

Minutes of the March 19, 1997,
United States Sentencing Commission Business Meeting

The meeting was called to order at 11:05 a.m. by Chairman Richard P. Conaboy in the Commissioners' Conference room. The following commissioners, staff, and guests participated:

Richard P. Conaboy, Chairman
Michael S. Gelacak, Vice Chairman
Michael Goldsmith, Vice Chairman
Wayne A. Budd, Commissioner
Deanell R. Tacha, Commissioner
Michael Gaines, Ex Officio Commissioner
Mary Frances Harkenrider, Ex Officio Commissioner
John H. Kramer, Staff Director
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Fred Bennett, Chairman, Practitioners' Advisory Group
Tom Hutchison, Representative, Federal Public Defenders

Motion made by Commissioner Budd to adopt the minutes of the February 12, 1997, business meeting; seconded by Commissioner Tacha. Passed unanimously.

Amendments

Emergency Amendment - Alien Smuggling (Amendment #2)

Motion made by Commissioner Budd to promulgate Option 1 as a temporary emergency amendment, effective May 1, 1997, with the following changes: substitution of the term "after" for the words "subsequent to" and the substitution of the term "person" instead of "victim". Commissioner Tacha seconded the motion. Commissioners Budd, Conaboy, Goldsmith, and Tacha voted in the affirmative, with Commissioner Gelacak voting against. Passed, 4-1.

Emergency Amendment - Immigration Document Fraud (Amendment #3)

Motion made by Commissioner Tacha to promulgate Option 1 as a temporary emergency amendment, effective May 1, 1997, with the following changes: substitution of the term "after" for the words "subsequent to", the substitution of the term "person" instead of "victim", and to keep under §2L2.1(b)(1) the words "defendant committed the" instead of adopting "was committed". Commissioner Goldsmith seconded the motion. Commissioners Budd, Conaboy, Goldsmith, and Tacha voted in the affirmative, with Commissioner Gelacak voting against. Passed, 4-1.

Emergency Amendment - Alien Smuggling (Amendment #2)

Motion made by Commissioner Tacha to keep under §2L1.1(b)(1) the words "defendant committed the" instead of adopting "was committed"; seconded by Commissioner Budd. Passed unanimously.

Emergency Amendment - Involuntary Servitude (Amendment #4)

Motion made by Commissioner Tacha to promulgate as a temporary emergency amendment, effective May 1, 1997; seconded by Commissioner Budd. Passed unanimously.

Emergency Amendment - Terrorism (Amendment #5)

Motion made by Commissioner Tacha to promulgate as a permanent emergency amendment, effective May 1, 1997; seconded by Commissioner Goldsmith. Passed unanimously.

Carjacking (Amendment #15)

This amendment addresses section 2 of the Carjacking Correction Act of 1996, which amends 18 U.S.C. § 2119(2).

Motion made by Commissioner Tacha to adopt Option 2 of the revised proposed amendment, with the proposed conforming amendment to §2A4.1; seconded by Commissioner Goldsmith. Passed unanimously.

Counterfeiting (Amendment #16)

This amendment addresses section 807(h) of the Antiterrorism and Effective Death Penalty Act of 1996, moves the coverage of offenses involving altered bearer instruments of the United States from §2F1.1 to §2B5.1, and clarifies the operation of §2B5.1.

Motion made by Commissioner Tacha to adopt only proposed §2B5.1(b)(4), with the addition before "the offense" of the language, "any part of"; seconded by Commissioner Budd. Passed unanimously.

Restitution (Amendment #31)

This amendment conforms §§5E1.1 (Restitution) and 8B1.1 (Restitution - Organizations) to sections 204 and 205 of the Antiterrorism and Effective Death Penalty Act of 1996.

Motion made by Commissioner Tacha to adopt; seconded by Commissioner Goldsmith. Commissioners Budd, Conaboy, Goldsmith, and Tacha voted in the affirmative, with Commissioner Gelacak voting against. Passed, 4-1.

Special Assessments (Amendment #32)

This amendment conforms §§5E1.3 (Special Assessments) and 8E1.1 (Special Assessments - Organizations) to section 210 of the Antiterrorism and Effective Death Penalty Act.

Motion made by Commissioner Goldsmith to adopt; seconded by Commissioner Budd. Passed unanimously.

Presentence Report (Amendment #36)

This amendment makes several technical changes to Chapter Six to conform to recent changes in the structure of Rule 32, Fed. R. Crim. P.

Motion made by Commissioner Tacha to adopt; seconded by Commissioner Budd. Passed unanimously.

Statutory Index (Amendment #7)

This amendment clarifies §1B1.2 (Applicable Guidelines) and the Statutory Index.

Failed for lack of a motion.

Cross Reference; Attempt (Amendment #10)

This amendment restricts the cross-reference comparison to Chapter Two offense levels unless a different procedure is expressly specified and deletes the three-level reduction for attempts, conspiracies, or solicitations not covered by a specific offense guideline.

Motion made by Commissioner Tacha to adopt; seconded by Commissioner Goldsmith. Commissioners Goldsmith and Tacha voted in the affirmative, with Commissioners Budd, Conaboy, and Gelacak voting against. Failed, 2-3.

Motion made by Commissioner Tacha to adopt the cross-reference language; seconded by Commissioner Budd. Passed unanimously.

Accessory (Amendment #20)

This amendment clarifies application of §2X3.1 when it is used as the result of a cross-reference and addresses the interaction of §§1B1.3 with 2X3.1 and 2X4.1 by clarifying that the knowledge requirement of Application Note 1 of §§2X3.1 and 2X4.1 applies when selecting an appropriate base offense level in a guideline that provides alternative base offense levels.

Failed for lack of a motion.

Term of Supervised Release (Amendment #30)

This amendment makes it clear that exemptions to mandatory minimum sentences granted under §5C1.2 apply to sentences of supervised release as well as to sentences of imprisonment.

Motion made by Commissioner Tacha to adopt, with §5D1.2 to state, "Except as provided in

§5C1.2, the term of supervised release imposed shall not be less than any statutorily required term of supervised release." ; seconded by Commissioners Budd and Goldsmith. Passed unanimously.

Chairman Conaboy stated that the Commission was still studying the crack and powder cocaine issue. Commissioner Budd stated that the Commission just received input on this issue from the Practitioners' Advisory Group.

Chairman Conaboy adjourned the meeting at 11:51 a.m.