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WILLIAM W. WILKINS, JR.
Post Office Box 10857
Greenville, South Carolina 29603
Telephone (803) 233-7081

PERSONAL DATA:

Born March 29, 1942
Married to Carolyn L. Adams; three children

PRESENT EMPLOYMENT:

United States Circuit Judge, Court of Appeals
for the Fourth Circuit
Chairman, United States Sentencing Commission (serving
without compensation)

LEGAL EXPERIENCE:

United States Circuit Judge, June 16, 1986 to present
United States District Judge for the District of South
Carolina, 1981-1986
Chairman, United States Sentencing Commission, October 1985
to present
Solicitor (State District Attorney, 13th Judicial Circuit),
1974-1981
Partner - Wilkins, Nelson and Kittredge, Attorneys,
1972-1976
Instructor (part-time), Greenville Technical College:
Constitutional Law, Family Law, Criminal Law, 1973-present
Legislative Aide, United States Senator Strom Thurmond, 1971
Law Clerk, Chief Judge Clement F. Haynsworth, Jr., United
States Court of Appeals for the Fourth Circuit, 1970

MILITARY EXPERIENCE:

Date and Source of Commission: May 30, 1964 - Davidson
College ROTC
Active Service: United States Military Police School, Law
Division; Captain, United States Army Law Instructor,
1967-1969
Lieutenant Colonel, United States Army Reserves (Judge
Advocate General Corps), 1969-1983
Colonel, South Carolina National Guard (State Judge
Advocate), 1983 to present

EDUCATION:

University of South Carolina School of Law, J.D. Degree
(1967)
Davidson College, B.A. Degree (1964)
Public Schools, Greenville County, South Carolina
Command and General Staff College (USAR)
Numerous schools and seminars on a variety of legal subjects

POLITICAL DISTINCTIONS:

Judge Wilkins was the first federal judge in the nation appointed by President Reagan after the 1980 election. When elected to the Office of Solicitor in 1974, Judge Wilkins was the first individual in South Carolina in over 100 years to be elected to that office as a Republican.

ACTIVITIES AND HONORS:

Outstanding Graduate of the Year Award, 1967. (Presented by U.S.C. School of Law Faculty)
Outstanding Graduate of the Year Award, 1967. (Presented by Phi Delta Phi International Legal Fraternity)
Editor-in-Chief, South Carolina Law Quarterly, 1967
Captain, South Carolina Moot Court Team, 1967
Member, Order of Wig and Robe Academic Society, 1967
Winner, AM JUR Award, Labor Law, 1967
Winner, Samuel L. Prince Moot Court Award, 1965
Recipient, Army Commendation Medal for Meritorious Service, 1969
Chairman, Greenville County Literacy Society, 1973
Recipient, Service to Mankind Award, Sertoma International, 1975
Recipient, Service to Mankind Award, Heritage Club, 1976
Recipient, Distinguished Service Award, Wade Hampton-Taylors Jaycees, 1977
Recipient, Distinguished Service Award, Bonner Kidd Home, 1978
Recipient, Award of Appreciation for Outstanding Public Service, Home Builders Association of Greenville, 1979
Recipient, Citizen of the Year Award, Kiwanis Club, 1982
Recipient, Distinguished Public Service Award, The American Legion, Department of South Carolina, 1987
Recipient, Justice Award, The Foundation for Improvement of Justice, 1989
Director, YMCA Metropolitan Board, 1979
Member, Governor's Committee on Criminal Justice, Crime, and Delinquency, 1975-1980
Lecturer, Taft Seminar, Clemson University, 1976-1980
Chairman, Paralegal Advisory Committee, Greenville Technical College, 1980-1989

PROFESSIONAL ACTIVITIES:

Member: Federal Bar Association
Federal Judges Association
South Carolina Bar Association
South Carolina Trial Lawyers Association
South Carolina Solicitors Association
Phi Delta Phi Legal Fraternity

Admitted to Practice Before:
United States Supreme Court
South Carolina Supreme Court
United States Court of Appeals, Fourth Circuit
United States District Court for the District of
South Carolina
United States Court of Military Appeals

LEGAL PUBLICATIONS:

Discovery of Existence and Amount of Defendant's Insurance Policy, 17 S.C.L. Rev. 750 (1965)

Lockouts: Return to the Common Law Ruling, 18 S.C.L. Rev. 299 (1966)

The Family Purpose Doctrine, 18 S.C.L. Rev. 638 (1966) [also in THE PERSONAL INJURY COMMENTATOR (Callaghan & Co.)]

Plea Negotiations, Acceptance of Responsibility, Role of the Offender, and Departures: Policy Decisions in the Promulgation of Federal Sentencing Guidelines, 23 Wake Forest L. Rev. 181 (1988)

Sentencing Reform and Appellate Review, 46 Wash. & Lee L. Rev. 429 (1989)

Relevant Conduct: The Cornerstone of the Federal Sentencing Guidelines, 41 S.C.L. Rev. 495 (1990)

MISCELLANEOUS:

While serving as Solicitor, Judge Wilkins organized the first Victim-Witness Assistance Program in South Carolina. This program was recognized by the National Organization for Victim Assistance Programs and by the National Institute of Justice as one of the most outstanding in the nation.

He also created the first Child Abuse Prosecution section in South Carolina. This program was later used as a model for implementation in every judicial circuit in South Carolina.

Another innovative approach to solving problems found in the criminal justice system was his creation of the Pretrial Diversion Program to deal with young first offenders. This program was also used as a model for implementation in every judicial circuit throughout the state of South Carolina.

THE NATIONAL LAW JOURNAL

Monday, September 29, 1986

Massive Undertaking

Revolution Nears On U.S. Sentences

BY FRED STRASSER

National Law Journal Staff Reporter

WASHINGTON — For the last 11 months, the U.S. Sentencing Commission has labored in relative obscurity here, quietly planning a revolution in the way the judges punish federal lawbreakers.

Its progress so far has been followed mostly by a small band of criminal justice experts who crowd into a windowless room at commission headquarters to testify at occasional hearings.

But a wider public is about to get involved.

Within the next two weeks, the commission — consisting of three judges, two social scientists, a law professor and a former member of the U.S. Parole Commission — will unveil some tentative proposals for a new sentencing system scheduled to begin operating in October 1987.

When its job is done, the federal criminal justice system will have undergone a remarkable transformation — and one that may well be a model for the states as well.

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Panel Plans Sweeping Changes in Sentencing

Continued from page 1

In the new system, judges no longer will have unbridled discretion to mete out penalties according to their views on crime and punishment. Parole will be abolished and with it, the parole board, making final whatever sentence a judge imposes. The idea of rehabilitation in prison, already in growing disfavor, will have been banished from the courtroom by law.

Instead, a new set of uniform standards will determine who goes to prison, for how long and for what crimes. The commission's final guidelines — if accepted by Congress — eventually will reach into every corner of the criminal justice system, exerting their influence on everything from plea bargaining to the number of inmates in federal prisons.

The commission's chief assignment, as stated by Congress in the Sentencing Reform Act of 1984, is to limit disparity in sentences handed down for similar crimes while leaving judges some flexibility in dealing with individual offenders. In all cases, judges will have a 25 percent range of discretion and the right to exceed it further with written justification.

Today, sentencing can be entirely unpredictable. A person convicted of kidnapping a government official might be sentenced to prison for life or just placed on probation. Even prison time means little; the parole board decides when the convict is freed.

A few states, in an effort to rationalize sentencing, now use a rigid "grid" that determines a sentence by matching the offense with a few details about the offender.

The commission is seeking a middle ground. "We must strike a balance between a system that is intellectually sound and one that is workable and understood by the American people," says the commission's chairman, Judge William W. Wilkins of the 4th U.S. Circuit Court of Appeals.

A Massive Task

No one doubts it is a massive task. When the work began, it was unknown how many laws required guidelines because federal criminal law has never been codified as such.

The first job of the commission's 40-person staff was to comb through the federal code, cataloging more than 3,000 scattered offenses.

Then the seven commissioners, who come from varied political backgrounds, began debate on the meaning and purpose of punishment and argued over what punishments achieve which results.

So far, they have tried to reach at least broad conclusions on a design that will provide individual justice and national uniformity, and yet be simple enough for any probation officer to use.

"It's a bigger job than I thought, much bigger," says commissioner Michael K. Block, an economist who teaches at the University of Arizona College of Law and once headed the Hoover Institution's Center for Econometric Studies of the Justice System.

Unresolved Issues

The job, in fact, is big enough that the commissioners, unable to resolve several key issues on sentencing policy, now will publish "preliminary, tentative guidelines" in the Federal Register in an effort to broaden the debate.

"We run some risks because we have not had as much time to work on this as we need," says Judge Wilkins. "I can't stress enough that it's all subject to change. But what appears will give a basis for a wide range of critical analysis and public comment."

Judge Wilkins says the commission at this point needs help from law-enforcement officials, defense attorneys, judges, probation officers and others involved in sentencing, a select group of whom have offered regular advice on the guideline drafting. In October, the commission will begin a series of six regional hearings around the country.

Even those who least expected to be heard say the commission and its staff have been surprisingly undocinaire.

Alvin J. Bronstein, executive director of the American Civil Liberties Union's National Prison Project in Washington, says he was at first "greatly concerned" about the Reagan-appointed commissioners until his first choice for staff director, Kay A. Knapp, who ran Minnesota's sentencing commission, was selected.

Later, he says, Judge Wilkins put him on a "short list" of experts used as a commission sounding board. "We've met a couple of times and he's made clear that he's quite open," adds Mr. Bronstein. "Frankly, I think something else was expected of him."

Guideline Questions

In large part, the commission's quandaries over technical and policy questions stem from the complexity of crafting a system for the federal code. Unlike state statutes, federal laws frequently give details of a crime, laying out only a vague, broad mission.

Take, for example, the law generally known as the Travel Act, says Commissioner Stephen G. Breyer, a judge on the 1st Circuit. The act states that anyone who travels interstate with intent to promote, manage or establish any unlawful activity shall be fined not more than \$10,000 or imprisoned for no more than five years.

Conceivably, the law could be aimed at the mastermind of a national stolen-car ring or a salesperson for a film-flam home-siding company. It will be up to the commission to decide who gets the maximum penalty and who gets probation.

"There is not an obvious way of tying a sentence directly to statutory language without taking conduct into consideration," Judge Breyer says.

According to Judge Wilkins, the guidelines will take these factors into account.

"We're going to use modified-real-offense sentencing," Judge Wilkins says. "That is where true conduct is the real question, where you can distinguish one bank robber from another."

The guidelines, he adds, will turn on a long list of

missions — a key to the issues that remain unresolved.

The act that created the commission stated that sentencing has three purposes: punishment, incapacitation and deterrence. Rehabilitation is not a factor to be considered in prison sentences, its failure recognized by both liberals and conservatives.

Indeed, the commission was the product of a seldom-seen alliance of political forces in Congress.

In the Senate Judiciary Committee, the measure was co-sponsored by conservative Sen. Strom Thurmond, R-S.C., and the voice of the Democratic party's liberal wing, Sen. Edward M. Kennedy of Massachusetts.

The hands of both are still felt at the commission: Judge Breyer was the committee's counsel when Senator Kennedy was chairman, while Judge Wilkins once served as Senator Thurmond's legislative assistant.

Political balance is guaranteed by the act itself, which bars appointment of more than four commissioners from the same political party.

Sentencing Disparity

The coalition converged largely on the issue of sentencing disparity.

In the late 1970s, liberals became increasingly concerned about implications for equal justice raised by the seemingly random sentences that showed up in study after study.

Conservatives also disliked disparity, appalled by what they saw as lenient sentences and convinced that only a consistent, rational system could deter some criminals and incapacitate others.

By the early 1980s, many criminal justice experts had concluded that individualization in sentencing depended more on the individual judge than on the offense or the offender. Consequently, new theories emerged on function of sentencing.

One view adhered to by Professor Block and Commissioner Ilene H. Nagel, a sociologist who teaches at the Indiana University at Bloomington School of Law, takes a purely "crime control" perspective.

