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LIFTING OF SENTENCING CONSTRAINTS CAUSES STIR

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Word travels fast among inmates in federal prison, local attorney **Jack Swerling** has learned.

That's one conclusion he's reached since the Supreme Court freed federal judges Wednesday from adhering to sentencing guidelines when handing down punishment. "They knew it before the lawyers knew it," **Swerling** joked. By Thursday night, his office received up to 20 calls in a 72-hour period from inmates and families wondering how this will affect their cases.

That's one conclusion **Swerling** and others in the legal community have yet to determine. Yet, all agree the decision will undoubtedly lead to more litigation.

In the 5-4 decision, the high court determined the sentencing guidelines violated a person's Sixth Amendment right to a jury trial by letting judges, not juries, determine what factors can lengthen sentences.

But instead of scrapping it, the court, in a separate decision, allowed the guidelines to be used in an advisory manner so that federal district judges can hand down reasonable sentences.

"What is the definition of 'unreasonable'?" said William W. Wilkins, chief judge of the Fourth Circuit Court of Appeals.

The appeals court will have to address that question, he said.

Swerling wondered if that would, in effect, create another round of disparity in sentencing, something the guidelines were supposed to eliminate.

"You could have a Fourth Circuit standard for reasonableness or an 11th Circuit standard for reasonableness," **Swerling** said.

Wilkins, who works out of Greenville, has experience with federal sentencing guidelines. In the 1980s, President Reagan, at then-U.S. Sen. Strom Thurmond's request, tapped Wilkins to head a seven-member commission to draw up the guidelines.

Part of their work required an analysis of hundreds of criminal cases from across the country.

Wilkins wasn't dismayed at the criticism that has been directed toward the guidelines. The rules will continue to play a role in the sentencing process, he said.

Former U.S. Attorney Pete Strom wasn't a fan of the sentencing guidelines. It made it difficult to seek lenient sentences compared to the state judicial process.

"I didn't like them when I was a prosecutor and I didn't like them when I was a defense attorney," Strom said, who was U.S. attorney from 1993 to 1996. "My hands would be tied as a prosecutor in cases where I wanted to help someone and give them a break and in cases where I wanted to punish them."

Strom said that if the judges were competent enough to be appointed by the president, then they are qualified enough to hand out appropriate sentences.

"You put faith in the prosecutors and the judge," he said.

Chief U.S. District Judge Joseph Anderson liked the guidelines.

"I'm in a distinct minority among the federal judges," Anderson said.

His concern was whether Wednesday's decision would apply to all those serving their sentences in federal prison.

"It'll take another case to go before the Supreme Court," he said.

Swerling said that while the ruling is applicable to cases currently on appeal, attorneys will want to know how it affects those already serving their sentences without appeal.

"Everybody is going to try to get this to apply to their case," he said.

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WHAT HAPPENED

The Supreme Court Wednesday ruled federal sentencing rules violate a defendant's Sixth Amendment right to a jury trial.

* In what way? The court determined the guidelines violate a defendant's rights by allowing judges, not juries, to decide what factors can increase sentences.

* Can judges now hand down any sentence they want? Not necessarily. In a separate opinion, the court determined the guidelines should be used in an advisory manner when determining a sentence.

* How does this affect those federal inmates who may or may not be appealing their case? The legal community is discussing that. Some say the appeals court, maybe even the Supreme Court, will have to decide.

