

Minutes of the April 3 and 4, 1990 United States Sentencing Commission Business Meetings

The April 3 meeting was called to order at 10:09 A.M. by Chairman William W. Wilkins, Jr.

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

William W. Wilkins, Jr., Chairman  
Helen G. Corrothers, Commissioner  
George E. MacKinnon, Commissioner  
Ilene H. Nagel, Commissioner  
Stephen Saltzburg, Ex Officio Member  
Paul Maloney, Deputy Assistant Attorney General  
Phyllis Newton, Staff Director  
John R. Steer, General Counsel  
David Anderson, Deputy General Counsel  
Sharon Henegan, Director of Training and Technical Assistance  
Peter Hoffman, Principal Technical Advisor  
Jeff Lawrence, Special Counsel  
Andy Purdy, Chief Deputy General Counsel  
Ronnie M. Scotkin, Guideline Development Analyst  
Dean Stowers, Staff Attorney  
Paul Borman, Representative, Federal Public Defenders  
Julie Carnes, AUSA  
Roger Pauley, Criminal Division, DOJ  
Vicki Portney, Criminal Division, DOJ

Motion made by Commissioner Corrothers to approve the minutes of the March 14 and 15, 1990, Commission meetings; seconded by Commissioner MacKinnon. Passed unanimously.

April 3, 1990 Amendments:

Chairman Wilkins stated that he would move each proposed amendment, request a second to the motion, and then proceed with discussion and a vote.

Emergency Amendments: § 2D2.1(b)(1) Unlawful Possession of Certain Quantities of Cocaine Base; § 5F1.6 Denial of Federal Benefits to Drug Traffickers and Possessors

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #1: Chapter One, Part A

Commissioner Corrothers seconded the motion to promulgate without the deletion or new insertion on page 8. Passed unanimously.

**Item #2: §1B1.8 Use of Certain Information**

Commissioner Corrothers seconded the motion to promulgate with language changes. Passed unanimously.

**Item #3: Chapter One, Part B (General Application (Principles)); Chapter Three, Part D (Multiple Counts)**

Commissioner Corrothers seconded the motion to promulgate with language changes. Passed unanimously.

**Item #4 Chapter Two, Part A; §2E1.4 Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire**

Commissioner Corrothers seconded the motion to promulgate with the addition of §371 into the commentary and consistent change in statutory index. Passed unanimously; Commissioner MacKinnon tentatively approved until given justification for the increase in punishment.

**Item #5 Chapter Two, Part B**

Commissioner Corrothers seconded the motion. Passed unanimously.

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

Deferred for consideration during the next amendment cycle.

**Item #7: §2B1.3 Property Damage or Destruction (Other than by Arson or Explosives) §2H3.3 Obstructing Correspondence**

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item #8: §2B3.1 Robbery §2B2.1 Burglary of a Residence §2B2.2 Burglary of Other Structures**

This amendment was considered with item #9.

**Item #9: §2B3.1 Robbery**

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item 10: §2B3.1 Robbery**

Deferred for further discussion during this amendment cycle. The Commission will address item #8 further during this amendment cycle.

**Item #11: §2B3.2 Extortion by Force or Threat of Injury or Serious Damage**

Commissioner Corrothers seconded the motion related to the specific offense characteristic (b)(1). Passed unanimously.

**Item #12: §2B1.1 Larceny, Embezzlement, and Other Forms of Theft  
§2B4.1 Bribery in Procurement of Bank Loan and Other  
Commercial Bribery §2F1.1 Fraud and Deceit**

Deferred for further discussion during this amendment cycle.

**Item #13: Chapter Two, Part D (Offenses Involving Drugs)  
Application Note 11**

Commissioner Nagel seconded the motion to promulgate as a permanent amendment with editorial changes. Passed unanimously.

**Item #14: Chapter Two, Part D (Offenses Involving Drugs)  
Application Note 10**

Deferred for further discussion during this amendment cycle.

**Item #15: §2D1.2 Drug Offenses Occurring Near Protected Locations  
or Involving Underage or Pregnant Individuals**

Motion to promulgate as a permanent amendment with the amendment consistent with the statutory directive. Passed unanimously.

**Item #16: §2D1.6 Use of a Communication Facility in Committing  
Drug Offense**

Deferred for further discussion during this amendment cycle.

**Item #17: §2D1.11 Unlawfully Importing, Exporting, Possessing, or  
Distributing Listed Chemicals and Certain Equipment**

Deferred for further discussion during this amendment cycle.

