

Appendix F

**MANDATORY MINIMUM REPORT FIELD INTERVIEW PROTOCOL
FOR U.S. ATTORNEY REPRESENTATIVE**

Introductory Statement

Hello, we are from the U.S. Sentencing Commission and are visiting your office today as part of a study mandated by Congress on statutory mandatory minimum provisions in federal sentencing. As part of this study, we are gathering information from prosecutors and defense attorneys.

We would like to take no more than _ hour(s) of your time to ask you some questions about the use of mandatory minimums in your district. Before we begin, we wish to emphasize that the report of our evaluation findings will not identify by name the offices we visit nor will individual respondents be identified or identifiable in the Commission's public documents.

Location:

Interviewer:

Date:

Time Began:

Time End:

Respondent:

Background:

1. How long have you been a practicing attorney?
2. How long have you been a federal prosecutor? What is your title?
3. How long have you been in this office?
4. How did you prepare for this interview?

We are going to start by asking about charging, plea, and sentencing practices in your district. We will then end with some general questions about your observations and experiences with mandatory minimums.

Charging Decisions

5. What role do mandatory minimums play in charging decisions?
6. Are there particular factors that influence whether a statutory offense requiring a mandatory minimum penalty is charged? If so, what are those factors? (Does the identity of the judge ever influence the charging decision?)
7. Do those factors change for different offenses types? If so, for which offense types and how do they change?
8. Are there circumstances in which the government declines to charge an offense carrying a mandatory minimum penalty? If so, under what circumstances? For example, is this done when the defendant gives concessions in return? If so, what are those concessions?
9. After *Booker*, has the charging of defendants pursuant to statutes requiring mandatory minimum penalties changed? If so, how has it changed? Do you have a view as to why it has changed? For *those* offenses where the charging of statutes carrying mandatory minimum penalties has increased after *Booker*, what factors encourage the charging of such statutes?
10. Have you ever had a case for which your office declined to file an information for an otherwise applicable section 851 enhancement? If so, why did your office decline to file the information? (*e.g.*, plea negotiations or other concessions by the defendant).
11. Are there policies in your office regarding requirements that must be met before a drug trafficking case may be brought in your district? What are those policies?
12. Are there policies in your office regarding requirements that must be met before multiple counts for charges carrying mandatory minimum penalties may be brought? For example, filing multiple counts for violations of 18 U.S.C. §§ 924(c) or 1028A. If so, what are those policies? If not, what factors influence the filing of multiple counts?
13. Are there policies in your office regarding requirements that must be met before child pornography offenses under a statute carrying a mandatory minimum penalty (*e.g.*, receipt as opposed to possession) may be brought? If so, what are those policies?
14. Are there policies in your office regarding requirements that must be met before identity theft offenses under 18 U.S.C. § 1028A may be brought? If so, what are those policies?
15. Are the practices regarding charging decisions related to mandatory minimums in your office the result of office-wide policies of the U.S. Attorney's office or the result of charging practices of individual prosecutors (or a combination of both)?

16. Are there any mandatory minimum sentencing provisions that you think are particularly effective law enforcement tools? If so, which ones? Are there any mandatory minimum sentencing provisions that you think are especially harsh or particularly detrimental to defendants? If so, which ones?

Guilty Pleas

17. What would you say is the strongest incentive that the government can offer to influence a defendant to plead guilty?
18. Does a mandatory minimum count influence the plea negotiation process? If so, how?
19. Are there circumstances in which counts requiring mandatory minimum penalties get dismissed when the defendant pleaded guilty? If so, what are those circumstances? For example, do counts requiring mandatory minimum penalties (including cumulative consecutive counts) get dismissed while other mandatory counts with shorter minimum terms remain?
20. Does the government use Fed. R. Crim. P. 11(c)(1)(C) plea agreements in this district? If so, has the use of Fed. R. Crim. P. 11(c)(1)(C) plea agreements changed since the date of the decision in *United States v. Booker* (January 12, 2005)? If so, how? Do you have a view as to why it has changed? (Does the identity of the judge ever influence usage of such agreements? If so, how?)
21. Is a waiver of appeal rights a standard provision in written plea agreements in this district? If so, does the government give the defendant any concession in exchange for the waiver? What is the concession? If appeal waivers are not routinely included in plea agreements, why not?

Substantial Assistance

22. Does the fact that a statutory offense with a mandatory minimum penalty could be charged impact a defendant's willingness to provide substantial assistance? If so, what is the impact? How significant is it? Are there circumstances that vary the impact? If so, what are they?
23. Do the guidelines have the same impact on a defendant's willingness to provide substantial assistance in cases where no statutory offense with a mandatory minimum penalty could be charged? If so, what is the impact?
24. Does a defendant's willingness to provide substantial assistance influence the government's decision whether to charge a statutory offense requiring a mandatory minimum penalty? If so, how? What factors influence this decision?
25. In cases where your office filed a substantial assistance motion under 18 U.S.C. § 3553(e), how **often** does your office make a recommendation regarding the extent of the reduction? In such cases, how does your office express that recommendation? In such cases, how often does the court follow your recommendation?

