

TAS AND TRAINING UNITS RESPONSE TO PROPOSED AMENDMENTS

#1: We support this and recommend that the amendment be further expanded to include the remainder of the sentence in 18 USC §3553(b), "unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described."

The same language should be incorporated into the quotation from 18 USC §3553(b) found at §5K2.0.

#12: We support this amendment, with the changes Peter agreed to make regarding the term "offense" in the first line of each paragraph. In all other places of the guideline the word "offense" has been defined as "relevant conduct". Hence, our concern, if we are further defining "relevant conduct" in this amendment, we do want to use "offense," a term that means relevant conduct. A term cannot be used to define itself. We recommend "criminal activity" as a substitute.

Additionally, we note that the word "scope" has been introduced and are wondering if it means "in furtherance of." Are these terms analogous?

#28: We see no problem with this amendment.

#34: We believe that this amendment will ease application, because the language clarifies what the Commission intends by "organized criminal activity." However, it does serve to limit correct application to only activity that involved the stealing of vehicles or vehicle parts. Is this the intent?

#36: We support this amendment. With regard to #36A,

#36A: We note that the field has stated that there is a burden of proof problem for the specific offense characteristic that adds four levels "if the offense was committed by a person in the business of selling stolen property." The suggested amendment, however may go too far in removing this phrase, expanding the umbrella to more defendants than intended.

#50: We support the concept that the adjusted offense level for bank robbery is most frequently too low. The field, including judges, prosecutors, and probation officers, have spoken to us loudly and often on this. However, we are not certain that raising the base offense level is the most appropriate approach to correcting this problem.

We recommend that the Commission consider the adoption of an additional specific offense characteristic for postal and financial institutions as a method of increasing the penalty for bank robbery without inept inadvertently raising the offense for robbery.

We strongly oppose the adoption of Option 1 and Option 2 to this amendment as we see numerous application problems. Option 1 incorporates language, "as part of the same course of conduct or common scheme or plan as the offense of conviction," that would carve an exception to the fundamental concept and application of relevant conduct. Under Option 2, it is possible that a defendant would get a higher offense level for the three additional robberies for which he was not convicted than he would receive if he had been convicted of all three robberies.

We support the concept of sanctioning for additional robberies that did not result in conviction and suggest for consideration the inclusion of an application note that instructs the court to consider an upward departure for unconvicted robberies.

#50B: We oppose this amendment, finding it unduly cumbersome for the minor relief it offers. Dividing the enhancement for weapon use into base and offense characteristic does not seem practical. The field would find this amendment more confusing than helpful.

We support the concept of the "Additional Possible Option" that sanctions the behavior of threatening the victim with a toy gun but feel that it should be revised and should be added as commentary to 50C below. The revision we recommend involves expanding to include the behavior of pretending to have a weapon (e.g., through the use of a note, gesture, or a statement by the assailant that he is armed).

#50C: While we find it troublesome to have differing specific offense adjustments for weapon use in different guidelines, this option addresses a problem of considerable concern to the field. It is a problem that is particularly acute for bank robbery and might, therefore, justify varied characteristics on an interim basis. We do recommend, however, that the "possessed" alternative be increased to include displayed, brandished, or otherwise used; and, that the "threatened" alternative be expanded to include whether or not the threat could be reasonably accomplished. These distinctions would provide a distinct improvement from the field's perspective.

#56: We support this amendment.

- #66: We support the need for an amendment to §2C1.1 to correct the application problem described. However we do not believe that the suggested amendment would accomplish that end, because this language would still only apply to offenses under §1B1.3(a)(1) and it is §1B1.3(a)(2) that presents the problem.
- #71: We support this amendment, but suggest that the format be revised to make the language of this amendment consistent with language. This could be accomplished by the following change near the end of the amendment:
- ". . . increase by 2 levels. If the resulting offense level is . . . "
- #77: We have no problems with this amendment.
- #77A: This is a policy issue for the Commission. We have no relevant information from the field.
- #82: We take no position on this other than to note that the statute requires the weight of the controlled substance to include the weight of the substance with which it has been mixed or diluted.
- #83: We oppose this amendment as written because it overly complicates application. We suggest that the amendment be written to mirror the requirements in the law.
- #92: We support this amendment, with the following change to the syntax:
- (a) Base offense level:
- (1) If the offense involved a person less than 18 years of age (Apply the grader):
- (A) 2 plus the offense level from §2D1.1;  
or
- (B) 26, otherwise.
- (2) Otherwise (Apply the grader):
- (A) 1 plus the offense level from §2D1.1;  
or
- (B) 13, otherwise.
- #96: This is a policy for the Commission. We have no relevant information from the field.
- #97: This is a policy for the Commission. We have no relevant information from the field.

#98: No opinion on substance, however, small we recommend that the format of this guideline be restructured to remain consistent with the structure of other guidelines (e.g., §2E1.2).

(a) Base offense level (Apply the grader):

(1) 3 plus the offense level from the drug quantity table in §2D1.1; or

(2) 20, otherwise.

#101: We have many questions regarding this amendment. We questioned the need for this cross reference, given that the statute will control. Would the Background note suffice?

If not, the reference to the "third sentence of 21 USC §844(a)" should be deleted and the actual language be inserted, because future revisions to the statute will require amendments only if the sentence placement changes.

#102: We object to the introduction of the heading "Note" as used in this amendment, because this is inconsistent with current guideline format.

We believe that the directive contained in the Note will present considerable application problems. If there are hundreds of injured persons, it would require hundreds of Worksheet A's. Given the frequency with which there will be multiple victims in this guideline, the note precludes any recommendation for upward departure when numerous victims are involved. Doesn't the base offense level consider that there may be more than one person injured or killed?

#117: We offer no opinion.

#117A: This is a policy issue for the Commission. We have no relevant information from the field.

#119: We offer no opinion, other than to suggest the following slight language modification so this guideline will remain consistent with the language and structure of other guidelines:

Recommended Amendment: Section §2F1.1(b) is amended by inserting at the end:

"(4) If the offense involved a conscious or reckless risk of serious bodily injury, increase by 2 levels. If the result is less than level 13, increase to level 13."

#125: This is a policy issue for the Commission. We have no relevant information from the field.

#127: We support this amendment, with possible modifications to §2G3.2(b)(1), there may be application problems when some forms of aberrant behavior are listed and many others are not. Should we specifically list ("sodomasochistic") if the statutes does make the distinction?

#128: Same position as noted in #127 above.

#142: We support this amendment, and recommend the following syntax change:

§2J1.7: ". . . to the offense level for the offense committed while on release. Treat this section as a specific offense characteristic contained in the offense

. . . "  
Application Note 2: (last sentence) This sentence should begin with : "For example," not "e.g."

#154: We recognize the need for revision and clarification of these guidelines and are supportive of that end. We are uncomfortable with the reference to specific statutes, because it shifts application to an offense of conviction system only. Option 141A exemplifies the problems inherent in referencing statutes and not conduct.

We support the amendment to §2K2.1, but prefer conduct as opposed to specific statutes.

The field has expressed a need for an increase to the overall offense level in §2K2.2 and we believe Option 2 within §2K2.2 would be seen as preferable. However, we note the considerable difference in the numbers of weapons and offense level increases between Option 1 and Option 2, which raises questions as to the efficacy of making a change without further study.

Guideline §2K2.3, as written, does not have our support. It is cumbersome and unwieldy.

#154A: This is a policy issue for the Commission. We have no relevant information from the field.

#160: This is a policy issue for the Commission. We have no relevant information from the field.

#168: We see no problem with this amendment.

#169: We support the field's request for intermediate adjustments when the escape is from non-secure custody, but does not meet all the criteria established for a 7

offense level reduction.

- #170: We see no problem with this amendment.
- #171: We support this amendment, but recommend that the language format be consistent with other current guidelines.
- #176: We offer no opinion, except that the language used in (a)(3) is extremely cumbersome. Although we acknowledge that the language is taken directly from the statute, we would still urge that it be clarified.
- #182: We do not like or recommend the use of the heading, "Note." This is inconsistent with current practice. It seems reasonable to put this in the commentary under "Background."
- #187: We see no problem with this amendment.
- #189: We see no problem with this amendment.
- #205: We support the notion of eliminating interests in calculating tax loss and therefore generally support this amendment, with editing for language and format consistency with current guideline drafting practice.
- We will provide Peter the appropriate consistency changes.
- #242: While we do not have an amendment on which to comment on, we recognize a need for clarification of terms. Under "Related Cases" as used in §4A1.2, the field seeks additional clarification of the meaning of the term "consolidated for trial or sentencing".
- #243: We are aware of the field's request that this guideline be clarified/modified. However, there are a number of problems not addressed by this amendment. A number of problems were raised by the working group last year and these have not been addressed.
- #258: We find no amendment on which to comment.
- #260: We support this amendment. We also support the idea of a special condition for imposing a curfew, however, suggest the following language change:
- "If the court concludes that restricting the defendant to his place of residence during evening and nighttime hours is necessary to provide just punishment for the offense, to protect the public from crimes that the defendant might commit during those hours, or to assist in the rehabilitation of

the defendant, a condition of curfew is recommended. Electronic monitoring may be used as a means of surveillance to ensure compliance with a curfew order".

- #267: We support this amendment, and have no problem with #267A.
- #273: We support this amendment.
- #291A: A policy decision by the Commission. We see no potential problems from the standpoint of the field.
- #292: We see no problem with this amendment.

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November 16, 1989

REPLY TO: **Tyler**

United States Sentencing Commission  
1331 Pennsylvania Avenue NW, Suite 1400  
Washington, DC 20004

Atten: Paul Martin  
Communications Director

**RE: 1990 AMENDMENT CYCLE (INPUT)**

Dear Mr. Martin:

This correspondence is in response to an article in the bi-weekly U.S. Probation Division newsletter dated November 13, 1989, wherein input from probation officers was requested. Therefore, the following is my input:

At the risk of further complicating the guidelines, there should be guidelines formulated under 5K1.1 to permit guided departures for substantial assistance. It seems that prosecutors have realized early on that the impact of the Sentencing Reform Act upon obtaining plea agreements is one whereby the "clout" of having numerous charges to file against the defendant has been replaced by the clout of how much the prosecutor can give away. It is commonly accepted that the life blood of the law enforcement arm of the criminal justice system is the cultivation of informants. It is equally accepted that the common means of processing the legion of offenders through prosecution is the inducement to plead guilty by rewarding defendants who provide useful investigative information.

The ambiguity of the 5K1.1 section is such that it has become the "black hole" toward which the plea agreements are drawn, resulting in continued disparity by means of abuseful, subjective exaggeration of the investigative value of information provided by defendants whose primary assistance has been that of pleading guilty.

It is easy to see, even in a cursory analysis of this problem, that assigning a value to information could be an infinite task.



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Generally, however, most information could be categorized in such a manner as to apply two different offense level reductions. First, the most common source of information offered by a defendant is that wherein he is involved in conspiracy conduct and can provide information useful to the conviction of others with whom the defendant was involved. For the sake of discussion, a departure guideline might be created that would give such information a 2-level reduction. Criminal investigators generally view as more valuable, however, information provided by informants which results in convictions for offense conduct beyond the scope of the offense conduct in which the informant is involved. Again, for the sake of discussion, such expanded information may warrant a 4-level reduction. Without the benefit of empirical information to make an estimate, I would estimate that guidelines of this nature would cover about 80 percent of the plea bargains.