This philosophy, based on economics, advocates reducing crime by the most efficient means possible, regardless of such considerations as "just punishment."

For example, it fines deter white-collar criminals — a hotly disputed question — then crime-control advocates see no reason to imprison financial swindlers solely because their crimes may be as harmful as a robbery. At the same time, disparity is seen as sometimes both efficient and fair.

Crime-control advocates also are more willing to formulate sentences using social-science-based predictors of future criminal activity, such as age, education, drug dependence and employment history. Their objective is to keep a potential criminal off the streets rather than dishing out punishment for crimes already committed.

Lawyers, in particular, worry that crime-control theories push the edges of traditional justice back too far, generally preferring sentences based on what is justly deserved.

"It is very risky dealing with variables that have limited use for predictability," asserts Kenneth R. Feinberg, a paid commission consultant who is a partner in the Washington office of New York's Kaye, Scholer, Fierman, Hays & Handler. "The most important is past record. I don't see using community ties, drug use, etc."

"We're still trying to work that out," Professor Block says. "It's an issue of what role science will play. There is the whole question of how research on prior record will be used and what elements of social science will be used in judging relative harms. It is very early in the sentencing-reform movement."

A Mix of Theories

Some of these questions may be posed in the tentative guidelines. One of the commission's jobs is researching the relation between crime and punishment, and the act itself suggested such factors could be useful.

The questions, if used, seem sure to provoke controversy once they become the focus of public debate. Sources close to the commission say the questions have been a central tension in trying to develop the guidelines.

The theories, of course, are generalizations that frequently fall apart on the facts. Yet they also set the tone. When Minnesota drew its guidelines, for instance, it made a conscious decision to opt for a "just punishment" standard.

Judge Wilkins says he believes the federal guidelines ultimately will reflect a mix of theories and strike a balance among assessing the harm done, the offender involved and the nature of the offense. As a former district court judge in South Carolina, he says, he knows "people and judges don't think in

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SEEKS BALANCE: U.S. Circuit Judge William W. Wilkins says the commission studying federal sentencing standards must "strike a balance between a system that is intellectually sound and one that is workable and understood by the American people."

questions. Some might be: What was the degree of harm done? Was violence used? What role did the offender play in the crime — kingpin or flunky?

The scheme will include too many factors to use the types of grids employed in some state sentencing guidelines, in which the offender appears on one axis, the charge against him on another.

"A grid is more rigid than we want," says Judge Wilkins. "We want individual treatment of individual offenders. They can't just be lumped."

'Decisional Branching'

The ultimate product, he notes, will draw heavily on a system developed by Commissioner Paul H. Robinson, a professor at Rutgers University School of Law in Camden, N.J., who is a nationally known authority on criminal law.

Sources familiar with the commission's work say the Robinson system of "decisional branching" in place of a grid was viewed as theoretically impressive but too complicated to use. They say Mr. Robinson does not support the current draft guidelines.

In the sentencing business, the list of questions that Judge Wilkins cites is called "offender and offense characteristics." He says the commission probably will assign numerical values to the characteristics — both those that mitigate and those that aggravate — and the total will add up to the sentence.

The process is uncontroversial for some crimes. Armed bank robbery resulting in murder, for example, is viewed universally as among the most serious offenses.

But in attaching specific numbers to many crimes and criminals, the scheme becomes enmeshed in ideological perspectives dividing some of the com-

Sentencing Revolution

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those compartments."

"In large part what we are doing here is rationalizing and putting down on paper the thought process — conscious and unconscious — that judges go through when they impose sentence," he observes.

For sentencing on violent crime, the priority will be on punishing and keeping the individual out of society based partly on looking at the harm done by the offender.

Drug sentences present a different problem. The harm done by a heroin trafficker may be incalculable. The sentence then would be based on the degree of involvement and scale of the enterprise.

In the area of white-collar crime — the frauds that constitute much of federal crime and include antitrust and price-fixing offenses — Judge Wilkins says deterrence is the chief consideration.

"This is a thinking, knowing crime performed for economic gain essentially by people who calculate risks," he adds. "We have not disagreed on that."

Busy for Years

But agreement is harder to come by on what to do about it.

The commission, for example, has not reached any conclusions yet on how to structure fines: Should they be based on income or the harm done?

Sanctions against organizations — basically corporations — also remain to be worked out, with such questions outstanding as whether stockholders, or only the individual officers, should be penalized.

Plea bargaining is another complex area in which Congress gave the commission the job of formulating policy, and in which the commission has yet to reach any conclusions.

"Today we bargain on three points," says Edward F. Marek, the federal public defender in Cleveland and chairman of a legislative panel of the Federal Defenders Advisory Committee.

"They are the sentence, the charge and the existence of certain facts," he explains. "The sentence will largely be gone as an issue under the guidelines. The charge could make little difference because the statutes provide wide ranges of penalty. The facts will become far more important if the commission looks only to the 'real offense.'"

As a result, the sentencing hearing, which now includes few procedural safeguards, could become the focus of the sentencing process when defendants dispute the facts of a case despite pleading guilty to the charge.

These sorts of complications are likely to keep the commission busy for years making adjustments and analyzing the effects of its decisions.

Unlike most commissions that breeze into Washington and vanish after a single report, the U.S. Sentencing Commission is a powerful, permanent creation that will affect criminal justice policy for the foreseeable future.

The commission will not only lay down the rules of sentencing, it will monitor the performance of judges through mandatory reporting. It has the power to alter required sentences in accord with changing national priorities in crime fighting.

And while Judge Wilkins promises the guidelines themselves will not consider the availability of prison space — an issue of major importance to hard-line conservatives — the commission is directed by law to "minimize the likelihood" that capacity will be exceeded, a goal that may be reached through new sentencing alternatives.

"The commission," says Mr. Marek, "could be the tail that wagged the criminal justice dog."

JANUARY 1987

BULLETIN OF THE FEDERAL COURTS



THE THIRD BRANCH

BULLETIN OF THE
FEDERAL COURTS



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Series of Regional Hearings Completed

Judicial representatives from five judicial circuits were among the more than 30 witnesses who testified before the U.S. Sentencing Commission in Washington last month. That two-day session was the last in a series of regional hearings that followed the publication of the Commission's preliminary draft sentencing guidelines on Oct. 1, 1986. Previous hearings were held in Chicago, New York City, Atlanta, Denver, and San Francisco. In all, the commission has received oral and written commentary

NEWS FROM THE SENTENCING COMMISSION

from hundreds of individuals and groups concerning the preliminary guidelines.

At the conclusion of the hearings, Sentencing Commission Chairman William W. Wilkins, Jr., said he was pleased that the hearings had accomplished their objective. "The preliminary draft and regional hearings focused attention on the many difficult issues the commission must face as it seeks to develop theoretically sound and workable guidelines," Judge Wilkins said. "I am encouraged by the strong support and also the constructive criticism offered by those interested in improving our criminal justice system."

The commission will consider the commentary received in preparing a redraft of the sentencing guidelines for publication in late January, on which it will again solicit public comment. As was the case with the preliminary draft, copies will be sent to every Article III judge, U.S. magistrate, U.S. attorney, chief U.S. probation officer (with several copies to each probation office), federal public defender, and hundreds of defense attorneys and interested organizations and individuals who received the first draft. ■



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Witnesses Differ at Hearing on Federal Sentencing Guidelines

This is one in a series of articles to keep federal judges and supporting personnel informed about the commission's work.

Hearings on offense seriousness.

Witnesses at the Sentencing Commission's first public hearing on Apr. 15 expressed a wide diversity of opinion on offense seriousness and how it might be measured.

In opening the hearing, commission Chairman William W. Wilkins, Jr., asked the witnesses, "What is it about a particular crime, the way in which it was committed, and its impact on others that should be considered by this commission in writing guidelines?"

The commission's statutory mandate directs it to consider whether

nal or the person who commits one illegal act motivated by a real or perceived need, emotional, financial or political, is a serious threat to society On the other hand," he said, "I consider economic criminals, corporate lawlessness and official corruption to be most threatening to our society."

At the hearing, Chairman Wilkins noted that "the severity of the sanction imposed should reflect the seriousness of the criminal conduct involved," and that the commission "must not only formulate appropriate sentences for the criminal conduct involved, but . . . must also for-

mulate sentences which are rational and explainable." The resulting system "must articulate to judges who impose sentences, to victims who suffer crimes, to defendants who receive punishments and to the American public why a particular sentence is appropriate," he said.

The commission invites comment on its work from judges, supporting personnel, and all other interested persons. Correspondence may be mailed to the U.S. Sentencing Commission, 1331 Pennsylvania Avenue, N.W., Suite 1400, Washington, DC 20004. The commission can also be reached at 202/662-8800. ■

NEWS FROM THE SENTENCING COMMISSION

several specified factors have relevance to the type of sentence served and to take them into account "only to the extent that they do have relevance." Three of the factors specifically mentioned in the statute are "the nature and degree of the harm caused by the offense," "the community view of the gravity of the offense," and "the public concern generated by the offense." 28 U.S.C. § 994(c).

At the hearing, the National Rifle Association, for example, called for "swift and certain punishment for serious, violent and dangerous armed criminals, but . . . a policy of leniency for technical, paperwork and *malum prohibitum* violations of laws regarding firearms acquisition, transfer, transportation and disposition among the generally honest gun owners of this country."

A witness for the American Civil Liberties Union disagreed with the view that "the common street crimi-



Judge William W. Wilkins, Jr., Chairman of Sentencing Commission, Discusses Goals

The Center Advisory Committee on Education Concerning 1984 Crime Legislation, appointed by the Chief Justice and chaired by Judge A. David Mazzone of the District of Massachusetts, met recently with the members of the United States Sentencing Commission. The meeting produced a suggestion that The Third Branch carry periodic reports on commission activities in order to keep federal judges and supporting personnel informed about the commission's work. This is the first article in that series.

District Judge William W. Wilkins, Jr., the commission chairman, stated

equality of treatment of similar defendants who commit similar crimes. Our goal must be justice not only for the defendant, but for the victim of crime, and for society."

When similar defendants who committed similar crimes are incarcerated in the same facility, they "may at some point compare notes on our judicial system. It is not whether they like those who put them behind bars that concerns me—it is whether they can respect the fairness of a judicial system which produces such inexplicable results."

Judge Wilkins recalled Justice Frankfurter's admonition that judicial authority rests ultimately on "public confidence in its moral sanction." "Unwarranted sentencing disparity," Judge Wilkins said, "undermines public confidence in our system. Unwarranted disparity breeds disrespect."

Although the present system may have worked well "in a less complicated age," Congress created the Sentencing Commission because the system "falls short now with more than 550 district judges throughout our nation addressing the complexities of sentencing on an individual basis. In order to ensure fairness and consistency," he said, "sentencing discretion must be better structured."

* * *

The commission's first public hearing was set for Apr. 15 in Washington. The hearing was scheduled to provide the commission various perspectives on its task of ranking the seriousness of federal crimes. The witness list included representatives from the American Civil Liberties Union, the Washington Legal Foundation, and the Association of the Bar of the City of New York.

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recently that, as a prosecutor for six years and now a district judge for five years, he had once been somewhat "skeptical . . . about the idea of federal sentencing guidelines." But his analysis of national federal sentencing data convinced him "of the great need for improvement in the area of sentencing." It is a conviction, he said "that many judges have long shared."

Judge Wilkins discussed the commission and its work at the Brookings Institution's Seminar on the Administration of Justice, held in March in Annapolis.

When defendants with similar characteristics, who committed the same crime, "receive dramatically different sentences due primarily to a single factor—which judge rapped the gavel . . . we should not be surprised by the widespread perception that sentencing is often purely the luck of the draw."

He stressed that "we judges owe it to those we serve, including those we sentence, to better satisfy the basic requirements of justice: certainty, fairness, and, to a much greater extent than has been the practice,

NEWS FROM THE SENTENCING COMMISSION



National Institute of Justice

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Federal sentencing guidelines—
Answers to some questions



There is also the question of how closely Federal judges will follow the guidelines. Judges may depart from guideline sentences for factors not adequately considered in the guidelines, provided they explain in writing their reasons for departure. While the Commission does not expect departures from the guidelines to occur with great frequency, it is not known how often they will occur, which direction they will take, and how large they will be. Thus, the discretion to depart from the guidelines, which is integral to the legislation that established the Commission, creates uncertainty about the ultimate impact of the guidelines on actual sentences.