26. Does your office have an office-wide policy about the amount of reduction that should be requested in a case in which a substantial assistance motion is filed? In your district (division), if a prosecutor makes a recommendation about the extent of a downward departure, does the prosecutor typically request a specific amount off the minimum of the guidelines range or a statutory minimum as a general practice (*e.g.*, one-third off) or does the recommendation vary depending on the facts and circumstances of the particular case? Does your office have an office-wide policy about the amount of reduction that should be requested in a case in which a substantial assistance motion is filed? Does it depend on the type of cooperation (*e.g.*, debriefing the government, testifying at trial, wearing a wire)?
27. Does the government move to dismiss counts requiring mandatory minimum when the defendant provided substantial assistance? If so, how often? What factors influence this decision?
28. Critics of mandatory minimum penalties suggest that they lead to false testimony by cooperators seeking relief from those penalties. Have you had any experiences with cooperators offering testimony later found to be false? If so, please describe that experience.
29. Have you ever declined to file a substantial assistance motion because you determined that the cooperator testified falsely? Have you ever declined to use testimony offered by a cooperator because you had concerns about the veracity of the testimony being offered?

Safety Valve

30. Does the fact that a defendant may not qualify for the safety valve influence whether the government charges under a statute that does carry a mandatory minimum penalty? If so, how often? What factors influence this decision?
31. As you know, Congress passed the safety valve to allow relief from mandatory minimum penalties for certain low-level non-violent drug offenders. How well does the safety valve work in your district?

General Questions

32. What is your view of how mandatory minimum penalties currently are used in the federal criminal justice system?
33. What is the reason(s) for your view?
34. Do you think that mandatory minimum penalties play a different role in an advisory guideline system than they did in a mandatory guideline system? If so, how is it different? What are your views on that?

Any additional comments on the topic of mandatory minimum penalty provisions in federal law?

**MANDATORY MINIMUM REPORT FIELD INTERVIEW PROTOCOL
FOR FEDERAL PUBLIC DEFENDER/CJA PANEL REPRESENTATIVE**

Introductory Statement

Hello, we are from the U.S. Sentencing Commission and are visiting your office today as part of a study mandated by Congress on statutory mandatory minimum provisions in federal sentencing. As part of this study, we are gathering information from prosecutors and defense attorneys.

We would like to take no more than _ hour(s) of your time to ask you some questions about the use of mandatory minimums in your district. Before we begin, we wish to emphasize that the report of our evaluation findings will not identify by name the offices we visit nor will individual respondents be identified or identifiable in the Commission's public documents.

Location:

Interviewer:

Date:

Time Began:

Time End:

Respondent:

Background:

1. How long have you been a practicing attorney?
2. How long have you been a federal public defender (defense attorney)?
3. How long have you been in this office (on the CJA panel)?
4. How did you prepare for this interview?
5. How long in your current position?

We are going to start by asking about charging, plea, and sentencing practices in your district. We will then end with some general questions about your observations and experiences with mandatory minimums.

Charging Decisions

6. What role do mandatory minimums play in charging decisions in this district?
7. In your experience, are statutory offenses requiring a mandatory minimum penalty charged consistently? If so, when are they charged? If not, what circumstances appear to influence the determination of whether mandatory minimum statutes are charged? (Does the identity of the judge ever influence the charging decision)
8. Do the circumstances that appear to influence the determination of whether mandatory minimum statutes are charged differ for different offense types? If so, for which offense types and how do they change?
9. Are there circumstances in which the government declines to charge an offense carrying a mandatory minimum penalty? If so, under what circumstances? For example, is this done when the defendant gives concessions in return? If so, what are those concessions?
10. After *Booker*, has the charging of defendants pursuant to statutes requiring mandatory minimum penalties changed? If so, how has it changed? Do you have a view as to why it has changed? For *those* offenses where the charging of statutes carrying mandatory minimum penalties has increased after *Booker*, what factors do you think encourage the charging of such statutes?
11. Have you ever had a case where the government declined to file an information for an otherwise applicable section 851 enhancement? If so, why did the government decline to file the information? (*e.g.*, plea negotiations or other concessions by the defendant).
12. Are there policies known to you in the local U.S. Attorney's office regarding requirements that must be met before a drug trafficking case may be brought in your district? What are those policies?
13. Are there policies known to you in the local U.S. Attorney's office regarding requirements that must be met before multiple counts for charges carrying mandatory minimum penalties may be brought? For example, filing multiple counts for violations of 18 U.S.C. §§ 924(c) or 1028A. If so, what are those policies? If not, what factors do you think influence the filing of multiple counts?
14. Are there policies known to you in the local U.S. Attorney's office regarding requirements that must be met before child pornography offenses under a statute carrying a mandatory minimum penalty (*e.g.*, receipt as opposed to possession) may be brought? If so, what are those policies?
15. Do you know whether the practices regarding charging decisions related to mandatory minimums in the local U.S. Attorney's office are the result of office-wide policies or the result of charging practices of individual prosecutors (or a combination of both)?

