

Approved

Minutes of the March 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
- Benjamin F. Baer, Commissioner
- Michael K. Block, Commissioner
- Stephen G. Breyer, Commissioner
- Helen G. Corrothers, Commissioner
- George E. MacKinnon, Commissioner
- Ilene H. Nagel, Commissioner
- Steve Saltzburg, Ex Officio Member
- Winston S. Moore, Staff Director
- Chih-Chin Ho, Senior Research Associate
- David Lombardero, Consultant
- Dennis Murphy, Economist
- Andy Purdy, Deputy General Counsel
- Gary Peters, Special Counsel
- David Scheffman, Economist
- Alain Sheer, Senior Research Associate
- Jeff Standen, Deputy General Counsel
- Al Blumstein, Representative, Pa. Sentencing Commission
- Harold Wooten, Chief of Operations, Probation Division

Chairman Wilkins introduced Joyce Bouwkamp, the Computer Network Administrator, Loretta McCray, a probation officer and Rich McNeil, a research analyst.

Dr. Al Blumstein, a criminal justice professor on the Pennsylvania Sentencing Commission, presented to the Commission an alternative view of addressing the "Career Offender" issue in terms of prison capacity. Throughout this discussion, Dr. Blumstein mentioned various factors including participation/frequency, and discussed their relation to the various sentencing policies.

Chairman Wilkins recessed the meeting for a break at 11:06 A.M. and reconvened the meeting at 11:29 A.M.

The Bank Robbery Research Task Force was introduced by David Scheffman. According to Scheffman, the following staff members contributed assistance to the Research Task Force: Charles Betsey, Steve Evans, Chih-Chin Ho, Candace Johnson, Bruce Kobayashi, Joe Lowery, Scott Lyden, Dennis Murphy, Phyllis Newton, David Rauma, and the monitoring staff.

Dennis Murphy summarized his March 29, 1989, memorandum on unarmed,

first-time bank robbery offenders. According to Murphy, the entire three years of FPSSIS data available to the Commission was utilized in an attempt to isolate, as carefully as possible, first-time offenders, with the goal of achieving a pure base offense. The other aspect of this project utilized the Bureau of Prisons "Sentry" data file to determine prison time served by the offenders in the sample. A discussion ensued about these data and analyses and the policy questions the Commission wished to address.

Dennis Murphy summarized his March 29, 1989, memorandum on bank robbery cases sentenced under the Guidelines as of approximately February 15, 1989. This memorandum included statistics concerned with key offender and offense characteristics, analysis of sentencing practices, and information on departures. A discussion, similar to the above, ensued on these issues.

Commissioner Breyer commended the Bank Robbery Research Task Force for their efforts and contribution to the Commission's informed consideration of the bank robbery issue.

Chairman Wilkins announced that the public hearing on proposed guideline amendments would be held at 9:00 A.M. on April 7, 1989, in the Ceremonial Courtroom of the U.S. Courthouse in Washington, D.C.

-- Motion made by Commissioner MacKinnon to approve the minutes of the February 28, 1989, Commission Business Meeting; seconded by Commissioner Breyer. Passed.

Commissioners Corrothers and Block asked whether the Commission was satisfied with the information presented by staff and ready to make it available to the public. Commissioner Corrothers expressed concern about the lack of analysis and the need for non-researchers to be able to understand what the data shows. Commissioner Nagel requested that this discussion be deferred to executive session. Commissioner Breyer opposed the deferral and suggested putting the material out with a cover memorandum translating the Robbery Group's tables into guideline levels. After discussion, Commissioner Breyer moved immediate release of the information with this translation; Commissioner Corrothers seconded. Commissioner Nagel stated her opposition to the motion. Discussion moved on to the fraud materials, since they were also proposed for public release.

Charles Betsey summarized the results from the studies on procurement fraud, banking and savings and loans fraud. Augmented FPSSIS data and monitoring case data were utilized to conduct the studies. Alain Sheer cautioned that in reference to banking and securities fraud, seventy-five percent of the cases listed estimated loss as unknown.

Commissioner Breyer added to his previous motion making available

to the public the staff material on fraud prior to the April 7, 1989, Public Hearing; Commissioner Corrothers seconded. Commissioner Nagel stated that she had no objection to the fraud materials being released but registered her strenuous objection to voting on the voluminous bank robbery material that was distributed to Commissioners less than twenty-four hours before the meeting. Commissioner Nagel agreed to state her disagreements on the record but only after she had been given a few days to read and review the materials and consult with the staff who had expressed concerns about the methodological origin and appropriateness of the analyses, and she had time to determine why the co-chair of the Bank Robbery Task Force, Phyllis Newton, had never been given an opportunity to review the report. In response to Commissioner Nagel's concerns, Commissioner MacKinnon suggested a delay until the co-chair of the Bank Robbery Task Force, Phyllis Newton, could be given the report and give her views. Commissioner Breyer was adamant in rejecting Commissioner MacKinnon's proposal and insisted on an immediate vote; he was opposed to any measure that would require an additional meeting prior to the release of the information to the public. Commissioner Block stated for the record that any staff member who disagreed with the data should state the disagreement on the record. Chairman Wilkins stated for the record that while he understood Commissioner Nagel's concerns, the Commission has an obligation to fulfill its commitment to the public and publish this material.

-- Commissioner Breyer changed his motion to require a vote that day to make available to the public staff bank robbery data and materials stamped "preliminary", with the understanding that it did not carry the Commission imprimatur as to approval or correctness; seconded by Commissioner Corrothers; Passed. Commissioner Nagel voted "no," reiterating her view that complicated data analyses whose reliability and validity the Commission could not attest to should not be distributed to the public before further more complete review was made and any appropriate qualifications or limitations noted.

-- Motion made by Commissioner Breyer to make available to the public fraud data and materials stamped "preliminary", with the same understanding; seconded by Commissioner Corrothers. Passed.

A discussion ensued regarding the possibility of funding subscriptions to the Federal Sentencing Reporter for federal judges.

Mr. Wooten, Chief of Operations of the Probation Division, presented a report on electronic monitoring for home detention. A discussion ensued on this issue.

Chairman Wilkins stated that there would not be a meeting on April 6, 1989, but that meetings are scheduled for April 18 and 19, 1989.

Chairman Wilkins adjourned the meeting at 1:50 P.M.