The above proposal would run into problems, however, when offenders may be in their late thirties, or older, and have extremely high offense level guidelines whereby the attractiveness of only a 4-level reduction would be substantially diminished. In such cases, guidelines may be structured in such a manner that, if an informer's offense level exceeds a certain point, the 2- or 4-level reduction for substantial assistance may be doubled.

These proposals may be too simplistic and reflect my ignorance of other important factors that would render such a guided departure inapplicable. I would hope, however, that these views would provide a point of interest which would provoke thought toward formulating some workable guidelines for guided departure that would not be unduly cumbersome, and would cover the vast majority of substantial assistance cases.

Workable guidelines in this area could substantially diminish the "black hole" of unwarranted sentencing disparity that currently exists. Further, it would diminish the despair that is generated when we as probation officers attempt to provide the Court with the facts of the defendant's conduct and assistance, while trying to maintain a working relationship with prosecutors who are increasingly viewing us as a meddlesome nuisance. It seems inevitable that the deteriorating working relationship is likely to undermine any expediency that might otherwise have been brought about by the guidelines.

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Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kenneth D. Smith". The signature is written in dark ink and is positioned above the typed name.

Kenneth D. Smith  
U.S. Probation Officer

KDS:sb



ORGANIZATION  
COMMENT

ORGANIZATION

COMMENT

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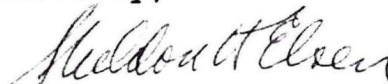
December 22, 1989

United States Sentencing  
Commission  
1331 Pennsylvania Avenue, NW  
Suite 1400  
Washington, D.C. 20004

Gentlemen:

Enclosed is my memorandum that comments on your Preliminary Draft of Sentencing Guidelines for Organizations, which you sent to me earlier this month.

Sincerely,



Sheldon H. Elsen

SHE/fb  
Enclosure

M E M O R A N D U M

TO: UNITED STATES SENTENCING COMMISSION  
FROM: SHELDON H. ELSEN  
DATE: DECEMBER 18, 1989

This memorandum responds to your Preliminary Draft on Sentencing Guidelines for Organizations dated December 1, 1989.

1. Practical Difficulties of Computing Losses and Gains.

At the hearings in New York City, I commented on the difficulty of applying a standard based on pecuniary loss or pecuniary gain, because the U.S. Attorney's Office normally has not developed such information during a Grand Jury investigation leading to an indictment.

Like civil damages, which are often difficult to determine, and sometimes require complex proof and expert testimony, the amount of loss and the amount of gain in a criminal case are not immediately apparent. Since the amount of loss or gain is normally not an element necessary to prove in order to convict of a crime, the U.S. Attorney normally does not attempt to develop those figures with precision.

The necessity to develop data like those necessary for proof of civil damages would create a substantial burden for prosecutorial offices, which operate on limited budgets. The need to prove loss or gain could add months to a Grand Jury investigation. They must take such budgetary considerations into account in determining how to allocate their resources. If the

burden of prosecuting organizational defendants imposes substantial additional burdens on prosecutors, prosecutors will be deterred from seeking indictments against organizations.

The result could have consequences that could either be too lenient or too harsh. It could be too lenient in that it frees organizational defendants from some of the normal risks of prosecution. It can be too harsh if it reduces the advisability of prosecuting an organization rather than individuals, i.e., if the difficulty of prosecuting the organization increases the possibility that individuals rather than their company will be the subjects of indictments.

The present draft, if I understand it correctly, would reduce this burden under Option I, but not under Option II because as I understand it, no gain or loss must be calculated for Option I but not for Option II. Thus Option II solves the problem referred to but Option I does not.

Balanced against this, however, are the huge fines permitted under Option II, which I think give too much room for prosecutive discretion. In this respect I agree with Stanley Arkin, who wrote in the December 14, 1989 New York Law Journal that Option II's provisions for astronomic fines leave too much room for coercive charging, along the lines of the Princeton-Newport case. We cannot rely on prosecutorial self-restraint to prevent undue coercion, as the recent history of RICO charges shows us.

Should the Commission give a judge both options, the U.S. Attorney's office would have to develop the figures before sentence, so that it would have the practical burdens referred to.

2. The Practical Difficulties of Computing Costs of Prosecution.

I note that costs of prosecution are now only a factor which the Court should consider in determining a fine within a particular guideline range.

In my earlier testimony, I had suggested that the Justice Department is in no position to calculate its costs of prosecution with any precision. Justice Department lawyers do not keep time records. In addition, most cases are developed by an investigative agency, such as the SEC, the Treasury or the Post Office, and it is difficult to determine how much of that agency's overhead should properly be allocated to the investigation.

Though the problem would be reduced by the new provision, so that such costs are less critical to the amount of the fine, the U.S. Attorney's Office may be left with the obligation of attempting to determine these costs with some precision if it is to do its job of helping the sentencing judge do his or her job properly. The U.S. Attorney's Office could make rough estimates, but this could leave a sense of arbitrariness and it would be doubtful wisdom to make it a



standard for professionals.

3. The Problem of the Criminal Offense That is not Properly Measured by Economic Loss or Gain.

I and many others had been concerned by the earlier draft's almost exclusive reliance on loss or gain as a measure of culpability. The example of a small bribe paid to a federal judge to fix a case was the one which came most readily to mind, i.e., an offense which involved a small number of dollars but was quite serious.

I see that under both options the Commission has now attempted to take into account these types of considerations by increasing the offense levels for such actions as bribing public officials. I have not yet had time to reflect on the adequacy of the other factors taken into account.

4. Alternatives

I still think justice would be better served by the promulgation of guidelines to inform sentencing, while leaving judges greater discretion in setting the amounts of fines.

I also think that the levels of permissible fines should be reduced. Very large fines should be determined by civil proceedings after the criminal case, rather than through fines.

December 20, 1989

United States Sentencing Commission  
1331 Pennsylvania Ave., N.W.  
Suite 1400  
Washington, D.C. 20004

Dear Sirs:

I am a field agent with the U.S. Department of the Interior, Office of Inspector General, and I frequently investigate corporations involved in violations of either the fraud or the environmental laws. I was provided with a copy of the Commission's Preliminary Draft on Sentencing Guidelines for Organizational Defendants and was asked to submit comments. As an enforcement agent working white collar crime I appreciate your efforts to create guidelines which when enacted will bring uniformity in the sentencing of organizations throughout the judicial districts of the United States. I applaud the clarity of the sentencing process you've developed, and the severity of the penalties that the guidelines will impose. Nevertheless, I feel that the following considerations should be brought to your attention:

1. Implementation of these guidelines will probably result in Sentencing Hearings becoming mini-trials in which the factors used in the determination of the fine will be questioned and attacked by the defense.
2. The guidelines thoroughly address restitution in financial crimes but do not adequately cover environmental crimes. I believe that in environmental cases a culpable organization should be totally responsible for clean-up costs, and I believe that the criminal courts should rule on this issue at sentencing rather than force the public to endure a lengthy and expensive civil trial in order to obtain an equitable remedy. Therefore, section 8B1 should be expanded to include clean-up costs in environmental cases. Furthermore, restitution and clean-up costs should be required as conditions of probation.

Thank you for allowing me the opportunity to make these comments.

Sincerely,



Richard J. Berta



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STATEMENT OF  
BENSON WEINTRAUB

ON BEHALF OF THE  
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

BEFORE THE UNITED STATES SENTENCING COMMISSION

WASHINGTON, D.C.

APRIL 7, 1989

Mr. Chairman and members of the Commission, my name is Benson Weintraub, and I am pleased to appear here today to offer comments on the pending proposed guideline amendments on behalf of the 15,000 members of the National Association of Criminal Defense Lawyers and its state and local affiliates. I am a partner in the Miami law firm of Sonnett Sale & Kuehne, where my practice is limited to Guideline sentencing, direct appeals and habeas corpus litigation. I serve as Vice-Chair of the Association's Sentencing Committee, and represented NACDL as amicus in Mistretta and dozens of lower court cases regarding the constitutionality of the guidelines.

NACDL deeply appreciates the Sentencing Commission's expressed receptiveness to public comment not just on the currently pending package of proposed amendments, but on all aspects of the sentencing guidelines. We wish to take advantage of this openness to urge that, before specific amendments to the guidelines are considered or acted upon by the Commission, careful scrutiny and attention be given to the process by which amendments are developed, and the precedent which is thus set for the development of future amendments.

The initial guideline package developed by the Commission in response to the congressional mandate of the Sentencing Reform Act of 1984 was the product of an extraordinarily thorough deliberative process, according to Commission statements in the guideline commentary and supplementary report, based upon an

exhaustive empirical review of existing sentencing practices. Clearly, the guidelines drew much of their force and justification from the Commission's wide-ranging examination of nearly 100,000 convictions and a sample of 10,500 presentence investigations.

It is precisely this intense level of scrutiny that Congress hoped for when it established the Commission. Congress had been wrestling with the idea of sentencing reform for more than a decade, and the commission approach was born, midway through that process, out of a recognition that such a mammoth, comprehensive task could only be accomplished by an expert body devoting full-time attention to the issue for a prolonged duration.

After reviewing the present set of guideline amendment proposals, however, we are deeply concerned that the Commission appears to be retreating from its earlier painstaking, empirically-based approach. We are concerned that there is not presently enough data available to conduct any meaningful analysis of sentencing practices under the guidelines and whether they are "working" as intended. The Commission appears to concede this point, in frankly stating (with respect to the options under consideration for the offense of robbery) that "the Commission's data on practice under the guidelines are very preliminary, and do not yet provide a reliable basis for evaluating the workings of the current guideline." (Item 50, at page 31).

Federal guideline sentencing is still in its infancy. Mistretta is only a few months old. Training of judges, prosecutors and defense lawyers is in progress and still desperately needed all across the country. The total number of cases sentenced under the guidelines to date (roughly 7,200) constitutes less than three months' worth of the federal sentencing caseload (at the current rate of some 40,000 federal sentencings per year).

Why then, despite the Commission's confession of incomplete data, is the Commission trying to make substantive changes to so many guidelines--guidelines which the Commission obviously once thought to be empirically valid and rationally linked to statistics regarding past sentencing practices--before any new data has come in to undermine the old data? Examples of amendments to such guidelines include amendments 32 and 33 (tables for larceny, embezzlement and other forms of theft), 40 (same--burglary), 48 (same--robbery), 66 (bribery, extortion), 72-78 (drug tables), 116 (fraud and deceit tables), 169 (escapes), 210 (tax evasion tables), 243 (career offenders), and 248 (fines).

A large part of what the Commission appears to be responding to is a variety of comments trickling in from a self-selected array of judges and prosecutors with individual complaints or observations about how the guidelines are working. For example, amendment 97 appears to be a reaction to a single Court of Appeals decision (the Correa-Vargas case); and the bank

robbery proposals (issue 50) is explicitly said to be the result of "comments from several sources, primarily Assistant United States Attorneys and certain District Judges." The process seems to be one of "amendment by anecdote." The Commission's recognition of the great significance of the initial guidelines, and the meticulous attention that the issues merited, appears to have given way to a sense that a less momentous "evolutionary" process is now underway--a process of simply "tinkering" with, or fine tuning, the original product.

