

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).

#64. Page 64 -- Sentencing Table

We oppose creating an additional more severe criminal history category. We have not found judges hesitant to depart in that very rare case when he or she believe Category VI does not adequately sentence for the particular offense.

The Reason for Amendment does not provide sufficient data to warrant this significant Amendment.



Washington, D.C. 20530

STATEMENT

OF

JOE B. BROWN
UNITED STATES ATTORNEY
MIDDLE DISTRICT OF TENNESSEE

Criminal History

The Commission has proposed the addition of a new criminal history category for offenders with high criminal history scores. Amendment No. 64. We urge the Commission to adopt this proposal. Offenders with criminal history scores of more than 13 should not get a free ride, as they do under the current guidelines. Relying on the possibility of departures for this group of offenders is not sufficient, given their serious backgrounds.

Several other revisions are in order for the criminal history guidelines in Chapter Four. We regard this area as one of the most important for amendment because problems in the criminal history scoring potentially affect every case. The Commission's guideline proposals ask how the definitions and instructions for computing criminal history might be improved.

STATEMENT OF

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

Item 64. The Commission has not provided an evaluation of empirical data with respect to Criminal History category VI, so it is impossible to know if a new category VII is warranted. It would be useful to know, for example, whether there have been a significant number of upward departures based on 4A1.3 for offenders with lengthy records, and whether defendants sentenced under category VI tend to be sentenced at the high end of the sentencing range.

The amendment would add 43 additional boxes to the current 258 boxes in the sentencing table, increasing the perceived complexity of the guidelines and the illusion of science for which these guidelines have been justifiably criticized. Also, it is hard to see why the Commission addressed the problem of extremely high criminal history scores by creating a category that itself only covers 13 to 15 points. The proposed amendment doesn't solve the perceived problem and should be rejected.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

CHAMBERS OF
JON O. NEWMAN
U. S. CIRCUIT JUDGE
430 MAIN STREET
HARTFORD, CONN. 06103

E. Amendment 64. I hope the Commission will resist the temptation to increase complexity by adding a seventh column to the sentencing table. There is no reason to think that criminal histories more serious than those in Category VI are not being handled by upward departures where warranted. Furthermore, if the addition of a seventh column means that the sentencing table must appear either on two pages or on one page but in smaller type, the extra column will surely not have been worth it.

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

64. Especially in the absence of empirical data indicating the frequency with which USSG §4A1.3 is applied, NACDL opposes such a radical revision of existing policy and guidelines.