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COMMISSION MEETING

12/18/90

AGENDA ITEM

William W. Wilkins, Jr. Chairman  
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Helen G. Corrothers  
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George E. MacKinnon  
A. David Mazzone  
Irene H. Nagel  
Benjamin F. Beer (ex officio)  
Paul L. Maloney (ex officio)



MEMORANDUM

TO: Chairman Wilkins  
Commissioners  
Senior Staff

FROM: Phyllis J. Newton *pin*  
Staff Director

SUBJECT: Bank Robbery Working Group Report

DATE: 10 December 1990

Attached for your review are the Bank Robbery Working Group report and a proposed amendment in this area. Additionally, there are three proposed questions for publication in the Federal Register. This report and proposed amendment are submitted for your consideration at the December 18th Commission meeting.

Attachment

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December 6, 1990

MEMORANDUM

TO: Phyllis Newton  
Staff Director

FROM: Andy Purdy  
Coordinator, Bank Robbery Working Group

SUBJECT: Report of the Bank Robbery Working Group

Attached is the Report of the Bank Robbery Working Group.  
The other members of the working group are David Anderson, Joseph  
Lowery, Pam Montgomery, and Melissa Selick.

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## 1. INTRODUCTION

This report details the Bank Robbery Working Group's exploration of three issues of concern about how bank robberies are sentenced pursuant to the robbery guideline.<sup>1</sup> While the Working Group recommends further study of bank robbery offenses sentenced under the guideline amended effective November 1, 1989 before the Commission considers taking final action next spring, this report includes potential amendment options and questions the Commission may wish to publish in the Federal Register in January to solicit public comment to inform its eventual decision-making.

The robbery guideline as it applies to bank robberies has long been the focus of scrutiny by the Sentencing Commission. Most recently it was the subject of substantive amendments that became effective November 1, 1989.<sup>2</sup> The Working Group perceives its mandate as involving the following three issues:

1. Are the offense levels for unarmed bank robbery too low?

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<sup>1</sup> §2B3.1

<sup>2</sup> Specifically, the base offense level was raised from 18 to 20; the enhancement for robbery of a financial institution or post office that assumed a loss of at least \$5,000 resulting in a 1 level enhancement, was changed to a 2 level increase; and the specific offense characteristic for money taken was amended so that additional levels are not added until the dollar amount exceeds \$10,000 (plus 1 level), rather than 1 additional level for \$2501 to \$10,000, and two additional levels for \$10,001 to \$50,000, as previously; and a specific offense characteristic was added providing a 2 level increase for an express threat of death. See n. 5, infra regarding bank robbery amendments considered, but not passed, last year.

2. Are the enhancements for weapon use sufficient,<sup>3</sup> particularly in light of the punishment for conviction for possession of a weapon during the commission of a felony, in violation of 18 USC 924(c), which requires a mandatory consecutive sentence of five years for a first offense?<sup>4</sup>
3. Should there be an enhancement for bank robberies committed not leading to a conviction?<sup>5</sup>

The Working Group studied the following resources to explore these issues: monitoring data (both post Mistretta, original guideline, and post-1989 amendment cases;<sup>6</sup> all cases sentenced under the 1989 amended guideline; Technical Assistance Service (hotline) reports; appellate bank robbery cases; and input from the Federal Bureau of Investigation about bank robbery statistics

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<sup>3</sup> There are currently enhancements for possession, display or brandishment of a dangerous weapon (3 levels) ; if a dangerous weapon is "otherwise used" (4 levels), and if a firearm is discharged (5 levels).

<sup>4</sup> A second conviction requires a mandatory ten years consecutive sentence. The recent crime bill raised the punishment for a first offense to a mandatory ten year sentence when a small class of weapons are involved, including a machine gun and certain short-barreled rifles.

<sup>5</sup> Last year the Commission published, but did not pass, two amendment options for enhancements for additional bank robberies committed but not resulting in convictions. See Options section, *infra*, for a revised version of last year's published draft amendments.

<sup>6</sup> Post-Mistretta cases include and overlap post-1989 cases so comparison analysis may somewhat dilute the differences and understate possible trends.

and a survey of field offices about their experiences with the robbery guideline.<sup>7</sup>

Caution should be exercised about drawing conclusions from the relatively small number of cases sentenced under the amended guideline about current bank robbery sentencing practices.<sup>8</sup> However, there are noticeable clusterings of sentences at both the lower and upper end of the applicable guideline range in most of the analyses conducted, and those are somewhat weighted toward the lower end.<sup>9</sup> This weighting of sentences toward the lower end of the applicable guideline range has increased somewhat for those cases sentenced under the 1989 amendment. This weighting is more pronounced in unarmed bank robberies and less pronounced when a weapon was involved but no count of 924(c) was pursued to conviction.<sup>10</sup>

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<sup>7</sup> During a bank robbery briefing of the Commission earlier this year by representatives of the Violent Crimes Section of the FBI, the Commission suggested a Bureau survey of its field offices about the robbery guideline. See Appendix I for the FBI summary letter of the survey results and excerpts from the field offices' responses.

<sup>8</sup> See Monitoring Data detailed later in this report and in the various appendices. The limitations on statistical significance of the post-amendment cases apply throughout this report.

<sup>9</sup> This is not surprising where most cases involve guilty pleas in light of the fact that the Department of Justice has specifically authorized its prosecutors to recommend a 2 level reduction for acceptance of responsibility and sentencing at the bottom of the guideline range as the maximum permissible incentive for guilty pleas. See "Plea Bargaining Under The Sentencing Reform Act" [hereinafter, the Thornburgh Memorandum], Department of Justice, March 1989.

<sup>10</sup> 18 U.S.C. 924(c) sanctions the offense of possession of a firearm during the commission of a felony with a mandatory five years consecutive sentence.

Depending on whether a prosecutor elects to pursue a 924(c) count when a firearm is used in the commission of a bank robbery, substantial disparity can exist in the sentencing of armed bank robbery cases because of the variation in prosecutorial practices. The Commission may wish to consider lessening the potential disparity in armed bank robbery cases by increasing the enhancement for use of a weapon during a robbery.

An analysis of post-amendment sentencing involving dismissed or uncharged additional robberies shows that cases involving dismissed counts reveal a smaller proportion of cases at the bottom of the guideline range than cases in which all robberies (as evidenced in the pre-sentence report) were accounted for by counts of conviction. In other words, in instances in which additional robberies were dismissed or not charged, judges tended to sentence relatively higher in the guideline range.

The Commission may wish to create a specific offense characteristic for unconvicted bank robberies to factor such conduct into the determination of the guideline range in order to minimize the potential disparity resulting from uneven prosecutorial practices in not charging or even dropping provable counts of bank robbery as part of the plea bargaining process.

## 2. BACKGROUND

The Federal Bureau of Investigation's Bank Crime Statistics for calendar years 1988 and 1989 reveal that in 1988 there were 6,549 bank robberies, 288 bank burglaries, and 158 bank larcenies; in 1989 the incidence of bank crime increased to 6,691 robberies, 273 burglaries, and 142 larcenies.<sup>11</sup> The solution rate for bank robberies for fiscal years 1988 and 1989 was 65 percent.<sup>12</sup> Most of those offenses occurred at bank branch offices located in commercial districts or shopping centers of either suburban or metropolitan areas.<sup>13</sup> In almost every case, the crime occurred at the bank counter.<sup>14</sup> About half of the

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<sup>11</sup> The discussion that follows is based on data taken from cases in each of the three crime groups. The FBI does not have retrievable data on the percentage of all "solved" robberies resulting in convictions; nor do they have information on dismissed counts. We have informally suggested that they may want to retain information by defendant of the number of robberies committed relative to the number resulting in conviction.

<sup>12</sup> Solution rates for bank robbery between 1979 and 1989 have varied between 63 and 69 percent. A bank robbery is not considered solved unless all participants are identified. In other words, a partial solution counts as an unsolved robbery.

<sup>13</sup> In 1988, 90% percent of all bank crimes occurred at branch offices, 91.6% occurred in commercial districts or shopping centers, and 82% in metropolitan or suburban areas. The data for 1989 are virtually identical: 90% of bank crimes committed against branch offices, 91.4% committed in commercial districts or shopping centers, and 82.1% committed in metropolitan or suburban areas.

<sup>14</sup> In 1988, 91.4% of the cases involved the bank counter. The remaining 1988 cases involved the vault (3.6%), the office area (3.8%), or other areas (4.5%). In 1989, 91.2% involved the counter area, while the remaining cases involved the vault (4.1%), the office area (3.3%), or other areas (5.2%).



cases involved the use of a demand note<sup>15</sup> and over 40 percent involved the threatened use of a weapon (where no weapon was actually observed).<sup>16</sup> About a third of the cases involved the use of a weapon.<sup>17</sup> Explosive devices were used, or the use of such devices were threatened, in a small but significant percentage of cases.<sup>18</sup>

In the last three fiscal years, 76.3% of bank robberies reported to the FBI and investigated by FBI field offices have involved less than \$5,000; 8.7 percent \$5,000-\$7499, 4.2 percent \$7500-9,999, and 10.3 percent \$10,000 or more.<sup>19</sup>

#### GENERAL MONITORING INFORMATION ON BANK ROBBERY SENTENCES

Two categories of cases with statements of reasons were examined in this study: cases sentenced since the Mistretta decision (post-January 19, 1989) and cases since November 1, 1989, that were sentenced pursuant to the robbery guideline amended effective November 1, 1989. By examining distribution of sentences imposed for bank robbery under the robbery guideline, the Working Group attempted to determine whether the guideline

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<sup>15</sup> 49.7% of the 1988 cases and 47.9% of the 1989 cases involved the use of a demand note.

<sup>16</sup> 41.9% of 1988 cases and 40.7% of 1989 cases involved the threatened use of a weapon where no weapon was observed.

<sup>17</sup> 33.1% of 1988 cases and 33.1% of 1989 cases involved the use of a weapon.

<sup>18</sup> 3.7% of 1988 cases and 3.5% of 1989 cases involved the use or threatened use of an explosive device.

<sup>19</sup> See Appendix I.

range was frequently placing apparent undo constraints on the ability of the sentencing judge to appropriately sentence offenders. For example, how frequently are sentences imposed at the top of the guideline range (the maximum amount of time allowable without having to depart upward), the bottom of the guideline range, and below or above the guideline range.<sup>20</sup> If, for example, all sentences are at the bottom of the range or below the range, or, conversely, at the top of the range or above the range, it would suggest that the range may be perceived by judges to be too high or too low, respectively. This information is summarized from charts and tables set out in the referenced appendices.

#### CASES SENTENCED SINCE MISTRETTA

Of a total 795 bank robbery cases sentenced since Mistretta and through June 30, 1990, 294 were designated as "missing (missing values for certain variables)," leaving 501 cases for analysis.<sup>21</sup> Of the 501 bank robbery cases sentenced:

- 11.6 (N=58) percent were sentenced below the guideline range,

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<sup>20</sup> Monitoring informed the working group that the denotations "above the range" or "below the range" do not necessarily constitute departures. For example, a low statutory maximum might require a guideline sentence below the otherwise applicable guideline range; such a sentence is not considered a "departure." Likewise, a mandatory minimum might require a sentence above the range that is not a departure and is not explained in the statement of reasons.

<sup>21</sup> See Appendix A

- 30.3 (N=152) percent involved sentences at the bottom of the range,
- and a total of 12 percent (N=60) fell in the lower middle of the range.
- Another 4.8 percent (N=24) were sentenced above the guideline range,
- 22.4 percent at the top of (N=112) the range,
- and 19 percent (N=95) fell in the upper middle of the guideline range.

Of 211 total cases sentenced under the bank robbery guideline between the January 19, 1989 and December 31, 1989, which should contain virtually no overlap with the post-amendment cases:

- 179 (84.8%) were sentenced within the guideline range,
- 14 (6.6%) were below the range, and
- 15 (7.1%) were above the range.<sup>22</sup>

By comparison, recent data show a within guideline range rate of 89% for single count bank robbery cases sentenced under the amended guideline between November 1, 1989 and June 30,

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<sup>22</sup> See 1989 Annual Report for cases sentenced under 18 USC 2113(A) and (D), Table XII, at p. 54. These data were based on a 25% random sample of total cases.

1990.<sup>23</sup> Five (7%) cases involved sentences below the range and only three (4%) were sentenced above the guideline range.

CASES SENTENCED UNDER THE NOVEMBER 1, 1989 AMENDED GUIDELINE

Information on 74 single count bank robbery cases with statements of reasons sentenced under the November 1, 1989 amended guideline have been forwarded to the Commission.<sup>24</sup>

Of the 74 cases:

- 5 cases (6.7%) were below the range,
- 32 (43.2%) fell at the bottom of the guideline range, and
- 10 (13.5%) were located in the lower middle of the guideline range.
- In addition, 3 (4%) cases were sentenced above the guideline range,
- 17 (22.9%) were sentenced at the top of the range, and
- 7 (9.4%) were sentenced in the upper middle of the range.

In summary, 37 cases (50%) were sentenced at the bottom of the guideline range or below the range, while 20 cases (27%) were sentenced at the top of the range or above the guideline range. Overall, 63.5 percent of robbery cases under the amended

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<sup>23</sup> See Appendix B, Table I. Hereafter, "cases sentenced under the amended guideline" refers to this universe of monitoring data.

<sup>24</sup> See Appendix B, Table I.

guideline were sentenced at or below the lower half of the applicable guideline range or below.

3. POLICY QUESTION: IS THE OFFENSE LEVEL FOR UNARMED BANK ROBBERY SUFFICIENT?

POST-MISTRETTA CASES

Of the 609 single count bank robbery cases sentenced since Mistretta, 274 included statements of reasons, and 100 of those involved no weapon.<sup>25</sup> Of these cases:

- 23 percent involved sentences below the guideline range,
- 36 percent fell at the bottom of the guideline range. and
- 8 percent were sentenced in the lower middle of the guideline range.
- 4 percent of the cases were sentenced above the guideline range,
- 14 percent at the top of the range, and
- 15 percent in the upper middle of the guideline range.

In summary, in cases in which no weapon was involved approximately two thirds (67%) of the sentences fell below the range or at the bottom and lower middle of the guideline range, whereas only 33 percent were sentenced in the middle upper, at

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<sup>25</sup> See Appendix D, Table XVI.

the top, or above the guideline range. Particularly noteworthy is the 23 percent rate of sentences below the guideline range when no weapon was involved. Thus, prior to the 1989 amendment, it does not appear that the guideline levels for unarmed bank robbery were perceived by judges to be unduly restricting their ability to impose sufficiently severe sentences for unarmed bank robbery.

CASES SENTENCED UNDER THE NOVEMBER 1, 1989 AMENDED GUIDELINE

Of the 23 cases with no weapon sentenced under the amended guideline, 78.2 percent (N=18) fell in the lower middle, bottom or below the guideline range. Five cases (21.8%) were sentenced in the upper middle, top or above the guideline range.

