do the Commissioners want to know from the public?

Commissioner Corrothers agrees with the theory that it is important to know what the public perceives and make sure that the information received is as comprehensive as possible.

Commissioner Nagel stated that there are two ways to accomplish this: (1) for the Commissioners to give to Commissioner Nagel the type of information they would like to know from the public; and (2) draft a paragraph scenario with facts to highlight the different characteristics - to make up a paragraph long and give to the public and ask them to provide their opinions.

Commissioner Robinson feels that this would be a luxury to have this information. However, he feels that there is a problem with the short time frame.

Commissioner Breyer stated that it would be a good idea for Burk and Rossie to come in and talk with the Commissioners and find out what the Commission is doing and what they want from the public survey - possibly by the end of February. Commissioner Breyer expressed concern that the study cover offense characteristics in addition to offender characteristics.

Commissioner Nagel stated this project would take about five months. She asked the Commissioners to start thinking now about the questions and what they would want Burk and Rossi to do.

Commissioner Breyer again expressed concern about what kind of information would be collected and expressed concerns regarding the time frame for the study. He noted that the information may be of little use if we don't get it until the fall of 1986.

Ms. Knapp agreed and stated that the research needs of the Commission require priority gives the tight deadlines the Commission faces. For example, in order to meet our short term needs we will have to conduct a major data collection effort on current sentencing practices. She also stated that a research agenda needs to be done which the Research Director should be involved with. Ms. Knapp stated that we will have to look at the cost. She stated that in order to respond to Congress and the writing of the guidelines, there are three items that are essential: (1) a distribution of cases according to the guidelines criteria; (2) information regarding what kind of changes are being recommended; and (3) the impact of the policies created on correctional and court resources.

Ms. Knapp stated that the Commissioners should be working on the characteristics and elements to be included in the guidelines. The collection can begin prior to the Commissioners making definite decisions. Regions could be sampled. We can do an efficient job using other data that has already been gathered.

Commissioner Breyer stated that such a study was essential and must be done.

Commissioner Nagel stated that until we are further along in seeing what is going into the guidelines she does not feel that is necessary to gather the material that Ms. Knapp suggested at this time as a priority.

Commissioner Corrothers stated she is worried about rushing ahead with a product to meet the time due date and not coming up with a quality product. Commissioner Breyer noted that going to Congress without that information could be very difficult.

It was suggested that a research person read the statute, provide an estimate of the studies that will be absolutely necessary for guideline development, and suggest other projects that would be useful to inform the Commissioners.

Commissioner Breyer feels that it would be a good idea to have a list of research studies as a checklist. The following information would be needed: a rough study from staff; critical elements needed for Congress (Ms. Knapp); and critical issues

from the Commissioners.

The Research Committee is to make a list of all research projects mentioned and report to the Commission at the February 11 Commission meeting.

Chairman Wilkins announced the next Offense Subcommittee meeting will be held on Tuesday, 2/11, at 9:30 a.m. The Commission Business meeting will begin on Tuesday, 2/11, at 1 p.m.

The Chairman adjourned the meeting at 11:05 a.m.