

STATEMENT OF

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

Item 53. It appears sensible for the Commission to describe with more specificity the contours of the obstruction guideline. It would be useful, however, to have a fuller accounting of experience under the current guideline. Presumably courts have brought their wisdom to bear on this question during the two years the guideline has been in effect, and a summary of the case law would allow for better informed public comment.

That said, it is still possible to offer an opinion of which factors should constitute obstruction and which should not. In our view, items 1-4, 6, 9, 12 and 13 are serious enough to warrant the enhancement.

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).

#53, Pages 55-57 -- §3C1.1

We object to providing these many, creative and wide-ranging examples of what conduct could be included. This matter is best left to the Courts.

We question whether many of these examples are indeed willful obstruction matters that warrant taking account in sentencing.

We have serious objection to #s 7, 8, 9, 11, 13, 14. As to #6, this is prosecuted as a separate offense.

A few specifics.

1. #9 negates the "Exculpatory No" exception recognized by some Court of Appeal.
2. #11 opens up the possibility of turning every one-sided police interrogation into a sentence upgrade.
3. #13 would turn a defendant's forgetfulness about his or her criminal record into a sentence up-grade.
4. #14, as to providing incomplete information, is the best example of the pro-prosecution, one-sided nature of all of these examples.

Finally, we object to a separate guideline for reckless endangerment for flight. Where appropriate, the conduct forms the basis for a separate criminal prosecution.

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

53. If any examples are to be included in this section, the Commentary should specifically note that the provision of lawful criminal defense representation and services is beyond the scope of activities proscribed this section.