

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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We note, with concern, the lack of any research or data to support the staff's Reason for Amendment boilerplate, "serious nature of this type of offense."

STATEMENT OF

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

Item 38. This proposal is objectionable for the reasons set forth in response to Item 4, above. What is "the Commission's view of the serious nature of this type of offense" based on? How have courts sentenced defendants under the current guideline? The Commission explicitly assumes that the heartland conduct under this statute is harmful or potentially harmful to national security. Intuitively, this assumption appears unreasonable. There's only one way to find out: the Commission should produce the needed research.

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

38. The proposed amendment to USSG §2M5.2 is based upon a politically unrealistic premise. "This base offense level assumes that the conduct was harmful or had the potential to be harmful to a security or foreign policy interest of the United States." What about a prosecution brought under this section for licensing or exporting violations to friendly nations? By dealing with this problem through a downward departure, is the base reference point still not too high? Finally, how many prosecutions have been brought under this section to warrant a change in the base offense level. Was the base offense level reasonable in the first instance? On what data does the Commission base this proposal?