(At the same time, we recognize that many of the proposed amendments do not fall into this category, being either purely technical corrections or necessary responses to legislation enacted subsequent to the implementation of the initial guidelines. The concerns we may have about such amendments, particularly in the latter category, relate more to their substance than to the process of their adoption.)

We do not doubt that amendments to the guidelines will, from time to time, be necessary or warranted. We strongly object, however, to the making of important decisions as to what is warranted based on ad hoc review of the extremely limited experience under current law.

The process of making amendments to the guidelines is the process of making law. The amendments are no less momentous, no less binding on the courts, no less dispositive of the rights and liberties of thousands of individual defendants, and no less confusing for defense lawyers, than are the guidelines

themselves. Each one of them will have the force and effect of a legislative enactment. They cannot, and must not, be supported by so slender a reed as a few months of anecdotal experience, informally gathered and not systematically or empirically reviewed.

From the perspective of the defense practitioner, it is virtually impossible to practice sentencing law, to stay abreast of changes in it, and to render effective legal assistance, in the current climate of incessant change--hundreds of guideline amendments and temporary "emergency" amendments, revisions of the Commission's "legislative history" (i.e., guideline commentaries), and scores of legislative changes. Even the most competent attorneys cannot effectively practice when the law changes so readily.

We urge the Commission to sort through the current package of proposed guideline amendments, and to send to the Congress a "bare bones" package made up of only those amendments that are purely technical and noncontroversial in nature and those that are necessitated by recent legislative changes. All others should be set aside until at least the May 1990 submission to Congress, to permit the accumulation and thorough review of a meaningful body of data regarding sentencing practices under the guidelines.

Of particular importance, in our view, would be a comprehensive analysis of the frequency and reasons for judicial departures from the guideline ranges, as an indicator of specific



areas where the guidelines are not perceived as leading to appropriate sentences, and where amendment may be warranted. We also anticipate that as experience accumulates over the next several years, NACDL and individual defense practitioners across the country will be able to offer the Commission valuable insight into the actual functioning of the guidelines, particularly on the issue of plea bargaining and the extent to which the rigidity and harshness of the guidelines may encourage their circumvention.

Such questions, however, are not ripe today. Before whisking through a whopping 290 amendments, there must be some chance for the guidelines to "settle in," for judges, lawyers and probation officers to become acquainted with them, and for the Commission to be able to distinguish real problems from aberrations which may arise solely from confusion or lack of training and which may vanish when the dust settles. We urge the Commission: Take your time; gather the data; do it as carefully as you did the first time.

And please don't keep changing the rules on us. Consistent and rational sentencing is an elusive enough goal as is without making it a moving target.

NACDL has not had sufficient time within which to prepare detailed comments on each proposed amendment. Next week, however, we will file a comprehensive analysis under separate cover. Given the limited time for the public testimony, we summarize some of the most important specific comments below.

\*Each amendment should include A "prison impact statement" consistent with the spirit of 28 USC 994.

\*Mandatory minimums: Amendment 96 asks for comments on what to do with statutory mandatory minimums, and others ask how to deal with statutory provisions mandating that a specified minimum level be provided in the guidelines. On the latter, it appears that the Commission has no choice (although we do not understand why the Commission is considering setting a guideline minimum level greater than required in such statutory provisions). On the straight-mandatory-minimum provisions, however, our recommendations are twofold: first, ignore them in setting the guideline range; the Commission's job is to set what it finds to be an appropriate sentence range, and it is the judge's job to impose the statutory minimum if it is greater than that provided in the guidelines. Second, and more importantly, the Commission should, in making its legislative recommendations to the Congress, propose that the Congress refrain from enacting mandatory minimums of either kind, since they are utterly inconsistent with the Commission's function and the system

of determinate sentencing that the Congress established in 1984. We are interested to see that Chairman Wilkins has expressed similar sentiments in a letter to Senator Nunn on August 22, 1988.

\*Amendment 10 is problematic due to the great potential for abuse of prosecutorial discretion. As drafted, the amendment encourages prosecutors to file one-count conspiracy indictments with multiple objectives, knowing that at sentencing, the multiple objectives--with their higher offense level--could be proven by the preponderance standard.

\*What force and effect will an "additional explanatory statement" have? Will it be printed in the guidelines manual?

\*NACDL concurs that the tax and theft monetary tables should be the same (amendments 32-33); yet, it is our view that they should not be increased at the higher levels at this time. Nor should amendments 40 and 41, absent empirical data demonstrating disparate sentences.

\*NACDL strongly opposes any changes contemplated by amendment 50 unless and until truly empirical data and current sentence

patterns indicate a change from past sentencing practices.

\*The defense bar objects -- in the strongest possible terms --- to amendment 97 for several reasons.

First, the Commission has not accumulated or analyzed sufficient data regarding violations of 21 U.S.C. 843(b) to appreciate the far-reaching ramifications of this radical change in Commission policy. Secondly, as I suggested earlier, it sets a dangerous precedent, for purposes of future amendments, to base a proposed amendment upon one or two Court of Appeals decisions which, further experience will only determine, may not be predictively significant as to the manner in which sentencing courts generally treat telephone counts in individual cases. See, e.g. United States v. Correa-Vargas, 860 F.2d 35, 1 Fed. Sent. R. 313 (2d Cir. 1988).

The third reason why NACDL strongly opposes any modification to 2D1.6 relates to plea bargaining. This offense represents the only "safety valve" providing an escape from the restrictive Drug Quantity Table which determines the base offense level for all other narcotics offenses. This valve must be left open in order to avoid a complete and total breakdown of the plea bargaining process, particularly for offenders with relatively low culpability and largely peripheral involvement. The harm to society punished by 843(b) is the use of a telecommunications facility in committing a drug offense. The societal harm sought to be protected by this statute is not necessarily drugs in and of itself. In appropriate cases, 2D1.6 provides for an

equitable and just resolution of the case while adequately reflecting the seriousness of the overall offense conduct. See generally, 6Bl.2, 6Bl.4. See also, U.S. Department of Justice Prosecutors Handbook on Sentencing Guidelines And Other Provisions of The Sentencing Reform Act of 1984, and the "Thornburgh Memorandum"

\*Notwithstanding an increase from 5 to 10 years imprisonment as the maximum sentence under Section 6462 of the Anti-Drug Abuse Act of 1988, amendment 154 should not be adopted because of the present lack of experience in acquiring sufficient data upon which to justify an increase in the base offense level.

\*Regarding Amendment 210, the Commission lacks sufficient data to demonstrate why the present tax table severity level does not adequately reflect the seriousness of the conduct. Consequently, the amendment should not be approved.

\*Career offenders (Amendment 243). NACDL concurs with the criticism enunciated in this section (page 135) but we urge you to reject the amendment at this time. All of the changes appear to result in longer guideline sentences and, as such, are not responsive to the section's critics. More study is needed. At present, judges may be departing downward to avoid purely Draconian sentences. Adoption of this amendment without substantially more experience and empirical data could send the wrong message to the

judiciary.

\*No. 260. The commission seeks public comment on the question of whether the policy reflected in the existing guidelines should or should not be revised to accommodate the provision in Section 7305 of the Omnibus Anti-Drug Abuse Act of 1988 providing for the use of home detention as an alternative to imprisonment in light of the existing guideline distinction between home detention, community or intermittent confinement and imprisonment. First of all, it is clear that Section 5C2.1(e) must be amended to permit home detention to be imposed as a substitute for imprisonment. As with intermittent community confinement, home detention, if substituted for imprisonment, should be done as an exact equivalent, i.e., one day for one day. Additionally, NACDL would not object to discretionary electronic monitoring being required to supplement probation officer enforcement of the condition so long as the prisoner not be made to bear the cost of the electronic monitoring thus precluding poor people from that type of alternative sentencing. NACDL also believes that no type of offender should be precluded from home detention. Moreover, NACDL supports the idea that people should be able to be sentenced directly to home detention even if the applicable guideline range in the sentencing table is more than ten (10) months. At the very least, if the sentencing guideline range is more than six (6) months but not more than ten (10) months, a person should be able to be sentenced to home detention without being required to serve at least one-half of the minimum term

in imprisonment.

\*No. 268. NACDL strongly opposes this proposed amendment which would revise Section 5K1.1 dealing with substantial assistance to authorities. First, prosecutors have too much discretion in determining whether to move to authorize a judge to depart based on cooperation. NACDL firmly believes that Section 5K1.1 violates 21 U.S.C. Section 994(n) in this regard. Further restricting the use of Section 5K1.1 will hinder effective law enforcement in attempting to get defendants to cooperate to the best of their ability. No criminal defendant in his right mind would subject himself or herself to the hazards of cooperation if his or her "best good faith efforts" will be incapable of being rewarded. Requiring "results" will lead to widespread perjury and confidential informant overreaching in order to secure the benefits of the proposed amendment. This runs the risk of unduly increasing the likelihood of convictions of innocent individuals. Ultimately, we believe that judges should be able to reward cooperation sua sponte. Cf., 18 U.S.C. 3553(e); rule 35(b), F.R.Cr.P.

#### CONCLUSION

That concludes my prepared statement. I appreciate this opportunity to share NACDL's concerns and comments with the Commission, and I would be happy to answer any questions the Commission may have.





DOJ COMPARISON  
PAROLE V. SENT. GUIDEL.



U.S. Department of Justice  
United States Parole Commission

STO  
Bank Robbery

Office of the Chairman  
January 19, 1989

5550 Friendship Blvd.  
Chevy Chase, Maryland 20815

Honorable William Wilkins  
Chairman  
U. S. Sentencing Commission  
1331 Pennsylvania Avenue, N.W., Suite 1400  
Washington, D. C. 20004

Dear Judge Wilkins:

Pursuant to my request, staff of the U. S. Parole Commission, recently conducted a study to compare parole guidelines with sentencing guidelines, as implemented by the courts. A copy of the research report prepared by Dr. James L. Beck, Director, Research and Program Development is attached. Please feel free to distribute copies of this report to your staff.

As an introduction to the report, I would like to highlight several points of interest. They are:

1. Copies of commitment orders and plea agreements were not available to the researchers. Had such documents been available, the findings could have contained more detail and/or explanation.
2. Plea bargaining appears to have had a major impact on the implementation of the sentencing guidelines. This trend has a strong potential to undercut the major purpose of sentencing guidelines -- equity in sentencing, and reduction in disparity.
3. Bank robbers, as a group, are required to serve more time under parole guidelines than under sentencing guidelines. This revelation was very surprising to me, since we know that approximately 75 percent of the new bank robbery commitments have prior records -- many of them very serious prior records.
4. A review of the marijuana cases indicates that large numbers are being required to serve inordinate amounts of time considering the relatively small quantities of marijuana involved.

5. Except for marijuana cases, a substantial percentage of drug offenders will serve less time than required by the parole guidelines. For example, 37 percent of heroin offenders and 26 percent of cocaine offenders will serve less time than the parole guidelines would indicate. (This is relevant because, under the old system, a large percentage, 36 percent of the heroin offenses and 32 percent of the cocaine offenders, were continued to expiration - below the parole guidelines - by the Parole Commission in FY 1988. It does not appear that the sentencing guidelines have solved this problem.)
6. The clarity of presentence reports has improved under the new system. However, the lack of more substantial information regarding drug abuse is of concern because of the need for such information during future periods of supervised release.