In comparison, since the 1989 guideline amendment, there have been 121 single and multiple count bank robbery cases (with statements of reasons) in which there was a weapon (and no conviction for 18 USC 924(c) was involved).<sup>26</sup> Of these cases, 27 (22.3%) were sentenced below the guideline range, 46 (38%) were sentenced at the bottom of the range, and 11 (9.1%) were in the lower middle. Five (4.1%) cases were above the guideline range, 16 (13.2%) were at the top of the range, and 16 (13.2%) were sentenced in the upper middle.

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<sup>26</sup> See Appendix D, Table XVI and Appendix F.

It appears that there has been a slight shift in sentence location toward the bottom of the sentencing range since the November 1, 1989, amendment for those cases where there was no weapon, relative to all post-Mistretta cases with no weapon. In the post-Mistretta data presented in Appendix D, Table XVI, 67 percent (N=67) of the cases fell in the lower half or below the guideline range. Post-Mistretta data revealed 33 percent of the cases were sentenced in the upper half of the guideline range or above the range. Since the 1989 amendment, 30.5 percent of the cases were sentenced above the guideline range, at the top of the range, or in the upper middle of the range.

4. POLICY QUESTION: ARE THE LEVELS FOR ARMED BANK ROBBERY SUFFICIENT?

The Commission asked the Working Group to consider whether or not the existence of a statute providing a mandatory consecutive sentence of five years in addition to the underlying offense should stimulate consideration of raising the offense levels for use of a weapon during the robbery to narrow the gap between similarly situated defendants who, on the same set of facts, face significantly different sentences solely because one prosecutor decided to pursue the weapons charge. The Working Group prepared charts (based on cases sentenced under the amended guideline) comparing sentences imposed for using a weapon during the robbery of a bank, depending on whether or not there was a conviction for a violation of 18 USC 924(c), which provides a five year (60 months) consecutive sentence to the bank robbery sentence.<sup>27</sup>

When one compares sentence location within the applicable guideline range for bank robberies in which a weapon was involved since Mistretta with the sentence location for the few cases sentenced under the November 1, 1989 amendment, slight changes occur. Since the amendment, there appears to be a slight shift in sentencing practice from the upper end of the guideline toward the lower end, possibly indicating a lessening of pressure on the

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<sup>27</sup> See Appendix G.



upper end in weapons cases because of the increase in the levels for a bank robbery.<sup>28</sup>

It appears from examining the cases sentenced under the amended guideline that, for whatever reason, prosecutors are not consistently charging 924(c) when a weapon is used during a bank robbery. Of the 53 post-1989 amendment cases in which a weapon was involved, 31 did not include convictions for 924(c) and 22 did.<sup>29</sup> The Commission, therefore, faces a policy question of whether or not it should amend the robbery guideline to alleviate the resulting disparity.

Applying the guideline model to the same set of facts, depending on whether or not there was a count of 924(c), yields the following theoretical differences in sentence: a bank robbery (Criminal History Category I) has a base offense level of 20, plus 2 for a financial institution (assume less than \$10,000 taken) plus 3 for possessing or brandishing a weapon for a total of 25. The same defendant convicted both of the bank robbery and the weapons charge would face 60 months on top of a level 22 (because the 924(c) count sanctions for the weapon, the 3 level guideline enhancement for possessing a weapon would NOT be applicable) for a total guideline sentence of 101-111 months (41-51 months on the robbery count plus 60 months consecutive on the 924(c) count), compared to a sentencing range of 57-71 months for the defendant not convicted of the gun count. Thus, the

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<sup>28</sup> See Appendix E, Tables XIV and Appendix D, Table XVI.

<sup>29</sup> See Appendix G.

prosecutor's charging/plea decision can yield a sentencing difference of no less than 44 months. If the defendant in both cases was awarded a two level reduction for acceptance of responsibility the difference would be no less than 46 months.

Should the Commission choose to close this gap by increasing the enhancement for weapon use, 4 levels would have to be added to the existing enhancement to reach a guideline range (level 29, range 87-108 months, in the hypothetical case involving a defendant in Category I Criminal History; the number of levels would vary depending on the offense level of the particular defendant) that could accommodate a 101 month sentence.

The 924(c) disparity effect varies significantly depending on the criminal history category of the defendant; generally, the higher the criminal history category, the smaller the difference between a case with a 924(c) count and one without. For example, for the above-described hypothetical bank robbery defendant, if the Criminal History Category was IV instead of I, the difference would amount to no less than 18 months without acceptance of responsibility and no less than 14 months with it. In other words, at Criminal History Category IV, it would only require an increase in the weapon enhancement of 2 levels to bring the offender who does not accept responsibility within a guideline range that could accommodate the minimum sentence that would be required with a 924(c) conviction, but it would require a 3 level

increase for the defendant who does accept responsibility to reach the minimum sentence if there is a 924(c) conviction.

The Commission should be aware, however, that 924(c) only applies to a defendant who uses a weapon during the commission of a felony, while the Commission's relevant conduct guideline (§1B1.3) would make the enhancement apply arguably more broadly, to those who are "otherwise accountable,"<sup>30</sup> unless the Commission amends the rule regarding the applicability of the weapon enhancement.

Unless the Commission wants to promulgate a rule providing a sliding scale for the weapon enhancement depending on the defendant's criminal history category, it could provide for a one or two level increase to the weapon enhancement to lessen the benefit to a defendant from the government's failure to charge a 924(c) violation in an otherwise applicable case.

#### POST-MISTRETTA CASES

Of the 355 single count bank robberies (with statements of reasons) sentenced since Mistretta a total of 246 involved a weapon enhancement.<sup>31</sup> Of these cases 17 (6.9%) were sentenced below the guideline range, 76 (30.8%) fell at the bottom of the guideline range and 30 (12.2%) were sentenced in the lower middle of the guideline range. An additional 16 cases (6.5%) were sentenced above the guideline range, 60 (24.4%) were sentenced at

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<sup>30</sup> See §1B1.3(a)(1), n. 1.

<sup>31</sup> See Appendix D, Table XVI.

the top of the range and 49 (19.9%) were sentenced at the upper middle range. Thus, single count cases involving a weapon enhancement had 37.7 percent at the bottom of the range or below, with 30.9 percent at the top of the range or above.<sup>32</sup>

#### CASES SENTENCED UNDER THE 1989 AMENDED GUIDELINE

Available sentencing data on robbery cases involving a weapon shows the following. There were 39 single count cases involving a weapon. Of these, two cases (5.1%) were sentenced below the guideline range, 16 (41%) at the bottom of the range, and four (10.2%) in the lower middle. Two (5.1%) were sentenced above the guideline range, 10 (25.6%) at the top of the range, and five (12.8%) in the upper middle.<sup>33</sup>

While data on the post-Mistretta multiple count bank robbery cases involving a weapon enhancement have not been compiled, data for the post-amendment cases have been compiled. Of the 34 such cases, only 10 did not have a 924(c) count of conviction. Of these 10 cases, four (40%) were sentenced below the guideline range, four (40%) at the bottom, and two (20%) at the top.

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<sup>32</sup> In the nine remaining single count cases there was no weapon enhancement given, even though the conviction was for 2113(D), armed robbery. Because of this anomalous circumstance, these cases were excluded from this analysis.

<sup>33</sup> See Appendix E, Table XIV.

5. POLICY QUESTION: SHOULD THERE BE AN ENHANCEMENT FOR BANK ROBBERIES COMMITTED BUT NOT SANCTIONED BY A CONVICTION?

There are conflicting policy reasons on the question of whether the Commission should explicitly sanction for bank robberies that a defendant committed but for which his guilt has not been adjudicated.<sup>34</sup> Because the Commission is informed on the issue by its deliberations during the last amendment cycle, the Working Group chose to forego a repetition of these arguments at this time,<sup>35</sup> choosing instead to analyze the data on bank robberies sentenced pursuant to the amended guideline, comparing sentencing practices for cases where there were dismissed or uncharged robberies with those where all robberies are accounted for in counts of conviction.<sup>36</sup>

As a follow-up to the FBI's briefing of the Commission on bank robberies earlier this year, the Working Group received a letter from the FBI based on a survey of field offices about the guidelines' treatment of bank robbery. The letter stated that while the responses were "generally...favorable" about the guideline for bank robbery, concern was expressed about the

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<sup>34</sup> Most often because the prosecutor dropped the charges as part of a plea bargain.

<sup>35</sup> The Working Group stands ready to marshal the arguments for or against the principle involved in such a proposal.

<sup>36</sup> In some instances there may well be additional robberies that were committed by the defendant about which we are unaware because they do not appear in the pre-sentence report. In an unknown number of districts it is reportedly the court-sanctioned practice not to include conduct not resulting in convictions in the pre-sentence report.

ineffectiveness of the guideline "for the first-time offender who commits multiple robberies before being apprehended."<sup>37</sup> In a subsequent briefing of the Working Group, FBIHQ Supervisory Agent Victor R. O'Korn said that the real concern focuses on the fact that the guidelines do not include enhanced levels for bank robberies that were committed but dismissed as part of a plea agreement.

The Working Group reviewed the 135 bank robberies sentenced under the amended guideline for which there were statements of reasons<sup>38</sup> and found that at least 42 involved bank robbery offenses that were dismissed or not pursued. Of those cases involving dismissed or uncharged bank robberies the sentences fell less often at the bottom of the guideline range than cases in which all robberies resulted in convictions (28.5% of cases with dismissed or uncharged counts versus 45.1% of cases with all robberies accounted for by convictions), and more often in the upper middle (9.5% v. 5.3%). However, the dismissed count cases had more sentencings below the guideline range (26.1% v. 12.9%), and slightly fewer cases at the top of the range (11.9% v. 16.1%). Finally, there were significantly more sentences above the guideline range in cases involving dismissed counts (9.5%) compared to cases in which all robberies resulted in conviction

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<sup>37</sup> See Appendix I. The letter also stated that "the guidelines appear to be effective regarding the repeat offenders or felons."

<sup>38</sup> Multiple count cases that included convictions for 18 USC 924(c) were excluded from this study. See Appendix H. The review of case files was conducted by legal staff law clerks Steve Greber, Phil Lau, and Bob Stein.

(4.3%). Paradoxically, there were far more cases sentenced below the guideline range involving dismissed counts (26.1%) than in cases in which all robberies resulted in counts of conviction (12.9%).

In summary, on balance it appears that in cases in which robberies were committed, but not reflected in the guideline range either because the charges were dismissed or not brought, the judges tended to sentence the defendant more harshly relative to the applicable guideline range--as compared to cases in which the guideline range was relatively higher because all robberies were accounted for by conviction.

The fact that in cases involving dismissed counts the sentences are still not heavily concentrated in the upper end of the range is not surprising for two reasons. These reasons are of sufficient importance that the Commission should not feel precluded from considering policy reasons that may favor a change to the guideline to include an enhancement for robberies not resulting in conviction.

First, judges can reasonably read the guideline on grouping multiple counts, §3D1.2(d), as instructing them that an offense like bank robbery is different and distinct from, say, a drug offense, such that unconvicted bank robberies should be given less weight in setting a sentence because it explicitly precludes their use in calculating the applicable guideline range, absent departure. Second, judges are sensitive about disrupting the incentives in the guidelines for guilty pleas, and it is widely

acknowledged that two of the most important incentives are the provision for acceptance of responsibility and sentencing at the lower end of the range. Judges could reasonably fear that by sentencing defendants at the upper end of the guideline range they might discourage pleas and encourage time-consuming trials.

6. CASE LAW RE: BANK ROBBERY

The following is a summary and analysis of selected case law decisions prepared by Pam Montgomery relevant to the issues under discussion by the Bank Robbery Working Group.

a. Sentencing patterns whether or not a weapon is involved. A review of the cases reveals that both armed and unarmed bank robbery is being charged under 18 U.S.C. §2113(a). In cases involving "inoperable guns" or "unloaded guns" the courts have upheld the "dangerous" weapon enhancement. See United States v. Laughy, 886 F.2d 28 (2d Cir. 1989); United States v. Gray, 895 F.2d 1225 (8th Cir. 1990); United States v. Smith, 905 F.2d 1296 (9th Cir. 1990). In United States v. Russell, No. 88-2154 (10th Cir. June 19, 1990), where the defendant pled guilty to violating §2113(a), a statute which does not mention a weapon, the circuit court upheld a weapon enhancement where the teller did not actually see the gun during the robbery. Evidence showed that the defendant possessed a firearm before the robbery, again very shortly after the robbery, and during the robbery he patted his jacket saying "don't make me use it." In United States v. Baker, 914 F.2d 208 (10th Cir.



1990), where the defendant used ten sticks of dynamite to intimidate the manager of a credit union during a robbery, the circuit court affirmed an upward departure stating that the Commission did not contemplate the use of explosive devices when it devised the "dangerous weapon" enhancement provision.

b. Sentencing patterns when cases involve dismissed or uncharged bank robberies. In United States v. Castro-Cervantes, 911 F.2d 222 (9th Cir. 1990), the district court made an upward departure where the defendant was indicted on 7 counts of unarmed robbery, pled guilty to two counts, and agreed to accept responsibility for two uncharged bank robberies. The departure was based on the "number of robberies," the defendant's sophistication in removing the dye packs from the money bag, and for the defendant's membership in an organized gang. The circuit court stated that if the sentencing court had expressly relied on the five dismissed counts when stating "number of robberies," the explanation would have been faultless. In United States v. Whitemarsh, 899 F.2d 1266 (9th Cir. 1990) (table), the circuit court remanded a case for re-sentencing, where the defendant pled guilty to two counts of robbery, and the district court made an upward departure based on the fact that the defendant had committed "4 robberies." The circuit court found that the reason was not sufficiently clear to allow meaningful appellate review.

c. Other bank robbery cases. In other bank robbery cases where the courts have found "atypical" circumstances, they have fashioned upward departures to provide adequate punishment. In

United States v. Lucas, 889 F.2d 697 (6th Cir. 1989), the circuit court upheld an upward departure under §5K2.3 for psychological injuries where in each bank robbery the defendant had the tellers disrobe completely at gunpoint and then took their clothes in an effort to gain a few minutes for escape. In United States v. Pridgen, 898 F.2d 1003 (5th Cir. 1990), where the defendant, a former law enforcement officer, robbed a bank and kidnapped the bank president, holding him hostage during a 100 mile drive, the circuit court upheld an upward departure. In this case the appellant pled guilty to bank robbery but the government dismissed the kidnapping charge which carried a ten-year minimum sentence. In affirming the upward departure the circuit court stated that the guidelines do not take into account "the uniquely severe punishment proscribed by Congress for abduction." The circuit court also found that the four-level enhancement found in §2B3.1 was inadequate for the seriousness of the conduct in this case.

