

**Minutes of the February 12, 1997,**  
**United States Sentencing Commission Business Meeting**

The meeting was called to order at 9:42 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

Chairman Conaboy announced that Michael Gaines, as newly appointed Chairman of the United States Parole Commission, would succeed Ed Reilly as ex officio commissioner. He introduced Paula Desio, who recently joined the Office of General Counsel as a deputy general counsel focusing on white collar and economic crimes, and Federal Public Defender Barbara O'Connor, who is on temporary assignment to the Commission from the Central District of California.

Motion made by Commissioner Budd to adopt the minutes of the December 17, 1996, business meeting; seconded by Commissioner Tacha. Passed unanimously.

**Amendments**

**Emergency Amendment - Precursors/Listed Chemicals**

Motion made by Commissioner Tacha to promulgate the revised amendment as a temporary emergency amendment, effective May 1, 1997, and to re-publish it as a proposed permanent amendment that may be submitted to Congress with other regular amendments no later than May 1, 1997; seconded by Commissioner Budd. Passed unanimously.

**Emergency Amendments - Immigration**

Motion made by Commissioner Tacha to promulgate the revised substitute amendment with the approach listed as option two under §2L1.1(b)(3); seconded by Commissioner Budd. After discussion among commissioners, it was agreed to defer the issue until the March meeting and Commissioner Tacha withdrew her motion.

## **Methamphetamine Part I**

This multi-part amendment implements section 301 and 303 of the Comprehensive Methamphetamine Control Act of 1996. Among other things, the Act generally instructs the Commission to increase penalties for unlawful manufacturing, importing, exporting, and trafficking of methamphetamine.

Motion made by Commissioner Tacha to publish for comment in the *Federal Register*, including a 2-6 level enhancement option for creating an environmental hazard; seconded by Commissioner Goldsmith. Commissioners Budd, Conaboy, Goldsmith, and Tacha voted in the affirmative, with Commissioner Gelacak voting against. Passed, 4-1.

## **Methamphetamine Part II**

This amendment implements sections 101 and 201 of the Comprehensive Methamphetamine Control Act of 1996, relating to listed chemicals.

Motion made by Commissioner Goldsmith to publish for comment in the *Federal Register*; seconded by Commissioner Tacha. Commissioners Budd, Conaboy, Goldsmith, and Tacha voted in the affirmative, with Commissioner Gelacak abstaining. Passed, 4-0-1.

## **Drug-Induced Rape Prevention Act of 1996**

(A) The Drug-Induced Rape Prevention Act of 1996 raises the penalty for offenses involving trafficking in flunitrazepam. The amendment treats flunitrazepam as a Schedule I and II depressant.

Motion made by Commissioner Tacha to publish for comment in the *Federal Register*, with the offense levels bracketed; seconded by Commissioner Goldsmith. Passed unanimously.

(B) The Act raises the maximum sentence for simple possession of flunitrazepam from one year imprisonment to three years. Option One makes no change in the base offense level and treats flunitrazepam the same as simple possession of other Schedule I and II depressants. In Option Two, the base offense level is raised to the same base offense level as heroin, other Schedule I and II opiates, and cocaine base.

(C) An issue for comment relating to the Act's amending of 21 U.S.C. § 841(b) to provide imprisonment and a fine for distribution of a controlled substance without the individual's knowledge with intent to commit a crime of violence.

Motion made by Commissioner Budd to publish for comment in the *Federal Register* proposed amendments (B) and (C); seconded by Commissioner Goldsmith. Passed unanimously.

## **Stalking and Harassing Communications**

This amendment addresses the offense of interstate stalking, 18 U.S.C. § 2261A, which was recently enacted in section 1609 of the Defense Authorization Act for Fiscal Year 1997.

Deferred until a later time.

## **Miscellaneous Immigration**

Proposed guideline amendments implement several sections of the Illegal Immigration and Immigrant Responsibility Act of 1996.

Motion made by Commissioner Tacha to publish for comment in the *Federal Register*; seconded by Commissioner Goldsmith. Passed unanimously.

## **Computer Crime and Economic Espionage**

This amendment adds commentary to §§2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property); 2B1.3 (Property Damage or Destruction); 2B2.3 (Trespass); 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) and 2F1.1 (Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). Specific offense characteristics are added to §§2B1.1 and 2B2.3. Also, special instructions are added to §§2B1.3 and 2F1.1.

Motion made by Commissioner Goldsmith to publish for comment in the *Federal Register*, with the correction on page 70 of the §2B2.3 specific offense characteristic dollar amount to \$20,000 and the table reference to §2F1.1; seconded by Commissioner Budd. Passed unanimously.

## **Miscellaneous Statutory Maximums**

Amendments address statutory index changes based on new legislation.

Motion made by Commissioner Tacha to publish for comment in the *Federal Register*, with the correction on page 84 of the statutory reference for 18 U.S.C. § 1518 to §2J1.2; seconded by Commissioner Budd. Passed unanimously.

## **Correction of January 2 Federal Register Notice**

Addresses several areas in which correction or supplemental information is needed to give full and fair notice of changes in the guidelines under consideration by the Commission.

Motion made by Commissioner Goldsmith to publish in the *Federal Register*; seconded by Commissioner Tacha. Passed unanimously.

### **Notice of Retroactivity**

Proposal would invite public comment on retroactivity of proposed amendments. No motion to publish.

Staff Director Kramer, reporting on staff and Commission-related activities, stated that the National Association of Sentencing Commissions was meeting July 21-22, 1997, in Palm Beach, Florida. He announced that the Federal Sentencing Reporter would be publishing several of the staff simplification papers and that Paul Hofer recently had an article on discretion to depart post *Koon* published in the Federal Sentencing Reporter. He stated that the Commission sponsored on January 16 a seminar with Professor Alfred Blumstein regarding criminal history. He stated that staff was almost finished coding drug cases for the ISS Sample and that the public service announcements, which are being done to educate young offenders of the severity of federal drug sentences, should be available by late March. He announced that the Commission is holding a public hearing on March 18 and a Commission meeting on the 19th.

Commissioner Tacha stated that because Congress created an agency that has both part and full-time members, the Commission must prioritize its work. She highlighted three areas of consideration for prioritization: time sensitive issues; matters not already addressed in the guidelines; and very pressing things that are causing problems. She stated that the Commission recognizes that there are longer-term issues that need to be addressed and they will prioritize them later this year. She thanked those who submitted public comment on the emergency amendments and encouraged a continuing dialogue.

Commissioner Budd, updating the Commission on the crack and powder cocaine issue, stated his hope that within the next three months the Commission would be in a position to make a new recommendation to Congress.

Chairman Conaboy adjourned the meeting into executive session at 11:04 a.m.