Future plea negotiations are another problem that clouds prison projections. Plea negotiations are an integral part of Federal criminal justice administration. Recognizing the functional role of plea bargaining, the guidelines attempt to structure the bargaining process, not eliminate its practice. The plea bargaining environment must change under the guidelines, but the nature and extent of the changes are unknowable, creating additional uncertainty for projecting future sentencing practices.

Using sensitivity analysis, we adjusted impact projections to account for the uncertainty inherent in projecting future prison demands in the face of major policy innovations. All the results reported in this article are somewhat affected by alternative assumptions adopted for the sensitivity tests, but the major conclusions are substantively unaffected.

Against the backdrop of these various problems, one might nevertheless fear that any impact projections will be far too speculative to be trusted. But decisionmakers do not have the luxury of adopting this view. Failure to project the impact of the guidelines on sentences and on prison capacity as realistically as possible could convert an imprecise decisionmaking process into a wholly arbitrary one.

Details of the model the Commission developed and of the data used for the projections may be found in the Supplementary Report on the Initial Sentencing Guidelines and Policy Statements published by the Commission.

Sentencing Commission Chairman Wilkins answers questions on the guidelines

Recently *NIJ Reports* asked U.S. Sentencing Commission Chairman William W. Wilkins, Jr., to answer a few questions regarding the proposed Federal sentencing guidelines and how they were developed. His answers follow.

How did public concerns and attitudes influence the guidelines? What were the most significant obstacles to development?

Public input has played a pivotal role in the formulation of the guidelines, with the Commission receiving more than 1,000 written comments, testimonies, and observations from various individuals and groups.

One of our first official actions was to form working and advisory groups to assist us in addressing the many complex issues we faced in promulgating sentencing guidelines. The groups consisted of Federal judges, prosecutors, defense attorneys, victim advocates, public interest and membership groups, and individuals with an interest in criminal justice. In addition, all Commission meetings were open for public attendance.

The Commission decided early on that responsible public policy is only as good as the quality and breadth of the public input that goes into its creation. For this reason, the Commission held six topical hearings in Washington, D.C., on various issues crucial to drafting sentencing guidelines.

After publishing a preliminary draft of guidelines in September 1986, the Commission held five regional hearings across the country to facilitate public

input. A revised draft was published in January 1987, followed by 2 days of additional public hearings in Washington, D.C.

Writing sentencing guidelines for the Federal courts is a most complex task, far more difficult than I had ever anticipated when I accepted this position. Among the hurdles the Commission had to overcome was the lack of empirical data on current sentencing practices.

Another major obstacle was the complexity of the existing Federal criminal code. A third obstacle was the short timetable Congress imposed on the Commission.

Fourth, the statute authorizing the Commission addresses a number of difficult, competing policy choices but does not always clearly instruct the Commission on how to resolve the conflicts.

Additionally, a particularly difficult task confronting the Commission throughout its work has been how to best achieve a proper balance between the competing interests of simplicity and complexity in the sentencing guidelines.

Was the Commission able to assess what its decisions meant for the Federal prison system?

The Commission has recently completed a detailed prison impact study that is included in its Supplementary Report on the initial Sentencing Guidelines and Policy Statements.¹ The Commission worked closely with the Bureau of Prisons to design this prison impact model. To ensure that the guidelines were rooted in practicality, the Commission's research staff collected detailed sentencing

¹ An article summarizing the study is on p. 2.

Sentencing Commission Chairman Wilkins answers questions on the guidelines

information on 10,500 actual, recent cases for use as a starting point in guideline development.

Using current sentencing data as a starting point also ensured that the guidelines would not raise the prison population dramatically. The Commission deviated from current practices for policy reasons—most notably in the areas of violent and economic crime—only after careful analysis and extensive public comment.

The Commission recognized from its inception that any responsible public policy must be weighed against the cost of that policy. Some observers urged the Commission to base its entire guideline system on current sentencing practices; others advocated an approach based on a singular sentencing philosophy (that would not significantly consider current practices at all); still others contended that the Commission should structure its decisions so as to cause no increase in prison population, and some even contended that the Commission should use its authority to effectuate a net decrease in the Federal prison population. The Commission adopted none of these paths in the extreme. Instead, it chose a balanced approach based extensively on current average sentencing practices, tempered by policy judgments which the Commission felt were sound.

A particularly thorny issue, as always, was the death penalty. Could you summarize the views held by the Commission while it debated that issue?

When the question was raised as to whether the U.S. Sentencing Commission had the authority to issue capital sentencing guidelines, and if so, whether it should proceed to develop such guidelines, the Commission approached this issue in the same manner it had confronted other important legal and policy issues. This approach involved the solicitation of written legal briefs and views from a wide audience and the holding of a public hearing to receive additional input.

After careful consideration of a broad range of public comments, the Commis-

sion voted against including capital sentencing guidelines in the initial guidelines submission. A majority felt that the Commission should devote all of its efforts to the further development of the sentencing guidelines on which it had already been working for a number of months, so that those guidelines could be submitted to Congress on schedule.

While I personally favor capital punishment, I voted with the Commission majority. I did not want to jeopardize the months of work that the Commission had invested in this important sentencing guidelines effort by interjecting the capital punishment issue into the initial submission of guidelines to Congress. The subject of capital punishment is so highly controversial and emotional that it could easily have overshadowed any consideration of the merits of the remainder of the sentencing guidelines and possibly led to rejection of the entire product.

Are sentences under the guidelines universally stiffer? Will plea bargaining work to undermine the Commission's intentions?

Sentences under the guidelines are not universally stiffer than current sentencing practices. Our best estimates show the average time served for violent offenses will increase substantially under the guidelines. On the other hand, average time served for most property crimes will be about the same and, in some cases, lower than current experience. In the area of "white collar" crimes, such as income tax evasion, price fixing, and insider trading, imprisonment will be required under the guidelines much more frequently than in current practice.

With respect to plea bargaining, the Commission has proceeded cautiously, and we think appropriately, in these initial guidelines. Given that over 85 percent of all Federal defendants enter guilty pleas, and that almost 80 percent of all guilty pleas involve an explicit plea agreement, the Commission did not believe it wise to stand the Federal criminal justice system on its head by making too drastic and too sudden a change in these practices.

What we did do in our initial guidelines and policy statements is quite important, however. The Commission's policy statements on plea agreements require that the entire agreement be fully disclosed on the record and that the agreement set forth the relevant facts of the actual offense conduct and defendant characteristics. If the agreement includes a recommendation that the court depart from the sentence otherwise applicable under the guidelines, the specific basis for that recommended departure must be stated, and the court then must decide whether the agreement is acceptable.

Thus, the Commission's proposals in this area encourage full disclosure in sentencing with respect to plea agreements. Testimony before the Commission established that the principal concerns with current plea practices are the secrecy of the process and the perceived manipulation or concealment of relevant evidence. The policies enunciated by the Commission are designed, as a starting point, to change this—to bring a greater openness and honesty to the plea agreement process. Based on monitoring and evaluating sentencing experience with plea agreements under the initial guidelines and policy statements, the Commission can then determine what further steps may be needed in this important area.

Now that the final guidelines have been submitted to the Congress, have you had time to reflect on the meaning of the guidelines? Do you see them structuring judicial discretion or perhaps serving as a model for State guidelines?

I believe the sentencing guidelines, together with other procedural and substantive changes brought about by the Sentencing Reform Act (such as the abolition of parole and the imposition of determinate sentences), will drastically change and improve our Federal criminal justice system. These sentencing reforms will structure judicial discretion and thereby lead to greater uniformity and fairness in sentencing of similar defendants who commit similar crimes in a similar manner.

I also believe that if this effort at the Federal level is generally found to be successful, these guidelines will foster the development of guidelines by many States that do not already have them. The extent to which these guidelines can serve as a model is limited, however, by the considerable differences between the Federal and State criminal codes.

How are Federal judges likely to react to the new system? Do you foresee a protracted phase-in or a rapid implementation?

I venture that if you took a survey of Federal judges' opinions regarding the concept of sentencing guidelines, many would voice opposition. However, I have been pleased to learn that many Federal judges have acknowledged the need for increased fairness and consistency through guideline sentencing. On the whole, when judges take the time to study the guidelines and apply actual cases using the Commission's draft worksheets, I believe the vast majority will be pleasantly surprised, and the guidelines will earn wide acceptance.

Unless amended by Congress, the implementation date for the guidelines is November 1, 1987. In its letter of transmittal to Congress, the Commission suggested Congress consider a stay of implementation for an additional reasonable period to provide time for training and education.

I advocate a stay of implementation only if carefully limited legislation can be passed by Congress to accomplish this objective without undermining the Sentencing Reform Act or the guidelines.

The very nature of the investigation, arrest, indictment, conviction, and sentencing process builds in a limited phase-in implementation period for the guidelines. The Commission has recommended that the guidelines apply only to offenses occurring after November 1, with the result that the number of cases which work their way through the system to the point of application of the sentencing guidelines will increase on a gradual, manageable basis.

In the interim, judges and other members of the court family will become familiar with the operation of the guidelines through education and training programs currently being organized by the Commission and the Federal Judicial Center.

If the Congress accepts the guidelines, the Commission will have finished an important phase of its mandate. What do you see as the new role of the Commission?

The next phase of the Commission's work is a logical outgrowth of its intense first phase—the development of the initial guidelines and policy statements. The Commission is already well into that phase, which might briefly be described as one of explaining, testing, training, monitoring, evaluating, and perfecting, not necessarily in that order. We have just finished the preparation of a Supplementary Report which further explains the guidelines and describes their projected impact, especially with regard to prison populations.

The Commission has initiated an intensive clinical testing program to assist in identifying the problems, ambiguities, and incomplete areas in the initial guidelines. This process involves testing of the guidelines using sample cases by both Commission staff and by Federal probation officers in regional working sessions around the country.

At the same time, the Commission will be working with the Federal Judicial Center and others to develop programs and materials for the training of Federal judges, probation officers, and others. Broad-based, effective training is necessary to ensure that implementation of the guidelines and a new sentencing system will be as smooth as possible.

The Commission is also required by law to monitor the operation of the guidelines in practice and to collect and analyze data with respect to each sentence imposed under the guidelines. This information will then be used to determine changes needed in the guidelines to en-



U.S. Sentencing Commission Chairman William W. Wilkins, Jr., of Greenville, South Carolina, is United States Circuit Judge for the Fourth Circuit.

sure that the purposes of sentencing and the goals of the Sentencing Reform Act are achieved.

The process of improving the initial guidelines will be an ongoing one. The Commission is authorized to submit to Congress amendments to the guidelines on an annual basis, an authority which the Commission intends to fully use as necessary to develop a workable, effective system of guidelines. Our continuous review and testing processes have already uncovered some areas where amendments to guidelines, policy statements, or commentary are needed, and actual experience in applying the guidelines can be expected to reveal the need for other changes.

Additionally, the Commission will be addressing, in the months ahead, a number of areas where its work is incomplete, such as organizational sanctions and the promulgation of guidelines for a number of infrequently prosecuted offenses not covered in the initial guidelines document.

Thus, with all of these tasks and others such as longer range research efforts, the Commission and its staff are going to be quite busy in the foreseeable future.

SOUTH CAROLINA'S LEADING NEWSPAPER

The Greenville News

Greenville, South Carolina, Wednesday, September 11, 1985

Judge Wilkins named head of sentencing commission

By Paul Martin
News staff writer

President Reagan on Tuesday named U.S. District Judge Billy Wilkins of Greenville chairman of a bipartisan panel that will develop strict sentencing guidelines for the nation's federal judges.

The guidelines will reduce the disparity between sentences imposed by different judges for the same crime by limiting a trial judge's discretion.

