

WASHINGTON BUREAU

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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March 30, 1990

Mr. Paul K. Martin
Communications Director
U.S. Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Dear Mr. Martin:

The NAACP submits the following comments, on sentencing guidelines in 55 Fed. Reg. 5718 (February 16, 1990).

The NAACP, in its 81st year, is the nation's oldest and largest civil rights organization. From its inception after the infamous 1908 Springfield, IL. race riot, the NAACP has responded to the incidences of lynching and hate crimes against blacks.

The NAACP in 1919 published, at great risk to many of its members, Thirty Years of Lynching in the United States: 1889 - 1918. This study, the first of its kind, chronicled and tabulated one hundred lynchings that took the lives of 3,224 persons. In the 1960's the NAACP's Washington Bureau lobbied Congress extensively for passage of the Civil Rights Acts. Congress was persuaded, in part, by the efforts of the NAACP and the comments of the Justices of the Supreme Court (in two cases

U.S. v. Guest and U.S. v. Price) to provide "... an effective means of deferring and punishing forcible interference with the exercise of federal rights." (Civil Rights Act of 1968, P.L. 90-284, 1968 U.S. Code Cong. and Admin. News 1837, 1841). Consequently, Title I of the Civil Rights Act of 1968 was added to include 18 U.S.C. 245 to the U.S. Code.

The existence of these federal laws, however, has not deterred a very small, but very violent segment of the population from committing hate crimes. Therefore it is timely that concerted attention is paid to proposed guidelines regarding sentencing. The NAACP has carefully scrutinized the proposed guidelines and submits its comments on three provisions of said guidelines:

- (1) Whether an increase (as currently provided) of 2 levels over the offense level applicable to any underlying offense is sufficient to adequately reflect the increased harm such crimes inflict on society when they are used as a means of insidious discrimination or to suppress the exercise or enjoyment of Federal rights; if not, should the Commission amend sections 2H1.1(a)(2), 2H1.2(a)(2), 2H1.3(a)(3) and 2H1.5(a)(2) by deleting "2" and inserting "4" in lieu thereof and by making comparable revisions to section 2H1.4:
- (2) Whether any chapter 3 general adjustment the Commission may adopt for offenses that are not prosecuted as civil rights offenses yet nevertheless involve the infliction, or intended infliction, of any harm motivated at least in part by the victim's status with respect to race, color, religion, alienage, or national origin or by the victim's exercise or enjoyment, of any right of privilege secured under the Constitution or laws of the United States (see proposed amendment 49) should have the same or a comparable structure and/or adjustment levels as the guidelines in part H, subpart 1 of chapter 2.

- (3) Whether the Commission should provide a general adjustment in chapter 3 where offenses have been committed by public officials under color of law or otherwise under the cloak of official duty or authority (in cases other than described above) that is distinct from the provision in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) and, if so, whether the amount of such an adjustment should be the same as the 4-level increase for public officials contained in the guidelines in part H, subpart 1 of chapter 2.

I. The NAACP believes that an increase (as currently provided) of two levels over the offense level applicable to any underlying offense is sufficient to adequately reflect the increased harm of hate crimes. The numbers of hate crimes have proliferated in recent years. Federal statutes such as 42 U.S.C. 245 are available to be utilized by victims of racially-motivated violence. These federal criminal civil rights statutes, however, need to be strengthened by increasing the penalties of conviction. Hopefully, increased penalties would serve as a deterrent.

Individuals and racist groups, such as the Skinheads, the Order and the Klu Klux Klan must be deterred from racially-motivated violence by stringent terms of imprisonment and fines. Some cases in point:

On March 1, 1990 in Dallas, five Skinheads were found guilty of conspiring to violate the civil rights of minorities. All five were convicted of 13 counts of conspiring to violate the civil rights of blacks, Jews and Hispanics by vandalizing a Jewish synagogue and harassing blacks and Hispanics in a Dallas, Texas park. U.S. District Judge Barefoot Sanders has set

sentencing for April 13, 1990. Each of the charges carries up to 10 years in prison and a \$250,000 fine.