The research required approximately twenty-five workdays to complete. I feel it is practical and may prove beneficial to the Sentencing Commission as we attempt to supplement public policy in an atmosphere of limited resources. I am hopeful there will be follow-up efforts. For example, a subsequent study with more recently sentenced cases and the availability of documents mentioned in the first paragraph of this letter might prove illuminating and useful to the Commission. Also, study should be given to determine why small scale marijuana cases are given such lengthy terms in comparison to more serious drug offenses.

I appreciate the cooperation staff provided in making information available to my staff. The data warrants discussion by the full Commission.

Sincerely,

  
Benjamin F. Baer  
Chairman

Enclosure

cc: Commissioner Michael Block  
Commissioner Stephen Breyer  
Commissioner Helen Corrothers  
Commissioner Ronald Gainer  
Commissioner George MacKinnon  
Commissioner Ilene Nagel



## Memorandum

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Subject	Date
Comparison of the Parole Guidelines with the Sentencing Guidelines	January 12, 1989

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To	From
Benjamin F. Baer Chairman U.S. Parole Commission	James L. Beck <i>B</i> Director, Research & Program Development

At your request, the Research Section recently completed a review of selected cases to compare the parole guidelines with the sentencing guidelines as implemented by the federal courts. The purpose of the review was to provide information to the Parole Commission, when and if it decides in the interest of equity, to modify the parole guidelines to conform with the sentencing guidelines. Of particular concern are those instances where the parole guidelines are more harsh relative to the sentencing guidelines. For example, there was some earlier indication that the sentencing guidelines for property offenses were more lenient than the parole guidelines for the same offenses.

In order to study this issue, the Bureau of Prisons was asked to provide a listing of all cases in Bureau custody sentenced under the new sentencing law. The list that was provided showed approximately 450 individuals serving a term of incarceration as of July 31, 1988. Due to delays in securing approval from the Sentencing Commission, review of the cases did not begin until November. Eventually 285 Presentence Reports were provided by the Sentencing Commission. The majority of the missing reports were cases sentenced to terms under one year.

Unfortunately, there are limitations to the data. The most obvious is the fact that the cases under review were the first cases sentenced under the new system and may not be representative of what may happen when greater experience is gained. Until later data is available, however, this is the best information currently open to study. Another major limitation is that only the Presentence Report was available for review. It would have been extremely useful to have had a copy of the plea agreement and the Commitment Order. Without these documents, it was not always clear what impact plea bargaining was having and the reasons for departure from the guidelines were not given. For the most part, sentence imposed was also not available from the Presentence Reports, but this was coded from the Bureau of Prisons data system.

The Presentence Reports were coded by Parole Commission staff, all of whom had experience conducting parole hearings and were well qualified in scoring the Parole Commission guidelines. To conduct this study, the sentencing guidelines were coded exactly as scored by the U.S. Probation Officer. An estimated parole guideline calculation was then made by coding staff in compliance with Parole Commission policy and procedures. The two guideline ranges were then compared (see Attachment A).

## Results

The comparison between the sentencing guidelines and the parole guidelines is shown in Table 1. The comparison is made by contrasting the lower limit of the sentencing guidelines with the lower limit of the parole guidelines. For example, if the parole guidelines were 24-36 months and the sentencing guidelines were 30-37 months, the sentencing guidelines would be scored as being higher.

The results in Table 1 show that the sentencing guidelines were higher than the parole guidelines in 79% of the cases studied. In addition, the type of offense was also examined. Overall, three-fourths of all the cases reviewed were drug distribution offenses. It is clear from the data that the sentencing guidelines for drug offenses tend to be higher than the parole guidelines. This is particularly true of marijuana offenses where the sentencing guidelines were higher in every case reviewed. On the other hand, the sentencing guidelines for property offenses tend to be lower than the parole guidelines.

Interestingly, the sentencing guidelines for robbery offenses also tend to be lower. For the 21 robbery cases studied, the sentencing guidelines were lower in 14 cases, higher in 4 cases, and the same (comparing the lower limits of the guidelines) in 3 cases. This is due in part to plea bargaining, which will be discussed later in this report. Another factor, however, is the impact of prior record. Everything else being equal, prior record tends to have a greater impact on time served under the parole guidelines than under the sentencing guidelines. This has little effect on drug offenses where offenders tend to be first offenders, but has a much greater impact on robbery where offenders are more likely to have a prior record.

An alternative analysis is shown in Table 2. Table 2 reports the estimated time served (calculated by multiplying the sentence by .85) under the sentencing guidelines in relation to the parole guidelines. Overall, 53% of the offenders studied will serve more time in prison than the range of time indicated by the parole guidelines. While this indicates that time served will tend to increase under the sentencing guidelines, it is still worth noting that 47% of the cases will still be serving within or below the parole guidelines.

Examining the type of offense, it is clear that the guidelines will have the most impact on marijuana distribution cases. Conversely, 57% of the robbery cases will end up serving less time than the applicable parole guideline range.

To provide a better context for interpreting Table 2, Table 3 shows actual time served for cases considered by the Parole Commission during Fiscal Year 1988. Overall, 29% of the cases heard will serve below the parole guidelines (2% as the result of a discretionary decision) and 18% will serve above the guidelines (8% as the result of a discretionary decision).

### Plea Bargaining

In making comparisons between the parole and sentencing guideline systems, it is difficult to avoid the issue of plea bargaining. Out of 285 cases reviewed, 231 (81%) were convicted as the result of a plea agreement. Plea agreements had a major impact on the sentencing guideline calculations and the resulting sentence. Plea bargaining reduced the sentences for many offenders which results in time served being closer to what would be expected to occur under the current parole system.

There were a number of strategies involved in plea agreements and those are outlined below. More than one strategy might be employed in any one case.

1. Several defendants offered a guilty plea in exchange for a decision at the bottom of the guidelines.
2. In many cases a plea would be offered in exchange for an explicit promise to be given a two point reduction in offense level for acceptance of responsibility. It is interesting to note in this regard that reductions for acceptance of responsibility are not automatic. As shown in Table 4, 17% of those who pled guilty did not receive the reduction and 30% of those who went to trial did receive the reduction for acceptance of responsibility.
3. Two individuals pled guilty in exchange for an agreement by the Court not to impose a fine.
4. A common practice was to dismiss counts which do not impact the guidelines calculations. For example, a defendant might be charged with distributing a quantity of drugs and aiding and abetting the distribution of drugs. In return for a plea, the aiding and abetting charge would be dismissed. This was a routine practice.

5. In sixteen cases, counts which did impact the guidelines were dismissed. In many of the robbery cases involving multiple counts, for example, an individual might admit to a number of robberies (restitution might even be paid to a number of separate banks) but the guideline calculations would be based on one count only. This practice accounted for a number of cases in which the parole guidelines were higher than the sentencing guidelines in a particular case.
6. There were instances in which the facts of the case were modified or ignored in exchange for a plea. For example, in one case cocaine base was treated as if it were cocaine. In other cases, the possession of a firearm or the distribution of drugs within 1,000 feet of a school were explicitly ignored in calculating the guidelines as part of a plea agreement. This was documented in six cases.
7. A fairly common practice, particularly in drug offenses, was to stipulate a maximum offense level in exchange for a plea. Attachment A shows the cases in which this occurred. For example, the first case listed in Attachment A involved the distribution of heroin. The Probation Officer calculated an applicable Offense Level of 26 and a guideline range of 63-78 months. In response to a plea, the Offense Level was set as 20 with a guideline range of 33-41 months. The sentence in this case was 40 months. This strategy was used in seventeen cases. There were no instances, however, in which the Criminal History Category was subject to a plea agreement.
8. In four cases, there was an explicit agreement to sentence below the guidelines as part of a plea agreement.
9. In three cases, an individual was allowed to plea to a lesser offense. For example, one defendant was allowed to plea to the use of a communication facility (guideline range of 12-18 months) and counts involving the distribution of methamphetamines (guideline range of 63-78 months as estimated by the Probation Officer) were dismissed.

As one final comment, the clarity of the Presentence Reports has improved under the new guideline system. There is less extraneous information being presented and the relevant facts in a particular case are more easily gleaned from the new reports. The only area where information appears less complete is in the area of drug abuse. It was more difficult to score the salient factor score item related to opiate dependence in the new Presentence Reports.

**TABLE 1: Comparison of the Lower Limit of the Sentencing Guidelines With the Lower Limit of the Parole Guidelines**

	Sentencing GLS Higher	Sentencing GLS the Same or Lower	TOTAL
Distribute Heroin	84%	16%	N=19
Distribute Cocaine	91%	9%	N=116
Distribute Marijuana	100%	0%	N=76
Distribute Other Drugs	75%	25%	N=4
Robbery	19%	81%	N=21
Property Offenses	29%	71%	N=20
Other Offenses	41%	59%	N=27
<b>TOTAL</b>	<b>79%</b>	<b>21%</b>	<b>N=283</b>

**TABLE 2: Estimated Time Served Under the Sentencing Guidelines in Relation to the Parole Guidelines**

	Below	Within	Above	Total
Distribute Heroin	37%	32%	32%	N=19
Distribute Cocaine	26%	28%	46%	N=111
Distribute Marijuana	0%	4%	96%	N=74
Distribute Other Drugs	25%	0%	75%	N=4
Robbery	57%	38%	5%	N=21
Property Offenses	43%	19%	38%	N=21
Other Offenses	54%	19%	27%	N=26
<b>TOTAL</b>	<b>26%</b>	<b>21%</b>	<b>53%</b>	<b>N=276</b>



**TABLE 3. Time Served for Parole Eligible Cases in Relation to the Parole Guidelines - Fiscal Year 1988**

	<u>Below*</u>	<u>Within</u>	<u>Above**</u>	<u>TOTAL</u>
Distribute Heroin	38% (36%)	52%	10% (6%)	N=816
Distribute Cocaine	34% (32%)	55%	11% (8%)	N=3,585
Distribute Marijuana	12% (10%)	56%	32% (22%)	N=1,206
Distribute Other Drugs	30% (28%)	51%	19% (12%)	N=717
Robbery	25% (22%)	52%	23% (12%)	N=772
Property Offenses	20% (18%)	58%	22% (12%)	N=3,184
Other Offenses	39% (37%)	44%	17% (5%)	N=2,263
<b>TOTAL</b>	<b>29% (27%)</b>	<b>53%</b>	<b>18% (10%)</b>	<b>N=12,543</b>

\* Percent continued to expiration below the guidelines is shown in parenthesis.

\*\* Percent paroled at eligibility above the guidelines is shown in parenthesis.

