

COMMISSION MEETING

AGENDA

APRIL 1, 1987

The following persons attended the U.S. Sentencing Commission Meeting on April 1, 1987.

Commissioners

William W. Wilkins, 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  
Alan Chaset  
Peter Hoffman  
Lester Joseph  
David Lombardero  
Paul Martin  
William Rhodes  
John Steer  
John Shadegg  
Sharon Turner  
Camille Williams

Guests

James Knapp, Civil Rights Division, DOJ  
David Bell, Civil Rights Division, DOJ

Commission Meeting Minutes - April 1, 1987

Chairman Wilkins called the meeting to order at 2:10 p.m., on Wednesday, April 1, 1987.

The Commission discussed the preparation of drug equivalency tables to be included in the guidelines. Commissioner Nagel stated that Dr. Louis Harris, one of the leading experts on drugs, had agreed to review the guideline drug tables within the next 24 hours. Judge MacKinnon questioned the use of the term "related drug offense" in the guideline for drug trafficking suggesting that it may impose an unneeded restriction.

Judge Wilkins asked the Commissioners for a format change in Chapters 2, 3, and 4. The chapter number would come first, followed by the letter for the part of the chapter, then the sections number and the guideline number of the section. Commissioners Block, Corrothers, and Nagel stated that they were in favor of this proposal.

Commissioner Gainer requested a 24-hour period to reexamine the guideline provisions which attempt to increase penalties for drug offenses, required by statute, by increasing the amount of drugs taken into account.

Judge Wilkins introduced a previously circulated proposal drafted by Commissioner Corrothers concerning the Civil Rights section of the guidelines. Commissioner Corrothers presented her proposal which included reintroducing a previously deleted section covering peonage, involuntary servitude and slave trade, an enhanced penalty for offenses committed by public officials, some increased base offense levels, and a rewrite of the commentary. Commissioner Corrothers discussed the importance of this section and the necessity of the changes to adequately reflect the seriousness of these offenses. Upon completing her presentation she noted that it would facilitate discussion if the Commission knew what type of offenses would actually be covered by this guideline. Consequently, she called on Mr. David Bell of the Department of Justice, Civil Rights Division, to briefly describe the types of cases recently prosecuted under the peonage statutes.

Mr. Bell discussed a case recently prosecuted under the peonage statute concerning a religious cult which had beaten a young boy to death for running away from a work detail. He stated that the sentencing judge requested aid in issuing a proper sentence, but ultimately handed down a sentence which was much too lenient. Mr. Bell concluded that judges need more guidance in the area of civil rights.

Commissioner Corrothers asked Mr. Bell whether he believed the proposed civil rights guideline would have provided the judge

in his illustration with the guidance needed to issue an appropriate sentence. Mr. Bell stated his support for the proposed guideline.

Commissioner Gainer strongly stated his support for the proposed changes in the civil rights guidelines. He noted that the offense which the new guideline would cover is slavery, historically the most serious of civil rights violations.

Judge Wilkins indicated his support for the proposal, but requested stylistic changes to remain consistent with the rest of the guidelines. He suggested that references to assault, kidnapping and other offenses be deleted and include a cross-reference to other misconduct if of a more serious nature.

Judge Breyer suggesting placing many of the references to other offenses in the commentary with examples, so that the sentencing judge does not overlook any relevant factors in the sentencing decision. Commissioner Corrothers agreed to place these examples in the commentary if the Commission is not willing to change the style of the remainder of the guidelines.

Commissioner Corrothers moved to adopt the proposed Part H as amended. Judge Breyer seconded. The motion passed by a vote of 6-0. Commissioner Robinson abstained.

Judge Wilkins stated that Judge Tjoflat and the Probation Committee suggested the Commission improve the language in the introduction to Chapter 3, concerning Criminal History, and the beginning of the commentary of Chapter 3.

Judge Breyer moved that the last sentence be deleted. He read it as too ambiguous and possibly misleading. The Commission discussed the use, in this chapter, of existing empirical research on factors involved in recidivism and how best to describe the Commission's position. Judge Breyer moved to replace the last sentence with, "The Commission has made no definitive judgment in respect to the reliability of presently existing data. However, the Commission will review any further data in so far as it becomes available in the future." Judge MacKinnon seconded. The motion passed by a vote of 6-0. (Commissioner Robinson abstained).

Judge Breyer discussed the manner in which criminal history points are counted in the guidelines for recent offenses and for offenses committed while in custody or on release. He stated that the possibility of "double counting" some defendants appeared to be warranted by the data. However, he stated that no more than four prior minor offenses should be counted. Judge Breyer moved to amend §A311(c) to replace the "6" (total points counted from prior minor offenses) with a "4". Judge MacKinnon seconded. The motion passed by a vote of 5-1. Commissioner

Corrothers voted no, but explained that her rationale was that uncounseled convictions should not be counted at all. (Commissioner Robinson abstained).

Judge Breyer discussed the list of minor offenses which are not counted in totalling prior criminal history points. He proposed making the list at least as inclusive as the list currently used by the Parole Commission. Commissioner Gainer stated that such a proposal should be given more thorough consideration by the Commissioners. Judge Wilkins put the issue aside until the next morning.

Commissioner Block distributed and explained the levels table for the first twenty levels. The Commission discussed the use and testing of the tables. Judge Wilkins stated that the levels should be listed in ascending order and recommended a comparison of similar offenses. He encouraged the Commission and the staff to study the levels table and prepare for a vote in the next week.

Judges MacKinnon and Breyer discussed the manner of increasing offense levels for multiple count convictions. They agreed the topic deserved further discussion.

John Shadegg discussed the new statutory index which would list all federal criminal statutes with applicable guidelines if available. The Commission discussed the review of Chapter Two and further corrections to be made on the guidelines.

Chairman Wilkins stated that the next meeting would be at 9:00 a.m., Friday, April 3, and that topics to be discussed included criminal history, general proportionality of offenses and an offense-by-offense review of Chapter Two. Judge Wilkins emphasized the time constraints upon the Commission. The meeting was adjourned.