

Minutes of the April 28, 1992  
United States Sentencing Commission Business Meeting

The meeting was called to order at 9:39 a.m. by Chairman William W. Wilkins, Jr., in the 14th floor conference room of the U.S. Sentencing Commission. The following Commissioners, staff, and guests participated:

William W. Wilkins, Jr., Chairman  
Julie E. Carnes, Commissioner  
Michael S. Gelacak, Commissioner  
Ilene H. Nagel, Commissioner  
Paul L. Maloney, Ex Officio Commissioner  
Phyllis J. Newton, Staff Director  
Paul K. Martin, Deputy Staff Director  
John R. Steer, General Counsel  
Sharon Henegan, Director, Training and Technical Assistance  
Peter Hoffman, Principal Technical Advisor  
Vincent Broderick, Chairman, Probation and Criminal Law Committee  
Vicki Portney, Criminal Division, DOJ

Commissioner Mazzone participated via telephone.

**#20 §2D1.8 Renting or Managing a Drug Establishment**

This amendment correlates the offense level to the offense level for the underlying drug offense, with a "cap" of level 16 if the defendant had no role in the drug offense other than allowing use of a premises.

Chairman Wilkins moved adoption of the amendment with Application Note 1 to read: "Subsection (a)(2) does not apply unless the defendant had no participation in the underlying controlled substance offense other than allowing use of a premises. For example, subsection (a)(2) would not apply to: a defendant who possessed a dangerous weapon in connection with the offense; a defendant who guarded the cache of controlled substances; a defendant who arranged for the use of a premises for the purpose of drug transactions; a defendant who allowed the use of more than one premises; a defendant who made telephone calls to facilitate the underlying controlled substance offenses; or a defendant who otherwise assisted in the commission of the underlying controlled substance offense. Further, subsection (a)(2) does not apply unless the defendant initially leased, rented, purchased, or otherwise acquired a possessory interest in the premises for a legitimate purpose. Finally, subsection (a)(2) does not apply if the defendant had previously allowed premises to be used as a drug establishment without regard to whether such prior misconduct resulted in a conviction." Commissioners Carnes, Mazzone, Nagel, and Wilkins voted in the affirmative; Commissioner Gelacak voted "no." Passed.

**#37 §5G1.3 Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment**

This amendment revises §5G1.3 to reduce the complexity of the operation of this guideline.

Motion made by Commissioner Nagel to adopt the substitute proposal with the deletion in Application Note 4 of the sentence, "Rather, this process...term of imprisonment" and the insertion in lieu thereof of "Rather, the process is meant to assist the court in determining the appropriate sentence; e.g., the appropriate point within the guideline range, whether to order the sentence to run concurrently or consecutively to the undischarged term of imprisonment, or whether to depart." Further, in the preceding sentence, substitution of the word "require" for the word "authorize". Passed unanimously.

**#3(A) & (B) Additional Commentary to §3E1.1**

Provides additional commentary to U.S.S.G. §3E1.1 expressing the rationale behind level 16 as the cut-off point for the additional acceptance reduction and the general idea behind the "timeliness" of defendant's acceptance of responsibility.

Motion made by Commissioner Carnes to adopt. Commissioners Carnes, Mazzone, Nagel, and Wilkins voted in the affirmative; Commissioner Gelacak voted "no." Passed.

Commissioner Mazzone requested that his votes be recorded in advance because he was unable to participate during the rest of the meeting. Commissioner Mazzone stated that he would vote in favor of Option 1 of #1(A) and #1(B) and would not vote in favor of Option 2 of #1(A) and #2.

**#2 Recommended Conforming Revision to Note 3 (formerly Note 6) of the Commentary to §2L1.1**

This amendment would harmonize §3B1.2 (Mitigating role) with the original intent of the application note (an unlawful alien defendant not permitted to receive a lower offense level if charged with alien smuggling than if only charged with his unlawful entry).

Failed for lack of a motion.

Chairman Wilkins recessed the meeting at 11:37 a.m. and reconvened at 12:29 p.m.

Chairman Wilkins indicated that he had spoken to Commissioner Mazzone during the recess. Although Commissioner Mazzone would not be participating in the remainder of the meeting, he asked to be recorded in the affirmative in respect to any further amendments receiving the requisite four votes in order that the Commission position would be unanimous.

**#37 §5G1.3 Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment**

Chairman Wilkins moved to make U.S.S.G. §5G1.3(c) a policy statement. Passed unanimously.

**#1(A)**

Chairman Wilkins moved to place Base Offense Level 11 into Zone C, with all conforming changes to the sentencing table and commentary. Passed unanimously.

Commissioner Nagel emphasized the need for Commission examination of white collar offenses.

**#1(B) §5C1.1 Imposition of a Sentence of Imprisonment**

Motion made by Commissioner Nagel to adopt this amendment to reformat the guidelines, with the Sentencing Table key to more fully describe available sentencing options. Passed unanimously.

Chairman Wilkins adjourned the meeting at 12:47 p.m.