

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).

#17, Page 25 -- §2D1.11

Comment will be provided in the March 30, 1990, Final Paper.

STATEMENT OF

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

Item 17. The 1988 drug bill created several new offenses for which the Commission is now promulgating guidelines. This particular proposal appears to lack proportionality: under the draft guideline, a defendant will receive the same punishment for possessing certain paraphernalia, such as drug scales, as if convicted of conspiracy to distribute drugs. Since the conspiracy guideline already results in the same punishment for conspiracy to distribute drugs as for actual distribution, these three different acts, each corresponding to different levels of harm and different degrees of culpability, result in equivalent punishment. This policy runs counter to established principles of proportionality and deterrence.

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

17. The proposed new guideline, USSG §2D1.11, appears to lack proportionality because a Defendant merely possessing "certain equipment" e.g. scales, paraphernalia, etc. would be held as accountable as a principal involved directly with narcotics. The social harm which this amendment addresses is different from other provisions of the ADAA.