**Item #18: §2D2.1 Unlawful Possession**

Commissioner Corrothers seconded the motion. Passed unanimously. Commissioner Nagel requested that this matter also be considered under the Penalties Review Project.

**Item #19: Chapter Two, Part F (Offenses Involving Fraud or Deceit)**

Deferred for consideration during the next amendment cycle.

Item #20: Chapter Two, Part G (Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity)

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #21: §2G1.2 Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct §3A1.1 Vulnerable Victim

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #22: §2G2.1 Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material. Custodian Permitting Minor to Engage in Sexually Explicit Conduct. Advertisement for Minors to Engage in Production.

This amendment was considered with items #23 and #24.

Item #23: §2G2.2 Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor

This amendment was considered with items #22 and #24.

Item #24: §2G3.1 Importing, Mailing, or Transporting Obscene Materials

Deferred for further discussion during this amendment cycle.

Item #25: §2H1.1 Going in Disguise to Deprive of Rights

This amendment was considered with items #26 and #49.

Item #26: Chapter Two, Part H

This amendment was considered with items #25 and #49.

Item #49: §3A1.4 Victim Due to Race, Color, Religion, Alienage or National Origin or on Account of Exercise of Federal Rights

Deferred for further discussion during this amendment cycle.

Item #27: §2J1.6 Failure to Appear by Defendant

This amendment was considered with item #44.

Item #44: §2P1.1 Escape, Instigating or Assisting Escape

Deferred for further discussion during this amendment cycle.

Item #28: §2K1.4 Arson: Property Damage by Use of Explosives

Deferred for further discussion during this amendment cycle.

Item #29: §2K1.6 Shipping, Transporting, or Receiving Explosives with Felonious Intent or Knowledge: Using or Carrying Explosives in Certain Crimes

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #30: §2K1.7 Use of Fire or Explosives to Commit a Federal Felony

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #31: §2K2.6

Deferred for further discussion during this amendment cycle.

Item #32: §2K2.1 Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition

Deferred for further discussion during this amendment cycle.

Item #33: §2K3.2 Feloniously Mailing Injurious Articles

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #34: Chapter Two, Part L (Offenses Involving Immigration Naturalization, and Passports)

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #35: §2L1.1 Smuggling, Transporting, or Harboring an Unlawful Alien

This amendment was considered with item #36.

Item #36: §2L2.1 Trafficking in Evidence of Citizenship or Documents Authorizing Entry §2L2.2 Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use

Deferred for consideration during the next amendment cycle.

Item #37: §2M4.1 Failure to Register and Evasion of Military Service

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item #38: §2M5.2 Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License**

Commissioner Corrothers seconded the motion to promulgate option #2 as a permanent amendment with title changes, addition of 22 U.S.C. §2780 in application note #1, and the number of weapons in (a)(2) reduced to ten. Passed unanimously.

**Item #39: §2N1.1 Tampering or Attempting to Tamper Involving Risk of Death or Serious Injury**

This amendment was considered with Item #40.

**Item #40: §2N1.2 Providing False Information to Tamper with Consumer Products**

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item #41: §2N2.1 Violations of Statutes and Regulations Dealing with any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product**

Deferred for consideration during the next amendment cycle.

**Item #42: Chapter Two, Part N**

Deferred for consideration during the next amendment cycle.

**Item #43: §2P1.1 Escape, Instigating or Assisting Escape**

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item #44: §2P1.1 Escape, Instigating or Assisting Escape**

Deferred for further discussion during this amendment cycle.

**Item #45: Chapter Two, Part S (Money Laundering and Money Transaction Reporting)**

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item #46: Chapter Two, Part T (Offenses Involving Taxation)**

Commissioner Corrothers seconded the motion to promulgate as a permanent amendment with conforming changes in §2T1.1-4. Passed unanimously.

**Item #47: §2X5.1 Other Offenses**

Deferred for consideration during the next amendment cycle.

**Item #48: Chapter Three, Part A**

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item #49: Victim Due to Race, Color, Religion, Alienage, or National Origin, or on Account of Exercise of Federal Rights**

Deferred for further consideration during this amendment cycle.

**Item #50: Chapter Three, Part B**

Deferred for further consideration during this amendment cycle.

**Item #51: §3B1.3 Abuse of Trust**

Deferred for further consideration during this amendment cycle.

**Item #52: Chapter Three, Part C (Obstruction)**

This amendment was considered with item #53.

**Item #53: §3C1.1 Willfully Obstructing or Impeding Proceedings**

No action was taken.

**Item #54: Chapter 3, Part D (Multiple Counts)**

This amendment was considered with items #55, #56, and #57.

