

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).

5, Page 16 -- §2B1.1

We object to the staff's suggestion here, and in subsequent provisions that the so-called anomolous differential among these statutes should be cured by raising the lower base offense level (BOL) to the higher BOL. Since three provisions contain the lower BOL and only one provision the higher, why not bring down the higher to correct the anomaly?

The "Reason for Amendment" provides no comprehensible justification.

STATEMENT OF

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

Item 5. The Commission has discovered an anomaly in the operation of several larceny-related guidelines. Certainly an amendment is

justified to correct this anomaly, but the explanatory paragraph does not tell us why the Commission chose this "fix." Specifically, why has the Commission chosen to conform the lower offense level in sections 2B1.1, 2B1.2 and 2B1.3 to the higher offense level in 2B5.2 instead of lowering the offense level in 2B5.2? Perhaps there is a technical drafting reason why the anomaly was corrected in this manner, but the Commission has not provided it.

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

5. Noting the "anomalous" result, why not employ the principle of parsimony by resolving the differences through application of the lower level for purposes of conformity?