**TABLE 4. Acceptance of Responsibility**

	<u>Two Point Reduction</u>	<u>No Two Point Reduction</u>	<u>TOTAL</u>
Plea	83%	17%	N=231
Trial	30%	70%	N=54

A T T A C H M E N T    A

DISTRIBUTION OF HEROIN

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #1	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	33-41 (Level 20/Cat.I)	40/34 Mos.
Case #2	40-52 (Cat. 6/SFS=9)	63-78 (Level 26/Cat.I)	51-63 (Level 24/Cat.I)	51/43 Mos.
Case #3	40-52 (Cat. 6/SFS=10)	57-71 (Level 25/Cat.I)	Same	60/51 Mos.
Case #27	52-80 (Cat. 7/SFS=10)	97-121 (Level 30/Cat.I)	Same	120/102 Mos.
Case #28	24-36 (Cat. 5/SFS=9)	46-57 (Level 22/Cat.II)	Same	33/28 Mos.
Case #108	40-52 (Cat. 6/SFS=10)	63-78 (Level 26/Cat.I)	Same	60/51 Mos.
Case #109	60-72 (Cat. 5/SFS=3)	33-41 (Level 18/Cat.III)	Same	30/25 Mos.
Case #110	40-52 (Cat. 6/SFS=10)	63-78 (Level 26/Cat.I)	Same	68/58 Mos.
Case #111	26-34 (Cat. 4/SFS=4)	30-37 (Level 13/Cat.V)	Same	30/25 Mos.
Case #112	40-52 (Cat. 6/SFS=10)	51-63 (Level 24/Cat.I)	Same	75/64 Mos.
Case #113	40-52 (Cat. 6/SFS=10)	151-188 (Level 34/Cat.I)	Same	151/128 Mos.
Case #114	40-52 (Cat. 6/SFS=10)	78-97 (Level 28/Cat.I)	Same	48/41 Mos.
Case #115	40-52 (Cat. 6/SFS=10)	78-97 (Level 28/Cat.I)	Same	30/25 Mos.
Case #116	26-34 (Cat. 4/SFS=4)	18-24 (Level 11/Cat.IV)	Same	24/20 Mos.
Case #117	12-18 (Cat. 4/SFS=10)	27-33 (Level 18/Cat.I)	Same	33/28 Mos.

DISTRIBUTION OF HEROIN (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #118	52-80 (Cat. 7/SFS=10)	121-151 (Level 32/Cat.I)	Same	40/34 Mos.
Case #119	40-52 (Cat. 6/SFS=9)	78-97 (Level 28/Cat.I)	Same	30/25 Mos.
Case #219	40-52 (Cat. 6/SFS=10)	63-78 (Level 26/Cat.I)	Same	72/61 Mos.
Case #220	20-26 (Cat. 4/SFS=7)	12-18 (Level 12/Cat.II)	Same	18/15 Mos.

DISTRIBUTION OF COCAINE

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #4	24-36 (Cat. 5/SFS=9)	51-63 (Level 24/Cat.I)	Same	12/10 Mos.
Case #5	40-52 (Cat. 6/SFS=8)	60-71* (Level 24/Cat.II)	Same	71/60 Mos.
Case #6	52-64 (Cat. 6/SFS=7)	60-63* (Level 24/Cat.I)	Same	63/54 Mos.
Case #7	40-52 (Cat. 6/SFS=10)	41-51 (Level 22/Cat.I)	Same	41/35 Mos.
Case #8	52-64 (Cat. 7/SFS=6)	151-188** (Level 34/Cat.II)	Same	160/136 Mos.
Case #9	24-36 (Cat. 5/SFS=10)	151-188 (Level 34/Cat.I)	Same	131/111 Mos.
Case #10	24-36 (Cat. 5/SFS=10)	41-51 (Level 24/Cat.I)	Same	46/39 Mos.
Case #29	24-36 (Cat. 5/SFS=9)	51-63 (Level 24/Cat.I)	Same	51/43 Mos.
Case #30	120+ (Cat. 8/SFS=6)	188-235 (Level 34/Cat.III)	Same	210/179 Mos.
Case #31	26-34 (Cat. 4/SFS=4)	27-33 (Level 12/Cat.V)	Same	27/23 Mos.

DISTRIBUTION OF COCAINE (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #32	120+ (Cat. 8/SFS=7)	51-63 (Level 24/Cat.I)	Same	60/51 Mos.
Case #33	24-36 (Cat. 5/SFS=10)	27-33 (Level 18/Cat.I)	Same	30/26 Mos.
Case #34	24-36 (Cat. 5/SFS=9)	121-151 (Level 32/Cat.I)	Same	121/103 Mos.
Case #35	52-80 (Cat. 7/SFS=10)	33-41 (Level 20/Cat.I)	Same	--
Case #36	12-18 (Cat. 4/SFS=9)	21-27 (Level 16/Cat.I)	Same	21/18 Mos.
Case #37	20-26 (Cat. 4/SFS=7)	21-27 (Level 14/Cat.III)	Same	18/15 Mos.
Case #38	52-80 (Cat. 7/SFS=9)	63-78 (Level 26/Cat.I)	Same	70/60 Mos.
Case #39	52-80 (Cat. 7/SFS=10)	63-78 (Level 26/Cat.I)	Same	63/54 Mos.
Case #40	100+ (Cat. 8/SFS=10)	151-188 (Level 34/Cat.I)	Same	151/128 Mos.
Case #41	24-36 (Cat. 5/SFS=10)	33-41 (Level 20/Cat. I)	Same	20/17 Mos.
Case #42	100+ (Cat. 8/SFS=10)	188-235 (Level 36/Cat. I)	Same	151/128 Mos.
Case #77	24-36 (Cat. 5/SFS=9)	33-41 (Level 20/Cat.I)	Same	36/31 Mos.
Case #78	24-36 (Cat. 5/SFS=9)	41-51 (Level 22/Cat.I)	Same	41/35 Mos.
Case #79	40-52 (Cat. 6/SFS=9)	168-210 (Level 35/Cat.I)	Same	189/161 Mos.

DISTRIBUTION OF COCAINE (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #80	40-52 (Cat. 6/SFS=10)	78-97 (Level 28/Cat.I)	Same	-
Case #81	12-16 (Cat. 3/SFS=7)	18-24 (Level 13/Cat.III)	Same	24/20 Mos.
Case #82	52-80 (Cat. 7/SFS=9)	121-151 (Level 32/Cat.I)	Same	60/51 Mos.
Case #83	52-80 (Cat. 6/SFS=7)	70-87 (Level 26/Cat.II)	Same	18/15 Mos.
Case #84	24-36 (Cat. 5/SFS=10)	21-27 (Level 16/Cat.I)	Same	24/20 Mos.
Case #85	24-36 (Cat. 5/SFS=9)	151-188 (Level 34/Cat.I)	Same	151/128 Mos.
Case #86	100+ (Cat. 8/SFS=9)	151-188 (Level 34/Cat.I)	Same	151/128 Mos.
Case #87	26-34 (Cat. 4/SFS=5)	46-57 (Level 21/Cat.III)	Same	57/48 Mos.
Case #88	26-34 (Cat. 4/SFS=4)	27-33 (Level 16/Cat.III)	18-24 (Level 13/Cat.III)	21/18 Mos.
Case #96	24-36 (Cat. 5/SFS=10)	78-97 (Level 28/Cat.I)	Same	--
Case #97	40-52 (Cat. 6/SFS=10)	37-46 (Level 21/Cat.I)	Same	37/31 Mos.
Case #98	40-52 (Cat. 6/SFS=10)	51/63 (Level 24/Cat.I)	Same	60/51 Mos.
Case #99	52-80 (Cat. 7/SFS=10)	78-97 (Level 28/Cat.I)	Same	78/66 Mos.
Case #100	40-52 (Cat. 6/SFS=10)	78-97 (Level 28/Cat.I)	Same	90/77 Mos.
Case #101	24-36 (Cat. 5/SFS=10)	33-41 (Level 20/Cat.I)	Same	24/20 Mos.
Case #102	40-52 (Cat. 6/SFS=10)	10-16 (Level 12/Cat.I)	Same	14/12 Mos.

DISTRIBUTION OF COCAINE (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #103	40-52 (Cat. 6/SFS=10)	10-16 (Level 12/Cat.I)	Same	14/12 Mos.
Case #104	100+ (Cat. 8/SFS=9)	151-188 (Level 34/Cat.I)	Same	84/71 Mos.
Case #120	52-80 (Cat. 7/SFS=9)	97-121 (Level 30/Cat.I)	Same	60/51 Mos.
Case #121	40-52 (Cat. 6/SFS=10)	63-78 (Level 26/Cat.I)	Same	63/53 Mos.
Case #122	24-36 (Cat. 5/SFS=8)	78-97 (Level 28/Cat.I)	Same	60/51 Mos.
Case #123	40-52 (Cat. 6/SFS=9)	60-63* (Level 24/Cat.I)	Same	63/53 Mos.
Case #124	20-26 (Cat. 4/SFS=6)	15-21 (Level 14/Cat.I)	Same	16/14 Mos.
Case #125	52-80 (Cat. 7/SFS=10)	121-151 (Level 32/Cat.I)	Same	121/103 Mos.
Case #126	40-52 (Cat. 6/SFS=9)	63-78 (Level 26/Cat.I)	Same	63/53 Mos.
Case #127	24-36 (Cat. 5/SFS=8)	108-135 (Level 30/Cat.II)	Same	108/92 Mos.
Case #128	24-36 (Cat. 5/SFS=8)	63-78 (Level 26/Cat.I)	Same	63/53 Mos.
Case #129	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	Same	51/43 Mos.
Case #130	24-36 (Cat. 5/SFS=9)	57-71 (Level 24/Cat.II)	Same	60/51 Mos.
Case #131	40-52 (Cat. 6/SFS=10)	121-151 (Level 32/Cat.I)	Same	120/102 Mos.
Case #132	20-26 (Cat. 4/SFS=7)	21-27 (Level 16/Cat.I)	Same	27/23 Mos.
Case #133	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	Same	42/35 Mos.

DISTRIBUTION OF COCAINE (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #134	40-52 (Cat. 6/SFS=8)	97-121 (Level 30/Cat.I)	Same	60/51 Mos.
Case #135	24-36 (Cat. 5/SFS=10)	41-51 (Level 22/Cat.I)	Same	45/38 Mos.
Case #136	24-36 (Cat. 5/SFS=10)	41-51 (Level 22/Cat.I)	Same	30/25 Mos.
Case #137	24-36 (Cat. 5/SFS=10)	51-63 (Level 24/Cat.I)	Same	40/34 Mos.
Case #138	36-48 (Cat. 5/SFS=7)	57-71 (Level 24/Cat.II)	Same	120/102 Mos.
Case #139	24-36 (Cat. 5/SFS=10)	27-33 (Level 18/Cat.I)	Same	27/23 Mos.
Case #140	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	Same	78/66 Mos.
Case #141	40-52 (Cat. 6/SFS=10)	87-108 (Level 28/Cat.II)	Same	147/125 Mos.
Case #142	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	Same	57/48 Mos.
Case #143	24-36 (Cat. 5/SFS=10)	51-63 (Level 24/Cat.I)	Same	63/53 Mos.
Case #144	24-36 (Cat. 5/SFS=9)	51-63 (Level 24/Cat.I)	Same	60/51 Mos.
Case #145	52-80 (Cat. 7/SFS=10)	151-188 (Level 34/Cat.I)	Same	120/102 Mos.
Case #146	36-48 (Cat. 5/SFS=7)	21-27 (Level 16/Cat.I)	Same	16/14 Mos.
Case #147	52-80 (Cat. 7/SFS=10)	168-210 (Level 35/Cat.I)	Same	189/161 Mos.
Case #148	12-18 (Cat. 4/SFS=8)	21-27 (Level 16/Cat.I)	Same	13/11 Mos.
Case #149	20-26 (Cat. 4/SFS=7)	18-24 (Level 14/Cat.II)	Same	22/19 Mos.

