

Approved

Minutes of the May 31, 1989 United States Sentencing Commission
Business Meeting

The meeting was called to order at 9:40 A.M. by Chairman William W. Wilkins, Jr.

The meeting was held in the library at the United States Sentencing Commission. The following Commissioners, staff members and guests participated.

- William W. Wilkins, Jr., Chairman
- Michael K. Block, Commissioner
- Helen G. Corrothers, Commissioner
- George E. MacKinnon, Commissioner
- Ilene H. Nagel, Commissioner
- Steve Saltzburg, Ex Officio Member
- Winston S. Moore, Staff Director
- John R. Steer, General Counsel
- David Anderson, Deputy General Counsel
- Jim Beck, Bureau of Prisons
- Julie Carnes, Special Counsel
- Nolan Clark, Deputy Chief Counsel
- Peter Hoffman, Principal Technical Advisor
- Mary Hogya, Director of Administration
- Candace Johnson, Director of Monitoring
- Phyllis Newton, Associate Research Director
- Sam Buffone, Chairman, American Bar Association Sentencing Guideline Committee

Because of a temporary medical disability, Commissioner Stephen G. Breyer participated in the Commission meeting via a telephone hook-up to his residence in the Boston area.

Chairman Wilkins introduced Bruce Beddow, a summer intern with Commissioner Nagel, Melissa Callahan and Josh Habib, summer interns on research staff. Also introduced were Vicky Toensing from the Attorney Working Group on Organizational Sanctions, and Sam Buffone, Chairman of the American Bar Association Sentencing Committee.

Chairman Wilkins summarized the memorandum on the Commission's short and long-term priority areas. A discussion ensued concerning possible implementation problems. A discussion followed related to Commissioner Nagel's role in the plea bargaining study group with Commissioner Saltzburg and Professor Stephen Schulhofer. Commissioner Nagel agreed to circulate a memorandum stating the purposes and means of accomplishing this project.

There was a discussion concerning the proposed research advisory group, including the need for this advisory group, its composition and compensation.

The discussion on possible priority areas for Commission action continued. Commissioner Nagel requested more information about the plans for changes in the prison impact model, violent offenses study, and criminal history study. Chairman Wilkins stated that there would be a plan drafted for each of the projects in the Staff Director's memorandum before the next meeting. Commissioner Corrothers stated for the record that in relation to future plans, the Commission should consider regional Commission meetings. She cited a number of key elements of a regional approach that would enhance guideline application and acceptance and has circulated a memorandum to the Commission on this recommendation and other priorities.

A discussion ensued related to organizational sanctions. Commissioner Block requested that the staff group on organizational sanctions obtain and analyze the 1988 data on corporate defendants, since assertions had been made that recent cases are different from 1986 and 1987 experience. Staff Director Moore said this would be done over the summer. Commissioner Nagel requested that there be meetings with the heads of the Fraud Sections of each major U.S. Attorney's Office handling a high number of frauds and with the Inspectors General of federal agencies handling major fraud prosecutions. The Commission agreed on the approach of drafting the proposals on organizational sanctions in guideline form.

Steve Saltzburg outlined the Department of Justice's position on corporate sentencing. He stated that it is important for the Commission to establish corporate sentencing proposals due to the probable increase of prosecutions. Past practice was too low, and Congress recognized this when it drafted the sentencing legislation. The Commission ought to be active in focusing on the purposes of punishing corporate crime, problems of detection, costs of investigation, convictions of both individual and corporations, etc. Also, the Commission should invite DOJ to produce information which it needs, including information regarding length of time taken to develop and prosecute cases, percentage of cases prosecuted, nature of the offense, losses, and reasons why individuals vs. corporations were prosecuted.

Commissioner Nagel asked Sid Moore to send to those persons who testified at the Public Hearing(s) on Organizational Sanctions or who requested documents, all documents related to this area. Commissioner Block requested that this information also be circulated to the Commissioners.

David Anderson summarized his memorandum containing the proposed policy relating to public access to the Commission's documents and data. Commissioner Corrothers suggested a modification in one part of the document.

-- Motion made by Commissioner Corrothers to adopt on an interim basis and to publish in the Federal Register for comment the

proposal on public access; seconded by Commissioner Block. Passed, 4-0. Commissioner MacKinnon was not present for this vote. Commissioner Breyer stated his agreement with the Commission's action.

A discussion followed concerning Candace Johnson's memorandum on deletion of certain variables from the coding of monitoring data. Commissioners Corrothers and Nagel expressed reluctance to delete variables on dependents, education, last occupation, and net worth/family income/financial situation, because of their strong correlation to sentencing, their value for future research, and their statutory basis. There was also a discussion about problems in obtaining accurate data, possibility of using PreTrial Services data, and possible revisions of the presentence report to include a checklist. Commissioner Block also expressed reservations about not collecting these data and suggested that at least a sample should be done on these variables in order to reduce costs. Commissioner Saltzburg suggested that the variables on dependents, education, and employment be kept and that the Commission attempt to convince the AO to continue some income indicator under FPSSIS. Chairman Wilkins pointed out that net worth is needed to determine ability to pay cost of imprisonment. Commissioner Nagel suggested that professional/nonprofessional status should be added to the employment variable. The Commission reached a consensus on which variables to continue (dependents, net worth or some other indicator of ability to pay), which to obtain from FPSSIS (education, employment, and all others), which to add (professional/nonprofessional), and which to delete (reside alone, family income). Commissioner Breyer stated his preference for collecting as much data as possible and was opposed to the Commission not collecting data on the occupation variable.

Chairman Wilkins stated that the House Subcommittee on Appropriations had requested that the Commission submit an official position on the proposal to make Commissioners part-time beginning in FY 1990. Commissioners Block and Breyer expressed agreement with this proposal. Chairman Wilkins and Commissioners Corrothers, MacKinnon and Nagel were opposed.

Chairman Wilkins adjourned the meeting at 12:07 P.M.