

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).

#49, Page 50 -- §3A1.4

While we deplore "hate crimes", we object to this Amendment.

Initially, we object because this proposal permits sentencing for a "hate crime" based on a mere allegation of intention meets the preponderance standard.

This allows a person to be sentenced on rumor and innuendo when there is not sufficient evidence to prosecute an individual for the charge. If there is a case to be prosecuted, the Federal Government has done so in the past and will do so in the future.

We believe this factor may form the basis for a departure in a specific case, rather than become a separate general Guideline.

STATEMENT OF

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

Item 49. The Commission's concern about hate crimes is laudable, but a new Chapter Three adjustment does not appear to be warranted at this time. Data should be developed to determine how many of all federal crimes are motivated by the victim's status. If a significant number of such cases exist, perhaps a general adjustment is justified. If not, this factor might be made an explicit basis for upward departure in Chapter Five.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

CHAMBERS OF
JON O. NEWMAN
U. S. CIRCUIT JUDGE
450 MAIN STREET
HARTFORD, CONN. 06103

B. Amendment 49. The desire to enhance punishment when crimes involve group hatred or denial of constitutional rights is understandable, but I question whether it is appropriate to accomplish this objective by an offense adjustment, rather than by a departure. Again, my concern is to avoid the need for an excessive number of hearings. Whether considered as an adjustment or a departure, I also suggest that the requisite motivation test be "motivated in substantial part" rather than "motivated at least in part." I do not think the intent is to add punishment every time a criminal utters a racial slur in the course of committing a crime. White and Black criminals do that with some frequency. If, as appears, the focus is on "hate crimes," the phrase "substantial part" would better capture the idea and avoid the disparity that would otherwise ensue as some courts added two levels for racial slurs and some did not.

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

49. NACDL does not believe that there are enough cases to warrant inclusion of such factors as a victim related adjustment. This would serve to unnecessarily lengthen the guideline calculation process.