DISTRIBUTION OF COCAINE (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #150	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	Same	72/61 Mos.
Case #151	12-18 (Cat. 4/SFS=10)	27-33 (Level 18/Cat.I)	Same	30/25 Mos.
Case #152	40-52 (Cat. 6/SFS=10)	78-97 (Level 28/Cat.I)	Same	60/51 Mos.
Case #153	36-48 (Cat. 5/SFS=7)	87-108** (Level 30/Cat.II)	Same	60/51 Mos.
Case #154	24-36 (Cat. 5/SFS=8)	33-41 (Level 20/Cat.I)	Same	33/28 Mos.
Case #155	64-78 (Cat. 6/SFS=5)	188-235 (Level 34/Cat.III)	Same	240/204 Mos.
Case #156	24-36 (Cat. 5/SFS=9)	51-63 (Level 24/Cat.I)	Same	60/51 Mos.
Case #157	40-52 (Cat. 6/SFS=8)	57-71 (Level 24/Cat.II)	Same	57/48 Mos.
Case #158	40-52 (Cat. 6/SFS=10)	78-97 (Level 28/Cat.I)	Same	84/71 Mos.
Case #159	40-52 (Cat. 6/SFS=10)	121-151 (Level 32/Cat.I)	Same	60/51 Mos.
Case #160	24-36 (Cat. 5/SFS=10)	51-63 (Level 24/Cat.I)	Same	60/51 Mos.
Case #161	0-10 (Cat. 3/SFS=8)	6-12 (Level 10/Cat.I)	Same	76/64 Mos.
Case #162	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	Same	66/56 Mos.
Case #163	24-36 (Cat. 5/SFS=10)	51-63 (Level 24/Cat.I)	Same	60/51 Mos.
Case #164	40-52 (Cat. 6/SFS=10)	78-97 (Level 28/Cat.I)	Same	84/71 Mos.
Case #165	40-52 (Cat. 6/SFS=10)	63-78 (Level 26/Cat.I)	Same	57/48 Mos.



DISTRIBUTION OF COCAINE (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #166	64-78 (Cat. 6/SFS=4)	121-151 (Level 30/Cat.III)	Same	37/31 Mos.
Case #167	36-48 (Cat. 5/SFS=6)	63-78 (Level 24/Cat.III)	Same	120/102 Mos.
Case #168	52-80 (Cat. 7/SFS=10)	97-121 (Level 30/Cat.I)	Same	95/81 Mos.
Case #169	48-60 (Cat. 5/SFS=4)	78-97 (Level 26/Cat.III)	Same	92/78 Mos.
Case #170	100+ (Cat. 8/SFS=10)	168-210 (Level 35/Cat.I)	Same	189/161 Mos.
Case #171	24-36 (Cat. 5/SFS=10)	27-33 (Level 18/Cat.I)	Same	25/21 Mos.
Case #172	36-48 (Cat. 5/SFS=6)	63-78 (Level 24/Cat.III)	Same	--
Case #221	12-18 (Cat. 4/SFS=9)	15-21 (Level 14/Cat.I)	Same	15/13 Mos.
Case #222	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	Same	70/60 Mos.
Case #223	24-36 (Cat. 5/SFS=10)	27-33 (Level 18/Cat.I)	Same	30/26 Mos.
Case #224	24-36 (Cat. 5/SFS=10)	41-51 (Level 22/Cat.I)	Same	36/31 Mos.
Case #225	12-18 (Cat. 4/SFS=8)	12-18 (Level 12/Cat.II)	Same	16/14 Mos.
Case #226	24-36 (Cat. 5/SFS=10)	63-78 (Level 26/Cat.I)	Same	63/54 Mos.
Case #227	24-36 (Cat. 5/SFS=10)	27-33 (Level 18/Cat.I)	Same	27/23 Mos.
Case #228	52-64 (Cat. 6/SFS=5)	97-121 (Level 28/Cat.III)	Same	18/15 Mos.
Case #229	24-36 (Cat. 5/SFS=10)	51-63 (Level 24/Cat.I)	Same	51/43 Mos.

DISTRIBUTION OF COCAINE (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #230	24-36 (Cat. 5/SFS=8)	78-97 (Level 28/Cat.I)	Same	72/61 Mos.
Case #231	52-80 (Cat. 7/SFS=10)	78-97 (Level 28/Cat.I)	Same	60/51 Mos.
Case #232	40-52 (Cat. 6/SFS=10)	63-78 (Level 26/Cat.I)	Same	65/55 Mos.
Case #233	52-80 (Cat. 7/SFS=10)	78-97 (Level 28/Cat.I)	Same	41/35 Mos.
Case #234	52-64 (Cat. 6/SFS=7)	188-235 (Level 34/Cat.III)	Same	152/129 Mos.
Case #235	52-80 (Cat. 7/SFS=10)	151-188 (Level 34/Cat.I)	Same	160/136 Mos.
Case #236	52-80 (Cat. 7/SFS=10)	121-151 (Level 34/Cat.I)	Same	151/128 Mos.
Case #237	36-48 (Cat. 5/SFS=6)	51-63 (Level 22/Cat.III)	Same	57/48 Mos.
Case #238	24-36 (Cat. 5/SFS=8)	57-71 (Level 24/Cat.II)	Same	130/111 Mos.
Case #239	24-36 (Cat. 5/SFS=10)	27-33 (Level 18/Cat.I)	Same	30/26 Mos.
Case #240	24-36 (Cat. 5/SFS=8)	37-46 (Level 21/Cat.I)	Same	37/31 Mos.
Case #241	40-52 (Cat. 6/SFS=10)	63-78 (Level 26/Cat.I)	Same	--

DISTRIBUTION OF MARIJUANA

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #11	0-10 (Cat. 3/SFS=10)	46-57 (Level 22/Cat.II)	37-46 (Level 20/Cat.II)	42/36 Mos.
Case #12	0-10 (Cat. 3/SFS=9)	15-21 (Level 14/Cat.I)	Same	15/13 Mos.
Case #13	0-10 (Cat. 3/SFS=10)	51-63 (Level 24/Cat.I)	Same	60/51 Mos.
Case #14	0-10 (Cat. 3/SFS=10)	21-27 (Level 16/Cat.I)	Same	21/18 Mos.
Case #15	0-10 (Cat. 3/SFS=9)	21-27 (Level 16/Cat.I)	Same	21/18 Mos.
Case #16	0-10 (Cat. 3/SFS=9)	21-27 (Level 16/Cat.I)	Same	21/18 Mos.
Case #17	6-22*** (Cat. 3/SFS=10)	27-33 (Level 18/Cat.I)	Same	27/23 Mos.
Case #18	0-10 (Cat. 3/SFS=9)	41-51 (Level 22/Cat.I)	12-18 (Level 13/Cat.I)	18/15 Mos.
Case #43	0-10 (Cat. 3/SFS=10)	27-33 (Level 18/Cat.I)	18-24 (Level 15/Cat.I)	18/15 Mos.
Case #44	0-10 (Cat. 3/SFS=8)	30-37 (Level 18/Cat.II)	Same	30/26 Mos.
Case #45	12-18 (Cat. 4/SFS=10)	63-78 (Level 26/Cat.I)	Same	63/54 Mos.
Case #46	0-10 (Cat. 3/SFS=9)	33-41 (Level 20/Cat.I)	24-30 (Level 17/Cat.I)	21/18 Mos.
Case #47	0-10 (Cat. 3/SFS=10)	21-27 (Level 16/Cat.I)	Same	25/21 Mos.
Case #48	24-36 (Cat. 5/SFS=10)	97-121 (Level 30/Cat.I)	Same	120/102 Mos.
Case #49	0-6 (Cat. 2/SFS=9)	33-41 (Level 20/Cat.I)	Same	27/23 Mos.
Case #105	12-18 (Cat. 4/SFS=10)	27-33 (Level 18/Cat.I)	Same	27/23 Mos.

DISTRIBUTION OF MARIJUANA (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #106	0-6 (Cat. 2/SFS=8)	18-24 (Level 14/Cat.II)	Same	18/15 Mos.
Case #173	0-10 (Cat. 3/SFS=8)	24-30 (Level 16/Cat.II)	Same	24/20 Mos.
Case #174	12-18 (Cat. 4/SFS=9)	78-97 (Level 28/Cat.I)	Same	60/51 Mos.
Case #175	20-26 (Cat. 4/SFS=6)	63-78 (Level 24/Cat.III)	Same	75/64 Mos.
Case #176	0-10 (Cat. 2/SFS=7)	21-27 (Level 14/Cat.III)	Same	21/18 Mos.
Case #177	12-18 (Cat. 4/SFS=10)	41-51 (Level 22/Cat.I)	Same	60/51 Mos.
Case #178	12-18 (Cat. 4/SFS=9)	51-63 (Level 24/Cat.I)	Same	51/43 Mos.
Case #179	24-36 (Cat. 5/SFS=10)	151-188 (Level 34/Cat.I)	Same	151/128 Mos.
Case #180	0-10 (Cat. 3/SFS=9)	21-27 (Level 16/Cat.I)	15-21 (Level 14/Cat.I)	15/13 Mos.
Case #181	12-18 (Cat. 4/SFS=8)	87-108 (Level 28/Cat.II)	Same	72/61 Mos.
Case #182	0-10 (Cat. 3/SFS=10)	21-27 (Level 16/Cat.I)	15-21 (Level 14/Cat.I)	18/15 Mos.
Case #183	0-10 (Cat. 3/SFS=9)	27-33 (Level 18/Cat.I)	Same	27/23 Mos.
Case #184	0-10 (Cat. 3/SFS=9)	33-41 (Level 20/Cat.I)	Same	33/28 Mos.
Case #185	12-16 (Cat. 3/SFS=7)	27-33 (Level 16/Cat.III)	Same	31/26 Mos.
Case #186	12-16 (Cat. 3/SFS=7)	24-30 (Level 16/Cat.II)	Same	24/20 Mos.
Case #187	12-16 (Cat. 3/SFS=6)	24-30 (Level 16/Cat.II)	Same	24/20 Mos.