When the new rules are enacted, parole will be abolished and determinate sentencing will be implemented.

Wilkins, 43, a former 13th Circuit solicitor and the first judge Reagan appointed to the federal bench, will serve a six-year term as chairman of the Federal Sentencing Commission. The 7-member panel, which must be confirmed by the Senate, has an initial budget of \$2.35 million.

The sentencing guidelines will reduce the historically broad discretion judges



Judge Billy Wilkins
...will head commission

Authorities have used 1984 anti-crime legislation to fight drug dealing in South Carolina and to help crime victims. See Page 1C.

have had by mandating strict maximum and minimum sentences based on the crime and the inmate's record. In special cases, a judge can deviate from the guidelines, but only after justifying the

See Wilkins, Page 7A

Wilkins

Continued from Page 1A

reason in writing.

Any departure from the guidelines can be appealed by the prosecution or defense.

"Quite frankly, as an individual judge I like to have a great discretion in dealing with the cases I'm handling, because at least in my mind I'm doing what's right," Wilkins said. "But this is really not a subject of debate anymore. All the judges throughout the nation are probably going to criticize the guidelines, but the fact of the matter is, Congress has spoken."

Wilkins said he hopes the commission can develop its sentencing guidelines by April. Congress then has six months to study and approve them.

"One of the things that has always troubled me about the rehabilitation of criminals is when one criminal is sentenced for an offense, he should stand in about the same shoes as the next fellow who committed a similar offense and is sentenced in another court," Wilkins said.

"It's just not justice for one fellow to go to prison and one fellow not to go to prison when both of them perhaps should be in prison or both perhaps shouldn't be in prison. We're going to try to reduce this disparity that exists."

Mandated under the far-reaching Crime Control Act of 1984, the commission will hold hearings in Washington, D.C., and possibly other cities to solicit views from victims of crime, prosecutors, defense attorneys, prison officials and social workers.

When the panel's guidelines are enacted, the federal parole system will be replaced by determinate sentencing. Wilkins called this "the most important change in the criminal justice system this century. By and large, a person sentenced to five years in prison is going to do five years, less the good time."

In the past, Wilkins said, some inmates attempted to hoodwink the parole board by play-acting to get early release from their sentences. "The uncertainty of parole motivated prisoners to get involved in all kinds of so-called rehabilitative programs merely to get brownie points."

When criminals are sentenced

under the guidelines, they will know exactly how long they will spend in jail. "I really think that definiteness, that certainty of punishment has a major deterrent effect," Wilkins said.

Wilkins also said there is a possibility more people will go to prison under the committee's guidelines, but that is not the intent. "If it happened to increase the prison population somewhat, that's part of it. I'd rather have a habitual criminal in prison than on the street even if it meant building a few more federal prisons."

But providing alternatives to prison for non-violent offenders will be one of the thrusts of the commission, he said.

Being appointed chairman was unexpected, Wilkins said, even though he felt confident about a slot on the panel.

"I can't say I was suprised that President Reagan selected me because I had some pretty good support," he said. "Sen. Strom Thurmond and Chief Justice Warren Burger recommended me, so I felt pretty good," said Wilkins, who managed Thurmond's U.S. Senate campaign in 1972.

Wilkins said the panel is composed of Republicans, Democrats and Independents.

Thurmond, a South Carolina Republican, said he sees the need for a cap on judges' discretion that the sentencing commission will apply. "I think we need a little more control than we have in the present. I think you have to leave a reasonable discretion, but right now there's just no limit."

Thurmond, chief sponsor of the anti-crime package, said Wilkins' selection "brings recognition to Greenville and the state of South Carolina."

Wilkins said he has no plans to give up his work as a federal judge, though initially he may be working full-time in Washington setting up the commission. Wilkins said he plans to double-up on his local workload and is counting on U.S. District Judge G. Ross Anderson Jr., who also sits in Greenville, to help pick up any slack.

The Greenville News

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February 9, 1987

editorials

Raising confidence in judges and justice

THE U.S. Sentencing Commission, headed by federal Appeals Court Judge Billy Wilkins, has accomplished a herculean task with the latest draft of guidelines it has proposed for making criminal sentencing more uniform in federal courts.

And as Wilkins openly admits, the job is not over.

In the two months left before the proposal is due to Congress, the commission will subject this draft to the same scrutiny it gave the first one after it was widely criticized for being too mechanical and limiting of judicial discretion.

The second draft has clearly benefited from the criticism.

It backs away from sharp restrictions on judges' discretion, but still provides them with realistic and flexible sentencing guidelines.

It also brings much-needed truth in sentencing to the federal court system.

That is the purpose behind the effort: to devise a system that provides comparable punishment to defendants convicted of comparable federal crimes — and makes the sentence assigned the sentence that is served.

The panel is proposing ranking offense levels and assigning points for such factors as the amount of money stolen, the harm inflicted on the victim and the defendant's criminal history.

This would determine the sentence that should be applied. Judges would be able to deviate from the guidelines, but would have to explain their reasons in writing.

The panel also proposes eliminating parole and the current system that allows prisoners to serve as little as one-third of their terms. The sentences may be shorter on paper, but they would reflect the actual time served.

Even these compromises haven't satisfied everybody, but Wilkins is not surprised.

Intense debate is normal, he says, considering the enormity of the task and the diversity of the commissioners on his panel, which includes federal judges and academicians from across the nation.

But what the panel has attempted to do will assure that federal justice is dispensed more equitably and that the public is not misled by inflated prison sentences that ignore reality.

It's a reform that South Carolina could well use.

The idea would deprive no judge of sentencing discretion, only ask him to explain in writing why he chose to be exceptionally lenient or exceptionally harsh.

The result would doubtlessly be more public confidence in judges, and in justice.

THE WALL STREET JOURNAL.

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More White-Collar Criminals Face Jail Under New Sentencing Rules

By MICHAEL ALLEN

Staff Reporter of THE WALL STREET JOURNAL

Record numbers of white-collar criminals may soon find themselves wearing prison blues.

That, at least, is one aim of the new federal sentencing guidelines that took effect this month. Created to bring consistency to sentencing practices for most types of crimes, the guidelines also call for significant changes in the way courts treat convicted embezzlers, tax cheats, inside traders and swindlers. Probation—until now a common refuge for the genteel scoundrel—has been eliminated for most offenders in favor of at least brief confinement. And a "truth in sentencing" provision, mandated by Congress, phases out parole.

"The white collars are going to get hurt pretty badly," says Rebekah Poston, a Miami criminal defense lawyer who is working with local judges and probation officers to implement the new guidelines.

Such conclusions may be premature, since the guidelines apply only to crimes committed after Nov. 1 and thus haven't fully been put into practice. What's more, judges will have room to deviate from the suggested punishments in unusual situations, as long as they explain their reasons in writing. Finally, the rules may be rendered moot by constitutional challenges. (See accompanying story).

'Short but Sure'

But the seven-member U.S. Sentencing Commission, which created the guidelines as part of the Comprehensive Crime Control Act of 1984, clearly intends to tighten the screws on white-collar offenders. Commission members cite two main reasons for the policy change. First, they contend that the prospect of a "short but sure" prison term is a particularly effective deterrent to would-be criminals in the ranks of the middle and upper class. Second, they say, fairness demands that wealthier crooks who evade taxes or use computers to steal face the same punishment as poorer crooks who use less-sophisticated methods.

"Whether you work on Wall Street or you drive a truck on Wall Street shouldn't make a difference if you commit a theft," says Commission Chairman William W. Wilkins Jr., a federal judge in Greenville, S.C.

Additionally, the guidelines don't ordinarily allow judges to take into account the defendant's age, community ties, family responsibilities or previous employment record—factors that have often mitigated the white-collar offender's punishment in the past. "White-collar criminals are going to find their exemplary backgrounds aren't going to influence a judge's sentencing decision" anymore, says Samuel Buffone, chairman of the American Bar Association's sentencing committee.

The guidelines reduce most crimes to a complex point system ranging in severity from one to 43. Points, representing jail time, are added or subtracted to reflect factors such as the defendant's degree of

participation in the crime, whether or not he admits guilt, and, especially, the amount of money involved.

Probation remains an option only for the most innocuous offenses. However, the guidelines permit many felons who might have received probation under the old rules to serve their time in halfway houses or in weekend jail visits.

The case of Randall Cecola, a minor figure in the Dennis Levine insider-trading scandal, illustrates how the new rules could change sentencing for white-collar offenders. Mr. Cecola, a former financial analyst at Lazard Freres & Co., pleaded guilty last year to two felony counts of filing false tax returns involving \$66,342 in profits made from securities trading. The judge in the case, noting that the 25-year-old Mr. Cecola was supporting his ailing mother and two brothers at the time of the crime and was unlikely to err again, sentenced him to five years probation.

But under the new guidelines, according to New York criminal defense lawyer William M. Brodsky, Mr. Cecola's crime would likely have mandated a prison term of six-to-12 months. The judge would have had the option of allowing Mr. Cecola to serve that time on weekends or in a community halfway house. But to grant probation without confinement, he would have had to submit his reasons in writing, and the government could have appealed.

Similarly, many recent securities-law violators would probably have received stiffer sentences if the new guidelines had applied. For example, Mr. Brodsky estimates that Mr. Levine, a former mergers specialist at Drexel Burnham Lambert Inc. who pleaded guilty to four felony counts related to insider trading, would have received between 46 and 57 months in

prison if he had committed his offenses after Nov. 1. Mr. Levine's punishment under the old rules: 24 months in prison and a \$362,000 fine.

(Mr. Brodsky cautions that his calculations aren't exact, since he doesn't have access to certain non-public information that might have influenced the sentencing judge. Moreover, he doesn't account for the mitigating effects of Mr. Levine's cooperation with the government.)

Among the hardest hit by the reforms will be income-tax evaders, lawyers predict. In recent years, about 57% of tax cheats have received probation with no confinement. The new guidelines aim to reduce that figure to just 3%, the commission says. First offenders who plead guilty to evading more than \$10,000 can probably expect some jail time under the rules change.

GREENVILLE PIEDMONT — Tuesday, September 16, 1986

Judge at work on restructuring federal sentences

U.S. Court of Appeals Judge William W. Wilkins said Monday that tentative proposals to restructure federal sentencing guidelines will be completed in two or three weeks, and they will remove sex, race and socio-economic statuses when judges hand down sentences.



Wilkins

Wilkins, 44, addressing the First Monday meeting, said the 150-page proposal to restructure federal sentences will improve the justice system and make it more "structured and principled."

Wilkins chairs the United States Sentencing Commission, which was created by the Comprehensive Crime Control Act of 1984.

He will serve a six-year term while continuing his work as an appeals judge.

Wilkins said the proposal will be presented to Congress when it is completed, and Congress will have six months to reject it. If Congress does not pass a law to reject it, the proposal becomes law.

Wilkins said the overall purpose of the proposal is to ensure that defendants in federal court are given equal sentences for committing the same crimes.

He said court records show some defendants get lesser sentences than others for committing the same crime.

"I think the American people want a justice system that is fair, and one of our goals is to come up with a proposal that will not be simplistic but ensure equal justice," Wilkins said.

Wilkins said civil liberties groups oppose efforts to equalize federal sentencing guidelines, and he expects such groups to strongly protest it.

New policy on sentencing will stress harm of crime

Associated Press

GREENVILLE

Guidelines that federal judges will use in the future to impose sentences will emphasize the harm caused by the crime, rather than the crime itself, said the judge who headed the commission that developed the standards.

U.S. 4th Circuit Court of Appeals Judge William W. Wilkins Jr., in his hometown of Greenville to address the Southeastern Victims Assistance Conference, said Friday that the proposed guidelines will reduce the disparity between sentences imposed by different judges for the same crime by limiting judges' discretion.

The guidelines will be published in the Federal Register for comment in

September, said Wilkins, chairman of the U.S. Sentencing Guidelines Commission. Congress then has six months to study the guidelines and approve them.

If the guidelines are enacted, he said, probation would be abolished and determinate sentencing would be used, eliminating early-release programs. Under determinate sentencing, "a two-year sentence is a two-year sentence" without work or educational credits reducing the term, he said.

