

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).

#16, Page 23 -- #2D1.6

We object to this change uncapping the BOL for this crime.

The "Reasons for Amendment" assumes, incorrectly, that United States Attorneys are not following Attorney General Thornburg's memorandum and other Justice Department orders to engage in "honest" plea bargaining.

The "reasoning" in the last paragraph on Page 24 states, incorrectly, that a prosecutor can reach a desired result by a "stipulation" to the underlying conduct. That is not accurate, since any such stipulation is not binding on the Probation Officer or the Court.

Again, the "Reason" lacks supportive data, other than an undocumented suspicion of improper plea bargaining.

STATEMENT OF

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

Item 16. This amendment presents a similar real offense/charge offense issue as Items 7 and 10 and should be rejected for the reasons stated in the body of the testimony.

STATEMENT OF
BENSON WEINTRAUB
ON BEHALF OF THE
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

16. NACDL strenuously objects to correlating the base offense level of USSG §2D1.6 with the offense level from USSG §2D1.1. NACDL expressed strong opposition to this amendment last year. In practice, prosecutors rarely agree to charge bargaining for a telephone count in large scale cases. However, the window should be left open for plea bargaining under this guideline for an appropriate case. Quantity and quality can still serve as a basis for departure without overly restricting the application of this guideline.