

*Approved*

Minutes of the November 4, 1994,  
United States Sentencing Commission Business Meeting

The meeting was called to order at 9:38 a.m. by Chairman Richard P. Conaboy in the conference room of the United States Sentencing Commission. The following commissioners, staff, and guests participated:

Richard P. Conaboy, Chairman  
Michael S. Gelacak, Vice Chairman  
A. David Mazzone, Vice Chairman  
Wayne A. Budd, Commissioner  
Julie E. Carnes, Commissioner  
Michael Goldsmith, Commissioner  
Deanell R. Tacha, Commissioner  
Jo Ann Harris, Ex-Officio Commissioner  
Edward F. Reilly, Jr., Ex-Officio Commissioner  
Phyllis J. Newton, Staff Director  
John R. Steer, General Counsel  
Peter Hoffman, Principal Technical Advisor  
Sharon Henegan, Director of Training and Technical Assistance  
Alan J. Chaset, Chair, National Association of Criminal Defense Lawyers Sentencing Guidelines Committee, Co-Chair American Bar Association Sentencing Guidelines Committee, and Member, Practitioner's Advisory Group  
Eric Sterling, President, Criminal Justice Policy Foundation  
Julie Stewart, Director, Families Against Mandatory Minimums  
Nkechi Taifa, Legislative Counsel, American Civil Liberties Union, and Coordinator, Committee Against the Discriminatory "Crack" Law

Chairman Conaboy introduced Commissioners Wayne Budd, Michael Goldsmith, Deanell Tacha, and Julie Carnes, Vice Chairmen David Mazzone and Michael Gelacak, Ex-Officio Commissioners Jo Ann Harris and Edward Reilly, and himself. He also introduced visiting federal defender Felicia Sarnier (Philadelphia Defender's Office), and visiting probation officers Joan McNamara (E.D. NY) and Carolee Grazioso (D. NJ), serving on temporary assignment to the Commission. Upon Chairman Conaboy's request, members of the audience introduced themselves.

Motion was made by Commissioner Carnes to approve the minutes of the September 1, 1994, and September 14, 1994, meetings. Vice Chairman Mazzone seconded the motion. Passed unanimously.

Crack Cocaine Report

Staff Director Phyllis Newton discussed the report on crack cocaine that Congress directed the Commission to complete by December 31, 1994. She stated that Commission staff has been working on the report for quite some time and hopes to complete all sections in the

very near future. She stated that the Commission has asked for outside review from the chairperson of the Commission's former research advisory committee on the empirical data chapter, and from the Drug Enforcement Agency on the distribution markets chapter.

Staff Director Newton reviewed the content of the crack report's chapters: Chapter One-introduction, Chapter Two-pharmacology, Chapter Three-public health issues, Chapter Four-distribution markets, Chapter Five-cocaine and associated crime, Chapter Six-legislative and enforcement response to cocaine, Chapter Seven-review of empirical data, and Chapter Eight-conclusions and recommendations. She stated that Commission staff will provide commissioners with the final draft report and additional relevant information as soon as possible.

Commissioner Reilly inquired whether the report considered an international response to crack cocaine. Nkechi Taifa stated that as a representative of the Committee Against the Discriminatory "Crack" Law, she reiterated the Committee's opposition to the current disparity between crack and powder cocaine laws and reported that she had delivered additional materials to individual Commissioners.

### Drug Proposals

Staff Director Newton reported that the Commission has established drug working groups on an annual basis for a number of years, due to the large number of drug cases and ongoing criticism of the drug guidelines and mandatory minimum penalties. Senior members of the staff examined reports of all past working groups and public comment, and as a result, developed two alternative sets of proposals that appear to address the predominant issue; that is, perceived inequitable sentences resulting from an over-reliance on drug quantity in the current drug guidelines. Technical Advisor Peter Hoffman presented one proposal, which compresses the drug table and increases the importance of role and the defendant's culpability in the offense. Training and Technical Assistance Director Sharon Henegan presented the second proposal, which determines a defendant's sentence on non-quantity based indicia of culpability, such as role in the offense and associated violence.

### Organizational Guidelines Symposium

Chairman Conaboy stated that the current Commissioners needed to vote on whether to approve the organizational guidelines symposium authorized by the prior Commission. Vice Chairman Mazzone moved to reaffirm the prior Commission's decision to hold an organizational guidelines symposium. Commissioner Budd seconded the motion. Passed unanimously. Commissioners Budd and Goldsmith expressed interest in working with staff on the symposium.

Commissioner Harris offered the assistance of the Department of Justice in planning the symposium. Staff Director Newton reported that staff will aim to schedule the symposium in September 1995.

### Money Laundering Guideline

Chairman Conaboy stated that consideration of the money laundering proposals will be tabled until the next meeting, because relevant staff members could not be present at this meeting.

### Procedural Issues

Chairman Conaboy discussed the need to establish procedures with respect to voting on Commission business. He solicited comments on whether motions should be seconded before Commission consideration of the motion. Commissioner Budd moved and Commissioner Tacha seconded that the Commission require seconds before a motion can be considered by the Commission. Passed unanimously.

Chairman Conaboy solicited comments on how many votes should be required for publication of proposed amendments. In the past, the Commission has used a four-vote rule, a three-vote rule, and a single-vote rule. Commissioner Tacha stated that she preferred either a three- or four-vote rule. Vice Chairman Mazzone stated that he felt three votes should be required. Commissioner Carnes stated that she felt three or four votes should be required. Alan Chaset urged that the number of votes required be as low as possible, preferably less than three votes. Eric Sterling recommended that only one vote be required in order to avoid stifling open debate among commissioners. Commissioner Tacha moved and Commissioner Carnes seconded that the Commission adopt a three-vote requirement for publication. Passed unanimously.

Chairman Conaboy solicited comments on whether voting on proposed amendments should require commissioners to be physically present at Commission meetings or whether votes via telephone conference call would be acceptable. General Counsel John Steer stated that in recent Commission meetings some telephone voting had occurred. Commissioner Tacha moved and Commissioner Carnes seconded that commissioners be permitted to vote whether physically present or via telephone conference call. Passed unanimously.

Chairman Conaboy stated that Commission meetings have been scheduled for November 22 and December 8, 1994. He also stated that beginning January 1995, Commission meetings will be held on the second Monday of each month. Commissioner Tacha noted that the scheduled February meeting will conflict with the ABA mid-year meeting and may need to be rescheduled.

Staff Director Newton apologized for the need to set a November 15, 1994, deadline for submission of proposed amendments from outside organizations.

Alan Chaset asked the Commission to consider drafting a set of rules and procedures for the conducting of Commission business. He offered the assistance of the ABA and commended the ABA's report on this issue for Commission consideration.

Commissioner Reilly asked whether ex-officio commissioners are allowed to second motions. General Counsel Steer stated that his immediate reaction was that ex-officio members are not allowed to second motions because the statute limits ex-officio members to non-voting status. Chairman Conaboy asked General Counsel Steer to research this question and report at the next Commission meeting.

Chairman Conaboy adjourned the meeting into executive session at 11:06 a.m.