Because crimes are not identical, he said, guidelines that depend solely on the crime as a yardstick would be inaccurate. On the other hand, guidelines that emphasize the harm inflicted by the crime are more likely to

decrease the disparity between sentences.

"The sentence imposed in the guidelines would be the mirror of the crime," Wilkins said.

Using a point system, federal judges would "look at the factual situation and identify the harms" to determine the sentence to be imposed, Wilkins said.

For example, he said, someone found guilty of robbing a bank, stealing \$1 million and harming a bank teller would receive a longer sentence than someone who is found guilty of robbing a bank but who didn't harm anyone.



Wilkins

editorials

The expression of this newspaper's opinion is restricted to this page and its staff. Views offered in the column below are the opinion of the company and publisher. Other opinion, often contrasting, is offered in adjoining columns.

Thomas P. Inman
Editor, News Editorial Page

Mary E. Podgett
Editor, Piedmont Editorial Page

Judge Wilkins soars

THE swiftness of favorable Senate action on the nomination of federal District Judge Billy Wilkins to the U.S. 4th Circuit Court of Appeals is not the least bit surprising, but is no less gratifying for that.

Wilkins' record as law student, private attorney, state prosecutor, federal trial judge and sentencing commission chairman is that persuasive.

His record wasn't just hastily embraced by the Senate, however.

Searching review (many would say to the point of nitpicking) of federal appellate court nominees by the Judiciary Committee staff is routine. And lengthy committee hearings, when the slightest evidence of unfitness turns up, is just as routine. The severity of this winnowing process that Wilkins breezed through resulted hardly two weeks ago in committee rejection of the Reagan administration's Indiana nominee to the U.S. 7th Circuit Court of Appeals.

Judge Wilkins, at age 44, possesses qualities of judicial temperament and legal scholarship that clearly mark him for a nationally notable career among federal appellate judges. South Carolinians who know him and admire his competency will share a native feeling of pride in his continuing success.

B.H. Peace, 1873-1934

Roger C. Peace, 1899-1968

J. Kelly Sisk, 1913-1980

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MULTIMEDIA

February 5, 1987

U.S. panel proposes sentencing guidelines

Object is to fit punishment to crime

By Tony Mauro
USA TODAY

Drug dealers, armed robbers and inside traders would face more certain prison terms under federal sentencing guidelines due out today.

Following the lead of 21 states, a federal sentencing commission proposes assigning "offense levels" that will dictate penalties for more than 2,000 federal crimes. Judges who want to impose stiffer or more lenient penalties would have to explain why.

Federal judges now have wide discretion in sentencing.

"Ten percent of those convicted of armed robbery are not sent to prison," said commission chairman William Wilkins Jr., a federal appeals judge from South Carolina. "It has produced uncertainty and unfairness."

After public comment, a final report goes to Congress April 13. The guidelines take

effect six months later unless both houses of Congress reject them.

Still unresolved: whether the commission should — or can — revive a federal death penalty, dormant since a Supreme Court ruling in 1972. The issue gets a hearing Feb. 17.

Wilkins predicts a modest — but manageable — increase in federal prison population if sentences vary less widely.

At the state level:

■ Minnesota's prison population went from 1,877 in 1982 to 2,320 two months ago under a sentencing guideline program, said state official Debra Dalley. "We saw some enormous changes. More violent offenders are going to jail."

■ West Virginia's Legislature considers sentencing reform this week. "Second-degree murderers and unarmed robbers can get the same penalty right now — five to 18 years, and it's unfair," Attorney General Charles Brown said.

April 22, 1987

Federal Guidelines for Truth in Sentencing

Judge-shopping is a tradition in the U.S. District Court in Manhattan and perhaps elsewhere as well: Smart defense lawyers try to schedule their guilty pleas before judges who have a reputation for leniency.

But the rewards of judge-shopping in the federal courts will dwindle if Congress accepts — as it should — the recommendations presented last week by the U.S. Sentencing Commission. The purpose of these guidelines is to produce similar sentences for similar crimes committed by similar criminals, regardless of who's judging the case.

The federal appellate judge who chairs the commission put it this way: "We want to take the two extremities of our justice system, the

hanging judge and the Baby Ruth judge, and pull them in together."

The commission's guidelines, which will take effect automatically on Nov. 1 unless Congress decides otherwise, set up 43 different levels of sentencing for federal crimes. The penalty is life in prison for the most serious: first-degree murder, treason and aircraft hijacking that results in death.

Judges would be restricted to a relatively narrow range of sentences for a given offense — 24 to 30 months for residential burglary, for instance — unless they cite mitigating or aggravating circumstances. Although federal prisoners are now normally eligible for parole after serving one-third of

their sentences, parole would be eliminated under the guidelines. Apart from limited time off for good behavior, prisoners would serve out their full sentences.

One rap against the guidelines is that they would probably increase the population of federal prisons, which are already desperately overcrowded. To deal with this, Congress might want to make some adjustments in the sentencing ranges after hearings are held.

But fundamentally the commission has done what Congress asked it to do, and Congress was right: A justice system worthy of the name obviously shouldn't permit wide disparities in punishment just because of judges' quirks.

EDITORIALS

GREENVILLE PIEDMONT — Tuesday, February 3, 1987

U.S. sentencing panel strikes middle ground

The U.S. Sentencing Commission, a powerful federal panel chaired by Federal Appeals Court Judge Billy Wilkins of Greenville, appears to have found middle ground in its assigned task of making criminal sentencing more uniform.

And in doing so, the commission has developed a set of proposed guidelines guaranteed not to please everybody. But by striking compromises and backing away from sharply restricting the discretion of federal judges in sentencing, the commission has accomplished its goals of providing judges with realistic, though flexible, guidelines and of bringing truth to sentencing.

These guidelines, due April 13, will become law in six months unless both houses of Congress vote to overturn them.

Says Judge Wilkins, as quoted last week in The Washington Post, the guidelines will be "very workable and very practical. We've taken out all the complexity we can and still be true to the statutory mandate. It will be a system that provides a great deal of guidance to judges, not just an arbitrary selection of numbers."

It's reported that some commission members are upset because this federal panel backed away from giving judges a rigid scale for assigning sentences, a scale that severely re-

duced individual discretion.

But what the commission has done is no small feat. First, early release through parole will be eliminated. Also, prisoners no longer will serve as little as one-third of their term. Instead, the sentences might be shorter on paper, but they will be more realistic.

And, despite the criticism, the panel has made great headway in reducing the disparities in judges' sentences. What the panel has developed is a system for ranking "offense levels," assigning "points" for such factors as the amount of money stolen, the harm inflicted on the victim and the defendant's criminal history.

Judges can deviate from these guidelines, but they will be required to explain their reasons in writing.

Said one commission member, "You have to start slowly. One has to see how judges react to a system that doesn't limit discretion too closely but gives guidance."

That is no small accomplishment, for it will ensure that justice is dispensed more equitably and that the public is not being hoodwinked by inflated prison sentences that in no way resemble reality. It's a plan that the state Legislature should consider, too.

The Gainesville Sun

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EDITORIALS

A forceful message

But for timing and circumstances, the sending away of Beverly Ann Holmes and Curtis Patrick Harris on Tuesday would have attracted little public notice. They would be just two more drug dealers on their way to the slammer.

Holmes and Harris were convicted on drug-related charges as a result of a police raid on a

The federal sentencing guidelines

Kennedy Homes apartment last November that turned up 140 grams of crack cocaine. What made their convictions particularly noteworthy — and particularly hopeful for those who believe that the drug problem is one of the most serious facing our society — is the fact that Holmes and Harris happen to be the first two defendants in North Florida to be sentenced under more stringent federal guidelines.

Had the two defendants gone before a state court, they might have drawn no more than three years in prison. But the raid that resulted in their arrests was carried out jointly by Gainesville police and federal Drug Enforcement Administration agents. And their case went before a federal judge.

Under the new federal sentencing guidelines, Holmes drew nearly 11 years, and Harris got more than 17 years.

"This is a message to crack cocaine dealers that if they are going to continue selling, they will end up like these people here today," said Richard Squires, Gainesville police spokesman. "The system is working for us."

Added Police Chief Wayland Clifton: "This union will provide local law enforcement with the benefit of federal resources and will allow GPD access to the federal system for sentencing purposes."

Gainesville isn't the only local law enforcement agency that has turned to the feds for help in cracking down on crime. Dade County prosecutor Janet Reno has indicated that her office will also seek to funnel more of South Florida's numerous drug cases through the federal system in order to take advantage of tougher sentences.

Still, turning to the feds won't be the panacea that it may appear. For one thing, the federal prison system is no less underfunded and overcrowded than the state's. The federal prison system is estimated to be 60 percent over capacity, with 44,000 inmates in 47 institutions.

With an estimated 40,000 defendants sentenced annually, it won't be long before federal prison authorities are forced to do what Florida is already doing — releasing prisoners far in advance of the expiration of their sentences as a matter of routine.

That's because Congress and the Florida Legislature have at least two things in common — they love to pass get-tough-on-crime laws, but they hate to pay for all the prisons necessary to

house those caught breaking the new, tougher laws.

And too, there is another potential problem with the federal sentencing guidelines — it is a legal problem that may directly affect the period of time Holmes, Harris and thousands of other prisoners will actually spend in prison.

The ink is hardly dry on the new guidelines, but already lawsuits have been filed in 17 states contending that they are unconstitutional. And it isn't the content of the guidelines that must pass the test of constitutionality, but rather the way in which they came into being.

Rather than enacting the guidelines into law, Congress created a Sentencing Commission to write and put them into effect. It mandated that three federal judges be part of the commission's seven-member body, and it characterized the panel as an arm of the judiciary.

In contesting the guidelines, attorneys say that Congress delegated too much of its lawmaking authority to the commission, and that, in any case, designating the commission as part of the judiciary violates the constitution's separation of powers doctrine.

Several federal courts are making various rulings in response to those challenges. Ultimately, it will be up to the Supreme Court to settle the issue, unless Congress decides to head off the challenges by enacting the guidelines into law.

As a matter of fairness and uniformity, sentencing guidelines are a good idea. Florida has similarly adopted guidelines and it has avoided the prospect of defendants drawing widely disparate sentences for similar offenses.

But sentencing guidelines, federal or state, do not by themselves hold out the promise that crime will be more swiftly or more surely punished.

"The system is working for us," Squires proclaimed with the conviction of Holmes and Harris, and so it is, at least in this case. But to ensure that punishment will be swift and sure for all of the drug dealers, violent offenders and career criminals there must be a comprehensive re-examination of the criminal justice system at both the state and federal levels.

Is there adequate funding for the court and prison systems? Are low-risk offenders being needlessly locked up? Could alternative forms of punishment, such as restitution and community service, be used more often to free costly prison space for those who really merit incarceration?

The sentencing of Holmes and Harris on Tuesday sent a forceful message that those who would poison our community with drugs can expect to pay a heavy price when they are caught at it. But for that message to be meaningful, there must be a renewed commitment to our criminal justice system at all levels, and a better sense of priorities in terms of meting out punishment.

The Washington Post

AN INDEPENDENT NEWSPAPER

A Deadline for Criminal Sentences

FOR MORE than a decade, Congress and a variety of criminal-justice experts have been working on a massive revision of criminal sentencing in federal courts. On Nov. 1, a completely new sentencing system that will include changes in procedures and penalties for every single federal crime will go into effect. At this late date, though, many of the people who are to carry out the changes are beginning to get cold feet.

The idea behind sentence guidelines is to reduce disparity in penalties by setting objective standards for judges to use in devising sentences. In 1984 Congress created a Sentencing Commission, which was given responsibility for identifying all the factors that should be weighed at sentencing, assigning values to these factors and setting out specific sentences for each crime in the code. Rigid timetables in the statute govern the work of the commission and the putting into effect of its recommendations. Members of the commission are all experts—some are senior federal judges—but the work went slowly. There was a long delay in naming commission members, which necessitated the postponement of all deadlines by a year. And the subject was both complicated and controversial.

