

January 30, 1987

Commission Meeting Minutes

The following Commissioners were in attendance:

Chairman William W. Wilkins, Jr.
Commissioner Michael Block
Judge Stephen Breyer
Commissioner Ronald Gainer
Judge George E. MacKinnon
Commissioner Ilene H. Nagel
Commissioner Paul H. Robinson

The following staff were in attendance:

Suzanne Conlon, Executive Director
Charles Betsey, Senior Research Associate
Alan Chaset, Parole Commission Representative
Russell Ghent
David Lombardero, Special Counsel
Debbie Lister, Law Clerk

The Chairman called the meeting to order at 10 a.m. The Executive Director read a statement from Commissioner Helen Corrothers, who could not attend the meeting. The statement read as follows:

Notwithstanding the fact that I don't agree with every single part of the draft, I nevertheless vote for publication because it is a draft and I recorded my vote yesterday.

The Chairman asked for any final comments on the revised draft. Commissioner Nagel suggested some minor editorial changes in Chapter 1. Commissioner Nagel then moved to adopt those amendments. Judge MacKinnon seconded. The motion was carried with all Commissioners voting yes except Commissioner Robinson, who abstained.

The Chairman noted that if the draft were to be published by Friday, February 6, the draft needed to be submitted to the Government Printing Office by 1:00 p.m. Friday, January 30. Commissioner Robinson asked if the four pages he wanted attached to the guidelines could be submitted at a later time. The Chairman said, in his understanding, all pages needed to be submitted at the 1:00 p.m. deadline. Commissioner Robinson said the draft guidelines had just become available in final form that morning. After a lengthy discussion on the modifications of the draft guidelines that occurred over the previous week, it was decided that Commissioner Robinson would meet the 1:00 p.m. deadline with some type of dissent, and would provide the full

dissent on Monday morning to be printed in the Federal Register and the remaining copies to be printed for the Commission.

Commissioner Robinson asked if this draft of the guidelines was the Commission's effort to comply with the requirements of the Administrative Procedures Act. Judge Breyer and Chairman Wilkins assured him that it was.

Commissioner Block made a motion to publish the draft guidelines. Judge Breyer seconded. The motion was carried with all Commissioners voting yes, except Commissioner Robinson, who voted no.

The Chairman stated for the record that the press had reported instances of disorganization in the staff, and while it may be true that one or two staff members or ex-staff members were not happy with all of the Commission's work, by and large the staff had performed in an outstanding fashion. Suzanne Conlon had provided much leadership and many staff members worked many nights and weekends preparing the revised guidelines. Judge Breyer moved for an official vote of thanks to the staff for their efforts in producing the guidelines. Commissioner Nagel seconded. The motion was carried unanimously.

The Chairman noted that until this point in time, everything the Commission had done was of a tentative nature. From this point forward, the decisions reached by the Commission affected the actual guidelines that are going to be sent to Congress. Judge Breyer agreed that until this time, the Commission had been creating "proposed rules," but once the proposed rules go out,

the discussion of amendments becomes part of the legislative history and adds meaning to the rules themselves.

The Chairman said the prison impact study will be a priority matter from this point forward. The Chairman appointed Commissioner Block to head the prison impact study. Rusty Burress has been asked to formally report the results of testing the guidelines by using presentence investigation reports.

The dates for the upcoming hearings were discussed.

Judge Breyer mentioned that the staff should begin cite checking for absolute accuracy, develop a "best estimate" of present sentencing practice and explain reasons for deviation, and revisit Bill Rhodes' memo listing offenses by characteristics to insure it makes intuitive sense. Commissioner Nagel added that several studies were identified early on in the Commission's work, and those studies could be begun at this time, and that a recidivism study was important to the deliberation of guidelines. Commissioner Nagel said a disparity study and a summary of agency data were other possible projects the Commission might consider.

The Commission discussed the possibility of having summary data available with the revised draft guidelines. It was decided that Commissioner Nagel would write language effectively stating that the data would be available upon written request.