

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).

#50, Pages 51-54 -- §3B

We object to this Proposed Amendment in its entirety. It is unnecessary. It is confusing. And most of all, it is harsh in its interpretation of the Guidelines.

We object to the narrowing of the potential for comparative conduct in the first full paragraph on Page 52. We believe that relative culpability should take into account the overall criminal enterprise.

On Page 53, #4, re §3B1.1(a), we object to the attempt to pad the number of participants to reach the 5 person level by including "unwitting participants". This defies the plain language of the Guideline.

On Page 54, we oppose proposed Application Note 2 to §3B1.2 which severely restricts eligibility for the mitigating role adjustments. If the defendant "mule", a mere carrier in a narcotics case induced a friend to drive her to the airport, she would not be eligible for a mitigating role reduction, even if it was a one-time trip for a huge drug organization.

Further restrictive is the second sentence in #2 which focuses on the commission of the offense instead of the criminal scheme.

Also, Application Note 6 on Page 55, insofar as it refers to Note 2, acts to cut back on the availability of this provision.

Finally, we believe that the Commentary to §3B1.2 captioned "Background" should not be deleted. It is helpful to understanding the Guideline.

STATEMENT OF

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

Item 50. The proposed revision of the Role guideline does not solve the two most pressing problems associated with that guideline. First, the guideline remains complicated and unduly inflexible. Second, the new guideline, like its predecessor, fails to provide a sufficient reduction for the so-called "mule" or "minnow", an individual whose role in the offense is so minor that it is unjust to even consider the full scope of the criminal enterprise at his sentencing.

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

50. NACDL strongly opposes the proposed amendment to Chapter 3, Part B. We believe that an offender's role in the offense is frequently significant for purposes of sentencing. However, both the current and proposed methods of analyzing role appear to be inadequate and rigid. Relative culpability should be viewed in the context of the overall criminal activity rather than assessing a Defendant's culpability relative to other participants within the parameters of his or her own relevant conduct. If an individual is merely an offloader, that status should be measured against the relative culpability of the financiers, principals, middlemen, brokers and facilitators. The offloader's culpability should not reflect that individual's culpability in the microcosm of other offloaders. Courts should be granted greater leeway in recognizing mitigating offense factors and characteristics.