DISTRIBUTION OF MARIJUANA (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #188	18-24 (Cat. 3/SFS=5)	27-33 (Level 16/Cat.III)	Same	27/23 Mos.
Case #189	20-26 (Cat. 4/SFS=7)	70-87 (Level 26/Cat.II)	Same	120/102 Mos.
Case #190	12-18 (Cat. 4/SFS=7)	70-87 (Level 26/Cat.II)	46-57 (Level 23/Cat.II)	57/48 Mos.
Case #191	0-10 (Cat. 3/SFS=10)	51-63 (Level 24/Cat.I)	27-33 (Level 18/Cat.I)	33/28 Mos.
Case #192	0-10 (Cat. 3/SFS=8)	46-57 (Level 22/Cat.II)	Same	46/39 Mos.
Case #193	0-10 (Cat. 3/SFS=8)	21-27 (Level 16/Cat.I)	Same	27/23 Mos.
Case #194	0-10 (Cat. 3/SFS=8)	27-33 (Level 18/Cat.I)	Same	27/23 Mos.
Case #195	0-10 (Cat. 3/SFS=8)	30-37 (Level 18/Cat.II)	Same	24/20 Mos.
Case #196	12-18 (Cat. 4/SFS=10)	41-51 (Level 22/Cat.I)	Same	72/61 Mos.
Case #197	12-18 (Cat. 4/SFS=9)	63-78 (Level 26/Cat.I)	Same	48/41 Mos.
Case #198	12-18 (Cat. 4/SFS=10)	78-97 (Level 28/Cat.I)	27-33 (Level 18/Cat.I)	33/28 Mos.
Case #199	12-16 (Cat. 3/SFS=7)	37-46 (Level 19/Cat.III)	Same	51/43 Mos.
Case #200	0-10 (Cat. 3/SFS=8)	37-46 (Level 20/Cat.II)	Same	24/20 Mos.
Case #201	24-36 (Cat. 5/SFS=10)	97-121 (Level 30/Cat.I)	Same	121/103 Mos.
Case #202	12-18 (Cat. 4/SFS=10)	33-41 (Level 20/Cat.I)	Same	33/28 Mos.
Case #203	0-10 (Cat. 3/SFS=8)	37-46 (Level 20/Cat.II)	Same	37/31 Mos.

DISTRIBUTION OF MARIJUANA (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #204	12-18 (Cat. 4/SFS=8)	51-63 (Level 24/Cat.I)	Same	60/51 Mos.
Case #205	12-18 (Cat. 4/SFS=10)	41-51 (Level 22/Cat.I)	37-46 (Level 21/Cat.I)	37/31 Mos.
Case #206	0-6 (Cat. 2/SFS=10)	15-21 (Level 14/Cat.I)	Same	15/13 Mos.
Case #207	20-26 (Cat. 4/SFS=7)	24-30 (Level 16/Cat.II)	Same	30/25 Mos.
Case #208	18-24 (Cat. 3/SFS=4)	33-41 (Level 18/Cat.III)	21-27 (Level 14/Cat.III)	21/18 Mos.
Case #209	40-52 (Cat. 6/SFS=10)	78-97 (Level 28/Cat.I)	Same	78/66 Mos.
Case #210	12-18 (Cat. 4/SFS=9)	63-78 (Level 26/Cat.I)	Same	36/30 Mos.
Case #211	0-10 (Cat. 3/SFS=9)	12-18 (Level 13/Cat.I)	Same	16/14 Mos.
Case #212	24-36 (Cat. 5/SFS=10)	151-188 (Level 34/Cat.I)	Same	151/128 Mos.
Case #213	12-18 (Cat. 4/SFS=9)	87-108 (Level 29/Cat.I)	Same	63/53 Mos.
Case #214	12-18 (Cat. 4/SFS=10)	41-51 (Level 22/Cat.I)	Same	44/37 Mos.
Case #215	20-26 (Cat. 4/SFS=7)	78-97 (Level 26/Cat.III)	Same	--
Case #242	26-35 (Cat. 4/SFS=5)	110-137** (Level 28/Cat.III)	Same	65/55 Mos.
Case #243	12-18 (Cat. 4/SFS=8)	37-46 (Level 20/Cat.II)	Same	37/31 Mos.
Case #244	0-10 (Cat. 3/SFS=9)	27-33 (Level 18/Cat.I)	Same	18/15 Mos.
Case #245	0-10 (Cat. 3/SFS=9)	30-41 (Level 20/Cat.I)	Same	48/41 Mos.

DISTRIBUTION OF MARIJUANA (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #246	0-10 (Cat. 2/SFS=6)	21-27 (Level 14/Cat.III)	Same	18/15 Mos.
Case #247	0-6 (Cat. 2/SFS=8)	18-24 (Level 14/Cat.II)	Same	33/28 Mos.
Case #248	12-18 (Cat. 4/SFS=10)	70-87 (Level 27/Cat.I)	Same	63/54 Mos.
Case #249	12-18 (Cat. 4/SFS=10)	78-97 (Level 28/Cat.I)	Same	80/68 Mos.
Case #250	0-10 (Cat. 3/SFS=10)	21-27 (Level 16/Cat.I)	Same	21/18 Mos.
Case #251	0-10 (Cat. 2/SFS=7)	33-41 (Level 18/Cat.III)	21-27 (Level 14/Cat.III)	16/14 Mos.
Case #252	0-6 (Cat. 2/SFS=8)	15-21 (Level 14/Cat.I)	Same	15/13 Mos.
Case #253	0-6 (Cat. 2/SFS=10)	21-27 (Level 14/Cat.I)	Same	21/18 Mos.
Case #254	26-34 (Cat. 4/SFS=5)	92-115 (Level 26/Cat.IV)	Same	137/116 Mos.
Case #255	12-16 (Cat. 3/SFS=6)	30-37 (Level 18/Cat.II)	Same	30/26 Mos.
Case #256	0-10 (Cat. 2/SFS=7)	18-24 (Level 14/Cat.II)	Same	20/17 Mos.
Case #257	12-16 (Cat. 3/SFS=6)	63-78 (Level 24/Cat.III)	27-33 (Level 16/Cat.III)	--

DISTRIBUTION OF OTHER DRUGS

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #50	24-36 (Cat. 5/SFS=10)	12-18 (Level 13/Cat.I)	Same	18/15 Mos.
Case #216	24-36 (Cat. 5/SFS=9)	108-135 (Level 30/Cat.II)	Same	180-153 Mos.

DISTRIBUTION OF OTHER DRUGS (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #217	24-36 (Cat. 5/SFS=10)	97-121 (Level 30/Cat.I)	Same	97-82 Mos.
Case #218	24-36 (Cat. 5/SFS=9)	63-78 (Level 26/Cat.I)	Same	72-61 Mos.

TRANSPORTING ALIENS/ILLEGAL ENTRY

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #19	12-16 (Cat. 3/SFS=6)	18-24 (Level 13/Cat.III)	Same	24/20 Mos.
Case #20	0-10 (Cat. 3/SFS=9)	1-7 (Level 7/Cat.I)	Same	--
Case #21	24-32 (Cat. 3/SFS=3)	4-10 (Level 7/Cat.III)	Same	116/99 Days
Case #22	12-16 (Cat. 3/SFS=7)	12-18 (Level 11/Cat.III)	6-12 (Level 8/Cat.III)	14/12 Mos.
Case #258	12-16 (Cat. 1/SFS=3)	--	--	13/11 Mos.
Case #259	12-16 (Cat. 1/SFS=3)	9-15 (Level 6/Cat.V)	Same	--
Case #260	0-10 (Cat. 3/SFS=10)	8-14 (Level 11/Cat.I)	Same	48/41 Mos.
Case #261	24-32 (Cat. 3/SFS=3)	12-18 (Level 9/Cat.IV)	Same	18/15 Mos.
Case #262	18-24 (Cat. 3/SFS=4)	18-24 (Level 9/Cat.V)	Same	36/31 Mos.
Case #263	0-10 (Cat. 3/SFS=8)	1-7 (Level 7/Cat.I)	Same	30/26 Mos.



FORGED/STOLEN CHECKS

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #54	24-32 (Cat. 3/SFS=3)	8-14 (Level 7/Cat. IV)	Same	60/51 Mos.
Case #55	18-24 (Cat. 3/SFS=4)	30-37 (Level 13/Cat.V)	Same	35/30 Mos.
Case #264	24-32 (Cat. 3/SFS=3)	12-18 (Level 9/Cat.IV)	Same	24/20 Mos.
Case #265	16-22 (Cat. 2/SFS=1)	6-12 (Level 4/Cat.VI)	Same	177/150 Mos.
Case #266	12-18 (Cat. 4/SFS=9)	12-18 (Level 13/Cat.I)	Same	15/13 Mos.

THEFT

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #107	34-44 (Cat. 4/SFS=2)	21-27 (Level 14/Cat.III)	Same	33/28 Mos.
Case #267	0-10 (Cat. 2/SFS=7)	0-5 (Level 4/Cat.II)	Same	18/15 Mos.
Case #268	24-36 (Cat. 5/SFS=8)	18-24 (Level 14/Cat.II)	Same	24/20 Mos.
Case #269	16-22 (Cat. 2/SFS=0)	21-27 (Level 10/Cat.V)	Same	24/20 Mos.

COUNTERFEITING

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #23	24-36 (Cat. 5/SFS=8)	21-27 (Level 15/Cat.II)	Same	25/21 Mos.
Case #24	24-36 (Cat. 5/SFS=10)	18-24 (Level 15/Cat.I)	Same	20/17 Mos.
Case #89	18-24 (Cat. 3/SFS=5)	30-37 (Level 13/Cat.V)	Same	30/26 Mos.

COUNTERFEITING (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #270	36-48 (Cat. 5/SFS=7)	21-27 (Level 15/Cat.II)	Same	21/18 Mos.
Case #271	24-36 (Cat. 5/SFS=8)	15-21 (Level 13/Cat.II)	Same	15/13 Mos.

FRAUD

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #90	0-10 (Cat. 3/SFS=8)	15-21 (Level 14/Cat.I)	Same	18/15 Mos.
Case #91	0-10 (Cat. 3/SFS=10)	-	-	18/15 Mos.
Case #92	26-34 (Cat. 4/SFS=5)	12-18 (Level 13/Cat.I)	Same	18/15 Mos.
Case #272	12-16 (Cat. 3/SFS=6)	24-30 (Level 12/Cat.IV)	Same	24/20 Mos.
Case #273	52-64 (Cat. 6/SFS=7)	18-24 (Level 13/Cat.III)	Same	24/20 Mos.

RAPE/ASSAULT

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #53	64-78 (Cat. 6/SFS=4)	120-150 (Level 26/VI)	Same	36/31 Mos.
Case #52	100-148 (Cat. 7/SFS=3)	41-51 (Level 20/Cat.III)	Same	39/33 Mos.
Case #94	64-78 (Cat. 6/SFS=5)	10-16 (Level 10/Cat.III)	Same	16/14 Mos.
Case #95	52-80 (Cat. 7/SFS=9)	87-108 (Level 29/Cat.I)	Same	99/84 Mos.

RAPE/ASSAULT (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #274	48-60 (Cat. 5/SFS=4)	24-30 (Level 13/Cat.IV)	Same	36/31 Mos.
Case #275	52-80 (Cat. 7/SFS=10)	46-57 (Level 23/Cat.I)	Same	46/39 Mos.
Case #276	34-44 (Cat. 4/SFS=3)	51-63 (Level 17/Cat.VI)	Same	36/31 Mos.

BURGLARY

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #25	48-60 (Cat. 5/SFS=4)	30-37 (Level 15/Cat.IV)	Same	30/26 Mos.
Case #277	18-24 (Cat. 3/SFS=4)	51-63 (Level 17/Cat.VI)	Same	21/18 Mos.

FIREARMS

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #26	24-36 (Cat. 5/SFS=9)	12-18 (Level 13/Cat.I)	Same	15/13 Mos.
Case #51	26-34 (Cat. 4/SFS=5)	12-18 (Level 11/Cat.III)	Same	15/13 Mos.
Case #93	18-24 (Cat. 3/SFS=5)	12-18 (Level 9/Cat.IV)	Same	14/12 Mos.
Case #278	26-34 (Cat. 4/SFS=5)	4-10 (Level 7/Cat.III)	Same	48/41 Mos.
Case #279	12-16 (Cat. 3/SFS=7)	12-18 (Level 9/Cat.IV)	Same	14/12 Mos.
Case #280	12-16 (Cat. 3/SFS=6)	8-14 (Level 9/Cat.III)	Same	14/12 Mos.