Six months ago the guidelines were sent to Congress, set to be inaugurated Nov. 1, but at that time the commission itself asked for an additional nine-month delay. The House, however, on a record vote earlier this month, refused to go along, and now the Senate Judiciary Committee is working only on a few last-minute technical amendments. There is little chance for further delay in spite of the fact that federal judges, from Chief Justice Rehnquist on down, are adamant about the need for more time to

study the guidelines, try them out informally and suggest changes.

In the past six months, the Sentencing Commission has provided training programs for most of the probation officers in federal courts, and seminars are scheduled for the judges next month. There will be a little lag time, since the new sentences will be used only in cases involving crimes committed after Nov. 1. No one expects the changeover to be accomplished without problems, but they can be handled.

As part of the plan, parole has been abolished, and criminals will be sentenced to fixed terms. This may increase the prison population, so these figures must be watched closely. Judges may also find that in certain situations their discretion is so restricted as to hamper the dispensation of justice. But the Sentencing Commission is a permanent body, and its members will continually monitor the use of the guidelines. Fine-tuning is expected, and even major changes are possible if Congress is convinced that some aspect of the new program is not working.

Some public officials are enthusiastic about the guidelines because they foresee tougher sentences and less room for judges they regard as "soft" to control the sentencing process. On the other side, defense lawyers in particular fear the new program will lock in long prison sentences and discourage the use of other penalties that don't involve incarceration. Congress, however, did not intend to curb lenient judges or to mandate harsh penalties across the board, but to make all sentences more predictable and more equitable. That is what took so long to plan, and that is what is expected to be accomplished when the federal criminal justice system enters a new era next month.

Guidelines due today on U.S. sentencing law

By Theo Stamos
THE WASHINGTON TIMES

After months of debate and several revisions, the U.S. Sentencing Commission today is expected to issue its proposed guidelines designed to make criminal sentencing for federal crimes more uniform.

The guidelines, which cover crimes from commercial bribery to concealing spies, automatically become law six months from today unless Congress votes to change them or reject them.

The seven members of the commission and their staff spent the weekend working on the final submission to Congress. The new report includes a number of changes from the panel's second public draft issued in February.

The commission was created by Congress in 1984 because of mounting frustration with a system that produces widely different sentences for the same crime and which lacks the guarantee of punishment, which, some say, is needed to deter other crimes.

While providing shorter and more realistic sentences, the guidelines also eliminate the traditional practice of granting parole to prisoners, who now can be released after serving one-third of their sentences or less.

U.S. Appeals Court Judge Stephen Breyer, a member of the commission, said the latest draft includes a number of significant changes from the February proposal, but that it was "an overstatement to say that the [February] proposal was totally scrapped."

The commission's first draft of the guidelines was issued last September and drew widespread criticism because of their complexity and harshness. A number of critics also thought that the September guidelines gave judges too little discretion in sentencing.

The second draft, issued last February, responded to much of the public criticism generated by the first draft by eliminating the unwieldy system of ranking offenses on a 360-point scale using various "weights" affixed to 2,600 criminal offenses, and a complicated mathematical formula to compute appropriate sentences.

In addition to giving judges more leeway in handing down sentences, the February draft also traded in the complicated weighing formula for a simpler system using 43 "offense levels," with each level corresponding to a po-

tential range of prison terms.

U.S. Court of Appeals Judge William Wilkins, the panel's chairman, said the final draft keeps the 43 offense levels, but drops the broader discretionary ranges that could have led to less uniform sentences.

"What we've done since the [February] draft is receive a great deal of public comment," Mr. Wilkins said. "And things are shaping up very well."

After receiving a legal opinion from the Justice Department, the commission determined that it did not have the legal authority to set the broader ranges that were used to increase or decrease sentences.

The final draft also includes guidelines for issuing sentences involving multiple counts of an offense, which Mr. Wilkins called "one of the most difficult issues we had to face."

"We've adopted an approach that does provide for the recognition that multiple acts of wrongdoing ought to be more severely sanctioned than a single act of wrongdoing," he said.

In addition, the final draft, which was approved by the commission 6-1, retains judicial discretion by allowing judges to depart from the guidelines if a situation is not covered by them.

Mr. Breyer said he anticipates mixed reviews on the final proposal.

In terms of the level of judicial discretion, a point that has engendered a good deal of controversy, Mr. Breyer said "different people will judge that differently."

"It's quite clear that judges have the legal power to depart from the guidelines, and it is possible that judges will depart from them" when the crime involved is bizarre or unusual, he said.

The final guidelines, like the two initial drafts, do not include the death penalty, despite efforts from the Justice Department and death penalty supporters who urged the commission to approve a death penalty provision.

Responding to congressional pressure, the commission last month voted not to include a capital punishment statute in the guidelines, fearing that such a provision would ignite strong congressional opposition and jeopardize the entire sentencing proposal.

The dissenter in the weekend voting was Commissioner Paul Robinson, a Rutgers University law professor, who is expected to file a formal dissent soon.

EDITORIALS

GREENVILLE PIEDMONT — Wednesday, November 25, 1987

Sentencing guidelines improve judicial system

Only the federal courts will be able to give a definitive answer to the charge that the federal sentencing guidelines that took effect this month are unconstitutional. A lawsuit filed this week is asking that the guidelines be thrown out because "Congress made an excessive delegation of legislative authority to the sentencing commission."

The chairman of that federal commission, federal appeals court Judge Billy Wilkins of Greenville, said he welcomes the lawsuit because it will settle any doubts about the guidelines before a large number of individuals have been sentenced under them.

Judge Wilkins also makes a convincing argument on behalf of the guidelines developed by the seven-member panel of judges and law experts. The commission was not given a free hand in developing the guidelines, but rather it operated under limitations imposed by Congress.

Perhaps more importantly though, the guidelines would not have gone into effect had Congress not allowed them to do so.

The two groups of public defenders that are contending the guidelines are unconstitutional contend they oppose only the manner in which the guidelines were established, not the guidelines themselves.

Maybe so, but the guidelines also make life a little more uncomfortable for many who are convicted of breaking federal laws: parole is abolished and the penalties are stiffened for white collar and violent crime. These changes comply with the desires of federal lawmakers.

The main thrust of the guidelines, though, is to reduce the disparity in judges' sentences by providing them with, as the name implies, sentencing guidelines that assign similar penalties to similar crimes. What this does is ensure that the price one has to pay for breaking a specific law doesn't depend on which judge hears the case.

Judges, of course, can deviate from the guidelines, but they must explain their reasons for doing so in writing, and either side in the case can appeal the sentence differing from the recommendation.

The net result is that the sentencing guidelines will ensure that justice is dispensed more equitably. But the guidelines are not so rigid that a judge, with a good reason, can't tailor a sentence to fit a particular case.

Special interests groups can argue over the manner under which the guidelines were established. But it's difficult to argue with the soundness of establishing such guidelines.

Monday, July 27, 1987

editorials

Proposed guidelines improve sentencing

It is hardly surprising that some judges and lawyers, and even one commission member, have voiced sharp objections to the sentencing guidelines developed by a special federal panel.

The task given two years ago to the U.S. Sentencing Commission, headed by federal Appeals Court Judge Billy Wilkins of Greenville, was a difficult one guaranteed to create disagreement. The group was instructed to develop a new, in some cases tougher, sentencing system for the federal courts. The guidelines were to bring greater consistency and fairness to sentencing.

Simply put, under the guidelines a person in South Carolina and a person in California who commit similar federal offenses under similar circumstances will face the same sentences, instead of receiving punishment reflecting different regional sentiment.

This new sentencing system will also keep a criminal, and society at large, from being subjected to the whim of any particular judge. Society will be better protected from soft-hearted judges inclined to downplay the seriousness of certain crimes. And criminals will be protected from hanging judges who wanted blood more than justice.

And, an added twist is that this new system is intended to reflect "truth in sentencing." This means if a defendant is sentenced to five years, that person serves five years.

On its face, the package of new guidelines the sentencing panel gave Congress on April 1 is fair.

A sentencing matrix will guide judges when they are sentencing criminals. Sentences can be more consistent throughout the federal courts. However, judges can deviate from the guideline norms as long as they explain their decision in writing. This process will be subject to appeal.

And, parole should virtually disappear, thus ending the situation cited by one commission member where a judge would sentence an offender to 12 years, only to see him on the street four years later.

It should be expected that some judges who enjoy the power of deciding on what they consider to be a proper sentence would chafe under any sentencing guidelines. And it should be expected that lawyers who do a good trade in judge-shopping for their clients would oppose any uniformity in the court sentencing.

These objections are the type being heard as a House criminal justice subcommittee gathers testimony on the recommended sentencing guidelines. But no one has offered convincing evidence to refute Wilkins' statement that the commission produced workable guidelines to ensure that "sentences handed down in federal courts ... will be fairer, more rational and more consistent."

Unless convincing testimony of that nature is forthcoming, the federal sentencing guidelines should take effect Nov. 1 as planned.

Making the Penalty Fit the Crime

EVERY BANK robbery is different. Was the felon armed? Did he threaten or harm others? Were the victims youngsters or old people? How much was stolen? What part did each of the robbers play? Have the criminals ever been convicted of a violent offense before?

A sentencing judge has to weigh these and other factors involving the nature of the offense and the history of the offender before fixing a punishment. And because judges across the country have different ideas about how much weight to accord each, sentences for offenses that sound the same differ widely.

In 1984 Congress created the U.S. Sentencing Commission and told it to devise sentence guidelines for federal courts that are honest (parole after serving a fraction of the time imposed, for instance, is to be abolished), uniform and at the same time proportional, allowing for some adjustments based on the unique aspects of each crime. That commission has just finished a first set of guidelines, which will take effect automatically unless a law is enacted that stops them. The commission has created categories of behavior and of characteristics, assigning numerical values to each and mandating sentences based on those distinctions. It was a formidable task, and it has been done well.

One member of the commission has dissented on the ground that the new guidelines are not firm enough, that they still leave some discretion

for judges. That's true, but it's not necessarily a flaw. A judge may deviate from the guidelines only when he finds an aggravating or mitigating circumstance that was not taken into consideration by the Sentencing Commission. He must specify his reasons for departing from the guidelines, and his decision can be appealed by the prosecutor or the defendant. A majority of the commissioners believe that, in practice, sentences outside the guidelines will be rare.

The 1984 statute says the guidelines will go into effect this November, but the commission has asked for nine more months in which to test the new procedures. During this trial period, the commission would learn whether judges were regularly deviating from the guidelines and could make adjustments if necessary. There would be a chance to see how the changes affect the prisons.

Predictions in this area now vary widely, but an increase in prison population of at least 10 percent is expected because of the abolition of parole, among other things. That would present a real problem in the already overcrowded corrections system, one that would have to be reckoned with. The Sentencing Commission is a permanent body that can submit guideline amendments to Congress each year. At the beginning of this new experiment, though, it does seem reasonable to move slowly and do as much fine-tuning as possible while the program is just getting under way.

The Philadelphia Inquirer

April 14, 1987

Guidelines issued for uniformity in federal sentencing

By Pete Yost
Associated Press

WASHINGTON — The U.S. Sentencing Commission yesterday issued guidelines that would increase prison terms for many federal crimes and force judges to sentence people convicted of such offenses according to uniform regulations.

The guidelines are designed to wipe out wide disparities in penalties for similar offenses.

"We want to take the two extremes of our justice system, the hanging judge and the Baby Ruth judge, and pull them in together," commission chairman William Wilkins, a federal appeals court judge, told a news conference. Because of "unwarranted disparity" in sentencing, he said, "fairness is sometimes lacking."

Wilkins also said the guidelines require that corporate executives convicted of antitrust offenses such as price-fixing serve prison terms. Currently, only 28 percent of those convicted of antitrust offenses are sent to prison.

The guidelines are expected to cause a 10 percent increase in the federal prison population over the next decade, the commission said. That population is now 42,000, a 75 percent jump since 1980.

The guidelines, which will take effect on an experimental basis late this year, will increase prison terms for robbery, fraud, forgery, drug violations and a host of other crimes.