A revitalized federal effort to remedy the effects of racially-motivated violence is necessary to deter these crimes. More stringent terms of imprisonment will help judges to impose harsher sentences.

Kenneth M. Mieske, 23, of Portland Oregon was sentenced to life imprisonment in March, 1989, with no parole for at least 20 years, for beating a man to death because he was black. Mulugeta Seraw, 27, an Ethiopian national was beaten to death with a baseball bat by Mieske on November 13, 1988. Mieske admitted when he pleaded guilty that he killed Seraw "because of his race". (Los Angeles Times, June 6, 1989 at 4, col.4)

Mieske will be eligible for parole in 20 years, however, the state parole board could release Mieske earlier by only a unanimous vote.

The NAACP believes that the federal government must make a strong response to vicious crimes, such as the Seraw ruling.

II. The NAACP believes that the Commission should adopt a comparable structure and/or adjustment levels for chapter 3 general adjustment as exists for part H, subpart 1 of chapter 2.

Crimes that are not prosecuted as civil rights offenses, per se may still involve the infliction or intended infliction of harm, which was motivated by the victim's race, color, religion, alienage or the victim's exercise or enjoyment of any right or privilege secured by the laws of the United States or the Constitution.

In March, 1989, two San Diego, California men were charged with killing two Mexican farm workers with a semi-automatic weapon. The two victims, Hilario Castenada Salagado and Matilde Macedo de la Sancha, legal residents of the U.S., were shot a total of 11 times. One of the two perpetrators, Kenneth Kovzelove was not prosecuted for civil rights offenses.

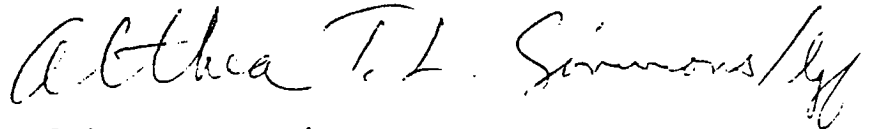
A crime, such as the one mentioned above, wherein the defendants are not prosecuted for civil rights offenses still merits the same or a comparable structure and/or adjustment level as the guidelines in offenses involving individual rights (part H, part 1 of chapter 2.) The NAACP maintains that this rationale will result in more consistent sentencing by judges.

III. The Commission should provide general adjustment in chapter 3 where offenses have been committed by public officials (under color of law) or otherwise under the cloak of official duty or authority that is different from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

An additional adjustment should be instituted for chapter 3 because an adjustment regarding offenses by public officials under color of law or cloak of official duty may be applied to a wide variety of offenses, e.g., voting fraud conspiracies to bribe voters by precinct registrars and/or intimidation by local election officials.

Although statutes and laws alone cannot eradicate hate crimes, strict enforcement of existing laws and tougher sentencing will indicate to racists that racially-motivated violence will not be condoned in this country.

Respectfully submitted,

A handwritten signature in cursive script, reading "Althea T. L. Simmons". The signature is written in dark ink and is positioned above the typed name and title.

Althea T. L. Simmons
Director/Chief Lobbyist

ATLS/tnd

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).

CHAPTER 2 -- Part H (Civil Rights)

#s 25 and 26, Pages 32 et seq.

We recognize and appreciate the seriousness of these offenses; nevertheless, we question the justification for raising the BOLs in #25.

As to both #s 25 and 26, what is the past experience? How many of these cases have been prosecuted? What sentences? Any departures?

We hope that answers to the above questions, and responsive comments to the Commission will provide the data necessary to provide a comprehensive resolution of those issues.

STATEMENT OF

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

Item 25. This amendment is objectionable due to the procedural concerns expressed in the body of the testimony.

STATEMENT OF

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

Item 26. Each of the three options set forth in this item is objectionable due to the procedural concerns expressed in the body of the testimony. The third option appears to be especially overbroad and ill-considered.