

TESTIMONY BY PAUL D. BORMAN, CHIEF FEDERAL DEFENDER, LEGAL AID AND DEFENDER ASSOCIATION OF DETROIT, ON BEHALF OF THE FEDERAL DEFENDERS, TO THE U.S. SENTENCING COMMISSION, MARCH 15, 1990, RE PROPOSED GUIDELINE AMENDMENTS (THE POSITION PAPER IN FINAL FORM WILL BE SUBMITTED BY MARCH 30, 1990).

7, Page 18 -- §2B1.3

This provision alters charged-based sentencing to offense-based sentencing. Any such Amendment should be tied to the "clear and convincing" standard of evidence, previously discussed.

STATEMENT OF

SAMUEL J. BUFFONE, CHAIRPERSON
U.S. SENTENCING COMMISSION COMMITTEE
CRIMINAL JUSTICE SECTION

Item 7. This amendment alters the Property Damage guideline, 2B1.3, in a manner that provides for real offense sentencing in cases of arson. Previously, the Commission had treated arson as a charge-based guideline: a defendant would have to be convicted under the specific criminal statute prohibiting arson before being punished for arson. That may or may not have been a wise policy - the arguments for and against real offense sentencing are highly complex and therefore beyond the scope of these comments -- but it was where the Commission had drawn the line.

A one sentence explanation says that the Commission now considers the difference between property damage and arson to be analogous to the difference between robbery and armed robbery. This explanation begs several questions: What principles underlie these distinctions? What research supports them? What has the experience been with the current real offense/charge offense distinctions? Is this part of a broader movement toward real offense sentencing and, if so, what is the likely impact of that shift on the federal criminal justice system? The Commission should explain such an important policy shift, and until it does so the status quo should be maintained.