

Commission Meeting
March 30, 1988

The Commission met at 9:40 a.m. Present were the Chairman and Commissioners Block, Breyer, Corrothers, and Nagel.

Judge Wilkins recognized Ms. Maggie Jensen, who will return to the Administrative Office of the United States Courts. The Commission expressed its appreciation for her contributions.

Motion by Commissioner Corrothers

To approve with minor corrections the minutes of the meetings from 12/16/86 through 9/09/87. Seconded by Commissioner Block, the motion was approved unanimously.

At 9:45 a.m. Judge MacKinnon arrived and took his seat.

Thereupon, the Commission proceeded to discuss proposed amendments to the guidelines pursuant to the Emergency Power granted by the Congress or for submission to Congress by May 1 pursuant to the ordinary 6 month review process. The Chairman urged that while a final vote might not be taken today, the Commission could review proposals and identify those to which it wanted to give serious consideration.

The Commission first considered the deletion of petty offenses from coverage under the guidelines. The Commission discussed at length the burden caused by treating petty offenses under the guidelines and the types of petty offenses most frequently charged. The Commission then asked the staff for development of two options for further discussion: 1) total deletion of petty offenses; or 2) deletion of petty offenses unless coupled with an indictment for a non-petty offense.

The Commission next discussed removing the requirement of calculating interest rates for tax cases under the guidelines. They requested that the staff prepare three options: 1) deletion of the interest calculation; 2) deletion of the interest calculation and addition of one offense level to the base offense level; and 3) deletion of the interest calculation and bringing tax guidelines into conformity with the theft table.

Motion by Commissioner MacKinnon

Seconded by Commissioner Corrothers.

[To include, at the next Commission meeting, the section relating to procedures for sentencing. (Item "C", Mr. Moore's memo, as written).

Unanimously passed.]

The Commission then discussed the issue of how to handle information about other criminal activity when it is provided by a defendant who is cooperating with the government. The staff was directed to develop a proposal for consideration by the Commission. The Commission also considered and discussed at length the section of the guidelines relating to abuse of a position of trust or special skill. The staff was directed to attempt to develop alternate proposed modifications to this provision, addressing concerns expressed by the field about when it is to be applied.

The Commission then turned to the Criminal Livelihood provision and discussed areas of concern perceived by the Commissioners and expressed by the field. There was a wide range of suggestions expressed, and, as with other provisions, the staff was instructed to develop alternative proposals for consideration. The Commission discussed the structure of the Continuing Criminal Enterprise, seeking to respond to criticism that C.C.E. sentences under the guidelines were likely to be lower than current practices. The Commission instructed the staff to a clear presentation of current practices, and with that to offer proposals for revising the C.C.E. guideline.

At 12:25 p.m., the Commission stood in recess until 3:00 p.m., while the Commissioners met at the Department of Justice to discuss the pending constitutional litigation.

When the Commission met again at 3:00 p.m., Judge Wilkins announced that the next meeting would be on April 12 at 11:00 a.m. There would be an attempt to take final votes on the provisions discussed earlier at today's meeting. The Commission will meet again on April 19 at 9:30 a.m., at which time it will take final action on any new proposals raised on April 12.

The Commission next considered a suggestion to standardize terminology (i.e., "taken" "stolen" "lost" "destroyed") in the guidelines involving property offenses. The Commission directed the staff to prepare those changes for final consideration on April 12.

The Commission next discussed suggestions to modify the provision requiring the defendant to pay the costs of his imprisonment or probation. There was concern expressed about the burden imposed on probation officers in calculating these costs. The Commission agreed to explore with Bureau of Prisons officials the possibility of finding a simple administrative solution to the burden imposed by calculating the cost and also agreed that the requirement should be omitted in cases of indigency. Commissioner Nagel will supervise the working group that will meet with the Bureau of Prisons, probation officials and others to discuss whether there is a practical compromise.

The Commission next agreed to address a suggestion from the recent public hearing: to modify the obscenity guideline by adding a term such as "prepubescent" for offenses involving minors. Staff will prepare a proposal including this change.

The Commission also agreed to have staff present a technical change in a part of the rule governing multiple counts: §3D1.2(d).

At this point Judge Wilkins left the meeting.

The Commission discussed the question of community confinement. Commissioner Corrothers summarized Judge Becker's presentation at the recent public hearing indicating the problem facing courts where "community confinement" facilities do not currently exist. Judge Breyer stressed that as used by the Commission the term "community confinement" was very broad, and that courts should be very imaginative in their use of this sanction.

The Commission also discussed adding an amendment history to each guideline section to facilitate the use of the Guidelines Manual.

It was announced that the Department of Justice will petition the Supreme Court for an expedited grant of certiorari, but that the Solicitor General believes that the argument will not be heard any earlier than the October Term.

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