

Minutes of the April 10, 1996,
United States Sentencing Commission Business Meeting

The meeting was called to order at 1:24 p.m. by Chairman Richard P. Conaboy in the Judicial Conference Center. The following Commissioners, staff, and guests participated:

Richard P. Conaboy, Chairman
Michael S. Gelacak, Commissioner
A. David Mazzone, Commissioner
Julie E. Carnes, Commissioner
Michael Goldsmith, Commissioner
Deanell R. Tacha, Commissioner
Mary Frances Harkenrider, Ex Officio Commissioner
Phyllis J. Newton, Staff Director
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Paul Hofer, Director, Special Projects
Jonathan Wroblewski, Legislative Counsel
Fred Bennett, Representative, Practitioners' Advisory Group
Barry Bosch, Representative, Practitioners' Advisory Group
Tom Hutchison, Representative, Federal Public Defenders
Amy Rudnick, Past Chair, ABA Money Laundering Committee and former Chief,
Financial Crimes Enforcement, Treasury Department

Commissioner Budd was unable to attend the meeting.

Motion made by Commissioner Carnes to adopt the minutes of the March 11, 1996, business meeting; seconded by Commissioner Mazzone. Passed unanimously.

Paul Hofer, briefing the Commission on the preliminary report relating to sex crimes against children, stated that the report was required pursuant to section six of the Sexual Crimes Against Children Prevention Act of 1995 and was due June 19, 1996. He stated that the legislation also directed the Commission to increase offense levels for crimes involving child pornography, prostitution, and other offenses. He reported that this preliminary report does not contain information related to sexual assault, which will be included in the final report. Commissioner Gelacak stated that he intended to support the proposed amendments because Congress directed the Commission to promulgate them and then issue a report, but he does so with the understanding that the report will be submitted with suggestions on how it ought to be done.

Amendment #1: §2G2.1, Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production

This amendment addresses sections two and three of the Sex Crimes Against Children Prevention Act of 1995. Those sections require the Commission to provide at least a two-level enhancement in the current guidelines for offenses involving the sexual exploitation of minors under sections 2251 and 2252(a) of such title if a computer was used to transmit notices or advertisements of visual depictions involving minors engaged in sexually explicit conduct or to transport or ship those visual depictions.

Motion made by Commissioner Tacha to adopt, with the deletion in application note two of the last sentence; seconded by Commissioner Goldsmith. Commissioner Tacha requested that staff review whether the term "distribution" is broader than just pecuniary gain. Commissioners Conaboy, Gelacak, Goldsmith, and Tacha voted in the affirmative, with Commissioners Carnes and Mazzone recusing themselves because of their "holdover" status. Passed.

Amendment #2: §2G1.2, Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct

The amendment addresses the requirement in section four of the Sex Crimes Against Children Prevention Act of 1995 that the Commission provide at least a three-level enhancement in the current guidelines for offenses involving the transportation of minors with intent to engage in prostitution or other prohibited sexual conduct under 18 U.S.C. § 2423(a). The amendment also addresses 18 U.S.C. § 2422(b), a new offense created by section 508 of the Telecommunications Act of 1996. Option 1 offers amendment without consolidation; Option 2 offers consolidation.

Motion made by Commissioner Tacha to adopt option two; seconded by Commissioner Goldsmith. Commissioners Conaboy, Gelacak, Goldsmith, and Tacha voted in the affirmative, with Commissioners Carnes and Mazzone recusing themselves because of their "holdover" status. Passed. Commissioner Tacha asked that the explanation of amendment outline that the Commission does not intend to limit upward departures.

Chairman Conaboy stated that the Commission's money laundering coordinating group was still working with the Department of Justice on a possible money laundering proposal. Several guests in the audience spoke strongly in favor of the Commission's original money laundering proposal and opposed the most recent substitute draft. Commissioner Goldsmith requested written comments from members in the audience.

Jonathan Wroblewski briefed the Commission on recent congressional actions. He stated that Congress has scheduled action on our appropriations, terrorism legislation, and immigration

reform for when they return from recess.

Commissioner Mazzone, reporting on the Federal Defender Meeting, stated that the discussion focused mostly on their participation in the Commission's amendment process. Commissioner Goldsmith stated that the federal defenders would like representation similar to the Department of Justice at the Commission's table.

Chairman Conaboy announced that the August 12, 1996, meeting would be held in Denver, Colorado in conjunction with a trip to the new maximum security federal prison.

Commissioner Gelacak requested a moment of silence in honor of the late Ron Brown.

Staff Director Newton reported that staff has been working on the money laundering issues and the child sex offenses report. She reported that the Annual report was scheduled to go to the printers next week and that the Commission has been having trouble with the printing of the corporate symposium proceedings book.

Chairman Conaboy adjourned the meeting at 2:31 p.m.