16. Are there any mandatory minimum sentencing provisions that you think are especially harsh or particularly detrimental to defendants? If so, which ones? Are there any mandatory minimum sentencing provisions that you think are particularly effective law enforcement tools? If so, which ones?
17. How often are your clients aware of the mandatory minimum penalties applicable to their criminal conduct before their apprehension or other contact with the criminal justice system?

Guilty Pleas

18. What would you say is the strongest incentive that can be offered by the government to influence a defendant to plead guilty?
19. Does a mandatory minimum count influence the plea negotiation process? If so, how?
20. Are there circumstances in which counts requiring mandatory minimum penalties get dismissed when the defendant pleaded guilty? If so, what are those circumstances? For example, do counts requiring mandatory minimum penalties (including cumulative consecutive counts) get dismissed while other mandatory counts with shorter minimum terms remain?
21. Do some defendants choose to go to trial because of charges carrying mandatory minimum penalties when they would otherwise have pleaded guilty if a charge not carrying a mandatory minimum had been brought?
22. Does the government use Fed. R. Crim. P. 11(c)(1)(C) plea agreements in this district? If so, has the use of Fed. R. Crim. P. 11(c)(1)(C) plea agreements changed since the date of the decision in *United States v. Booker* (January 12, 2005)? If so, how? Do you have a view as to why it has changed? (Does the identity of the judge ever influence usage of such agreements? If so, how?)
23. Is a waiver of appeal rights a standard provision in written plea agreements in this district? If so, does the government give the defendant any concession in exchange for the waiver? What is the concession? If appeal waivers are not routinely included in plea agreements, why not?

Substantial Assistance

24. Does the fact that a statutory offense with a mandatory minimum penalty could be charged impact a defendant's willingness to provide substantial assistance? If so, what is the impact? How significant is it? Are there circumstances that vary the impact? If so, what are they?
25. Do the guidelines have the same impact on a defendant's willingness to provide substantial assistance in cases where no statutory offense with a mandatory minimum penalty could be charged? If so, what is the impact?
26. In your experience, does a defendant's willingness to provide substantial assistance influence the government's decision whether to charge a statutory offense requiring a mandatory minimum penalty? If so, how? What factors influence this decision?

27. Which of the following is more common in your district in cases in which a defendant cooperates with the government: (a) a charge carrying a mandatory minimum is brought, the defendant is convicted of it, and the defendant then seeks to win a substantial assistance motion under 18 U.S.C. sec. 3553(e) in order to reduce his sentence below the statutory minimum; or (b) the prosecutor threatens to bring a charge carrying a mandatory minimum unless a defendant provides substantial assistance before he is convicted but does not do so (or, alternatively, dismisses a charge carrying a mandatory minimum) if the defendant sufficiently cooperates and pleads guilty to a charge not carrying a mandatory minimum?
28. To your knowledge, does the local U.S. Attorney's office have an office-wide policy about the amount of reduction that should be requested in a case in which a substantial assistance motion is filed? If a prosecutor makes a recommendation about the extent of a downward departure, does the prosecutor typically request a specific amount off the minimum of the guidelines range or a statutory minimum as a general practice (*e.g.*, one-third off) or does the recommendation vary depending on the facts and circumstances of the particular case? To your knowledge, does the local U.S. Attorney's office have an office-wide policy about the amount of reduction that should be requested in a case in which a substantial assistance motion is filed? Does it depend on the type of cooperation (*e.g.* debriefing the government, testifying at trial, wearing a wire)?
29. In cases where the government filed a substantial assistance motion under 18 U.S.C. § 3553(e), how **often** does the government make a recommendation regarding the extent of the reduction?
- In such cases, how does the government express that recommendation?
- In such cases, how often does the court follow the government's recommendation?
30. Does the government move to dismiss counts requiring mandatory minimum when the defendant provided substantial assistance? If so, how often? What factors influence this decision?
31. Critics of mandatory minimum penalties suggest that they lead to false testimony by cooperators seeking relief from those penalties. Have you had any clients who cooperated with the government and provided testimony that was later found to be false? If so, please describe that experience.
32. Have you ever represented a client for whom the government declined to file a substantial assistance motion because it determined that your client testified falsely? If so, please describe that experience.
33. Have you ever represented a client who offered to testify as a cooperating witness, and the government has refused to accept that offer? If so, please describe that experience.

Safety Valve

34. Does the safety valve factor into charging or plea negotiations? If so, how so? How often?

35. As you know, Congress passed the safety valve to allow relief from mandatory minimum penalties for certain low-level non-violent drug offenders. How well does the safety valve work in your district?

General Questions

36. What is your view of how mandatory minimum penalties currently are used in the federal criminal justice system?
37. What is the reason(s) for your view?
38. Do you think that mandatory minimum penalties play a different role in an advisory guideline system than they did in a mandatory guideline system? If so, how is it different? What are your views on that?

Any additional comments on the topic of mandatory minimum penalty provisions in federal law?

