

COMMISSION MEETING

JULY 15, 1986

Commission Meeting - July 15, 1986

Chairman Wilkins called the meeting to order. The Chairman informed the Commission that the Department of Justice had urged the President to veto the technical amendments legislation. Commissioner Gainer stated that the Department had made that recommendation because the bill contained a technical error referencing the "maximum" of a range rather than the "minimum." Dave Tevelin added that there is a clarifying amendment in the next set of technical amendments to be proposed in the House. Chairman Wilkins noted that at the lower end of the scale, where the maximum is six months, the Department of Justice would prefer that the Commission not exercise that sentencing authority in all cases. The Chairman said he personally did not feel that six months was such a great disparity, but that the Department's concern may be warranted in certain cases. The Chairman asked if there was any other business to discuss. The meeting was adjourned to attend the Sentencing Options Hearing.

Chairman Wilkins reconvened the meeting after the Hearing on Sentencing Options. He asked for discussion of any amendments to the minutes of the meetings of May 7, 22, 27, June 10 and 17. When there were no proposed amendments, he asked if there were a motion to approve the minutes. Judge Breyer made a motion that the minutes be approved. All Commissioners agreed.

Judge Breyer said that in reading the minutes, he noticed that the House version of the bill on technical amendments does not contain the appellate court provisions. Judge Breyer asked if anything was being done about that. Judge Wilkins stated that

the House will not entertain those arguments without public hearings. Judge Wilkins said John Steer would have a schedule of those hearings. Dave Tevelin interjected that he and John had been waiting for the next "wave" of technical amendments to be considered. Judge Breyer asked who was opposing the provision. Dave Tevelin said there was at least one member opposing, but the provision will be considered along with some other somewhat controversial points soon. Judge Breyer suggested it would never pass if it were included in that package. Chairman Wilkins said the decision to put it there did not just happen; it was discussed and considered at length. He mentioned that Tom Hutchison had been an opponent of the point, and probably represented the views of some members of the Committee as well. Dave Tevelin stated that the enacted bill had been passed under suspension of the rules which it could not have been if it had contained controversial provisions like the appellate review sections. John Steer added that the Committee had no objection to the provision to remand a case to district court for sentencing; the problem is in the standard of review that is to be applied. Chairman Wilkins acknowledged that it was a problem, but he felt the issue may not be resolvable in the Commission meeting. The Chairman noted that the issue was being reviewed. John said there was still a chance to resolve the problem if S. 1236 goes to conference, because the Senate version of the bill with the larger package of technical amendments does have the appellate court provision. That bill has not yet been passed in the House.

Alan Chaset asked if Tom Hutchison had preferred to put the provision in the form of amendments to S. 1236 as opposed to a new bill. Dave Tevelin said the House is getting ready to pass another set of technical amendments that are non-controversial and will be voted on under suspension of rules. The appellate court provision is not in that package because it is too controversial and needs a hearing before the matter can be decided. If those amendments were passed as an amendment to S. 1236, that bill will go to conference with the Senate bill containing the appellate review provisions. The Chairman suggested the Commission coordinate all contacts on this matter with Dave and John because of their background and involvement in the subject.

Chairman Wilkins distributed a memorandum from Suzanne Conlon on possible speakers at the Plea Negotiations Hearings. (The memorandum is attached). Because Suzanne is coordinating that hearing, additional witness suggestions should be forwarded to her for future consideration at the next Commission meeting. Commissioner Nagel asked if there was a particular reason why the same three groups had been asked to testify at just about every hearing. Chairman Wilkins said there was no particular reason any one group was singled out for more than one hearing, except that they had expertise in the particular subject areas and were also interested in cooperating with the Commission. Judge Breyer said the groups in question had been appropriate for each of the hearings they had attended.

Commissioner Corrothers suggested that someone from the

Department of Justice might be an appropriate witness for the Plea Negotiations Hearing. The Chairman agreed, stating that the list distributed was merely a list of suggestions, and additions could be made at any point. The Chairman asked the Commissioners to review the list and direct suggestions and comments to Suzanne Conlon before the next Commission meeting.

The Chairman addressed the topic of the Regional Hearing Schedule for the fall. Commissioner Corrothers asked if the plans had been finalized. Elizabeth Williams said all hotel reservations had been made for the night before and the night of each hearing (where an additional night is deemed necessary because of the distance involved). Chairman Wilkins said Suzanne Conlon will be the Regional Coordinator of the Chicago hearing, so all information concerning that hearing should be directed to her. Judge Breyer and Suzanne are the Regional Coordinators for the San Francisco hearing; Denis Hauptly is the Regional Coordinator in charge of the Denver hearing; John Steer, Atlanta; Mary Ellen Abrecht, Washington D. C.; and Dave Tevelin, New York. Chairman Wilkins requested that all informational submissions and inquiries concerning the hearings be directed to each city's Regional Coordinator.

John Steer said, at some point, the staff would need guidance as to whether or not to solicit judges' testimony at the Regional Hearings. Judge MacKinnon stated that two working groups of federal judges will be in to work with the Commission before those hearings. The Chairman asked if the Commission members thought judges' testimony should be solicited. Judge

MacKinnon did not think so. Judge Breyer believed sufficient input could be gained in the Commission Work Groups. Chairman Wilkins clarified that all judges would be welcome at the hearings, but he thought specific invitations should not be directed at individual judges. Commissioner Nagel suggested extending an invitation to the Circuit. Judge MacKinnon objected on the premise that a Circuit Judge would not be the most interested in sentencing. Denis Hauptly suggested the designated judge of the Federal Judicial Conference. Commissioner Baer asked about U.S. Attorneys and academics. Judge Wilkins said those will be among the individuals invited, but that the Hearings will be open to all who wish to attend. Suzanne said Chief Judge Cummings had invited the Seventh Circuit Judges as spectators. Judge Breyer thought that was fine, but did not want to solicit testimony from individual judges. Chairman Wilkins agreed that any judge attending the hearings would be able to testify at the end of the Hearing when the floor becomes open for comments.

The Chairman called an executive session of the Commission members for discussion of further procedures involving personnel.