**Item #55: Chapter Three, Part D (Multiple Counts)**

This amendment was considered with items #54, #56, and #57.

**Item #56: Chapter Three, Part D (multiple Counts)**

This amendment was considered with items #54, #55, and #57.

**Item #57: Chapter Three, Part D**

Commissioner Nagel seconded the motion to promulgate as a permanent amendment with the deletion in item #55 - §3D1.2(d) - of "specifically included" and the insertion of "to be." Passed unanimously.

**Item #58: Chapter Three, Part E (Acceptance of Responsibility)**

Deferred for further discussion this amendment cycle.

**Item #59: Chapter Four, Part A (Criminal History)**

Deferred for further discussion during this amendment cycle.

**Item #60: §4A1.2 Definitions and Instructions for Computing Criminal History**

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item #61: §4A1.2 Definitions and Instructions for Computing Criminal History**

Commissioner Corrothers seconded the motion. Passed unanimously.

**Item #62: §4A1.2 Definitions and Instructions for Computing Criminal History**

Deferred for consideration during the next amendment cycle.

**Item #63: §4A1.2 Definitions and Instructions for Computing Criminal History**

Deferred for further discussion during this amendment cycle.

**Item #64: Chapter Five, Part A (Sentencing Table)**

Deferred for consideration during the next amendment cycle.

**Item #65: §5E1.1 Restitution**

Deferred for consideration during the next amendment cycle.

**Item #66: §5E1.2 Fines for Individual Defendants**

Deferred for further discussion during this amendment cycle.

**Item #67: Chapter Five, Part H**

Deferred for further discussion during this amendment cycle.

**Item #68: Chapter Five, Part K**

Deferred for further discussion during this amendment cycle.

**Item #69: Chapter Seven (Violations of Probation and Supervised Release)**

Deferred for further discussion during this amendment cycle.

**Item #70: Statutory Index**

Commissioner Corrothers seconded the motion, with conforming changes to be made as a result of subsequent votes. Passed unanimously.

Chairman Wilkins recessed the meeting at 4:38 P.M. until April 4, at 9:30 A.M.



April 4, 1990 Amendments:

Chairman Wilkins reconvened the meeting at 9:39 A.M., April 4.

Item #12: §2B1.1 Larceny, Embezzlement, and Other Forms of Theft  
§2B4.1 Bribery in Procurement of Bank Loan and Other  
Commercial Bribery §2F1.1 Fraud and Deceit

Deferred for further discussion during this amendment cycle.

Item #25: §2H1.1 Going in Disguise to Deprive of Civil Rights

Commissioner Corrothers seconded the motion. Passed unanimously.

Item #26: Chapter Two, Part H

This amendment was considered with item #49.

Item #49: §3A1.4 Victim Due to Race, Color, Religion, Alienage, or  
National Origin or on Account of Exercise of Federal  
Rights

Deferred for consideration during the next amendment cycle.

Item #28: §2K1.4 Arson: Property Damage by Use of Explosives

Commissioner Corrothers seconded the motion to promulgate as a permanent amendment with the deletion in §2K1.4(a)(1) of "intentionally" and the insertion of "knowingly." Passed unanimously.

Item #32: §2K2.1 Unlawful Receipt, Possession, or Transportation  
of Firearms or Ammunition

Commissioner Nagel seconded the motion to promulgate as a permanent amendment with §2K2.1(a)(1) increase to 18 and the deletion of §2K2.1(b)(3). Passed unanimously.

Item #50: Chapter Three, Part B

Deferred for further discussion this amendment cycle.

Item #51: §3B1.3 Abuse of Trust

Deferred for further discussion during this amendment cycle.

Item #58: §3E1.1 Acceptance of Responsibility

Deferred for further discussion during this amendment cycle.

**Item #67: Chapter Five, Part H**

Commissioner Corrothers seconded the motion to promulgate the proposal as a permanent amendment and within the introduction, to keep only the first and last paragraphs. Passed unanimously.

**Item #68: Chapter Five, Part K**

Commissioner Corrothers seconded the motion to promulgate as a permanent amendment with the reinstatement of "The controlling decision...courts(.)" and the deletion of "at the time of sentencing." Passed unanimously.

**Item #71: §2H1.5 Other Deprivations of Rights or Benefits in Furtherance of Discrimination**

Commissioner Corrothers seconded the motion to delete an incorrect statutory citation. Passed unanimously.

Chairman Wilkins announced that the next Commission meeting would be held on April 10, 1990, at 9:30 A.M.

Chairman Wilkins adjourned the meeting at 2:45 P.M.