

COMMISSION MEETING

AGENDA

JANUARY 28, 1987

The following persons attended the U.S. Sentencing Commission Meeting on Wednesday, January 28, 1987.

Commissioners

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

Staff

Suzanne Conlon, Executive Director
Rusty Burress
Alan Chaset
Matthew Greenberg
Paul Martin
John Steer
David Tevelin
Elizabeth Williams

Commission Meeting Minutes - January 28, 1987

Chairman Wilkins called the meeting to order. He called on Commissioner Gainer to discuss two matters concerning publication of the guidelines.

The Administrative Procedure Act

Commissioner Gainer discussed whether the Commission should use more specific ranges in Chapter 2 over the next two and a half months. He stated that if the Commission's continuing examination of more definite ranges for Chapter 2 offense levels were noted in the Federal Register, the Commission would be freer to make major changes along those lines than it otherwise would be under the Administrative Procedure Act.

Commissioner Gainer also stated that the Civil Division of the Department of Justice had been asked to look at the Administrative Procedure Act in the context of the Commission's work. The Administrative Procedure Act could be satisfied, according to the Civil Division, by publishing the final guidelines in the Federal Register when they are submitted to Congress. The final guidelines could be materially different from the preceding publication. Unlike most commissions, the Sentencing Commission's work does not go into effect until at least six months after publication. This allows time for public comment to Congress. Thus, the Commission would meet the requirements of the Administrative Procedure Act while maintaining a great deal of flexibility until April 13.

Judge Wilkins stated that the Commission would continue to reexamine the ranges as well as the offense levels.

Judge Breyer suggested that the Commission ask for comment, since some people think the ranges should be more specific and some people do not.

Commissioner Robinson asked whether the guidelines would still go into effect on November 1 if the Commission made changes after April 13. Commissioner Gainer stated that the Civil Division did not address that issue, but that he would provide John Steer with a memorandum concerning that topic.

The Commission discussed the possibility of Congressional amendment of the guidelines and the mechanics for changing the guidelines after April 13.

The Annual Report

The Chairman noted that John Steer distributed the Annual Report of the Commission. The Chairman stated that there was no deadline for the 1986 report, but that the first month of 1987 appeared to be appropriate. Commissioner Corrothers moved that the Commission authorize John Steer to distribute the final report. Commissioner Nagel seconded. The motion passed by a vote of 5-0. Commissioner Block was absent. Commissioner Robinson abstained.

The Guideline Worksheets

Judge Wilkins encouraged the staff to continue testing the guidelines. He noted that this had been an ongoing process by the staff and some commissioners over the past six months. The Chairman said that he asked Rusty Burress to obtain several presentence investigation reports so the Commissioners could apply the guidelines to them. Mr. Burress distributed and explained the testing forms.

Criminal History

Judge Breyer stated that there was a double-counting problem in the criminal history section, §A311. The Commission discussed this provision and issues pertaining to the recency of prior criminal conduct and its correlation to recidivism. Rusty Burress explained the application of §A311 to several test cases.

Judge MacKinnon moved to delete §A311(d) and the underlined portion of (e), to define the general provision for custody as broadly as (d) is defined, and add a reference to the general provision in the commentary for criminal history. Judge Breyer seconded the motion. The motion passed by a vote of 5-2. Judges Wilkins, Breyer and MacKinnon and Commissioners Block and Nagel voted yes. Commissioners Corrothers and Robinson voted no. The Commission discussed redrafting this section.

Judge Breyer moved to delete §A311(d) and the (e)(2). Commissioner Corrothers seconded. The motion failed by a vote of 2-4. Judge Breyer and Commissioner Corrothers voted yes. Judges Wilkins and MacKinnon and Commissioners Block, and Nagel voted no. Judge Wilkins stated that he wanted to wait to see Mr. Burress' report on criminal history before deciding the issue. (Commissioner Robinson abstained).

Worksheets

Rusty Burress explained the worksheets, concentrating on multiple counts and concurrent sentences. He used robbery, forgery, drug and burglary cases to illustrate the application of the guidelines.

Commissioner Nagel encouraged the staff to continue testing the guidelines. Judge Wilkins agreed, and stated that the testing should be an ongoing process to identify problems and ambiguities in the guidelines.

Publication Timetable

The Commission discussed the timetable for publishing the January draft. Judge Wilkins suggested working through the weekend. Judge MacKinnon stated that he considered the current draft of the guidelines suitable for publication and eliciting comment.

Judge Wilkins stated that the Commission would meet the following day at 10:00 a.m.

The meeting was adjourned.