**FIREARMS** (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #281	12-18 (Cat. 4/SFS=10)	15-21 (Level 14/Cat.I)	Same	14/12 Mos.

**ROBBERY**

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #57	52-64 (Cat. 6/SFS=6)	41-51 (Level 20/Cat. III)	Same	46/39 Mos.
Case #58	48-60 (Cat. 5/SFS=5)	30-37 (Level 17/Cat.III)	Same	36/31 Mos.
Case #59	60-72 (Cat. 5/SFS=0)	210-262 (Level 32/Cat.VI)	Same	144/122 Mos.
Case #60	48-60 (Cat. 5/SFS=5)	46-57 (Level 21/Cat.III)	Same	57/48 Mos.
Case #61	60-72 (Cat. 5/SFS=1)	46-57 (Level 17/Cat.V)	Same	48/41 Mos.
Case #62	24-36 (Cat. 5/SFS=9)	24-30 (Level 17/Cat.I)	Same	24/20 Mos.
Case #63	24-36 (Cat. 5/SFS=10)	33-41 (Level 20/Cat.I)	Same	36/31 Mos.
Case #64	40-52 (Cat. 6/SFS=9)	30-37 (Level 19/Cat.I)	Same	36/31 Mos.
Case #65	40-52 (Cat. 6/SFS=8)	24-30 (Level 17/Cat.I)	Same	30/26 Mos.
Case #66	24-36 (Cat. 5/SFS=9)	24-30 (Level 17/Cat.I)	Same	30/26 Mos.
Case #67	24-36 (Cat. 5/SFS=8)	37-46 (Level 20/Cat.II)	Same	37/31 Mos.
Case #68	60-72 (Cat. 5/SFS=3)	27-33 (Level 17/Cat.II)	Same	33/28 Mos.
Case #69	64-78 (Cat. 6/SFS=5)	41-51 (Level 20/Cat.III)	Same	42/36 Mos.

ROBBERY (Con't)

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #70	40-52 (Cat. 6/SFS=8)	30-37 (Level 19/Cat.I)	Same	36/31 Mos.
Case #71	36-48 (Cat. 5/SFS=7)	30-37 (Level 17/Cat.III)	Same	33/28 Mos.
Case #72	78-100 (Cat. 6/SFS=3)	37-46 (Level 17/Cat.IV)	Same	42/36 Mos.
Case #73	78-100 (Cat. 6/SFS=3)	63-78 (Level 19/Cat.VI)	Same	96/82 Mos.
Case #74	36-46 (Cat. 5/SFS=6)	33-41 (Level 18/Cat.III)	Same	41/35 Mos.
Case #75	48-60 (Cat. 5/SFS=4)	51-63 (Level 17/Cat.VI)	Same	60/51 Mos.
Case #76	48-60 (Cat. 5/SFS=5)	37-46 (Level 19/Cat.III)	Same	33/28 Mos.
Case #282	24-36 (Cat. 5/SFS=10)	24-30 (Level 17/Cat.I)	Same	30-26 Mos.

EXTORTION

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #283	24-36 (Cat. 5/SFS=8)	30-37 (Level 19/Cat.I)	Same	30/26 Mos.
Case #284	24-36 (Cat. 5/SFS=9)	27-33 (Level 18/Cat.I)	Same	18/15 Mos.

CURRENCY VIOLATION

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #285	24-36 (Cat. 5/SFS=10)	21-27 (Level 16/Cat.I)	Same	15/13 Mos.

ESCAPE

<u>Case</u>	<u>Estimated Parole Guidelines</u>	<u>Calculated Sentencing Guidelines</u>	<u>Stipulated Sentencing Guidelines</u>	<u>Sentence/ Time Served</u>
Case #56	24-32 (Cat. 3/SFS=3)	24-30 (Level 11/Cat.V)	Same	36/31 Mos.

NOTE:

\*Bottom of the guidelines raised to conform to statutory minimum.

\*\*Guidelines appear to be the result of a clerical error.

\*\*\*Includes guidelines for failure to appear in court.



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

DEC 14 1989

CC-38,342 FE:JBP

Honorable William W. Wilkins, Jr.  
Chairman  
United States Sentencing Commission  
1331 Pennsylvania Ave., N.W., Suite 1400  
Washington, DC 20004

Dear Judge Wilkins:

Your staff has contacted us and requested that we review the sentencing guidelines and make recommendations with respect to possible changes in those areas within the jurisdiction of the Bureau Alcohol, Tobacco and Firearms (ATF). The changes recommended in this letter are based on our experience with the guidelines.

Arson

Under 18 U.S.C. § 844(i), it is unlawful to damage or destroy or attempt to damage or destroy by means of fire or an explosive any property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce. Under section 2K1.4 of the guidelines, the base offense level for this offense is only 6. (For example, a defendant with two serious prior convictions would only receive a sentence of 2-8 months, and the defendant could be placed on probation.) The Commentary to the guidelines states that a review of presentence reports indicates that many arson cases involve malicious mischief, *i.e.*, minor property damage under circumstances that do not present an appreciable danger. We believe that the Commentary is an inaccurate description of prosecutions under section 844(i).

Title XI of the Organized Crime Control Act of 1970, of which section 844(i) is a part, was enacted by the Congress to combat bombings and other serious criminal misuses of explosives. The focus of the title was not upon malicious mischief or minor damage to property, not presenting an appreciable danger. When amending the statute in 1982 to cover fires as well as explosions, the Congress accurately described the purpose of Title XI--to provide Federal jurisdiction over the criminal use of explosives (*e.g.*, extortion, terrorism, and revenge). H.R. Rep. No. 97-678, 97th Cong., 2d Sess., reprinted in 1982 U.S. Code Cong. & Ad. News 2631-2635.

Honorable William W. Wilkins, Jr.

The House Report also alluded to the types of serious arson cases prosecuted under section 844(i), stating that "Identifying fires caused by explosives is technically difficult. Determining the cause of a deliberately set fire involves an extensive physical and chemical inventory of the debris at the fire scene, and extensive chemical laboratory analysis of the debris. Determining the persons responsible for causing the fire involves laborious analysis of insurance policy applications, records of property transfers, extensive corporate ownership records, balance sheets, profit and loss statements, and comparison with information concerning other suspicious fires. Fire is used extensively not only for the criminal purposes of extortion, terrorism and revenge, but to conceal other crimes such as homicide, and for fraud against insurance companies." Id at 2632.

The report also states that in a 1981 hearing "numerous representatives of the fire fighting profession, the law enforcement profession, and the insurance industry testified that the arson investigations performed by BATF were of critical importance, and if anything, ought to be expanded." Id at 2632.

Significantly, ATF does not utilize section 844(i) to prosecute arson incidents involving malicious mischief. Rather, ATF's law enforcement program with respect to arson emphasizes the use of section 844(i) in combatting arson-for-profit, a major economic crime of national magnitude. This program instructs ATF law enforcement personnel to direct their investigations toward those incidents involving industrial or commercial activities where the suspected perpetrators are members of organized crime, white-collar criminals, members of organized arson rings, and violent criminals whose illegal activities impact upon the community at large.

A review of the reported cases under section 844(i) reveals no case predicated upon malicious mischief. The reported cases fall within the following categories: arson and bombings for profit (including insurance fraud) or some other commercial motive; arson and bombings to injure a person or damage property for revenge; and other serious arsons and bombings.



Honorable William W. Wilkins, Jr.

In setting the base offense level at only 6, the guidelines appear to ignore the risk of injury to emergency personnel and private citizens when emergency personnel respond to an arson scene. The risk to firefighters in large commercial buildings is substantial. The guidelines do not take these risks into account and seem to ignore congressional intent to severely punish violations of section 844(i), resulting in injury to emergency personnel. In 1984, Congress amended section 844(i) to make explicit that an injury to or the death of a public safety officer would result in an increased sentence. The committee report accompanying the legislation states: "The Committee intends that a death or injury is a direct or proximate result of conduct proscribed in section 844(d), (f), or (i), if it is reasonably foreseeable. For example, included in the reasonably foreseeable consequences of the burning or destruction by an explosive of a building affecting interstate commerce in violation of subsection 844(i) would be a response by firemen and others (including high speed driving of fire equipment and ambulances), crowd control by policemen, and the examination of the remains of the building and undetonated explosives by any one of a number of law enforcement officers and technicians." S. Rep. No. 98-225, 98th Cong., 2d Sess. 359, reprinted in 1984 U.S. Code Cong. & Ad. News 3508.

We recommend that the base offense level for arson should be increased to 24. Arson in violation of section 844(i) is a serious offense and is a crime of violence for purposes of the Career Offender provisions.

Under the current guidelines, if the defendant "endangered" the safety of another person, an increase of 4 levels is made. If the defendant "recklessly endangered" the safety of another person, an increase of 14 levels is made. If the defendant knowingly created a "substantial risk of death or serious bodily injury," an increase of 18 levels is made. Information from Assistant U.S. Attorneys handling these cases indicate that these guidelines are confusing and not easy to apply. For example, uncertainty exists with respect to the appropriate sentencing level where a fireman or private citizen is injured while firefighters are driving to the scene, and the defendant did not intend this consequence.

Honorable William W. Wilkins, Jr.

Arson cases under section 844(i) are, by their nature, difficult and complex cases to prosecute. United States Attorneys are more reluctant to prosecute these cases when the sentencing guidelines for increasing the base offense level above 6 are difficult to apply.

If the base offense level is increased to 24, the increase in offense level for endangering the safety of another person could be eliminated; the increase for recklessly endangering the safety of another person could be reduced from 14 levels to 4 levels; and the increase for knowingly creating a substantial risk of death or serious bodily injury could be reduced from 18 levels to 8 levels. United States Attorneys will be more willing to prosecute arson cases under section 844(i) when they are certain that a reasonable sentence will be imposed even if the increases for recklessly endangering the safety of another or for knowingly creating a substantial risk of death or serious bodily injury are not imposed by the sentencing judge.

Maximum Sentences Under The Armed  
Career Criminal Act, 18 U.S.C. § 924(e)

Under 18 U.S.C. § 924(e), an individual such as a felon who has three prior convictions for a violent felony or a serious drug offense and who violates 18 U.S.C. § 922(g) by possessing a firearm is subject to a mandatory minimum sentence of 15 years imprisonment. Section 924(e) does not state a maximum term. However, in United States v. Savage, 863 F.2d 595 (8th Cir. 1988), the court held that the maximum sentence under section 5G1.1(b) of the guidelines is 15 years.

In numerous cases where armed career criminals possessed firearms before the sentencing guidelines became effective, judges imposed more than the mandatory minimum 15-year sentence. In reported cases, defendants received the following sentences: life (2 cases); 30 years (1 case); 25 years (1 case); 23 years (1 case); 20 years (5 cases, including 1 case in which the defendant received consecutive sentences of 20 years each on two counts); and 18 years (1 case). In Attachment A to this letter, the reported cases are analyzed in some detail and the factors judges used in imposing more than the minimum 15-year sentence are discussed.