There are also several other cases where the courts have fashioned upward departures where the defendants had several prior bank robberies that were either consolidated for sentencing United States v. Armstrong, 901 F.2d 988 (11th Cir. 1990), or where the sheer number was overwhelming, United States v. Pearson, 900 F.2d 1357 (1st Cir. 1990) (pled guilty to 8 counts of robbery; 3 additional robberies not counted); United States v. Chase, 894 F.2d 488 (1st Cir. 1990) (pled guilty to 14 bank robberies and 1 attempted bank robbery).

7. HOT LINE ACTIVITY

Generally, questions to the hotline about bank robbery pertain to application issues or problems.<sup>39</sup> Some have raised questions of policy about what should or should not be in the guideline.

For example, if a defendant commits a bank robbery but pleads to larceny, should the real offense conduct govern? How should dismissed bank robberies be accounted for?

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<sup>39</sup> For example, there have been questions about such matters as whether the dollar value of the stolen car used in the get-away should be added to the bank's loss (yes); should the get-away driver be held liable for all of the co-defendant's conduct in the bank (yes, if the requirements of "otherwise accountable" are met under 1B1.3); can the express threat of death be applied in addition to the weapon enhancement (no, they must be applied in the alternative); and how should injuries to more than one victim be accounted for (within the range or by departure).

8. POSSIBLE AMENDMENTS AND QUESTIONS FOR PUBLICATION TO ELICIT COMMENT

a. QUESTION FOR COMMENT: Should the base offense level for robbery be increased by [1-4] levels?

b. QUESTION FOR COMMENT: Should the enhancement for weapons and/or weapon use in connection with some or all offenses be raised by an additional [1-4] levels to more closely accommodate Congress' view of the severity of committing a felony while possessing a weapon? Should the enhancement in robbery alone be so increased?

c. QUESTION FOR COMMENT: Should there be a specific offense characteristic in robbery for bank robberies committed not leading to a conviction?

d. Comment is also requested on the following potential draft amendment for accomplishing this:

**Proposed Amendment:**

**§2B3.1. Robbery**

\* \* \*

**(c) Special Instructions**

**(1)** If the defendant committed (A) one additional robbery, increase by 2 levels; (B) two additional robberies, increase by 3 levels; (C) three or four additional robberies, increase by 4 levels; or (D) five or more additional robberies, increase by 5 levels. This instruction applies only to federal robbery offenses (i) charged in the counts of which the defendant is convicted, or (ii) that were part of the same series as any robbery charged in a count of which the defendant is convicted.

**Commentary**

\* \* \*

9. For the purposes of subsection (c)(1), any two or more robberies committed at intervals of twelve months or less shall be deemed part of the same series. *E.g.*, if the defendant committed a second robbery within twelve months of the robbery for which the defendant is convicted and a third robbery within twelve months of the second robbery, all three robberies are to be deemed part of the same series, even if the third robbery and the robbery resulting in the offense of conviction were separated by more than twelve months. A robbery offense included under subsection (c) is treated as part of the instant offense and not as criminal history (see §4A1.2(a)(1)).
10. Where the defendant is convicted of multiple, separate robberies, the offense level for each count of conviction will be increased under subsection (c)(1). The counts will then be grouped together into a single count-group under §3D1.2(c).

**Background:** Possession or use of a weapon, physical injury, and unlawful restraint sometimes occur during a robbery. The guideline provides for a range of enhancements where these factors are present.

\* \* \*

LAST YEAR'S DRAFT AMENDMENTS PUBLISHED FOR COMMENT

"Proposed Amendment: Option 1: Section 2B3.1 is amended by inserting the following additional subsection:

"(c) Special Instruction:

- (1) If the defendant, as part of the same course of conduct or common scheme or plan as the offense of conviction, committed one or more additional robberies, apply Chapter Three, Part D (Multiple Counts) as if the defendant had been convicted of a separate count for each such robbery."

The Commentary to §2B3.1 captioned "Application Notes" is amended by inserting the following additional Note:

- "9. Separate robberies are not grouped together under §3D1.2(a-d). The special instruction at §2B3.1(c) provides that where the defendant committed an additional robbery or robberies as part of the same course of conduct or common scheme or plan as the offense of conviction, the offense level will be determined as if the defendant had been convicted on a separate count for each such robbery (whether or not the defendant was actually convicted of each such robbery). The restriction

in this provision to robbery offenses that are part of the same course of conduct or common scheme or plan as the offense of conviction coincides with the restriction on the scope of relevant conduct under subsection (a)(2) of §1B1.3 (Relevant Conduct).".

Option 2: Section 2B3.1(b) is amended by inserting the following additional subsection:

"(7) If the defendant committed one or more additional robberies, increase by 2 levels. Do not apply this adjustment, however, if the defendant is convicted of more than one robbery.".

The Commentary to §2B3.1 is amended by inserting the following additional Note:

"9. When the defendant is convicted of more than one robbery, the multiple count rules of Chapter Three, Part D (Multiple Counts) will apply in lieu of specific offense characteristic (b)(7).".

**Reason for Amendment:** This amendment addresses a concern that the guidelines may result in lower sentences in certain multiple robbery cases than under pre-guidelines practice. This may occur when the prosecutor accepts a plea to only one count of robbery where the defendant in fact has

committed several robberies, because the additional robberies would not be taken into account by the guidelines. Under past practice, the court was unconstrained in considering such circumstances (within the maximum sentenced authorized by statute for the count or counts of which the defendant was convicted). Where additional robberies were found to have been committed by the defendant, the Parole Commission guidelines expressly considered such conduct. Because such cases are serious and not infrequent, the proposed amendment would expressly provide for the inclusion of such conduct in the guidelines. As with pre-guideline practice, the sentence imposed under each option could not exceed the maximum authorized by statute for the count or counts of which the defendant was actually convicted.

Under Option 1, the case would be treated as if the defendant had been convicted of each robbery provided that the court determined both that the defendant committed the additional robbery or robberies, and that such robbery or robberies were part of the same course of conduct or common scheme or plan of the offense of conviction. The limitation to "same course of conduct or common scheme or plan as the offense of conviction" coincides with that in §1B1.3(a)(2).

Under Option 2, a 2-level increase would be provided if the defendant committed an additional robbery, whether or not part of the same course of conduct or common scheme or plan as the offense of conviction. This adjustment would not



apply, however, where the defendant was actually convicted of more than one robbery; in that case, the rules of Chapter Three, Part D (Multiple Counts) would apply instead.

The Commission seeks comment on both options. In addition, as to Option 1, the Commission seeks comment on whether it should adopt a specific definition of same course of conduct or common scheme or plan in respect to robbery offenses and, if so, the appropriate content for this definition."

APPENDIX A

RELATIVE POSITION OF SENTENCE TO GUIDELINE RANGE

RELATIVE POSITION	Frequency	Percent
BELOW RANGE	58	11.6
BOTTOM OF RANGE	152	30.3
LOWER MIDDLE	60	12.0
UPPER MIDDLE	95	19.0
TOP OF RANGE	112	22.4
ABOVE RANGE	24	4.8
TOTAL	501	100.0

Frequency Missing = 294

NUMBER CASES FOR WHICH:  
 STATMAX < GLMIN                      1                      0.1

<b>TABLE I - LOCATION OF SENTENCE IN GUIDELINE RANGE FOR BANK ROBBERY</b> <b>(18 § USC 2113 A &amp; D)</b> <b>SENTENCED UNDER NOVEMBER 1, 1989 AMENDMENT TO §2B3.1</b>				
<b>SINGLE COUNT CASES</b>				
<b>Position in Guideline Range</b>	<b>18 § USC 2113 A</b>		<b>18 § USC 2113 D</b>	
	<b>Frequency</b>	<b>Percent</b>	<b>Frequency</b>	<b>Percent</b>
<b>BELOW RANGE</b>	<b>5</b>	<b>(8.1%)</b>	<b>0</b>	<b>(0.0%)</b>
<b>BOTTOM OF RANGE</b>	<b>27</b>	<b>(43.5%)</b>	<b>5</b>	<b>(41.7%)</b>
<b>LOWER MIDDLE</b>	<b>9</b>	<b>(14.5%)</b>	<b>1</b>	<b>(8.3%)</b>
<b>UPPER MIDDLE</b>	<b>6</b>	<b>(9.7%)</b>	<b>1</b>	<b>(8.3%)</b>
<b>TOP OF RANGE</b>	<b>12</b>	<b>(19.4%)</b>	<b>6</b>	<b>(41.7%)</b>
<b>ABOVE RANGE</b>	<b>3</b>	<b>(4.0%)</b>	<b>0</b>	<b>(0.0%)</b>
<b>TOTAL</b>	<b>62</b>	<b>(100.0%)</b>	<b>12</b>	<b>(100.0%)</b>
		<b>Missing = 22</b>		<b>Missing = 7</b>

\* Although comparisons here only include location of sentence in relation to the SOR guideline range, review of individual cases suggest no substantial difference in variation for "Missing" cases when compared to the PSR range.

Table XII

**GUIDELINE COMPLIANCE RATE BY  
PRIMARY OFFENSE CATEGORY\***  
(January 19, 1989 through December 31, 1989)

PRIMARY OFFENSE	TOTAL	COMPLIANCE RATE (Based on 25% Random Sample)							
		Sentenced Within Guidelines		Substantial Assistance		Downward Departure		Upward Departure	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	4,709	3,844	81.7	278	5.9	421	8.9	166	3.5
Homicide	17	12	70.6	1	5.9	1	5.9	3	17.7
Kidnapping	9	6	66.7	0	0.0	1	11.1	2	22.2
Robbery	211	179	84.8	3	1.4	14	6.6	15	7.1
Assault	47	37	78.7	0	0.0	9	19.2	1	2.1
Burglary/B&E	20	18	90.0	0	0.0	1	5.0	1	5.0
Larceny	293	264	90.1	4	1.4	12	4.1	13	4.4
Embezzlement	191	164	85.7	1	.5	25	13.1	1	.5
Tax Offenses	8	5	62.5	2	25.0	0	0	1	12.5
Fraud	357	315	88.2	7	2.0	26	7.3	9	2.5
Drug Offenses									
-Importation and Distribution	2,193	1,671	76.2	232	10.6	252	11.5	38	1.7
-Simple Possession	144	136	94.4	0	0.0	0	0	8	5.6
-Communication Facility	48	36	75.0	2	4.2	0	0	10	20.8
Auto Theft	23	21	91.3	1	4.4	0	0	1	4.4
Forgery/Counterfeiting	169	151	89.4	5	3.0	7	4.2	6	3.6
Sex Offenses	36	29	82.9	1	2.9	2	5.7	3	8.6
Bribery	13	11	84.6	1	7.7	1	7.7	0	0
Escape	80	66	82.5	1	1.3	11	13.8	2	2.5
Firearms	285	240	84.2	4	1.4	17	6.0	24	8.4
Immigration	309	274	89.0	5	1.6	14	4.6	15	4.9
Extortion/Racketeering	82	36	44.0	3	3.7	8	9.8	5	6.1
Gambling/Lottery	11	10	90.9	1	9.1	0	0.0	0	0.0
Other	196	163	83.2	4	2.1	20	10.2	8	4.1

Of the 5,181 applicable cases in the sample, 472 cases were excluded due to one or more of the following conditions: multiple count cases involving both guideline counts and pre-guideline counts (30), cases missing compliance information (53), and cases missing FPSSIS primary offense category (376).

SOURCE: U.S. Sentencing Commission, 1989 Compliance Study Data File

**TABLE XVI - LOCATION OF SENTENCE IN GUIDELINE RANGE BY POSSESSION AND/OR USE OF A WEAPON  
FOR BANK ROBBERY (18 § USC 2113 A & D)  
SENTENCED BETWEEN JANUARY 19, 1989 TO JUNE 30, 1990  
-SINGLE COUNT CASES-**

POSITION IN GUIDELINE RANGE	18 § USC 2113 A WEAPON POSSESSED AND/OR USED?		18 § USC 2113 D WEAPON POSSESSED AND/OR USED?	
	YES	NO	YES	NO
BELOW RANGE	15 (8.6%)	23 (23.0%)	2 (2.8%)	1 (11.1%)
BOTTOM OF RANGE	53 (30.5%)	36 (36.0%)	23 (31.9%)	1 (11.1%)
LOWER MIDDLE	20 (11.5%)	8 (8.0%)	8 (11.1%)	2 (22.2%)
UPPER MIDDLE	30 (17.2%)	15 (15.0%)	19 (26.4%)	3 (33.3%)
TOP OF RANGE	46 (26.4%)	14 (14.0%)	14 (19.4%)	2 (22.2%)
ABOVE RANGE	10 (5.8%)	4 (4.0%)	6 (8.3%)	-
TOTAL	174 (100.0%)	100 (100.0%)	72 (100.0%)	9 (100.0%)
	missing=201		missing=53	

**TABLE XIV - LOCATION OF SENTENCE IN GUIDELINE RANGE BY POSSESSION AND/OR USE OF A WEAPON  
FOR BANK ROBBERY (18 § USC 2113 A & D)  
SENTENCED UNDER NOVEMBER 1, 1989 AMENDMENT TO §2B3.1  
-SINGLE COUNT CASES-**

POSITION IN GUIDELINE RANGE	18 § USC 2113 A		18 § USC 2113 D	
	WEAPON POSSESSED AND/OR USED?		WEAPON POSSESSED AND/OR USED?	
	YES	NO	YES	NO
BELOW RANGE	2 (6.7%)	3 (13.0%)	-	-
BOTTOM OF RANGE	11 (36.7%)	13 (56.5%)	5 (55.6%)	-
LOWER MIDDLE	4 (13.3%)	2 (8.7%)	-	1 (50.0%)
UPPER MIDDLE	4 (13.3%)	1 (4.4%)	1 (11.1%)	-
TOP OF RANGE	7 (23.3%)	3 (13.0%)	3 (33.3%)	1 (50.0%)
ABOVE RANGE	2 (6.7%)	1 (4.4%)	-	-
TOTAL	30 (100.0%)	23 (100.0%)	9 (100.0%)	2 (100.0%)
	missing=31		missing=8	

# APPENDIX F - Weapon (9

## MULTIPLE COUNTS

RELATIVE POSITION OF SENTENCE TO GUIDELINE RANGE : SINGLE AND  
MULTIPLE COUNT CASES WITH NO WEAPONS

RELATIVE POSITION	Frequency	Percent
BELOW RANGE	27	22.3
BOTTOM OF RANGE	46	38.0
LOWER MIDDLE	11	9.1
UPPER MIDDLE	16	13.2
TOP OF RANGE	16	13.2
ABOVE RANGE	5	4.1
Total	121	100.0