The impact of the guidelines will be even more significant when combined with other measures — such as

abolition of parole and retraction of time off for good behavior — required by the Comprehensive Crime Control Act of 1984.

In addition, new federal laws now going into effect target drug dealers and repeat offenders with a background of violent crime for longer prison terms.

The commission approved the new sentencing system on a 6-1 vote over the weekend, and it now will be reviewed by Congress before going in effect.

Commissioner Paul H. Robinson, a Rutgers University professor, dissented, saying that "the guidelines treat identically offenses that are of very different seriousness. ... The commission has chosen ... to mimic the mathematical averages of past sentences."

The guidelines would add three months to the sentences of bank robbers; two months to the sentences for fraud and forgery, and eight months to the terms of heroin dealers. Currently, bank robbers serve an average of 44 months, those convicted of fraud and forgery serve just under seven months and heroin dealers serve 29 months.

Congressional and other critics say the commission's approach to sentencing will overwhelm already overcrowded prisons.

Although Wilkins has acknowledged that the guidelines will cause some rise in prison population, he insists it will not be significant.

He has said that allowing the number of available prison beds to deter-

mine sentencing practices "is a dangerous case of the tail wagging the dog that ignores the goals of public protection, crime deterrence and appropriate punishment of offenders."

Norman Carlson, director of the federal prison system, said he does not question the sentence lengths proposed by the guidelines but was "concerned with our ability to respond."

Under the new rules, the burden of sentencing criminals falls totally on judges. Convicts would serve their full sentence, less a small amount of time earned for good behavior.

The commission devised a scheme in which each federal crime falls into one of 43 different levels.

Three crimes were assigned Level 43 and automatically draw a life sen-

tence — first-degree murder, treason and aircraft hijacking resulting in death.

The length of the prison term is determined by the prior criminal record of the offender as well as by the seriousness of the crime.

Commercial bribery is assigned Level 9 and an offender with no prior convictions is sentenced to serve four to 10 months in prison. Someone with an extensive criminal record convicted of commercial bribery would receive a much longer sentence.

Judges who depart from the guidelines have to cite aggravating or mitigating factors in writing and both the defendant and the prosecutor could appeal.

April 14, 1987



Sentencing rules would rate crimes

By Maureen McDonald
USA TODAY

Federal lawbreakers face longer prison terms if U.S. Sentencing Commission guidelines issued Monday are accepted by Congress and pass an anticipated constitutional challenge.

The guidelines provide similar sentences for similar crimes, said Commission Chairman William Wilkens, a South Carolina federal judge.

Wilkens said the plan would increase prison population by only 10 percent in 10 years. Federal prisons now hold 42,000 inmates, up 75 percent since 1980.

Big target: white-collar criminals, who go to prison in less than 28 percent of convictions.

"This is one area where sharp yet short sentences will

serve as a deterrent," he said.

Guidelines are based on a 43-level point system rating crimes by severity. Sentences increase on factors such as a prior criminal record.

The report was adopted Friday by a 6-1 vote, with a dissent by Commissioner Paul Robinson, a Rutgers law professor.

He said the rules were developed without enough research and are certain to be challenged in court.

Congress, which ordered the guidelines, has six months to block or amend the plan.

The guidelines are scheduled to take effect Nov. 1. But the commission wants nine months of testing by judges before putting the rules in effect.

Once implemented, the guidelines would serve as a sentencing model for states.

How the guidelines work

Here is an example of how the sentencing guidelines work. John Doe is convicted of assault with intent to commit murder. He has served no previous time in prison. Under the guidelines the range of his sentence would be:

Minimum 33 (in months)
Maximum 41

If Doe had discharged a firearm during the crime, the guidelines increase the penalty range to:

Minimum 57
Maximum 71

If Doe's crime resulted in permanent or life-threatening bodily harm, the guidelines increase the penalty to:

Minimum 108
Maximum 135

Source: United States Sentencing Commission

Doing Hard Time, Fairly

A guide for sentencing

What's the proper punishment for bank robbers? It may depend on whether they're Bonnie and Clyde or Robin Hood, or whether they used guns or just a threatening note. But all other things being equal, fairness demands that similar crimes and criminals receive similar punishments. All too often, however, that's not the case in America's courts, where sentences are usually left to the discretion of the judge.

The problem is called sentencing disparity—and for more than a decade conservatives and liberals have, for different reasons, united to condemn the inconsistencies of the system. Two years ago Congress created a nine-member commission to write guidelines that would ensure more equal punishments to the 40,000 or so defendants convicted each year in federal court. Last week the commission released its latest draft, proposing to send more convicts to prison while narrowing the sentencing spectrum. The report sharply limits probation sentences, increases the use of fines and, recognizing that a little discretion may be a good thing, tries to leave judges a little wiggle room.

Sharp break: The sentencing guidelines use the same principle as a newspaper quiz that tests the health of a marriage or a smoker's chance of heart attack. Faced with a convicted defendant, the judge is supposed to rate the offender by adding or subtracting points for, among other things, the crime's severity, the victim's injuries, the presence of weapons and any previous criminal offenses. The final score carries with it a narrow range of permissible sentences (37 to 46 months for some robberies). Not content to stop there, the commission also includes a commentary to help judges pick a number within that spectrum. With all of that data in hand, the judge must settle on a sentence, inform the defendant and then complete a commission questionnaire that will be the grist for further research. If the sentence is outside the recommended range, either the prosecution or defense can appeal—a sharp break with current federal practice.

The guidelines will send more defendants to prison, although sometimes for shorter periods (chart). The commission was particularly stern on white-collar, drug and violent offenders, requiring that nearly all spend some time behind bars. That recommendation presents a problem



JIM PICKERELL—CLUCK CHICAGO

No room inside: *Here come more inmates*

for the overcrowded Federal Bureau of Prisons, but its possible consequences have not yet been fully addressed by the commission. Making matters worse is another major change: inmates will serve nearly all of their announced sentences because of cut-backs in so-called good time. But, according to Gene Nagel, a commissioner and a professor of law at Indiana University, the group's "major purpose [was] to control crime," not grapple with the question of prison capacity.

The commission did not rule out plea bargaining, which accounts for about 85 percent of all convictions. But the report is

unclear about precisely how the system will work. Judges are instructed to reject pleas that "undermine" the "purposes of sentencing." Some commission members say that language will prevent judges from approving some pleas; others predict it won't change anything. And, if a prosecutor, defense attorney and judge all agree that a plea is justifiable, the guidelines need not be followed at all. Little wonder then that one staffer, who asked not to be named, said the guilty-plea loopholes are so broad that the courts "can drive a truck through them."

Death penalty: The commission did not present a united front. One member, Rutgers law Prof. Paul Robinson, issued a dissent calling the guidelines "haphazard and internally inconsistent." Among his charges, he asked rhetorically, "Is it appropriate . . . that the sentence for aggravated forcible sexual contact with a 13-year-old child can be less than for submitting a false record on protected wildlife?" Commission chairman William W. Wilkins Jr., a federal appeals judge from South Carolina, said some "bugs" would be removed. But, said Wilkins, "we don't want guidelines that are rigid . . . without giving regard to individual characteristics of the crime, the defendant and the victim."

The commission has until April 13 to submit its report to Congress. The guidelines will automatically become law six months later unless both houses vote them down and President Reagan signs the rejection bill. That seems unlikely unless the commission insists on writing in a federal death penalty, a notion anathema to key Senate Democrats. If the guidelines pass, the commission has six years to make modifications. Their potential influence is enormous: should the guidelines succeed in limiting disparities, many states will undoubtedly follow suit.

ERIC PRESS with ANN MCDANIEL
in Washington

Crime—And New Punishments

Under the new sentencing guidelines more convicted felons would go to prison but some federal offenses would carry shorter sentences than they currently do. A few sample comparisons, all of them for first-time offenders:

Crime	*Average time served now	Proposed guidelines
Kidnapping	7.2 to 9 years	4.2 to 5.2 years
First-degree murder	10 to 12.5 years	30 years to life in all cases
Income-tax evasion: \$5,000 or less	4 to 10 months; only 30% serve time	Virtually all subject to some confinement for 1 to 7 months
Drug dealing (1 ounce of cocaine)	21 to 27 months; only 33% serve time	Virtually all serve 21 to 27 months

*U.S. SENTENCING COMMISSION ESTIMATES
COMPARISONS APPLY ONLY TO THE 15 PERCENT OF DEFENDANTS WHO GO TO TRIAL. PLEA BARGAINS NOT INCLUDED

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A GANNETT NEWSPAPER

New sentencing process will help justice system

AT first glance the new system for sentencing people convicted in federal courts appears cumbersome and likely to lead to some difficult problems.

That much was conceded the other day by the chairman of the U.S. Sentencing Commission, Judge William Wilkins, who was in Nashville to talk about guidelines that may revolutionize the federal justice system.

But on closer examination, merits of the new procedures are clearly apparent. And now that they are the law of the land, federal judges and others involved in administration of the justice system should give them a chance to work.

The Sentencing Commission came about because of Congress' concern over disparate sentencing practices throughout the nation. A judge in California might levy a sentence completely different from that which a Tennessee judge would give for the same crime in similar circumstances. Judges had wide latitude in exercising their discretion when sentencing defendants.

A lot of latitude still exists, but the net result of the new law is to curtail the worst abuses and give the federal justice system a good deal of uniformity.

Not everyone approves of this. Judges used to doing as they pleased may not welcome strictures on their actions. But the U.S. Supreme Court has upheld the constitutionality of the Sentencing Commission and its recommendations are in the process of being implemented across the country.

It will take time to absorb the new system. Time will bring about streamlining as glitches are worked out. Judge Wilkins and commission staffers are traveling throughout the U.S. to train court officials and defense lawyers in how to administer the sentencing guidelines.

An increase in the federal prison population is seen as a result of the new system; Judge Wilkins predicts a 27% increase in the number of inmates by the year 2000. At first blush, this might be viewed as a difficult circumstance; how will courts and the prison system deal with the increase?

But a large portion of that increase is expected to come from stiffer sentences levied against drug traffickers; and since illegal drugs are among the biggest problems faced by this country, that is welcome news. In addition, whereas white collar criminals served no time in prison 87% of the time under the old system, now they face an 87% chance of being incarcerated.

