

**U.S. Sentencing Commission Public Meeting Minutes**  
**May 15, 2006**

Chair Ricardo H. Hinojosa called the telephone conference meeting to order at 10:08 a.m. in the Commissioners' Conference Room.

The following Commissioner was present:

- John R. Steer, Vice Chair

The following Commissioners were present via telephone:

- Judge Ricardo H. Hinojosa, Chair
- Judge Ruben Castillo, Vice Chair
- Beryl Howell, Commissioner

The following Commissioners were not present:

- Judge William K. Sessions, III, Vice Chair
- Michael E. Horowitz, Commissioner
- Edward F. Reilly, Jr., Commissioner Ex Officio
- Michael Elston, Commissioner Ex Officio

The following staff participated in the meeting:

- Judith Sheon, Staff Director

The Chair noted that according to Rule 2.2 (Voting Rules for Action by the Commission) of the Commission's Rules of Practice and Procedure, action by the Commission requires the affirmative vote of a majority of the members at a public meeting at which a quorum is present and that a quorum shall consist of a majority of the members then serving. Noting that a quorum was present, the Chair stated that pursuant to Rule 3.2 (Public Meetings) of the Commission's Rules of Practice and Procedure, a public meeting of the Commission requires a public notice of at least seven days, to the extent that it is practicable to issue such a notice. The Chair asked if there was a motion concerning the notice requirements for the Commission's public meeting. Vice Chair Steer stated that, due to exigencies beyond the Commission's control in a matter requiring the Commission's attention, it was not practicable to issue a public notice of at least seven days and made a motion to waive the requirements of Rule 3.2. Commissioner Howell seconded Vice Chair Steer's motion. Hearing no further discussion, the Chair called for a vote on the motion, which was adopted unanimously.

The Chair stated that the Commission received a letter dated May 8, 2006 from the Secretary of the Judicial Conference of the United States acknowledging receipt of the Commission's letter dated March 28, 2006, concerning the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192 (2006), (the "Act"), which requires that a uniform Statement of Reasons (SOR) form be used by all federal judges throughout the United States. The Act mandates that the SOR be issued by the Judicial Conference and approved by the Sentencing

Commission. In its reply, the Judicial Conference states that, for the purposes of the Act, the SOR approved in June 2005 is the form issued by the Judicial Conference.

The Chair stated that the Commission is required to vote on its approval of the June 2005 SOR form before it becomes the official form pursuant to the Act. The Chair asked for the staff's assessment of the SOR form, and Ms. Sheon replied that the staff was of the view that the form should be approved. The Chair then asked for a motion to approve the SOR form issued by the Judicial Conference in June 2005, attached hereto as Exhibit A. Commissioner Howell made such a motion, with Vice Chair Steer seconding the motion. Vice Chair Steer asked what the next step in the procedure will be if the motion is adopted. The Chair suggested that the Commission immediately notify the Secretary of the Judicial Conference in writing that the Commission has approved the SOR form and that the Commission is willing to work with the Judicial Conference on any notices to be sent to judges. Hearing no further discussion, the Chair called for a vote. The motion was adopted by a unanimous vote.

The Chair asked if there was any further business before the Commission. Hearing none, the Chair asked if there was a motion to adjourn the meeting. Commissioner Howell made a motion to adjourn the meeting, with Vice Chair Castillo seconding the motion. The Chair submitted the motion to voice vote. The motion was adopted unanimously, and the meeting was adjourned at 10:13 a.m.

**DEFENDANT:**  
**CASE NUMBER:**  
**DISTRICT:**

**STATEMENT OF REASONS**  
(Not for Public Disclosure)

**I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT**

- A  The court adopts the presentence investigation report without change.
- B  The court adopts the presentence investigation report with the following changes.  
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if  
(Use page 4 if necessary.)
- 1  Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level, or  
specific offense characteristics):
- 2  Chapter Three of the U.S.S.G. Manual determinations by court (including changes to victim-related adjustments,  
role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):
- 3  Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or  
scores, career offender, or criminal livelihood determinations):
- 4  Additional Comments or Findings (including comments or factual findings concerning certain information in the  
presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation,  
or programming decisions):
- C  The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

**II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)**

- A  No count of conviction carries a mandatory minimum sentence.
- B  Mandatory minimum sentence imposed.
- C  One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the  
sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum  
does not apply based on
- findings of fact in this case
- substantial assistance (18 U.S.C. § 3553(e))
- the statutory safety valve (18 U.S.C. § 3553(f))

**III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):**

Total Offense Level: \_\_\_\_\_  
Criminal History Category: \_\_\_\_\_  
Imprisonment Range: \_\_\_\_\_ to \_\_\_\_\_ months  
Supervised Release \_\_\_\_\_ to \_\_\_\_\_ years  
Fine Range: \_\_\_\_\_ to \$ \_\_\_\_\_  
 Fine waived or below the guideline range because of inability to pay.