RELATIVE POSITION OF SENTENCE TO GUIDELINE RANGE : MULTIPLE COUNT  
CASES WITH NO WEAPONS

RELATIVE POSITION	Frequency	Percent
BELOW RANGE	4	19.0
BOTTOM OF RANGE	10	46.6
LOWER MIDDLE	3	14.3
UPPER MIDDLE	1	4.8
TOP OF RANGE	2	9.5
ABOVE RANGE	1	4.8
Total	21	100.0

RELATIVE POSITION OF SENTENCE TO GUIDELINE RANGE : SINGLE COUNT  
CASES WITH NO WEAPONS

RELATIVE POSITION	Frequency	Percent
BELOW RANGE	23	23.0
BOTTOM OF RANGE	36	36.0
LOWER MIDDLE	8	8.0
UPPER MIDDLE	15	15.0
TOP OF RANGE	14	14.0
ABOVE RANGE	4	4.0
Total	100	100.0



**TABLE X - WEAPON USE**

**BANK ROBBERY (18 § USC 2113 a & d)**

**SINGLE COUNT CASES**

26110	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT	42148	THREAT, NO WEAPON
26875	NO WEAPON OR THREAT	42208	FIREARM DISCHARGED
28623 -	NO WEAPON OR THREAT	42257	NO WEAPON OR THREAT
35899	THREAT, NO WEAPON	42344	OTHER WEAPON PRESENT & THREATENED, NO USE
32126	NO WEAPON OR THREAT	42348	NO WEAPON OR THREAT
33280	NO WEAPON OR THREAT	42430	NO WEAPON OR THREAT
34052	THREAT, NO WEAPON	42888	NO WEAPON OR THREAT
34398	NO WEAPON OR THREAT	43090	FIREARM BRANDISHED, NO USE
34815	NO WEAPON OR THREAT	43219	NO WEAPON OR THREAT
34913	THREAT, NO WEAPON	43305	NO WEAPON OR THREAT
36152	THREAT, NO WEAPON	43511	KNIFE USED
36696	THREAT, NO WEAPON	43548	NO WEAPON OR THREAT
37327	NO WEAPON OR THREAT	43565	MISSING
37357	THREAT, NO WEAPON	43845	NO WEAPON OR THREAT
37530	NO WEAPON OR THREAT	43853	FIREARM BRANDISHED, NO USE
37641	THREAT, NO WEAPON	44088	FIREARM BRANDISHED, NO USE
37648	NO WEAPON OR THREAT	44111	THREAT, NO WEAPON
37936	NO WEAPON OR THREAT	44138	NO WEAPON OR THREAT
38278	NO WEAPON OR THREAT	44209	NO WEAPON OR THREAT
38313	THREAT, NO WEAPON	44257	FIREARM DISCHARGED
38341	THREAT, NO WEAPON	44323	FIREARM BRANDISHED, NO USE
38469	THREAT, NO WEAPON	44324	FIREARM BRANDISHED, NO USE
38500	FIREARM BRANDISHED, NO USE	44378	MISSING
38772	NO WEAPON OR THREAT	44411	NO WEAPON OR THREAT
39110	THREAT, NO WEAPON	44477	THREAT, NO WEAPON
39403	OTHER WEAPON BRANDISHED, NO USE	44836	MISSING

39469	MISSING
39601	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT
39858	THREAT, NO WEAPON
40034	THREAT, NO WEAPON
40035	OTHER WEAPON PRESENT & THREATENED, NO USE
40125	EXPLOSIVES THREATENED OR USED
40136	NO WEAPON OR THREAT
40252	THREAT, NO WEAPON
40362	MISSING
40449	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT
40780	OTHER WEAPON PRESENT & THREATENED, NO USE
40868	THREAT, NO WEAPON
40881	NO WEAPON OR THREAT
40947	THREAT, NO WEAPON
41000	THREAT, NO WEAPON
41070	THREAT, NO WEAPON
41228	NO WEAPON OR THREAT
41328	NO WEAPON OR THREAT
41384	NO WEAPON OR THREAT
41405	MISSING
41426	THREAT, NO WEAPON
41577	NO WEAPON OR THREAT
41636	FIREARM BRANDISHED, NO USE
41804	NO WEAPON OR THREAT
41857	NO WEAPON OR THREAT
42142	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT

45072	THREAT, NO WEAPON
45093	NO WEAPON OR THREAT
45624	MISSING
45886	THREAT, NO WEAPON
45856	MISSING
46366	NO WEAPON OR THREAT
46391	FIREARM BRANDISHED, NO USE
46485	MISSING
46873	FIREARM DISCHARGED
46883	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT
46884	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT
47268	THREAT, NO WEAPON
47475	MISSING
47389	THREAT, NO WEAPON
47598	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT
47788	NO WEAPON OR THREAT
48257	NO WEAPON OR THREAT
47783	NO WEAPON OR THREAT
49054	NO WEAPON OR THREAT
49079	THREAT, NO WEAPON
49187	MISSING
49567	THREAT, NO WEAPON
49771	THREAT, NO WEAPON
50035	MISSING
50532	FIREARM BRANDISHED, NO USE

**TABLE XI - WEAPON USE**

**BANK ROBBERY (18 § USC 2113 a & d)**

**MULTIPLE COUNT CASES**

26231	FIREARM BRANDISHED, NO USE	41044	THREAT, NO WEAPON
30550	OTHER WEAPON USED	41047	THREAT, NO WEAPON
31389	FIREARM BRANDISHED, NO USE	41285	NO WEAPON OR THREAT
31601	FIREARM DISCHARGED	41331	FIREARM BRANDISHED, NO USE
31602	FIREARM BRANDISHED, NO USE	41575	NO WEAPON OR THREAT
32421	THREAT, NO WEAPON	41576	NO WEAPON OR THREAT
32516	THREAT, NO WEAPON	41807	FIREARM BRANDISHED, NO USE
32537	NO WEAPON OR THREAT	42145	FIREARM BRANDISHED, NO USE
32560	THREAT, NO WEAPON	42150	THREAT, NO WEAPON
33972	FIREARM DISCHARGED	42153	FIREARM BRANDISHED, NO USE
34616	OTHER WEAPON PRESENT & THREATENED, NO USE	42224	NO WEAPON OR THREAT
35960	FIREARM BRANDISHED, NO USE	42253	NO WEAPON OR THREAT
36028	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT	42387	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT
36518	THREAT, NO WEAPON	42717	NO WEAPON OR THREAT
36749	FIREARM BRANDISHED, NO USE	42646	THREAT, NO WEAPON
36964	FIREARM BRANDISHED, NO USE	42763	MISSING
38329	OTHER WEAPON BRANDISHED, NO USE	43002	THREAT, NO WEAPON
38414	NO WEAPON OR THREAT	43145	NO WEAPON OR THREAT
39059	THREAT, NO WEAPON	43146	THREAT, NO WEAPON

39191	NO WEAPON OR THREAT
39446	FIREARM PRESENT & THREATENED, NO USE OR BRANDISHMENT
39946	NO WEAPON OR THREAT
39975	NO WEAPON OR THREAT
40628	THREAT, NO WEAPON
40849	NO WEAPON OR THREAT
40866	OTHER WEAPON PRESENT & THREATENED, NO USE

43231	FIREARM BRANDISHED, NO USE
43235	FIREARM BRANDISHED, NO USE
43238	FIREARM BRANDISHED, NO USE
43342	MISSING
43632	FIREARM BRANDISHED, NO USE
43833	MISSING
44807	FIREARM BRANDISHED, NO USE

**List of Multiple Count Cases (No Weapons) Showing Placement of Sentence in Relation To Guidelines Range**

32421	Bottom
32516	Below
32537	Above
36518	Bottom
38414	Bottom
39059	Bottom
39191	Top
39946	Below
39975	U.Mid
40628	Below
40849	L.Mid
41044	Bottom
41047	Top
41575	Bottom
41576	Bottom
42150	Below
42224	Bottom
42253	L.Mid
43002	Bottom
43145	L.Mid
43146	Bottom

# APPENDIX G - §924(c)

## SINGLE COUNT - § 2113: WEAPON PRESENT

case #	super. indict.	sent. range	sent.	§ 924 conv.	§ 924 dism.	no § 924; no enhan.
	Y	57-71	57	N	N	
	N	57-71	57	N	N	
	N	57-71	57	N	N	
	N	84-105	105	N	N	
	N	70-87	70	N	N	
	N	92-115	96	N	N	
	N	unknown	72	N	N	
	N	84-105	84	N	N	
	N	46-57	40	N	N	
	N	57-71	64	N	N	
	N	51-63	53	N	N	
	Y	210-262	262	N	N	
	N	78-97	97	N	N	
	N	63-78	78	N	N	
	N	46-57	46	N	N	
	N	92-115	115	N	N	
	N	57-71	71	N	N	
	N	70-87	87	N	N	
	N	120-150	120	N	N	
	N	51-63	41	N	N	
	N	70-87	70	N	N	

Defendant did not plead guilty in 90-41405.

case #	super. indict.	sent. range	sent.	§ 924 conv.	§ 924 dism.	no § 924; no enhanc.
	N	57-71	138	Y	N	
	N	262-327	270	Y	N	
	N	30-37	97	Y	N	
	N	97-121	84	N	Y	
	N	87-108	63	N	Y	
	N	210-262	63	N	N	

Defendant did not plead guilty in 89-26231.

MULTIPLE COUNTS - § 2113: WEAPON PRESENT

case #	super. indict.	sent. range	sent.	§ 924 conv.	§ 924 dism.	no § 924; no enhanc.
	N	41-51	101	Y	N	
	N	168-195	195	Y	Y	
	N	110-137	170	Y	Y	
	N	41-51	41	N	Y	*
	N	46-57	96	Y	N	
	N	84-105	144	Y	N	
	N	46-57	97	Y	N	
	N	37-46	97	Y	N	
	N	84-105	165	Y	N	
	N	37-46	97	Y	N	
	N	33-41	100	Y	N	
	Y	41-51	51	N	Y	*
	Y	324-405	240	Y	N	
	N	210-262	210	N	N	
	N	97-121	117	Y	N	
	N	57-71	123	Y	N	
	Y	262-327	322	Y	N	
	N	37-46	300	Y	Y	
	N	92-115	152	Y	N	
	N	57-71	30	Y	N	
	N	70-87	132	Y	N	
	N	70-87	130	Y	N	
	N	97-121	157	Y	N	
	N	57-71	41	N	N	
	N	33-41	41	N	N	
	N	63-78	240	Y	N	
	N	57-71	57	N	N	
	N	57-71	57	N	N	



## APPENDIX H - Dismissed Cts.

Analysis of sentencing practices - effect of dismissed uncharged robberies 31.1% (42/135) of cases had one or more robberies dismissed or not charged.

(96 cases since the amendment)

All robberies in counts of conviction	One or more robberies dismissed or not charged (% of total # of cases)		
Below range	12 - 12.9%	11 - 26.1%	(8.1)
Bottom	42 - 45.1%	12 - 28.5%	(8.8)
Lower middle	11 - 11.8%	5 - 11.9%	(3.7)
Middle	4 - 4.3%	1 - 2.3%	(.74)
Upper middle	5 - 5.3%	4 - 9.5%	(2.9)
Top	15 - 16.1%	5 - 11.9%	(3.7)
Above range	4 - 4.3%	4 - 9.5%	(2.9)
93 cases		+ 42 cases	= 135 total cases

31.1% (42/135) of cases had one or more robberies dismissed or not charged.

**BANK ROBBERY COUNTS DROPPED/DISMISSED  
SINGLE COUNT CASES**

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # CONV.	# ROBBERIES DROPPED/ DISMISSED	# ROBBERIES NOT CHARGED
	N	37 - 46	46	1	1	0	0
	N	210 - 262	210	1	1	0	0
	N	33 - 41	35	1	1	0	0
	N	37 - 46	37	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	63 - 78	63	1	1	0	0
	N	37 - 46	37	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	46 - 57	46	1	1	0	0
	N	168 - 210	189	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	63 - 78	71	1	1	0	13
	N	33 - 41	33	1	1	0	0
	N	77 - 96	77	1	1	0	1
	N	46 - 57	36	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	77 - 96	96	1	1	0	0
	N	84 - 105	120	1	1	0	0
	N	51 - 63	51	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	168 - 210	168	1	1	0	0
	N	51 - 63	51	1	1	0	0
	N	57 - 71	60	1	1	0	0
	N	51 - 62	51	1	1	0	0
	N	168 - 210	168	1	1	0	0
	N	210 - 262	225	1	1	0	0
	N	41 - 51	46	1	1	0	0
	N	77 - 96	96	1	1	0	0
	N	41 - 51	46	1	1	0	0
	N	41 - 51	46	1	1	0	0

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # CONV.	# ROBBERIES DROPPED/ DISMISSED	# ROBBERIES NOT CHARGED
	N	46 - 57	33	1	1	0	0
	N	70 - 87	87	1	1	0	0
	N	41 - 51	51	1	1	0	0
	N	63 - 78	63	1	1	0	0
	N	168 - 210	120	1	1	0	0
	N	168 - 210	144	5	1	0	4
	Y	33 - 41	60	1	1	0	0
	N	41 - 51	41	1	1	0	0
	N	78 - 97	97	1	1	0	0
	N	70 - 87	70	1	1	0	0
	N	51 - 63	60	1	1	0	0
	N	210 - 262	86(?)	1	1	0	0
	N	41 - 51	D. INSANE SENT TO ASYLUM	10	1	9	0
	N	70 - 87	87	1	1	0	0
	N	63 - 78	63	1	1	0	0
	N	46 - 57	41(?)	1	1	0	0
	N	70 - 87	75	1	1	0	0
	N	51 - 63	55	1	1	0	0
	N	41 - 51	41	1	1	0	0
	N	41 - 51	41	1	1	0	0
	N	120 - 150	120	1	1	0	0
	N	46 - 57	18(?)	1	1	0	0
	N	70 - 87	70	1	1	0	0
	N	51 - 63	41(?)	1	1	0	0
	N	51 - 63	51	1	1	0	0
	N	37 - 46	37	1	1	0	0

\* - DEPARTURE

\*\* - D. WENT TO TRIAL

\*\*\* - D. WENT TO TRIAL & CT. DEPARTED

(?) - REASON FOR FIGURE UNCERTAIN; PROBABLY A DEPARTURE (REASON UNKNOWN)

**BANK ROBBERY COUNTS DROPPED/DISMISSED**  
**MULTIPLE COUNT CASES**

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # OF CONV. (COUNTS)	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	63 - 78	78	1	1	0	0
	N	33 - 41	150 days	2	1	1	0
	N	63 - 78	41	2	2	0	0
	N	46 - 57	60	2	2	0	12
	rule 20s	168 - 210	168	at least 9	6	at least 3	unknown
	N	33 - 41	33	1	2 <sup>1</sup>	0	0
	N	57 - 71	41 <sup>2</sup>	7	2	5	0
	N	210 - 262	240	1	1	0	0
	N	46 - 57	46	1	1	0	0
	N	30 - 37	32	1	1	0	0
	N	63 - 78	78	1	1	0	0
	N	78 - 97	97	1	1	0	0
	N	51 - 63	51	2	1	1	0
	Y	210 - 262	262(7)	1	1	3	0
	N	41 - 51	101 <sup>4</sup>	2	1	1	0
	N	51 - 63	53	2	2	0	0
	N	46 - 57	5 yrs prob.	2	1	1	0
	N	57 - 71	64	1	1	0	0
	N	46 - 57	117 <sup>3</sup>	4	1	3	1
	N	57 - 71	131 <sup>4</sup>	5	1	4	1
	N	46 - 57	40	2	1	1	0
	N	51 - 63	51	3	2	1	0
	N	84 - 105	84	1	1	0	0
	N	27 - 33	27	1	1	0	0
	N	63 - 78	72	1	1	0	0

<sup>1</sup> Defendant guilty of 18 U.S.C. § 371, 2113(a) & (d).