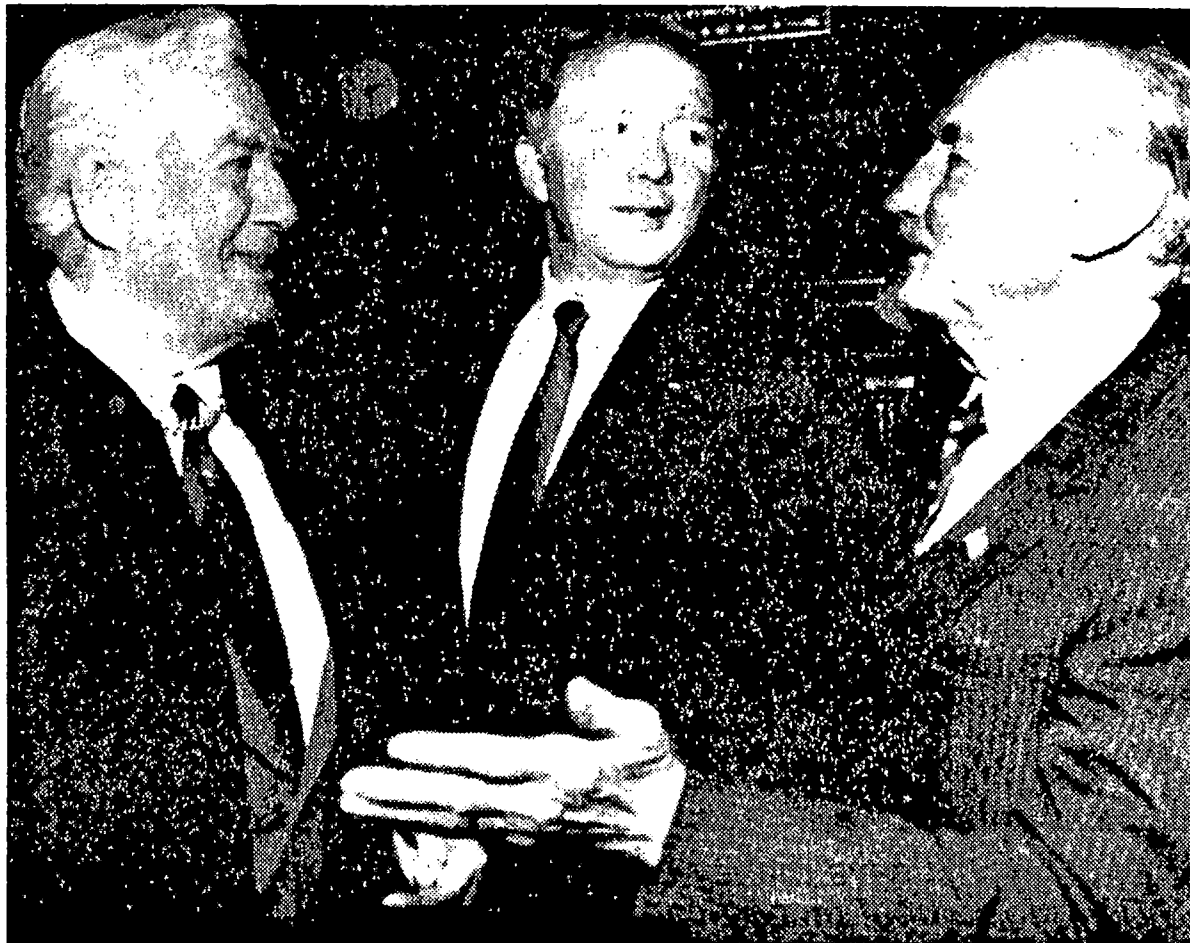
The underlying concept behind the new system is simple: Let the punishment fit the crime, and have uniformity in administering justice all across the nation. There is nothing wrong with that concept; it makes perfect sense.

It will take more, however, than a perfect concept to make this system work. It will require dedication and open-mindedness on the part of people who may have been firmly entrenched in the old ways of doing things. Judge Wilkins' efforts to foster a new way of doing things deserve support by everyone who cares about the cause of justice.

Chairman congratulated

U.S. District Judge W.W. Wilkins of Greenville, center, the new chairman of the Federal Sentencing Guidelines Commission, talks with U.S. Supreme Court Chief Justice Warren Burger, left, and Senate Judiciary Committee Chairman Strom Thurmond, R-S.C., on Tuesday after Wilkins was sworn in at the U.S. Supreme Court.

Associated Press



The State/Columbia, S.C., Wednesday, October 30, 1985

Disparity in sentences a problem

Judge says policy will have impact

By Chris Simmons

News staff writer

A sentencing policy for federal courts "will have the most far-reaching impact on law at the federal level of anything in this century," U.S. District Judge Billy Wilkins said Thursday in Greenville.

The main goal of the sentencing policy is to wipe out disparity between sentences handed down by different judges for similar crimes, said Wilkins, chairman of the United States Sentencing Commission.

Speaking to approximately 250 people at the March meeting of the Greater Greenville Chapter of the National Association of Accountants, Wilkins said: "Disparity undermines public confidence in our system. It undermines public respect."

Wilkins cited as examples the cases of two co-defendants in a mail fraud case who were charged with the same offense but were sentenced in different states. The defendant sentenced in Florida re-

ceived a sentence twice as long as the defendant sentenced in Greensboro, N.C.

In a hypothetical robbery sentencing, 22 judges handed down sentences ranging from two to 25 years on the same defendant, Wilkins said.

In another test, 50 percent of judges gave a defendant probation in a case while the other half sent the man to prison.

The guidelines also seek to make sentencing more honest at the federal level, Wilkins said.

"Judges will tell you that when they sentence, they're trying to second guess the parole board," he said.

Under the new guidelines, parole at the federal level is abolished. The time a judge gives is the time a defendant serves, except for time an inmate may earn for good behavior.

An inmate may qualify for a maximum of 54 days per year lopped off his sentence, he said.

The new guidelines should also be effective in discouraging criminal activity, he said. An inmate will serve longer on an eight-year sentence than he would currently would on an 18-year sentence.

The commission forming the new guidelines is composed of

seven members, plus two ex-officio members. Three members are federal judges, three are college professors and one is a parole commissioner. The commission was given the job of overhauling federal sentencing within a six-year period.

The new sentencing program will allow judges some discretion in sentencing, Wilkins said. Judges have a 25-percent tolerance above or below recommended sentences.

If judges believe a crime is especially severe or especially minor, they may hand down a penalty stiffer or lighter than the tolerance allows. But they must give written reasons for the sentencing decision, which is subject to review.

The guidelines will consider the defendant's criminal history as well as the severity of the crime, Wilkins said.

They will guarantee that sentences will be rational and explainable, and that the system will be as fair, honest and effective as possible, Wilkins said.

Wilkins said judges want uniformity, but deciding on the appropriate sentence is still a problem.

"Every judge believes in uniformity. They think 'When every judge sentences like me, we'll be



Billy Wilkins

uniform."

In a question-and-answer session after his speech, Wilkins said South Carolina prisons should consider setting up factories where inmates are put to work as they are in the federal system.

He said many federal prisons teach a job skill, such as furniture making, while earning a profit.

May 26, 1988

James J. Kilpatrick

Rebellion of the Judges

One trouble with federal judges is that they spend most of their lives in a warm milk bath of adulation. Accountable to no one, protected by life tenure, they take on the trappings of hereditary monarchs. We are seeing the phenomenon all over the country in the judges' revolt against federal guidelines for sentencing criminals. The guidelines are tough. Some of the protesting judges are woefully soft.

Until this past November, when the new guidelines became operative, federal judges had very nearly absolute discretion over the sentences they could impose. The guidelines were intended to take away much of that discretion and to restore some measure of legislative control. Many judges felt wounded in their dignity, where it hurts worst. As of last week,

59 federal judges had declared the guidelines "unconstitutional" and refused to abide by them.

This rebellion of the judges has to be put down, and it ought to be put down promptly. Who do these fellows think they are? Congress has power to define federal crimes and to fix punishments for their violation. In the matter at hand, Congress created a blue-ribbon commission to study the erratic pattern of criminal justice in our federal courts. Congress received the commission's report and, through the Sentencing Reform Act of 1984, accepted its recommendations. The notion that the guidelines are unconstitutional because judges served on the commission is hokum. This is taking the doctrine of separation of powers and jumping off a cliff with it.

The findings of the commission were, in a word, devastating. Lenient federal judges were giving mere wrist slaps, and often not even that, to defendants found guilty of serious crimes. Nonviolent offenses were going widely unpunished. Nearly identical crimes, committed by offenders with nearly identical presentence reports, were drawing wildly variant sentences.

Thus the commission came up with guidelines intended to be both uniform and tough. One idea is to get hardened criminals off the streets and into prison. Never mind "rehabilitation." The commission dismisses the thought. Its goals are to punish, to incarcerate and to deter. Second convictions should draw longer terms than first convictions, and third convictions longer terms still.

The guidelines abolish federal parole. For the first time, such "white-collar" crimes as price-fixing must be taken seriously. At present, roughly 60 percent of those convicted of fraud serve no time at all. The commission predicts that under its guidelines, only 24 percent would escape without at least some time behind bars.

Many of the reforms are directed toward the traffic in narcotic drugs. By requiring certain minimum sentences and by cracking down on repeat offenders, the guidelines—if only judges would apply them—would result in jailing many drug dealers who now go free. The commission found that the average time served for all drug offenses is now 23 months. This would increase to nearly 58 months if the guidelines were followed.

Under former sentencing practices, 41 percent of federal offenders spent zero time in prison. Under the guidelines, the commission projects that fewer than 19 percent would go on probation.

The criticism is made that the guidelines are too rigid, that they operate too mechanically, that the point system gives insufficient account to human factors that cannot be quantified by computer. Maybe so, but the guidelines leave federal judges much leeway. All that is required is that they explain in writing why a light sentence should be imposed instead of a heavy one.

The protesting federal judges brought these guidelines on themselves. If they had been more sensitive to the public outcry against lax sentences, the reform act might never have been passed. Until the Supreme Court overturns the guidelines, they stand as part of the supreme law of the land. Even federal judges, divine beings though they may be, have a duty to treat them with respect.

editorials

The expression of this newspaper's opinion is restricted to this page and its staff. Views offered in the column below are the opinion of the company and publisher. Other opinion, often contrasting, is offered in adjoining columns.

William deB. Mebane
Publisher

Thomas P. Inman
Editor, Editorial Page

Federal guidelines improve sentencing

ALL significant new directions in national policy eventually are tested in the courts, so it's no surprise that a class action suit has been filed challenging the constitutionality of the new federal sentencing guidelines which took effect last month.

In fact, the early timing of this test is providential, as it will settle the constitutionality question before a great number of defendants have been sentenced under the new rules. This explains the welcome given the challenge by federal Appeals Court Judge Billy Wilkins, who chaired the federal commission that wrote the guidelines.

Wilkins is equally persuasive in his reasons for believing the guidelines will withstand the lawsuit's argument that Congress excessively delegated its legislative authority to the commission. Congress did not give the seven-member panel a free hand, he says, but set strict limitations on its powers and on the task it was assigned.

That resulted in a new sentencing system for the federal courts that assures greater consistency and perceived fairness in the sentences federal judges impose. It does so by generally requiring similar penalties for similar offenses, and specifically requiring judges to enter into the trial records their reasons for deviating from the guidelines.

This creates a rational sentencing structure, not a straitjacket. And it encourages a two-part protection: Criminals likely will be victimized less often by "hanging judges" who want blood more than justice, and society probably will be burdened less often by the repeat violence of criminals who make a revolving door of prison because of permissive judges.

The new guidelines also invoke truth-in-sentencing by abolishing parole, thus ensuring that the sentence being imposed is the sentence actually served. This, too, should help encourage more public respect for the courts.

The guidelines will, as Judge Wilkins has said, mean that "sentences handed down in federal courts will be fairer, more rational and more consistent." The legal challenge to this policy quibbles with the way it was established, not the way it will work. That in itself is recognition of its merit.

Study says judges following guidelines

The Associated Press

A study released Tuesday found that federal judges are following sentencing guidelines in four out of five cases, leading one justice to say the rules are working well and have been accepted by judges.

The study by the U.S. Sentencing Commission examined 3,260 cases and found 81.1 percent of the sentences were within the guidelines. U.S. Circuit Court of Appeals Judge William W. Wilkins Jr. of Greenville, head of the commission, said the findings showed "the guidelines are close to the mark and working well."

The guidelines, considered a revolutionary change in the federal criminal justice system, were instituted in January. The guidelines were designed to eliminate what some called unjustified disparities in sentences. They set up specific sentences for specific crimes and abolished parole.

In addition, judges who depart from the guidelines are required to give specific reasons for doing so.

The study examined 25 percent of the sentences handed down in the United States from Jan. 19 to Sept. 30. Among the findings

were:

- In about 15.4 percent of the cases, federal judges gave more lenient sentences than the guidelines called for.

- About 5.7 percent of the more lenient sentences stemmed from motions by federal prosecutors, saying defendants helped the government in their criminal investigations.

- In 3.4 percent of the cases, judges gave defendants stricter sentences than the guidelines.

Wilkins said the high compliance rate exceeded his expectations.

"Eighty-two percent of the people across the country are getting similar sentences, (and that) ... means increased fairness to victims of crime, defendants and the public," he said.

Paul Martin, spokesman for the commission in Washington D.C., said, "if we had a 50 percent compliance rate, we would have a serious question as whether the guidelines were working."

The study found when judges gave stricter sentences, they did so 44 percent of the time because of a defendant's criminal history. Other factors cited included plea agreements.

PUBLISHED OPINIONS

Authored By

**WILLIAM W. WILKINS, JR.
United States Circuit Judge
United States Court of Appeals
For the Fourth Circuit**

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