

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).

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The Commission should define "substantially" in such a way as to carry out Congress' intent to limit this punishment to major episodes of criminality. We assume this would not apply to the teller whose \$10,000 embezzlement pushed the bank to insolvency.

Further, why is level 24 selected; to what other offense is it comparable? Again, a reason has not been provided.

STATEMENT OF

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

Item 12. Congress instructed the Commission to provide for a "substantial period of incarceration" for certain fraud offenses. How did the Commission arrive at an offense level of 24? That offense level is the offense level that would be assigned to someone who had stolen \$20 million. Has research demonstrated that \$20 million is the "heartland" theft in such bank fraud cases? Or is this a normative judgment that five years (level 24, criminal history category 1 results in a guideline range of 51-63 months) constitutes a "substantial period of incarceration?" Clearly the Commission must respond to the congressional directive, but in the absence of research or explanation, and in light of the rule of lenity, it is hard to see why the offense level should be 24 rather than, for example, 20.

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

12. NACDL believes that there is insufficient empirical data to justify the proposed specific offense characteristic relating to federally insured financial institutions. We believe that the Commission's statutory mandate to consider this factor might best be served through a departure under appropriate circumstances. Moreover, this proposed specific offense characteristic appears to be inconsistent the principle of parsimony codified at 18 U.S.C. §3553(a). See United States v. Denardi, 892 F.2d 269 (3d Cir. 1990) (Becker, J., concurring in part and dissenting in part).