<sup>2</sup> Ex Post Facto case.

<sup>3</sup> Court departed because defendants used a "minor" to rob the bank.

<sup>4</sup> Court departed because defendants used a "minor" to rob the bank.

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # OF CONV. (COUNTS)	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	92 - 115	96	1	1	0	0
	N	70 - 87	70	1	1	0	0
	N	41 - 51	51	4	1	3	0
	N	84 - 105	105	2	1	1	0
	N	41 - 51	51	1	1	0	1
	N	63 - 78	72	2	1	1	0
	N	100 - 125	112	2	1	1	0
	N	70 - 87	80	3	1	2	5
	N	70 - 87	70	2	1	1	0
	N	57 - 71	57	1	1	0	0
	N	37 - 46	46	3	1	2	0
	N	57 - 71	57	1	1	0	0
	N	37 - 46	40	7	1	6	0
	N	33 - 41	41	1	1	0	0
	N	41 - 51	41	2	1	1	0
	N	63 - 78	78	1	1	0	0
	Y	57 - 71	57	1	1	0	0
	N	41 - 51	101*	1	1	0	0
	N	108 - 135	195*	7	8	0	0
	N	110 - 137	170*	2	2	0	0
	N	41 - 51	41	1	1	0	0
	N	46 - 57	96*	1	1	0	0
	N	100 - 125	144*(7)	8	1	7	0
	N	37 - 46	97*	1	1	0	0
	N	84 - 105	165*	1	1	0	0
	N	37 - 46	97*	1	1	0	0
	N	33 - 41	100*	1	2	0	0
	N	210 - 282	210	11	5	5	1
	Y	57 - 71	66	18	10	8	0
	N	63 - 78	63	13	4	6	3
	N	63 - 78	63	7	2	2	3
	N	110 - 137	115	5	3	2	0
	Y	168-210	51(?)	1	2	0	0

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # OF CONV. (COUNTS)	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	46 - 57	57	2	2	0	0
	Y	168 - 210	168	15	9	6	0
	Y	324 - 405	240 <sup>5</sup>	2	2	0	0
	N	84 - 105	84	3	3	0	0
	N	57 - 71	71	1	1	0	0
	N	57 - 71	57	1	1	0	0
	N	82 - 115	115	1	1	0	0
	N	63 - 78	51 <sup>6</sup>	12	4	8	0
	N	41 - 51	41	4	2	2	0
	Y	77 - 98	77	2	2	0	0
	N	77 - 98	98	10	5	0	5
	N	63 - 78	66	5	2	3	0
	N	46 - 57	41	4	3	1	0
	N	210 - 262	210	2	2	0	0
	Y	210 - 262	240	1	1	0	0
	N	97 - 121	117 <sup>7</sup> (?)	7	4	3	0
	N	57 - 71	123 <sup>6</sup>	1	1	0	0
	Y	262 - 327	322 <sup>6</sup>	1	2	0	0
	N	37 - 46	337 <sup>7</sup> <sup>6</sup>	2	2	0	1
	N	92 - 115	152 <sup>6</sup>	4	4	0	1
	N	57 - 71	30	1	3	0	0
	N	292 - 365	328 <sup>6</sup>	1	1	0	0
	N	70 - 87	132 <sup>6</sup>	2	3	0	0
	N	70 - 87	130 <sup>6</sup>	3	4	0	0
	N	97 - 121	157 <sup>6</sup>	5	5	0	0
	N	33 - 41	30	4	1	3	0
	N	70 - 87	50	9	1	8	0
	N	41 - 51	41	5	2	0	3

<sup>5</sup> Statutory maximum (becomes applicable guideline range).

<sup>6</sup> Ex Post Facto case.

<sup>7</sup> Two separate armed bank robberies (37 months on each count to run concurrently) and two 924(c) convictions (1st conviction mandatory 60 months consecutive; 2nd conviction mandatory 240 months consecutive), hence, the 337 month sentence.

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # OF CONV. (COUNTS)	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	63 - 78	66	22	2	0	20
	N	63 - 78	63	3	2	1	0
	N	87 - 108	63	5	5	0	0
	N	97 - 121	84	1	1	0	0
	N	51 - 63	39	2	1	1	0
	N	57 - 71	41	2	2	0	3
	N	33 - 41	60	14	2	0	12
	N	30 - 37	97*	1	1	0	0
	N	210 - 282	270*	1	1	0	0
	N	63 - 78	138*	1	1	0	0
	N	57 - 71	57	5	2	3	0
	N	57 - 71	57	2	1	1	0
	N	78 - 97	120 <sup>b</sup>	1	1	0	0
	N	30 - 37	97*	1	2	0	0
	N	63 - 78	78	2	1	1	0
	N	33 - 41	36	2	2	0	0
	N	51 - 63	51	2	2	0	0
	Y	63 - 78	240 <sup>b</sup>	1	1	0	0

\* 924 - FIREARM CASE

\* DEPARTURE

\*\* WENT TO TRIAL

(?) - REASON FOR FIGURE UNCERTAIN; PROBABLY A DEPARTURE (REASON UNKNOWN)

<sup>a</sup> The court imposed the statutory minimum sentence for the defendant's count of conviction under 18 U.S.C. § 2113(e), hence the 120 month sentence.

<sup>b</sup> The Defendant pled guilty to a three count superseding indictment; count 1, armed robbery, 18 U.S.C. § 2113(d); count 2, possession of a firearm during a crime of violence, 18 U.S.C. § 924(c)(1); and count 3, felon in possession of a firearm and armed career criminal, 18 U.S.C. § 924(g)(1) & (e)(1). Count 3 requires a sentence of not less than fifteen years, thus the guideline range becomes 180 months. This sentence is consecutive to a term of imprisonment of 650 months pursuant to count 2, hence, the 240 month sentence.

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TABLE XIII - LOCATION OF SENTENCE IN GUIDELINE RANGE BY STATUS OF DISMISSED/REDUCED COUNTS  
 FOR BANK ROBBERY (18 § USC 2113 A & D)  
 SENTENCED UNDER NOVEMBER 1, 1989 AMENDMENT TO §2B3.1  
 -SINGLE COUNT CASES-

POSITION IN GUIDELINE RANGE	18 § USC 2113 A CHARGES REDUCED/DISMISSED?		18 § USC 2113 D CHARGES REDUCED/DISMISSED?	
	YES	NO	YES	NO
BELOW RANGE	1 (5.6%)	4 (11.4%)	-	-
BOTTOM OF RANGE	7 (38.9%)	17 (48.6%)	2 (66.7%)	3 (37.5%)
LOWER MIDDLE	2 (11.1%)	4 (11.4%)	-	1 (12.5%)
UPPER MIDDLE	2 (11.1%)	3 (8.6%)	-	1 (12.5%)
TOP OF RANGE	4 (22.2%)	6 (17.1%)	1 (33.3%)	3 (37.5%)
ABOVE RANGE	2 (11.1%)	1 (2.9%)	-	-
TOTAL	18 (100.0%)	35 (100.0%)	3 (100.0%)	8 (100.0%)
	missing=31		missing=8	



**BANK ROBBERY COUNTS DROPPED/DISMISSED  
SINGLE COUNT CASES**

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # CONV.	# ROBBERIES DROPPED/ DISMISSED	# ROBBERIES NOT CHARGED
	N	37 - 46	46	1	1	0	0
	N	210 - 262	210	1	1	0	0
	N	33 - 41	35	1	1	0	0
	N	37 - 46	37	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	63 - 78	63	1	1	0	0
	N	37 - 46	37	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	46 - 57	46	1	1	0	0
	N	168 - 210	189	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	63 - 78	71	1	1	0	13
	N	33 - 41	33	1	1	0	0
	N	77 - 96	77	1	1	0	1
	N	46 - 57	36	1	1	0	0
	N	33 - 41	33	1	1	0	0
	N	77 - 96	96	1	1	0	0
	N	84 - 105	120	1	1	0	0
	?	51 - 63	51	?	1	?	?
	N	33 - 41	33	1	1	0	0
	N	168 - 210	168	1	1	0	0
	N	51 - 63	51	1	1	0	0
	N	57 - 71	60	1	1	0	0
	N	51 - 62	51	1	1	0	0
	N	168 - 210	168	1	1	0	0
	N	210 - 262	225	1	1	0	0
	N	41 - 51	46	1	1	0	0
	N	77 - 96	96	1	1	0	0
	N	41 - 51	48	1	1	0	0
	N	41 - 51	48	1	1	0	0

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # CONV.	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	46 - 57	33	1	1	0	0
	N	70 - 87	87	1	1	0	0
	N	41 - 51	51	1	1	0	0
	N	63 - 78	63	1	1	0	0
	N	168 - 210	120	1	1	0	0
	N	168 - 210	144	1	1	0	0
	Y	33 - 41	60	1	1	0	0
	N	41 - 51	41	1	1	0	0
	N	78 - 97	97	1	1	0	0
	N	70 - 87	70	1	1	0	0
	N	51 - 63	60	1	1	0	0
	N	210 - 262	86(?)	1	1	0	0
	N	41 - 51	D. INSANE SENT TO ASYLUM	1	1	0	0
	N	70 - 87	87	1	1	0	0
	N	63 - 78	63	1	1	0	0
	N	46 - 57	41(?)	1	1	0	0
	N	70 - 87	75	1	1	0	0
	N	51 - 63	55	1	1	0	0
	N	41 - 51	41	1	1	0	0
	N	41 - 51	41	1	1	0	0
	N	120 - 150	120	1	1	0	0
	?	46 - 57	18	?	?	?	?
	N	70 - 87	70	1	1	0	0
	N	51 - 63	41(?)	1	1	0	0
	N	51 - 63	51	1	1	0	0
	N	37 - 46	37	1	1	0	0

\* - DEPARTURE

\*\* - D. WENT TO TRIAL

\*\*\* - D. WENT TO TRIAL & CT. DEPARTED

**BANK ROBBERY COUNTS DROPPED/DISMISSED**  
**MULTIPLE COUNT CASES**

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # CONV.	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	63 - 78	78	1	1	0	0
	N	33 - 41	150 days	2	1	1	0
	N	63 - 78	41	2	2	0	0
	N	46 - 57	60	2	2	0	12
	rule 20s	168 - 210	168	at least 9	6	at least 3	?
	N	33 - 41	33	1	2 <sup>1</sup>	0	0
	N	57 - 71	41 <sup>2</sup>	2	2	0	0
	N	210 - 262	240	1	1	0	0
	N	46 - 57	460	1	1	0	0
	N	30 - 37	32	1	1	0	0
	N	63 - 78	78	1	1	0	0
	N	78 - 97	97	1	1	0	0
	N	51 - 63	51	2	1	1	0
	Y	210 - 262	262(7)	1	1	3	0
	N	41 - 51	101*	2	2	0	0
	N	51 - 63	53	2	2	0	0
	N	46 - 57	5 yrs prob.	2	1	1	0
	N	57 - 71	64	1	1	0	0
	N	46 - 57	117*	4	1	3	1
	N	57 - 71	131*	5	1	4	1
	N	46 - 57	403	2	1	1	0
	N	51 - 63	51	3	2	1	0
	N	84 - 105	84	1	1	0	0
	N	27 - 33	27	1	1	0	0
	?	63 - 78	72	?	?	?	?
	N	92 - 115	96	1	1	0	0
	N	70 - 87	70	1	1	0	0

<sup>1</sup> Defendant guilty of 18 U.S.C. § 371, 2113(a) & (d).

<sup>2</sup> Ex Post Facto case.

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # CONV.	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	41 - 51	51	4	1	3	0
	N	84 - 105	105	2	1	1	0
	N	41 - 51	51	1	1	0	1
	N	63 - 78	72	2	1	1	0
	N	100 - 125	112	2	1	1	0
	N	70 - 87	803	3	1	2	5
	N	70 - 87	70	2	1	1	0
	N	57 - 71	57	1	1	0	0
	N	37 - 46	46	2	1	1	0
	N	57 - 71	57	1	1	0	0
	N	37 - 46	40	7	1	6	0
	N	33 - 41	41	1	1	0	0
	N	41 - 51	41	2	1	1	0
	N	63 - 78	78	1	1	0	0
	Y	57 - 71	57	1	1	0	0
	N	41 - 51	101 <sup>a</sup>	1	1	0	0
	N	168 - 210	195	7	7	0	0
	N	110 - 137	170 <sup>a</sup>	3	3	0	0
	N	41 - 51	41	1	1	0	0
	N	46 - 57	96 <sup>a</sup>	1	1	0	0
	N	37 - 46	97 <sup>a</sup>	1	1	0	0
	N	84 - 105	165 <sup>a</sup>	1	1	0	0
	N	37 - 46	97 <sup>a</sup>	1	1	0	0
	N	33 - 41	100 <sup>a</sup>	1	1	0	0
	N	210 - 262	210	10	5	5	0
	Y	57 - 71	66	18	10	8	0
	N	63 - 78	63	10	4	6	0
	N	63 - 78	63	4	2	2	0
	N	110 - 137	115	5	3	2	0
	Y	41 - 51	51	2	1	1	0
	N	46 - 57	57	2	2	0	0
	N	168 - 210	168	9	9	0	0
	Y	324 - 405	240 <sup>a</sup>	2	2	0	0

<sup>a</sup> Statutory maximum (becomes applicable guideline range).