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**IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)**

- A** The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.
- B** The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons. (Use page 4 if necessary.)
- C** The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual. (Also complete Section V.)
- D** The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

**V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)**

**A The sentence imposed departs (Check only one.):**

- below the advisory guideline range
- above the advisory guideline range

**B Departure based on (Check all that apply.):**

**1 Plea Agreement (Check all that apply and check reason(s) below.):**

- 5K1.1 plea agreement based on the defendant's substantial assistance
- 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program
- binding plea agreement for departure accepted by the court
- plea agreement for departure, which the court finds to be reasonable
- plea agreement that states that the government will not oppose a defense departure motion.

**2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):**

- 5K1.1 government motion based on the defendant's substantial assistance
- 5K3.1 government motion based on Early Disposition or "Fast-track" program
- government motion for departure
- defense motion for departure to which the government did not object
- defense motion for departure to which the government objected

**3 Other**

- Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

**C Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.)**

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy                      | <input type="checkbox"/> 5K2.1 Death                             | <input type="checkbox"/> 5K2.11 Lesser Harm                             |
| <input type="checkbox"/> 5H1.1 Age  | <input type="checkbox"/> 5K2.2 Physical Injury                   | <input type="checkbox"/> 5K2.12 Coercion and Duress                     |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills                  | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury      | <input type="checkbox"/> 5K2.13 Diminished Capacity                     |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition                   | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint   | <input type="checkbox"/> 5K2.14 Public Welfare                          |
| <input type="checkbox"/> 5H1.4 Physical Condition                               | <input type="checkbox"/> 5K2.5 Property Damage or Loss           | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense         |
| <input type="checkbox"/> 5H1.5 Employment Record                                | <input type="checkbox"/> 5K2.6 Weapon or Dangerous Weapon        | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic            |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities                 | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.18 Violent Street Gang                     |
| <input type="checkbox"/> 5H1.11 Military Record, Charitable Service, Good Works | <input type="checkbox"/> 5K2.8 Extreme Conduct                   | <input type="checkbox"/> 5K2.20 Aberrant Behavior                       |
| <input type="checkbox"/> 5K2.0 Aggravating or Mitigating                        | <input type="checkbox"/> 5K2.9 Criminal Purpose                  | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct         |
|   | <input type="checkbox"/> 5K2.10 Victim's Conduct                 | <input type="checkbox"/> 5K2.22 Age or Health of Sex Offenders          |
|   |  | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment        |
|   |  | <input type="checkbox"/> Other guideline basis (e.g., 2B1.1 commentary) |

**D Explain the facts justifying the departure. (Use page 4 if necessary.)**

**DEFENDANT:**  
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**VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM**  
(Check all that apply.)

**A The sentence imposed is (Check only one.):**

- below the advisory guideline range  
 above the advisory guideline range

**B Sentence imposed pursuant to (Check all that apply.):**

**1 Plea Agreement (Check all that apply and check reason(s) below.):**

- binding plea agreement for a sentence outside the advisory guideline system accepted by the court  
 plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable  
 plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory system

**2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):**

- government motion for a sentence outside of the advisory guideline system  
 defense motion for a sentence outside of the advisory guideline system to which the government did not object  
 defense motion for a sentence outside of the advisory guideline system to which the government objected

**3 Other**

- Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (Check reason(s))

**C Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)**

- the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)  
 to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))  
 to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))  
 to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))  
 to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective (18 U.S.C. § 3553(a)(2)(D))  
 to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))  
 to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

**D Explain the facts justifying a sentence outside the advisory guideline system. (Use page 4 if necessary.)**

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**VII COURT DETERMINATIONS OF RESTITUTION**

- A  Restitution Not Applicable.
- B Total Amount of Restitution: \_\_\_\_\_
- C Restitution not ordered (Check only one.):
- 1  For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
  - 2  For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. §
  - 3  For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
  - 4  Restitution is not ordered for other reasons. (Explain.)
- D  Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

**VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)**

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's Residence \_\_\_\_\_

Defendant's Mailing Address: \_\_\_\_\_

Date of Imposition of Judgment

Signature of Judge

Name and Title of Judge

Date Signed \_\_\_\_\_