

U.S. Sentencing Commission Meeting

July 20, 1988

DRAFT

Chairman Wilkins called the Commission to order at 9:30 a.m. Present were Commissioners MacKinnon, Corrothers, Nagel, Block and Gainer; Commissioner Breyer was absent. Also present were Staff Director Sid Moore and members of the Sentencing Commission staff. Vicki Portney attended on behalf of the Justice Department.

Motion #1 by Commissioner Block

To approve the minutes from past Commission meetings as modified by Commissioner Corrothers.

Seconded by Commissioner Nagel. Unanimously adopted.

John Steer gave a status report on litigation. He indicated that the Court of Appeals for the 3rd Circuit would hear oral argument in the Frank case on July 28, 1988. This case raised the issues of separation of powers and unlawful delegation. Mr. Steer indicated that Paul Bator will be arguing for the USSC.

Sid Moore and Ronald Weich gave a status report on legislation. Mr. Weich indicated that the Commission's legislative proposals are pending before the House Criminal Justice Subcommittee.

Sid Moore noted that Senator Biden's staff is confident that there will be an end-of-session drug bill. This bill will

include either mandatory minimum sentencing provisions or policy directives to the Sentencing Commission. The Commission discussed the relative merits of these two approaches and directed Mr. Weich to draft a letter from Chairman Wilkins to Senator Biden outlining the Commission's views.

Charles Betsey gave a status report on the Monitoring Project. Mr. Betsey estimated that there have been 19,000 sentences imposed under the old law and approximately 2,200 under the guidelines. Of these, the Commission has received approximately 1,600. Approximately 400 cases have been coded thus far, and they indicate a departure rate of 15%. The Commission discussed the possibility of adding a small "check off" box to the presentence investigation (PSI) or Judgement and Commitment (J&C) form so that the Probation Officer could indicate if the sentence was a departure from the guidelines. This small change would easily indicate a departure and would reduce the processing time. Mr. Betsey stated that while the suggestion was a good idea, the Commission alone could not change the forms, but would need to work through the Administrative Office of the Courts and the Judicial Conference.

Commissioner Block and Jeffrey Parker discussed the Organizational Sanctions Project proposals. Commissioner Block noted that the proposals contain five separate parts: 1) a draft summary statement of subjects and issues for public comment; 2)

the July 12th draft of the organizational guidelines; 3) an alternative draft of standards for Organizational Probation; 4) a statistical report on sentencing of organizations in federal courts from 1984-1987; and 5) a staff working paper on criminal sentencing policy. The Commission discussed the merits of publishing some or all of these materials in the Federal Register. Eventually, the Commission decided to publish in the Federal Register only a notice of upcoming public hearings, along with a statement that the documents are available from the Commission upon request. They also decided to print a statement on the materials explaining that the Commission has neither discussed in detail nor agreed on any approach to organizational sanctions, but that it is publishing these proposals to receive public comment.

The Commission considered eighteen proposed guideline amendments. Four of the proposed items were deferred for consideration at a later date. After discussion, the Commission unanimously approved publication of the twelve guideline amendments listed below. The motion to approve was made by Commissioner Corrothers and seconded by Commissioner Block. These approved amendments were added to the list of amendments to be published for public comment later in the year.

- 1) Murder; Assault with Intent; Conspiracy; Attempt
The proposed amendment removes an inconsistency in

language, substituting the expression "firearm or other dangerous weapon" for the term "firearm or dangerous weapon."

Specifically, §2A2.1(b)(2) would read:

(A) If a firearm was discharged, increase by 5 levels;
(B) If any dangerous weapon (including a firearm) was otherwise used, increase by 4 levels; (C) If any dangerous weapon (including a firearm) was brandished or its use was threatened, increase by 3 levels.

2) Criminal Sexual Abuse

Guideline §2A3.1(b)(1) would be amended by changing the reference to 18 U.S.C. §2241 to read "offense was committed by the means sets forth in 18 U.S.C. §2241(a) or (b)." Clarifying language would also be added to Application Note 2 of the Commentary to §2A3.1.

3) Criminal Sexual Abuse of a Minor

The statutory reference in the Commentary to §2A3.2 would be clarified, substituting "2243(a)" for "2243". Additionally, the term "age of the victim" would be substituted for "victim's incapacity to give lawful consent" in the Commentary. The Commission rejected the proposed amendment which would delete the term "Statutory Rape" from the title of Guideline §2A3.2.

4) Unlawful Manufacturing, Importing, Exporting, etc.

The Commentary to §2D1.1 would be amended to insert the

following language: "If the quantity of drugs substantially exceeds that required for level 36, an upward departure may be warranted."

5) Obstruction of Justice

The Commission proposed a series of modifications to §2J1.2 to eliminate inconsistencies between language in subsections (b)(1) and (c)(1). Additionally, (b)(1) would be amended to read:

If the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice, increase by 8 levels.

6) Escape

The Commission proposed two modifications. The first would conform the language in Guideline §2P1.1 more closely to the language of 18 U.S.C. §751. The second would broaden the description of law enforcement officers in §§2P1.1 and 2P1.2.

7) Official Victim

§3A1.2 would be amended to read:

If the victim was any law enforcement or corrections officer, any other person included in 18 U.S.C. § 1114, or a member of the immediate family thereof, and the crime was motivated by such status, increase by 3

levels.

8) Criminal History Category

The text of Guideline §4A1.1(e) would be amended to clarify that it applies to defendants who are in a confinement status--in prison or on escape--at the time the offense is committed.

9) Instructions for Computing Criminal History

The Commission proposed a series of amendments to §4A1.2 to clarify the instructions for computing criminal history.

10) Multiple Counts

The text of Guideline §5G1.2 would be amended to include the following language "This section applies to multiple counts of conviction (1) contained in the same indictment or information or contained in different indictments or information for which sentences are to be imposed at the same time or in a consolidated proceeding."

11) Cross References

The Commission will publish amendments to correct erroneous cross references, but will retain those cross-references which are not inaccurate or misleading

but are merely appropriate "short titles" of guideline sections.

12) Miscellaneous Clerical Errors

The Commission will also publish amendments to correct a series of clerical errors identified by the staff.

Thereafter, having no further business, the Commission adjourned.