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # CONV.	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	84 - 105	84	3	3	0	0
	N	57 - 71	71	1	1	0	0
	N	57 - 71	57	1	1	0	0
	N	82 - 115	115	1	1	0	0
	N	63 - 78	51 <sup>4</sup>	12	4	8	0
	N	41 - 51	41	4	2	2	0
	Y	77 - 96	77	2	2	0	0
	N	92 - 115	96	5	5	0	0
	N	63 - 78	66	5	2	3	0
	N	46 - 57	41	4	3	1	0
	N	210 - 262	210	2	2	0	0
	Y	210 - 262	240	2	2	0	0
	N	97 - 121	117	7	4	3	0
	N	57 - 71	123 <sup>4</sup>	1	1	0	0
	Y	262 - 327	322 <sup>4</sup>	1	1	0	0
	N	37 - 46	300 <sup>4</sup>	2	2	0	0
	N	92 - 115	152 <sup>4</sup>	4	4	0	0
	N	57 - 71	30	2(?)	2(?)	0	0
	N	292 - 365	328 <sup>4</sup>	1	1	0	0
	N	70 - 87	132 <sup>4</sup>	2	2	0	0
	N	70 - 87	130 <sup>4</sup>	3	3	0	0
	N	97 - 121	157 <sup>4</sup>	5	5	0	0
	N	33 - 41	30	4	1	3	0
	N	70 - 87	50	9	1	8	0
	N	41 - 51	41	2	2	0	0
	N	63 - 78	66	14	2 <sup>5</sup>	0	11
	N	210 - 262	63	3	2	1	0
	N	87 - 108	63	5	5	0	0

<sup>4</sup> Ex Post Facto case.

<sup>5</sup> 2 counts relating to 3 robberies.

CASE #	SUPER. IND./INF.	RANGE	SENTENCE	TOTAL # ROBBERIES	TOTAL # CONV.	# ROBBERIES DROPPED/DISMISSED	# ROBBERIES NOT CHARGED
	N	97 - 121	84	1	1	0	0
	N	51 - 63	39	2	1	1	0
	N	57 - 71	41	2	2	0	0
	Y	33 - 41	36	?	2	?	?
	N	30 - 37	97*	1	1	0	0
	N	282 - 327	270*	1	1	0	0
	N	57 - 71	138*	1	1	0	0
	N	57 - 71	57	2	2	0	0
	N	57 - 71	57	2	1	1	0
	N	63 - 78	240*	1	1	0	0

\* 924 - FIREARM CASE

\* DEPARTURE

\*\* WENT TO TRIAL



U.S. Department of Justice

Federal Bureau of Investigation

**APPENDIX I - FBI**

Washington, D.C. ....

November 13, 1990

Mr. Donald A. Purdy, Jr.  
Chief Deputy General Counsel  
United States Sentencing Commission  
1331 Pennsylvania Avenue, N.W.  
Suite 1400  
Washington, D.C.

Dear Andy,

At the conclusion of the FBI's August 28, 1990 briefing to the United States Sentencing Commission's Bank Robbery Working Group, you expressed several areas of interest and requested the FBI to address the concerns of the Bank Robbery Working Group. The areas of interest included the structure and levels of the sentencing guidelines as applied to bank robbery; information that the FBI has concerning a composite of the typical bank robber; information on why persons rob banks; and what, if anything, serves to deter bank robberies.

The bank robbery group expressed concerns regarding the Federal Sentencing Guidelines as they pertain to bank robbery. The Violent Crimes Unit (VCU), FBIHQ, subsequently surveyed all FBI field offices concerning the perception of the structure and levels of the Federal Sentencing Guidelines for Bank Robbery. In addition, field offices were requested to provide views regarding Federal and local bank robbery prosecutions and the sentences received respectively.

Generally, the responses from the FBI field offices were favorable concerning the Federal Sentencing Guidelines for Bank Robbery. However, a common concern among field offices was that the guidelines are not effective for the first-time offender who commits multiple robberies before being apprehended. The offices generally advised that the guidelines appear to be effective regarding the repeat offenders or felons.

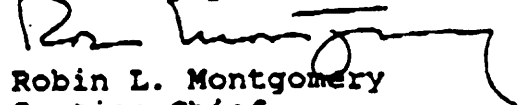


Mr. Donald A. Purdy, Jr.

Regarding the composite of the typical bank robbers, the FBI's Annual Bank Crime Statistics (BCS) Report (copies of the 1988 and 1989 reports previously provided) provides a breakdown of the race and sex of the bank robbery perpetrators. The FBI BCS Report provides the percentage of the perpetrators using narcotics and those individuals previously convicted in either Federal or state court for bank robbery. The BCS Report also provides a breakdown of the modus operandi used during the course of a bank robbery.

The FBI looks forward to assisting the Bank Robbery Working Group and to further discuss the Federal Bank Robbery Sentencing Guidelines. A second meeting with you and your staff is scheduled for 11:00 a.m. on 11/14/90. FBIHQ Supervisory Special Agent Victor R. O'Korn will attend the meeting.

Sincerely yours,



Robin L. Montgomery  
Section Chief  
Violent Crimes and Major  
Offenders Section  
Criminal Investigative  
Division



Below are the number of cases reported to FBIHQ, which were investigated by FBI field offices where loot was taken during the commission of bank robberies. Loot taken would include cash, securities and/or bank properties. Keep in mind that these are only cases involving bank robberies and not bank burglaries or bank larcenies. Also at the time of reporting the investigations, some banks could have experienced loot losses; however, the amount or value was undetermined. Therefore, loot taken is not included in the following information.

<u>Amount</u>	<u>FY '88</u>	<u>%</u>	<u>FY '89</u>	<u>%</u>	<u>FY '90</u>	<u>%</u>
1 cent - \$ 999	1,363	23.8	1,414	21.9	1,502	22.5
\$1,000 - 2,499	1,874	32.7	2,149	33.2	2,085	31.2
\$2,500 - 4,999	1,175	20.5	1,364	21.1	1,469	22
\$5,000 - 7,499	483	8.4	553	8.5	613	9.1
\$7,500 - 9,999	231	4	288	4.4	274	4.1
\$10,000 or more	592	10.3	687	10.6	731	10.9
	<u>5,718</u>		<u>6,455</u>		<u>6,674</u>	

The above was prepared by the FBI on 11/28/90.

Three year totals

<u>Amount</u>	<u>FY '88-90</u>	<u>%</u>
1 cent - \$ 999	4,279	22.7
\$1,000 - 2,499	6,108	32.4
\$2,500 - 4,999	4,008	21.2
\$5,000 - 7,499	1,649	8.7
\$7,500 - 9,999	793	4.2
\$10,000 or more	2,010	10.6
	<u>18,847</u>	

EXCERPTS FROM FBI FIELD OFFICES RE: BANK ROBBERY

## ALBUQUERQUE

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY  
INVESTIGATIONS; BUDED: SEPTEMBER 27, 1990.

AS MENTIONED IN RETELCAL BETWEEN ALBUQUERQUE VIOLENT CRIMES  
SSA MC CORMICK, AND SSA O'KORN, VCU, ALBUQUERQUE FBI INVESTIGATES  
AND PROSECUTES VIRTUALLY ALL BANK ROBBERIES IN NEW MEXICO.  
THEREFORE, A COMPARISON OF STATE VERSUS FEDERAL SENTENCING CANNOT  
BE MADE, BUT IT IS DOUBTFUL THAT SENTENCING WOULD APPRECIABLY

PAGE TWO

DIFFER BETWEEN STATE ROBBERY CHARGES AND FEDERAL BANK ROBBERY CHARGES.

ALBUQUERQUE HAS OBTAINED OVER 20 BANK ROBBERY CONVICTIONS IN FY90, WITH THE VARIANCE IN SENTENCES RANGING FROM 2-YEARS, 6-MONTHS, TO 17 YEARS. OBVIOUSLY A NUMBER OF FACTORS ARE INVOLVED, PARTICULARLY PLEA AGREEMENTS TO ONE OR TWO COUNTS ON SUBJECTS WHO HAVE COMMITTED SEVERAL OFFENSES. IT IS ALBUQUERQUE'S OPINION THAT THE SENTENCING GUIDELINES AFFORD APPROPRIATE SENTENCES TO THOSE SUBJECTS WITH PRIOR CONVICTIONS, BUT THAT FIRST TIME OFFENDERS, INCLUDING THOSE WHO COMMIT FOUR TO EIGHT BANK ROBBERIES BEFORE BEING APPREHENDED, DO NOT RECEIVE AN ADEQUATE OR APPROPRIATE SENTENCE AS A RESULT OF THE CURRENT SENTENCING GUIDELINES. THERE HAVE BEEN SEVERAL EXAMPLES OVER THE PAST TWO YEARS WHERE ALBUQUERQUE BANK ROBBERY SUBJECTS ROBBED MORE THAN ONE BANK AND RECEIVED 2 1/2 TO 4-YEAR SENTENCES DUE PRIMARILY TO HAVING NO PRIOR CONVICTIONS..

A COMPOUNDING FACTOR IS THAT THE SENTENCING GUIDELINES ADD RELATIVELY LITTLE EXTRA TIME FOR MULTIPLE BANK ROBBERIES, I.E., A PLEA TO THREE COUNTS INSTEAD OF TWO COUNTS REGARDING A SERIES OF BANK ROBBERIES, WILL ADD ONLY 10-14 MONTHS DEPENDING UPON OTHER CIRCUMSTANCES. THE LEVERAGE FROM "STACKING" TIME AND CHARGES IS

PAGE THREE

NO LONGER AVAILABLE TO THE INVESTIGATOR OR PROSECUTOR.

THESE ARE THE ONLY OBSERVATIONS BY ALBUQUERQUE REGARDING THE  
ISSUES RAISED IN REBUTEL.

BT

#0003

DELAWARE/MARYLAND

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK  
ROBBERY INVESTIGATIONS; BUDED SEPTEMBER 27, 1990.

PROSECUTIONS IN BANK ROBBERY MATTERS HAS BEEN REVIEWED  
FOR FISCAL YEARS 1989 AND 1990 IN THE BALTIMORE DIVISION  
SPECIFICALLY TO COMPARE LOCAL AND FEDERAL PROSECUTIONS IN

PAGE TWO

SENTENCINGS RECEIVED. THIS REVIEW INCLUDED REVIEW OF APPROPRIATE FILES AND CONSULTATIONS WITH AGENTS WORKING BANK ROBBERY MATTERS IN THE STATES OF MARYLAND AND DELAWARE.

IT WAS DETERMINED AFTER THIS REVIEW AND CONSULTATIONS THAT THE SENTENCING GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS ON THE FEDERAL LEVEL ARE VERY WELL RECEIVED AND ARE APPROPRIATE FOR BANK ROBBERY INVESTIGATIONS IN THE BALTIMORE DIVISION. AS NOTED BY ALL AGENTS, THE SENTENCING GUIDELINES ARE VERY EFFECTIVE WITH REPEAT OFFENDERS AND REPEAT FELONS. BALTIMORE ESTIMATES APPROXIMATELY 35 PERCENT OF ALL BANK ROBBERIES ARE COMMITTED BY REPEAT OFFENDERS AND THE SENTENCING GUIDELINES DEAL VERY EFFECTIVELY WITH THESE INDIVIDUALS. SOME OF THE STATE JURISDICTIONS IN MARYLAND AND IN DELAWARE ALSO DEAL EFFECTIVELY WITH REPEAT OFFENDERS AND FELONY OFFENDERS IN REPEAT OFFENDER PROGRAMS PASSED BY STATUTORY LAW IN THE STATE OF MARYLAND AND DELAWARE. SOME OF THESE STATUTES MANDATORILY SENTENCE A REPEAT OFFENDER ON HIS THIRD VIOLENT CRIME TO 25 YEARS WITHOUT PAROLE AND FOURTH VIOLENT CRIME TO LIFE WITHOUT PAROLE. HOWEVER, BECAUSE OF THE OVERCROWDED NATURE OF PRISONS WITHIN THE STATE OF MARYLAND THESE REPEAT OFFENDER STATUTES ARE NOT UNIFORMLY USED WITHIN

PAGE THREE

THE STATE OF MARYLAND AND VERY FEW INDIVIDUALS ACTUALLY RECEIVE THESE SENTENCES. IT IS NOTED THAT THE FEDERAL SENTENCING GUIDELINE INCOMPASS HARSH PENALTIES FOR REPEAT OFFENDERS WITHIN THE SENTENCING GUIDELINES ON A FEDERAL LEVEL.

WHILE IT IS FELT THAT THE REPEAT FELONS AND REPEAT OFFENDERS OF THE BANK ROBBERY STATUTES ARE HANDLED VERY EFFECTIVELY WITH THE FEDERAL SENTENCING GUIDELINES, THE FIRST OR SECOND OFFENDERS ARE HANDLED SOFTLY IN THE FEDERAL SENTENCING GUIDELINES. IN COMPARISON TO STATE PROSECUTIONS MARYLAND AND DELAWARE, IT IS REALIZED THAT LOCAL PROSECUTIONS ALSO HANDLE FIRST AND SECOND OFFENDERS VERY SOFTLY WITHIN THE MARYLAND AND DELAWARE PENAL SYSTEMS PROBABLY CAUSED BY PRISON OVERCROWDING. IT IS NOTED THAT IN PRINCE GEORGE'S COUNTY, MARYLAND A POLICE OFFICER WHO ATTEMPTED A BANK ROBBERY WAS SENTENCED TO A PROBATIONARY PERIOD IN THAT JURISDICTION BEING A FIRST OFFENDER. IT IS FELT THAT UNDER THE FEDERAL SENTENCING GUIDELINES, THIS INDIVIDUAL WOULD HAVE SEEN A MINIMAL INCARCERATION IN THE FEDERAL SYSTEM. THE FOLLOWING CONCERNS PROBLEMS OR PERCEPTIONS WERE NOTED BY THE BALTIMORE DIVISION OF THE FEDERAL SENTENCING GUIDELINES OTHER THAN NOT



PAGE FOUR

ABOVE:

1. PURSUANT TO THE LAST SENTENCE OF 2(B) 3.1 (B) (1), OF THE GUIDELINES, "ROBBERY OF A BANK OR POST OFFICE RESULTS IN MINIMUM ONE LEVEL ENHANCEMENT. THERE IS NO SPECIAL ENHANCEMENT FOR BANKS AND POST OFFICES IF A LOSS EXCEEDS \$10,000 HOWEVER".

BALTIMORE DIVISION QUESTIONS WHY A ROBBERY OF A FINANCIAL INSTITUTION OR A POST OFFICE IS NOT SUBJECT TO THE VALUE OF PROPERTY TAKEN OR DESTROYED CHART SHOWING THE INCREASE OF OFFENSE LEVEL AS DESCRIBED IN 2 (B) 3.1 (B) (1).

2. IN THE SENTENCING GUIDELINES, THERE IS NO CONSIDERATION FOR MULTIPLE BANK ROBBERY ACTIVITY AND THE BALTIMORE DIVISION FEELS THERE SHOULD BE A MECHANISM IN THE SENTENCING GUIDELINES TO SHOW THAT ACTIVITY. I.E. IF A FIRST TIME OFFENDER ROBS, IS APPREHENDED AND CONFESSES TO ROBBING TEN BANKING INSTITUTIONS AND IS INDICTED, PROSECUTED AND SENTENCED FOR ONE THERE IS NO MECHANISM FOR SHOWING MULTIPLE BANK ROBBERY ACTIVITY WITHOUT SEPARATE INDICTMENTS ON EACH BANK ROBBERY EVEN THOUGH MULTIPLE BANK ROBBERY ACTIVITY IS WELL-KNOWN AND ADMITTED ON THE PART OF THE OFFENDER.

