

Minutes of the July 26, 1994,  
United States Sentencing Commission Business Meeting

The meeting was called to order at 10:07 a.m. by William W. Wilkins, Jr., in the conference room of the Sentencing Commission. The following Commissioners, staff, and guests participated:

William W. Wilkins, Jr., Chairman  
Michael S. Gelacak, Commissioner  
A. David Mazzone, Commissioner  
Ilene H. Nagel, Commissioner  
Gary Katzmann, Ex Officio Commissioner  
Phyllis J. Newton, Staff Director  
Paul K. Martin, Deputy Staff Director  
John R. Steer, General Counsel  
Peter Hoffman, Principal Technical Advisor  
Susan Katzenelson, Director, Office of Policy Analysis  
Win Swenson, Deputy General Counsel  
Gordon Waldo, Research Expert  
Jonathan Wroblewski, Deputy General Counsel  
Alan Chaset, Representative, Practitioners' Advisory Group  
Tom Hutchinson, Representative, Federal Public Defenders  
Richard K. Preston, Representative, Parole Commission

Commissioner Julie E. Carnes participated via telephone conference call.

Motion made by Commissioner Nagel to adopt the minutes of the June 27, 1994, meeting. Passed unanimously.

Chairman Wilkins introduced Probation Officers Theresa A. Grant (N.D. OH) and Martin Wahrer (D. ME), both on temporary assignment to the Commission and graduate student Brian MacCarthy, who is researching the ways in which state guideline systems address drug offenses. He also introduced Talbert Cottey, Willie Martin, and Christine Neitzey, all of whom have recently joined the Commission's Office of Policy Analysis as researchers.

#### **RETROACTIVITY**

**Amendment 505, effective November 1, 1994, unless nullified by Congress**

This amendment modifies USSG §2D1.1(c) to reduce the highest quantity-determined offense level from level 42 to level 38.

Motion made by Commissioner Mazzone to make amendment 505 retroactive. Commissioner Mazzone voted in favor of the amendment. Failed.

Motion made by Commissioner Nagel to make amendment 505 retroactive, except for instances in which there was either a firearm enhancement given under the guidelines or an 18 U.S.C. § 924(c) conviction. Commissioner Nagel voted in favor of the amendment. Failed.

**Amendment 506, effective November 1, 1994, unless nullified by Congress.**

This amendment modifies the definition of "offense statutory maximum" in Application Note 2 to USSG §4B1.1 (Career Offender) to mean the statutory maximum prior to any enhancement based on prior record.

Motion made by Commissioner Mazzone to make this amendment retroactive. Commissioners Carnes, Gelacak, Mazzone, and Wilkins voted in favor of the amendment, with Commissioner Nagel voting against. Passed, 4-1.

**Amendment 371, effective November 1, 1991.**

This amendment, in relevant part, promulgated USSG §2D1.11, relating to the possession of listed chemicals with intent to manufacture a controlled substance (i.e., violations of 21 U.S.C. §§ 841(d) and 960(d)).

Motion made by Commissioner Mazzone to make this amendment retroactive. Commissioners Carnes, Gelacak, Mazzone, and Wilkins voted in favor of the amendment, with Commissioner Nagel voting against. Passed, 4-1.

General Counsel Steer, updating the Commission on the status of the crime bill, stated that the crime bill conferees are scheduled to meet this afternoon. He stated that the latest Chairmen's mark contained some directives to the Commission, the safety valve provision, and no mandatory minimum penalties except for the "Three Time Loser" provision. He stated that the House conferees would offer an amendment relating to retroactivity of the safety valve.

Dr. Waldo, reporting on the Drugs-Violence Task force, stated that their first meeting in June went very well. He mentioned that Senator Kennedy recognized the importance of Commission-sponsored task forces because of the Commission's responsibility to provide information on and a forum for criminal justice matters. Dr. Waldo also reported that New Jersey Governor Whitman recently joined the task force as an ex officio member. He stated that the next meeting of the task force would be September 16-17, 1994, with a meeting of the ex officios' liaisons sometime prior to that.

Chairman Wilkins stated that the next meeting was tentatively scheduled for September 13, 1994. Commissioner Mazzone reported that he would be unable to attend a September 13th meeting. Chairman Wilkins proposed September 6 or 7. Notice will be forthcoming.

Chairman Wilkins announced that Commissioner Nagel's last meeting was today. On behalf of the Commission, he wished her every success and the best for the future. He thanked

her for her work on the Commission.

Staff Director Newton, updating the Commission on its priorities, stated that staff was submitting creative ideas related to the drug guidelines, which would then be submitted as a package at the September meeting. She reported that tomorrow the Substantial Assistance Working Group would be meeting with the Attorney General's Advisory Group on the cooperation issue. Mr. Wroblewski reported that the crack report was being augmented with additional research and that a draft would be ready by mid-August, with the report completed this fall.

Mr. Swenson, reporting on the Commission's September 1995 Symposium on corporate sentencing issues, stated that the focus would be on four major issue areas: (i) how companies and industries are responding to USSC incentives to establish compliance programs; (ii) how collateral penalties can affect guideline incentives; (iii) complementary government policies that can strengthen good corporation citizenship; and (iv) different models demonstrating how government can be helpful. Commissioner Nagel mentioned that the Antitrust Division has a new set of guidelines when evaluating compliance programs, with indicia similar to the Environmental Advisory Group's.

Staff Director Newton reported that the Criminal Law Committee is taking the lead in organizing a meeting to discuss retroactivity and resentencing issues.

Chairman Wilkins adjourned the meeting at 11:10 a.m. into executive session.