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(put in order)*

Minutes of the March 3, 1995,  
United States Sentencing Commission Business Meeting

Richard P. Conaboy convened a telephone conference call at 11:00 a.m. in the Commissioners' conference room in order for the Commission to ratify three draft reports to Congress relating to congressional directives contained in the Violent Crime Control and Law Enforcement Act of 1994.

Staff Director Phyllis J. Newton, General Counsel John R. Steer, Senior Research Associate Cam Counters, and Senior Research Associate Lou Reedt participated at the Commission. Chairman Richard P. Conaboy, Vice Chairmen Michael S. Gelacak and A. David Mazzone, and Commissioners Wayne A. Budd, Julie E. Carnes, Michael Goldsmith, and Deanell R. Tacha participated via telephone. Commissioner Michael Gaines, on behalf of Ex Officio Commissioner Edward F. Reilly, Jr., also participated via telephone.

Chairman Conaboy reported that he had spoken with Ex Officio Commissioner Jo Ann Harris and that she stated that the Department of Justice did not have any problems with or corrections to the draft reports.

Before focusing on the reports to Congress, the Commission addressed two court-related issues. The first related to the Atlanta case, U.S. v. McLellen, in which the Commission has been asked to provide certain documentation. The Commission had no objection to a letter from the Chairman to the Department of Justice asking if the Commission can join as an amicus in the defense of that case.

The second related to challenges in several circuits to the Commission's career offender amendment:

Amend. 506 §4B1.1 Career Offender

This amendment defines the term "offense statutory maximum" in §4B1.1 to mean the statutory maximum prior to any enhancement based on prior criminal record (i.e., an enhancement of the statutory maximum sentence that itself was based upon the defendant's prior criminal record will not be used in determining the alternative offense level under this guideline).

Discussion followed on the appropriate Commission response to the Department of Justice's challenge of the validity of amendment 506, which took effect November 1, 1994.

Motion made by Commissioner Tacha not to proceed with an amicus brief at this time but to cooperate and review the defense brief with the possibility of joining in the brief by letter to the court. Commissioner Budd seconded the motion. Commissioners Budd, Carnes, Conaboy, Goldsmith, and Mazzone voted in the affirmative, with Commissioner Gelacak voting against, passed, 6-1.

## Reports to Congress

Pub. L. No. 103-322 requires the Commission to issue three reports to Congress by March 13, 1995. Commissioner Tacha requested that staff amend all three draft reports to include at the beginning of each report the relevant congressional directive and a summary of the reports' conclusions.

### Intentional HIV Exposure--Section 40503(c) of the Violent Crime Control and Law Enforcement Act of 1994

Commissioner Goldsmith requested that a statement be added to both the HIV and Rape Reports stating that the rape and HIV congressional directives only involve federal issues in very limited contexts. Commissioner Carnes asked that the HIV report emphasize that the federal presence generally relates to federal prisons.

Motion made by Commissioner Budd to approve the report, with corrections, for submission to Congress; seconded by Commissioners Goldsmith and Tacha. Passed unanimously.

### Penalties for Federal Rape Cases--Section 40112 of the Violent Crime Control and Law Enforcement Act of 1994

Commissioner Tacha requested that a statement be added to the report recognizing that the congressional directive in section 40112 requested that the Commission seek independent experts in the field, and indicating that the Commission will in fact be using independent experts at some point in the future in its analysis of the directive. Staff is continuing to explore this issue.

Commissioner Tacha asked that data from surrounding states be added to the report, particularly focusing on Arizona and South Dakota, as suggested by the Commission's data.

Motion made by Commissioner Goldsmith to approve the report, with corrections, for submission to Congress; seconded by Commissioner Budd. Passed unanimously.

### Fraud Against the Elderly--Section 250003 of the Violent Crime Control and Law Enforcement Act of 1994

Commissioners expressed concern that the congressionally mandated age threshold of 55 years appears to be, based on the Commission's report, significantly lower than the age typically associated with cases in which the vulnerable victim adjustment is applied. They asked that the report emphasize this finding.

Motion made by Commissioner Tacha to approve the report, with corrections, for submission to Congress; seconded by Commissioner Budd. Passed unanimously.

Chairman Conaboy reviewed the agenda for the next meeting. Staff Director Newton stated that packets providing analysis of the proposed 1995 amendments will be sent to the commissioners two weeks before the April 10, 1995, meeting.

Chairman Conaboy suggested that a request for public comment concerning crack cocaine penalties be prepared. The period for public comment will be limited to 30 days in order that all public comment be received before the April 10, 1995, Commission meeting. Staff Director Newton stated that staff would prepare and fax the request to commissioners by March 6, 1995.

Chairman Conaboy adjourned the meeting at 12:35 p.m.