3. THE SENTENCING GUIDELINES DO INCREASE LEVELS IF A

PAGE FIVE

FIREARM IS DISCHARGED, BRANDISHED, DISPLAYED OR POSSESSED, HOWEVER, THERE IS NO INCREASE IN LEVEL IF A FIREARM IS INDICATED BY GESTURE OR THREATENED IN A DEMAND NOTE. THE THREAT OF FIREARM WHETHER BRANDISHED OR THREATENED HAS THE SAME IMPACT ON VICTIMS AND THE BALTIMORE DIVISION BELIEVES THAT THIS THREAT SHOULD INDICATE AN INCREASE IN SENTENCING LEVELS.

OVERALL, THE BALTIMORE DIVISION FEELS THAT THE FEDERAL SENTENCING GUIDELINES ARE A WELCOME CHANGE TO THE FEDERAL PENAL SYSTEM AND THAT THE FEDERAL GUIDELINES WOULD SERVE THE UNITED STATES MUCH BETTER THAN THE FORMER LACK OF GUIDELINES IN ITS WAR ON CRIME.

BT

#0001

NNNN

BOSTON

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY  
INVESTIGATIONS, BUDED 9/27/90.

IT SHOULD BE NOTED THAT THE FEDERAL SENTENCING GUIDELINES DO  
NOT IMPOSE A GREATER SENTENCE FOR AN INDIVIDUAL WHO IS  
RESPONSIBLE FOR SEVEN OR MORE BANK ROBBERY VIOLATIONS. THE

PAGE TWO

GUIDELINES AS PRESENTLY SET FORTH TAKE INTO CONSIDERATION ONLY SIX VIOLATIONS (SEPARATE ACTS). BS HAS EXPERIENCED SEVERAL INSTANCES WHERE ONE INDIVIDUAL HAS COMMITTED FAR IN EXCESS OF VIOLATIONS BEFORE HIS IDENTITY IS ESTABLISHED AND HE IS APPREHENDED. AS THE GUIDELINES ARE WRITTEN, THAT PERSON RECEIVES NO GREATER SENTENCE THAN AN INDIVIDUAL THAT COMMITS ONLY SIX VIOLATIONS. AT A PRACTICAL MATTER, SINCE AN INDIVIDUAL THAT COMMITS A GREATER NUMBER OF VIOLATIONS, (EXAMPLE 10 TO 20) BECOMES A GREATER HAZARD TO PUBLIC SAFETY AND ALSO CAUSES A GREATER EXPENDITURE OF INVESTIGATIVE MANPOWER AND RESOURCES, THE SENTENCE THAT INDIVIDUAL RECEIVES SHOULD REFLECT SO. THE GUIDELINES ARBITRARILY CEASE AFTER SIX VIOLATIONS AND SHOULD BE REWRITTEN TO TAKE INTO CONSIDERATION A FAR GREATER NUMBER OF VIOLATIONS.

DURING FISCAL YEAR 1990, BS CONDUCTED AN INVESTIGATION OF A BANK BURGLARY GANG, AND APPREHENDED SIX MEMBERS OF THE GANG PRIOR TO THEM ENTERING THE VICTIM BANK'S VAULT. THE SIX INDIVIDUALS WERE CONVICTED AND SENTENCED ACCORDING TO THE GUIDELINES. IT IS BOSTON'S OPINION THAT SENTENCING DID NOT REFLECT THE SERIOUSNESS OF THE CRIME. BOSTON IS SETTING FORTH THE FOLLOWING REASONS TO SUPPORT THAT CONTENTION.

PAGE THREE

DURING THE PROSECUTIVE STATE OF THIS INVESTIGATION, SEVERAL ISSUES WERE RAISED REGARDING SENTENCING THE DEFENDANTS. AS THE GUIDELINES ARE WRITTEN, SENTENCING FOR BURGLARY IS LESS SEVERE OVERALL THAN BANK ROBBERY. DURING THE PROSECUTION OF THIS CASE IT WAS ARGUED THAT THE ACT OF BURGLARY IS A VIOLENT CRIME AND THAT THE POTENTIAL FOR VIOLENCE, IF A BURGLAR IS UNEXPECTEDLY CONFRONTED BY A BANS ACCEPTED BY THE MAGISTRATE DURING THE ARRAIGNMENT PHASE OF THE PROSECUTION. IT IS BOSTON'S OPINION THAT SENTENCING FOR BURGLARY SHOULD BE ELEVATED TO AT LEAST THE SAME LEVEL AS BANK ROBBERY.

ANOTHER ISSUE RAISED WAS THE AMOUNT OF MONEY AND VALUABLES TAKEN DURING THE BURGLARY. THE GUIDELINES ARE WRITTEN SUCH THAT THE GREATER AMOUNT TAKEN, THE GREATER THE SENTENCE. FOR ALL PRACTICAL PURPOSES, DURING INVESTIGATIONS OF THIS NATURE, AN ACCURATE AMOUNT OF LOSS MAY NEVER BE KNOWN. THE BANK SURELY WILL KNOW HOW MUCH MONEY UNDER IT'S CONTROL IS TAKEN FROM THE VAULT, IT IS VERY DIFFICULT TO GET AN ACCURATE ACCOUNTING OF THE VALUABLE ITEMS TAKEN FROM SAFE DEPOSIT BOXES. OFTEN THE BOX HOLDER, FOR PERSONAL REASONS, WILL NOT PROVIDE DETAILS AS TO THE CONTENTS OF THE SAFE DEPOSIT BOX. IN THE BOSTON INVESTIGATION,

PAGE FOUR

NOTHING WAS TAKEN FROM THE BANK VAULT BECAUSE THE BURGLARS WERE ARRESTED BEFORE THEY MADE ENTRY. THESE INDIVIDUALS RECEIVED LESS OF A SENTENCE SINCE NO LOSS WAS INCURRED. IT IS BOSTON'S OPINION THAT BASING THE SENTENCING IN A BURGLARY CASE ON THE AMOUNT OF MONEY OR VALUABLES TAKEN IS IMPRACTICAL AND COUNTERPRODUCTIVE.

THE THIRD ISSUE RAISED DURING THIS CASE WAS THAT THE POTENTIAL MONETARY LOSS DURING A BURGLARY IS FAR GREATER THAN DURING A BANK ROBBERY. THE BANK BURGLAR IS A SOPHISTICATED CRIMINAL THAT, IF SUCCESSFUL, CAN THROUGH HIS CRIMINAL ACTIVITY AMASS A GREAT AMOUNT OF MONEY AND VALUABLES. THE BANK BURGLARY, WITH IT'S POTENTIAL FOR VIOLENCE AND MONETARY GAIN SHOULD BE REEVALUATED AS THE SERIOUSNESS OF THE CRIME IS EVIDENT AND THE GUIDELINES SHOULD REFLECT SO.

THE THIRD AND FINAL COMMENT THAT BOSTON WOULD LIKE TO SUBMIT IS THAT SINCE THE ESTABLISHMENT OF THE GUIDELINES, THE CRIMINAL DEFENDANT HAS A VERY ACCURATE IDEA AS TO WHAT HE/SHE IS FACING IN TERMS OF SENTENCING. THE SENTENCE RANGE IS KNOWN TO THE DEFENDANT PRIOR TO ANY PROSECUTIVE ACTION TAKING PLACE. BOSTON IS OF THE OPINION THAT IN SOME CASES, THIS HAS MOTIVATED THE DEFENDANT TO GO TO TRIAL, WHERE IN THE PAST, DUE TO THE OVERWHELMING NATURE OF THE EVIDENCE, THE DEFENDANT WOULD HAVE

PAGE FIVE

NORMALLY ENTER A PLEA. BOSTON IS BRINGING THIS TO THE BUREAU'S ATTENTION AS IT IS A PERCEPTION THAT BOSTON HAS DEVELOPED SINCE THE INCEPTION OF THE SENTENCING GUIDELINES.

BT

## CHARLOTTE, NC

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK  
ROBBERY INVESTIGATIONS, BUDED: SEPTEMBER 27, 1990.

THE VAST MAJORITY OF BANK ROBRERIES IN THE STATE OF  
NORTH CAROLINA ARE REFERRED FOR FEDERAL PROSECUTION. THIS IS  
A CONSEQUENCE OF THE INVESTIGATIVE SUCCESS ENJOYED BY THE  
CHARLOTTE DIVISION AND THE SEVERITY OF THE SENTENCE TYPICALLY  
IMPOSED IN FEDERAL COURT UPON CONVICTION.

LOCAL PROSECUTION OFTEN RESULTS IN REDUCED SENTENCING



PAGE TWO

AND ABBREVIATED TIME SERVED DUE TO MANY FACTORS, TO INCLUDE PROSECUTIVE BURDEN AND PRISON OVERCROWDING.

THE FEDERAL SENTENCES CURRENTLY GIVEN TO FIRST AND/OR REPEAT OFFENDERS ARE JUSTIFIABLY SEVERE AND HAVE A CHILLING AFFECT ON POTENTIAL VIOLATORS.

BT

CINCINNATI

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS. BUDED SEPTEMBER 27, 1990.

CINCINNATI HAS REVIEWED BANK ROBBERY INVESTIGATIONS FOR FISCAL YEARS 1989 AND 1990, REGARDING FEDERAL BANK ROBBERY PROSECUTIONS COMPARED TO LOCAL BANK ROBBERY PROSECUTIONS AND SUBSEQUENT SENTENCES RECEIVED.

PAGE TWO

DURING THIS TIME PERIOD, CINCINNATI DIVISION HAS INVESTIGATED OVER 200 BANK ROBBERIES WITH THE MAJORITY IN THE TERRITORY COVERED BY THE COLUMBUS RA. CINCINNATI HAS ALSO DISCUSSED THIS MATTER WITH LOCAL POLICE AND WITH THE UNITED STATES ATTORNEY'S OFFICE.

JUDGES IN THE SOUTHERN DISTRICT OF OHIO (SDO) ARE APPLYING THE GUIDELINES, AND PERSONS CONVICTED OF BANK ROBBERIES ARE RECEIVING APPROPRIATE SENTENCES. LOCAL OFFICERS CONSIDER IT TO THEIR ADVANTAGE TO BRING BANK ROBBERY PROSECUTIONS TO FEDERAL COURT BECAUSE OF THE STRONGER SENTENCES THAT HAVE BEEN RECEIVED THERE. THIS OFFICE HAS NO PROBLEMS OR CONCERNS WITH FEDERAL/LOCAL BANK ROBBERY PROSECUTIONS OR THE STRUCTURE AND LEVEL OF FEDERAL BANK ROBBERY SENTENCING GUIDELINES.

BT

#0006

## DALLAS

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS.

THE CURRENT FEDERAL SENTENCING GUIDELINES HAVE SIGNIFICANTLY AFFECTED BANK ROBBERY PROSECUTIONS IN THE DALLAS DIVISION.

THE DALLAS DIVISION, DURING RECENT YEARS, HAS PROSECUTED A CONSIDERABLE NUMBER OF CASES IN STATE COURT. THE TEXAS DEPARTMENT OF CORRECTIONS (TDC) HAS BEEN CONSIDERED BY THE CRIMINAL ELEMENT ONE OF THE HARDEST PLACES IN THE COUNTRY TO DO PRISON TIME, AND SEVERAL BANK ROBBERY ARRESTEES HAVE ACTUALLY

PAGE TWO

AGREED TO PLEAD GUILTY TO FEDERAL CHARGES FOR NO REASON OTHER THAN TO ENSURE THEY DID FEDERAL TIME AS OPPOSED TO TDC TIME. DALLAS HAS AT TIMES SUCCESSFULLY WON THE COOPERATION OF A PARTICULAR DEFENDANT BY AVAILING TO HIM A FEDERAL PRISON TERM, WHILE HIS NON-COOPERATING CO-DEFENDANTS ARE SENT TO TDC.

THE ATMOSPHERE OF FEDERAL PROSECUTIONS VERSUS STATE PROSECUTIONS IN TEXAS HAS VERY DEFINITELY CHANGED, HOWEVER, DUE IN EQUAL PART TO THE FOLLOWING FACTS:

- 1) RECENTLY ENACTED FEDERAL SENTENCING GUIDELINES;
- 2) A SIGNIFICANTLY OVERCROWDED PRISON SYSTEM (TDC) WHICH HAS LITERALLY RESULTED IN STATE PRISONERS SERVING ONLY ONE MONTH PRISON TIME PER YEAR PENALTY ASSESSED.

DALLAS HAS DEVELOPED A COMPUTERIZED BANK ROBBERY ADMINISTRATIVE PROGRAM (BRAP) WHICH TRACKS BANK ROBBERY ACTIVITY WITHIN THE DIVISION. THE DATA BASE CONSISTS OF A LISTING OF EVERY BANK ROBBERY WITHIN THE DIVISION DURING THE LAST SEVERAL YEARS, AND INCLUDES NAMES OF BANKS, DATES OF ROBBERIES, AMOUNTS OF LOSSES, SOLUTION DATA, ARREST DATA, PROSECUTIVE DATA, ETC.

THE DALLAS VCU SQUAD, CONCERNED ABOUT EARLY RELEASES OF SIGNIFICANT CRIMINALS FROM TDC, RAN A BRAP PRINTOUT OF FEDERAL VERSUS STATE PROSECUTIONS WITHIN THE PAST TWO YEARS, AND THEN MET

PAGE THREE

WITH THE DEPUTY CHIEF, CRIMES AGAINST PERSONS UNIT (CAPERS), DALLAS POLICE DEPARTMENT (DPD).

THE DPD DEPUTY CHIEF, ON REVIEWING THE DATA, AND AWARE OF TDC'S OVERCROWDED CONDITIONS AND EARLY RELEASES, IMMEDIATELY CONCURRED THAT BANK ROBBERS SERVING FEDERAL SENTENCES WERE SERVING MORE PRISON TIME THAN STATE INMATES. HE INDICATED THAT INsofar AS DPD IS CONCERNED, ALL FUTURE DALLAS ROBBERIES WOULD BE HANDLED IN FEDERAL COURT SO AS TO TAKE ADVANTAGE OF FEDERAL SENTENCING GUIDELINES.

IT WAS MUTUALLY AGREED THAT THE ONLY ROBBERIES WHICH WOULD EVEN POSSIBLY BE HANDLED IN STATE COURT WOULD BE THOSE PERPETRATED BY INDIVIDUALS WITH NO PREVIOUS RECORD, AND WHO DID NOT THREATEN, INJURE, OR DISPLAY WEAPONS DURING THE ROBBERIES, THEREBY NOT QUALIFYING FOR AS EFFECTIVE SENTENCING FEDERALLY AS THEY MIGHT RECEIVE IN STATE COURT. THESE MATTERS WOULD BE DECIDED ON A CASE BY CASE BASIS.

