

Minutes of the April 2, 1991, United States Sentencing Commission Business Meeting

The meeting was called to order at 2:07 p.m. by Chairman William W. Wilkins, Jr.

The meeting was held in the library of the United States Sentencing Commission. The following Commissioners, staff, and guests participated:

William W. Wilkins, Jr., Chairman
Julie E. Carnes, Commissioner
Helen G. Corrothers, Commissioner
Michael S. Gelacak, Commissioner
George E. MacKinnon, Commissioner
A. David Mazzone, Commissioner
Ilene H. Nagel, Commissioner
Paul L. Maloney, Ex Officio Member
Phyllis J. Newton, Staff Director
Paul K. Martin, Deputy Staff Director
John R. Steer, General Counsel
Peter Hoffman, Principal Technical Advisor
Tom Hutchison, Representative, Federal Public Defender
Roger Pauley, Criminal Division, DOJ
Vicki Portney, Criminal Division, DOJ

-- Motion made by Commissioner MacKinnon to adopt the minutes of the March 26, 1991, Commission meeting; seconded by Commissioner Corrothers. Passed unanimously.

Chairman Wilkins announced Commission meetings on April 9, 1991, at 2:00 p.m., April 10 (tentatively), and April 16, 1991, at 2:00 p.m.

#4: §2B1.1 Larceny, Embezzlement, and Other Forms of Theft

Motion made by Commissioner Mazzone to adopt the revised proposal with an application note that states if §2B1.1(b)(7)(A) or (B) applies, a rebuttable presumption arises that the offense involved more than minimal planning; seconded by Commissioner Carnes. Passed unanimously.

#6: §2B1.1 Larceny, Embezzlement, and Other Forms of Theft

Commissioner Nagel requested a working group to review the fraud table and the severity of the offense in terms of small fraud.

Commissioner Corrothers moved that the appropriate commentary language reflecting this offense as contained in this amendment be inserted into U.S.S.G. §2B1.1, U.S.S.G. §2B4.1 and U.S.S.G. §2F1.1. Passed unanimously.

#8: §2B3.2 Extortion by Force or Threat of Injury or Serious Damage

Chairman Wilkins moved for adoption of the staff proposal with the following changes: (1) §2B3.2(b)(3)(A)(i) as a level 7, §2B3.2(b)(3)(A)(ii) as a level 6, §2B3.2(b)(3)(A)(iii) as a level 5 and §2B3.2(b)(3)(B) as a level 5; (2) the cap in §2B3.2(b)(4) as 11 levels; (3) Amendment #7(A)-(C) be rewritten to conform with Amendment #8; (4) language identifying that if organized criminal activity was involved or if a threat is made to a family member of the victims, a departure may be indicated; (5) deletion in Application Note #6 of "an enhancement from subsection (b)(3)(A) or (B) applies, and" and "risk" and the insertion of "threat" after "the offense involved the"; (6) cross reference attempted murder using language from the tampering guideline; seconded by Commissioners MacKinnon and Nagel. Passed unanimously.

#13: Crystal Methamphetamine (Ice)

Deferred until later this amendment cycle.

#16(A)-(D): §2D1.11 Unlawful Distribution, Import, Export or Possession of Listed Chemicals; §2D1.12 Unlawful Possession, Distribution or Manufacture of Prohibited Flask or Equipment: Presenting False or Fraudulent Identification to Obtain a Listed Chemical; §2D1.13 Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements; §2D3.5 Violation of Recordkeeping or Reporting Requirement

Deferred until later this amendment cycle.

#20: §2X3.1 Accessory After the Fact

Chairman Wilkins moved for adoption of the proposed staff amendment; seconded by Commissioner Corrothers. Passed unanimously.

#23(A), (B): §2L1.1 Smuggling, Transporting, or Harboring an Unlawful Alien; §2L1.2 Unlawfully Entering or Remaining in the United States

Motion made by Commissioner Gelacak to adopt the proposed amendment to §2L1.2 with the deletion in §2L1.2(b)(1) and (b)(2) of "sustaining", §2L1.2(b)(2) as 16 levels, and the deletion of application note 5 and insertion of the commentary from the staff proposed amendment. He also moved adoption of the proposed staff amendment for §2L1.1 with the deletion in §2L1.1(a)(1) of "subsequent to sustaining" and insertion of "after", (a)(1) as level 20 and the insertion in §2L1.1(b)(1) after "profit" of "and the base offense level is determined under subsection (a)(2),".

Passed unanimously.

Commissioner Nagel requested the record include the December 5, 1990, memorandum from Joe Brown regarding enhanced penalties with respect to aliens who unlawfully re-enter the U.S. subsequent to deportation resulting from a felony conviction.

#24: §2N1.1 Tampering or Attempting to Tamper Involving Risk of Death or Serious Bodily Injury

Chairman Wilkins moved for the adoption of the staff proposed amendment with the deletion in Application Note #1 of "neither risked" and the insertion of "did not cause a risk of"; seconded by Commissioner Corrothers. Passed unanimously.

#30: §4A1.1 Criminal History Category; §4A1.2 Definitions and Instructions for Computing Criminal History

Motion made by Commissioner Carnes to adopt the proposed staff amendment through the first part of Application Note #3 with §4A1.1(f) as 3 points and the latter part of Application Note #3 from option #1 of the published amendment. Passed unanimously.

Chairman Wilkins adjourned the meeting into Executive Session at 3:15 p.m.