

COMMISSION MEETING
FEBRUARY 9, 1988

The Committee met at 10:07 a.m., Judge Wilkins in the chair. Present were Commissioners Block, Breyer, Corrothers, Gainer, MacKinnon, and Nagel. Commissioner Robinson had resigned since the last meeting.

The Chairman introduced Mr. Winston S. Moore, the new Staff Director. Judge Wilkins explained that Mr. Moore will prepare the agenda for Commission meetings, upon receipt of comments from the Commissioners and staff.

John Steer, General Counsel, informed the Commission of the status of the several law suits challenging the Guidelines and the constitutionality of the Commission. Mr. Steer distributed a litigation schedule detailing the assignment of staff attorneys, the brief of the Department of Justice, and the Commission's own brief as amicus curiae. Mr. Steer recommended that the Commission file its amicus brief in as many cases as possible, and that he observe the initial oral arguments and appear and argue in some cases. The Commission agreed and left to Mr. Steer the details.

Bill Rhodes, Director of Research, reported on the field testing of the expert system in Philadelphia with Judge Becker and four probation officers. He said that the participants preferred the Commission's system to that of the Federal Judicial Center, and that his staff is incorporating the suggestions of the Philadelphia participants into the system. Mr. Rhodes suggested a two week testing period of intensive application in fifteen districts. On the suggestion of Judge Breyer, the Commission agreed that the research staff should work with the legal staff to insure that textual material in the expert system is simple but accurate.

Mr. Rhodes raised concerns expressed by the Administrative Office of the U.S. Courts with the requirement that courts forward to the Commission certain data. The Commission agreed to revise a letter from the Administrative Office to the judicial districts, discussing situations when a transcript of the

sentencing should be forwarded. It was agreed that Judge Breyer would revise the letter in accordance with the Commission's direction.

Judge Wilkins reminded the Commissioners of the Sentencing Reform Conference in August and encouraged the several Commissioners to attend.

The Commission discussed the Annual Report to Congress for 1987. It was determined that the report should be used as an information vehicle to those of the public interested in the operation of the Commission. The Commission further agreed that the Report should note that the Congress declined to delay the implementation of the Guidelines last November, and that the Department of Justice has issued restrictions on plea negotiations to comply with the Guidelines. Other suggestions for the annual report should be sent to Mr. Moore or Mr. Paul Martin.

Motion By Commissioner MacKinnon

To appoint Commissioners Corrothers, Nagel, and Block to a committee to work on the Annual Report to the Congress of the United States.

Seconded by Commissioner Wilkins. Unanimously passed.

The Commission then considered proposed changes to guideline 2D1.5, covering convictions under the Continuing Criminal Enterprise statute (21 U.S.C. 848). Donna Triptow of the legal staff presented three alternative proposals and explained how they address the various problems of the existing Guidelines. Commissioner Corrothers praised Ms. Triptow's presentation of alternative proposals for the Commission's consideration and suggested that it should be a model for future presentations. The Chairman stated that C.C.E. was an area that had not been dealt with adequately in the guidelines and that the Commission ought to consider modification.

Motion by Commissioner Block

Seconded by Commissioner Corrothers

To publish that the Commission is considering modifying guideline 2D1.5(a)(2) and 2D1.5(a)(3).

Unanimously passed.

Motion by Commissioner MacKinnon

Seconded by Commissioner Block

a) To publish one of the proposals to adjust Continuing Criminal Enterprise; b) To publish an analysis of data of past

Continuing Criminal Enterprise convictions; and c) To publish in narrative form the other approaches to C.C.E. that the Commission is considering.

Unanimously passed.

The Commission convened in a brief executive session at 1:05 p.m., and then stood in recess for lunch. The Commission reconvened at 2:30 p.m.

The Commission then considered a series of proposed guidelines for offenses which had not been addressed in the April version of the guidelines:

Obstructing or Impeding Officers

Motion by Commissioner Corrothers

Seconded by Commissioner Block

To publish for comment Proposed Additional Offense Guideline §2A2.4 (Obstructing or Impeding Officers).
Unanimously passed.

Committing Certain Crimes Aboard Aircraft

Motion by Commissioner Corrothers

Seconded by Commissioner Block

To publish for comment Proposed Additional Offense Guideline §2A5.3 (Committing Certain Crimes Aboard Aircraft).

Unanimously passed.

Imparting False Information Re: Attempt to Wreck Aircraft

Three motions addressed this proposed guideline, all of which addressed subsection (b)(1) stating that if the defendant's conduct involved little or no deliberation, decrease by 4 levels.

Motion #1 by Commissioner Nagel

To delete from Proposed Additional Offense guideline §2A6.2 (Imparting False Information Regarding Attempt to Wreck or Destroy Aircraft, Aircraft Facility, Motor Vehicle or Vessel) subsection (b)(1).

Failed for want of a second.

Motion #2 by Commissioner Breyer

Seconded by Commissioner Corrothers

To publish as proposed, §2A6.2.
Voting Yea: 2 - Commissioners Breyer and Corrothers
Voting Nay: 4 - Commissioners Wilkins, Block, MacKinnon, and Nagel.
Motion fails.

Motion #3 by Commissioner Block

Seconded by Commissioner Wilkins

To delete §(b)(1) from §2A6.2 and to add possible mitigating and aggravating examples.
Voting Yea: 5 - Commissioner Wilkins, Block, Breyer, MacKinnon, and Nagel.
Voting Nay: 1 - Commissioner Corrothers
Motion passes.

Mailing Injurious Articles

Motion by Commissioner Nagel

Seconded by Commissioner Corrothers

To reject and not publish Proposed Additional Offense Guideline §2K3.2 (Mailing Injurious Articles).

Motion unanimously passed.

The Commission then considered a draft of proposed guidelines organizational defendants. Jeffrey Parker explained the proposal, elaborating on the remarks of Commissioner Block. There was considerable praise for the work that had been done to date, but the Commissioners all expressed the view that the draft was not yet ready for publication. Judge Wilkins expressed the "consensus of the Commission" to table consideration of the proposed organizational guidelines for the present and to solicit views of the Commissioners as well as outside groups. Additionally, the research staff should compile data on current practices.

At the suggestion of Commissioner Nagel, it was agreed by the Commission that staff appearances on behalf of the Commission should be coordinated by Mr. Moore.

The public hearing will be held on Tuesday, March 22, instead of March 21 in the Ceremonial Court Room of the United States Courthouse in Washington, D.C., at 9:30 a.m. It may carry over to Wednesday, March 23. Invitations will go to all those previously invited. The agenda will include all proposed changes and Emergency Guidelines adopted to date.

There being no further business to come before the Commission, they stood adjourned at 4:45 p.m.