THE U. S. PROBATION OFFICE (USPO), NORTHERN DISTRICT OF TEXAS (NDT), DALLAS, TEXAS, INFORMED DALLAS FBI THAT FEDERAL SENTENCING GUIDELINES WERE MODIFIED EFFECTIVE NOVEMBER 1, 1989, AND THAT A ROBBERY BY AN INDIVIDUAL WITH NO PREVIOUS RECORD

PAGE FOUR

CARRIES AN OFFENSE LEVEL OF 20 POINTS. THE FACT THE VICTIM INSTITUTION IS A FINANCIAL INSTITUTION ELEVATES THE OFFENSE LEVEL TO 22 POINTS, QUALIFYING FOR A SENTENCE OF 41-51 MONTHS.

DALLAS HAS CONCERN ABOUT THE 41-51 MONTH EXPOSURE. THE FOUR YEAR SENTENCE IS REASONABLE IN SINGLE INCIDENT VIOLATIONS, BUT FALLS SIGNIFICANTLY SHORT OF BEING SUFFICIENT IN MULTIPLE OFFENSE VIOLATIONS. USPO FURTHER ADVISED THAT THE SENTENCING JUDGE DOES NOT HAVE THE DISCRETION OF TREATING EACH OF THE MULTIPLE OFFENSES AS A SEPARATE 41-51 MONTH EXPOSURE, BUT MUST TREAT THEM COLLECTIVELY, EVEN THOUGH HE MIGHT THEN OPT TOWARD THE UPPER END OF THE 41-51 MONTH WINDOW OF EXPOSURE.

AN INDIVIDUAL COMMITTING ONE SUCH ROBBERY MIGHT BE GIVEN 41 MONTHS, WHILE ANOTHER PERSON RESPONSIBLE FOR A DOZEN SUCH ROBBERIES WOULD RECEIVE A SENTENCE OF ONLY 51 MONTHS - CONSTITUTING VIRTUALLY A FREE TICKET FOR ADDITIONAL ROBBERIES, SO LONG AS THE ROBBERIES DO NOT INVOLVE USE OF WEAPON OR THREAT OF INJURY.

DALLAS WOULD STRONGLY RECOMMEND THAT THE GUIDELINES BE MODIFIED BY PROVIDING FOR ADDITIONAL OFFENSE POINTS FOR EACH ADDITIONAL VIOLATION IN MULTIPLE OFFENSE MATTERS.

THE ADDITION OF ONE POINT PER ADDITIONAL VIOLATION IN

PAGE FIVE

ROBBERIES NOT INVOLVING PREVIOUS CONVICTION, INJURY, OR USE OF WEAPON WOULD INCREASE THE EXPOSURE OF AN INDIVIDUAL RESPONSIBLE FOR SIX SUCH ROBBERIES FROM 41 TO 51 MONTHS (FOR ONE ROBBERY) TO 70-87 MONTHS (WITH FIVE EXTRA POINTS FOR THE FIVE ADDITIONAL ROBBERIES).

SENTENCES IN MULTIPLE OFFENSE MATTERS INVOLVING AGGRAVATED VIOLATIONS SHOULD BE SIMILARLY ENHANCED THROUGH THE ADDITION OF POINTS PER VIOLATION. THE FILING OF WEAPONS CHARGES (TITLE 18, SECTION 924(C), USC) IN THE MORE AGGRAVATED VIOLATIONS ENSURES A PROGRESSIVELY MORE STRINGENT SENTENCE, BUT THESE VIOLATIONS SHOULD ALSO MERIT ADDITIONAL POINTS (2 POINTS PER ADDITIONAL VIOLATION), SO AS TO ENSURE SIGNIFICANT SENTENCES INDEPENDENT OF WEAPONS CHARGES.

DALLAS NOTES THAT SERIAL ROBBERS GROW BOLDER AND MORE ABUSIVE AS THEIR ROBBERY EXPERIENCE PROGRESSES. THE SENTENCING GUIDELINES MUST THEREFORE CONTAIN A MANDATORY BUILT-IN DETERRENT TO MULTIPLE VIOLATIONS.

AN ALTERNATIVE TO THE ABOVE ONE/TWO POINT SYSTEM IN MULTIPLE OFFENSES WOULD BE TO SIMPLY MODIFY THE GUIDELINES TO ENCOURAGE THE PRESIDING JUDGE TO DEPART FROM THE GUIDELINES IN MULTIPLE



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OFFENSES, BUT SAME ENCOURAGES DEPARTURE. DALLAS WOULD RATHER THE ESCALATOR BE BUILT INTO THE GUIDELINES, AND THAT DEPARTURE FROM THE GUIDELINES BE MINIMIZED.

DALLAS, WHILE RECOMMENDING MODIFICATION OF THE SENTENCING GUIDELINES AS SET FORTH ABOVE, COMMENDS THE UNITED STATES SENTENCING COMMISSION AND THE USSC BANK ROBBERY WORKING GROUP FOR EXISTING SENTENCING GUIDELINES. THE FOLLOWING IS AN EXCELLENT EXAMPLE OF THE EFFECTIVENESS OF THE NEW SENTENCING GUIDELINES:

JOHNNY DARWIN EADS, W/M, JUNE 15, 1941, IS A CAREER ARMED ROBBER. HE IS A COLD, CALLOUS AND PROFESSIONAL GUNMAN WHO HAS CAPITALIZED ON HIS PLEASANT PERSONALITY, DISARMING MANNER, CUNNING AND JAIL HOUSE-LAWYER EXPERTISE TO SECURE REDUCED SENTENCES IN STATE COURTS ON EVEN THE MOST AGGRAVATED CHARGES. IN ONE OF HIS MOST RECENT INCARCERATIONS, HE PLEA BARGAINED AWAY THREE STATE LIFE SENTENCES IN EXCHANGE FOR AN INCREDIBLY LOW EIGHT YEAR SENTENCE ON A STATE ARMED ROBBERY CHARGE AND TWO COUNTS OF ATTEMPTED CAPITAL MURDER OF POLICE OFFICERS. HE WAS OUT OF STATE PRISON IN THREE YEARS. DALLAS FBI, INTENT ON HIS CONTINUED INCARCERATION, HAD HIM INDICTED FOR HIS POSSESSION OF

BT

DALLAS

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS.

TEXT CONTINUES:

AN ARSENAL OF WEAPONS AT THE TIME BUREAU AGENTS ARRESTED HIM IN THE DALLAS AREA ON UFAP-ATTEMPTED CAPITAL MURDER OF POLICE OFFICER CHARGES. HE WAS CONVICTED OF THE WEAPONS CHARGES. THE FEDERAL JUDGE WHO SENTENCED HIM (UNDER THE OLD SENTENCING GUIDELINES) INCREDIBLY, BOUGHT INTO HIS CLAIM OF HAVING FOUND RELIGION, GAVE HIM A MINIMAL 18 MONTH SENTENCE, AND FREED HIM ON

PAGE TWO

BOND TO LATER REPORT TO FCI, MEMPHIS. DALLAS FBI, STUNNED BY EADS' RELEASE ON BOND, AND COMMITTED TO HIS CONTINUED INCARCERATION, DEVELOPED A COOPERATING WITNESS WHO ASSISTED IN DEVELOPING PROSECUTABLE CASES AGAINST EADS AND HIS BANK ROBBERY GANG MEMBERS ON SEVERAL OF A SERIES OF TEN BANK ROBBERIES, SOME OF WHICH WERE COMMITTED WHILE HE WAS FREE ON THE ABOVE MENTIONED FEDERAL BOND.

DALLAS FBI AGAIN PURSUED INDICTMENT - THIS TIME ENSURING PROSECUTIVE FOCUS ON POST GUIDELINE VIOLATIONS SO AS TO MINIMIZE DISCRETION IN SENTENCING. EADS EVENTUALLY PLED GUILTY TO SEVERAL OF THE CHARGES AND WAS GIVEN A MANDATORY 30 YEAR SENTENCE, FINALLY BRINGING TO AN END A CRIMINAL CAREER SPANNING 35 YEARS AND TWENTY-PLUS FELONY CONVICTIONS, THUS ELIMINATING A SERIOUS THREAT TO PUBLIC SAFETY AND THE LIVES OF LAW ENFORCEMENT OFFICERS. DALLAS CREDITS THE MANDATORY SENTENCING GUIDELINES ALONE FOR ENSURING EADS INCARCERATION FOR VIRTUALLY THE REMAINDER OF HIS LIFE.

DALLAS, BUT FOR THE SAKE OF BREVITY, COULD SET FORTH ADDITIONAL SUCCESSFUL POST-GUIDELINE INCARCERATIONS, BUT ALL BASICALLY PARALLEL THE EADS CASE HISTORY.

BT

DENVER

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS; BUDED: SEPTEMBER 27, 1990.

THE VIOLENT CRIMES UNIT ADVISED THAT THE U. S. SENTENCING COMMISSION (USSC), BANK ROBBERY WORKING GROUP HAD REQUESTED THE FBI'S ASSISTANCE IN DETERMINING ANY CONCERNS REGARDING FEDERAL AND LOCAL BANK ROBBERY PROSECUTIONS, AND THE SUBSEQUENT SENTENCES RECEIVED RESPECT VELY. EACH FIELD FICE WAS TO REVIEW BANK ROBBERY INVESTIGATIONS FOR FISCAL YEARS

PAGE TWO

1989 AND 1990, AND EXPRESS ANY CONCERNS OR PROBLEMS IN REGARDS TO THE FEDERAL BANK ROBBERY PROSECUTIONS COMPARED TO LOCAL BANK ROBBERY PROSECUTIONS, AND SUBSEQUENT SENTENCES RECEIVED.

PURSUANT TO THE ABOVE REQUEST, ON SEPTEMBER 25, 1990, DENVER DIVISION BANK ROBBERY COORDINATOR, SA DOUGLAS B. MEREL, CONFERRED WITH AUSA DAVID CONNER CONCERNING THE AFOREMENTIONED SITUATION. AUSA CONNER HAD BEEN A DEPUTY DISTRICT ATTORNEY IN THE DENVER DISTRICT ATTORNEY'S OFFICE FOR EIGHT YEARS AND HAS BEEN AN AUSA FOR APPROXIMATELY THREE YEARS, AND THUS WAS IN A KNOWLEDGEABLE POSITION CONCERNING THE PROSECUTIONS AND SENTENCES RECEIVED, FOR BOTH FEDERAL AND STATE BANK ROBBERY PROSECUTIONS. AUSA CONNER ADVISED THAT IN THE FEDERAL SYSTEM THE AVERAGE SENTENCE RECEIVED FOR AN UNARMED BANK ROBBER IS APPROXIMATELY 40-45 MONTHS, AND THE AVERAGE SENTENCE FOR AN ARMED BANK ROBBER IS APPROXIMATELY 45-50 MONTHS. AUSA CONNER ADVISED THAT HIS EXPERIENCE AS A STATE PROSECUTOR INDICATED THAT THE AVERAGE SENTENCE RECEIVED BY AN ARMED BANK ROBBER WHO WAS PROSECUTED BY THE STATE OF COLORADO, IS APPROXIMATELY 10-32 YEARS AND THE AVERAGE SENTENCE RECEIVED BY AN UNARMED BANK ROBBER IS 40-100 MONTHS; HOWEVER, THE ACTUAL TIME THAT A SUBJECT WOULD SPEND IN STATE CUSTODY WOULD BE APPROXIMATELY HALF OF THE AFOREMENTIONED SENTENCE. AUSA CONNER

PAGE THREE

ADVISED THAT FROM HIS EXPERIENCE AS BOTH A STATE AND FEDERAL PROSECUTOR, THE STATE PENAL CODE HAS PROVISIONS, SUCH AS THE HABITUAL CRIMINAL OFFENDER STATUTE, WHICH DRASTICALLY INCREASES THE SENTENCE FOR A CONVICTED SUBJECT. AUSA CONNER ALSO NOTED THAT UNDER THE COLORADO STATE STATUTES, A SUBJECT CONVICTED OF UNARMED OR ARMED BANK ROBBERY THAT HAS EXTENUATING CIRCUMSTANCES, SUCH AS THE INDIVIDUAL BEING ON PROBATION OR PAROLE, OR IN AN ESCAPE STATUS, OR HAVING PRIOR FELONY CONVICTIONS, WILL BE TREATED MORE HARSHLY THAN IN THE FEDERAL SYSTEM. AUSA CONNER ADVISED THAT UNDER THE FEDERAL SENTENCING GUIDELINES, THE ONLY ADDITIONAL PENALTY THAT CAN BE ADDED TO A BANK ROBBERY SUBJECT WOULD BE THE INCLUSION AS A CAREER CRIMINAL OFFENDER.

IN AUSA CONNER WAS ASKED IF THERE WERE ANY SUGGESTIONS THAT HE MIGHT HAVE TO REVISE THE FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY PROSECUTIONS. HE EXPRESSED THAT THE BASE LEVEL FOR A ROBBERY IS CURRENTLY A LEVEL 20, AND THE BASE LEVEL FOR A BANK ROBBERY IS CURRENTLY A LEVEL 22 UNDER THE FEDERAL GUIDELINES, WHICH IN HIS OPINION SHOULD BE RAISED TO A BASE LEVEL FOR A ROBBERY OF LEVEL 26, AND A BASE LEVEL FOR A BANK ROBBERY OF LEVEL 28. THEN, WITH AN ACCEPTANCE OF RESPONSIBILITY

PAGE FOUR .

PROVISION DOWNGRADING THE PENALTY TWO POINTS, A FIRST-TIME BANK ROBBER WOULD GET A SENTENCE RANGE OF 63-78 MONTHS WHICH WOULD SEND A STRONG MESSAGE OF DETERENCE TO POTENTIAL BANK ROBBERY SUBJECTS.

ON SEPTEMBER 26, 1990, CHUCK LEPLEY, DEPUTY ASSISTANT DISTRICT ATTORNEY, DENVER DISTRICT ATTORNEY'S OFFICE, WAS CONTACTED CONCERNING HIS PERCEPTIONS REGARDING FEDERAL/LOCAL BANK ROBBERY PROSECUTIONS AND SENTENCES RECEIVED. LEPLEY ADVISED THAT THERE EXISTS AN EXCELLENT WORKING RELATIONSHIP BETWEEN HIS OFFICE AND THE AUSA'S OFFICE CONCERNING PROSECUTION OF BANK ROBBERIES AND HE DID NOT PERCEIVE ANY GREAT DIFFERENCES BETWEEN THE SENTENCES RECEIVED BY SUBJECTS THROUGH FEDERAL PROSECUTION AS COMPARED TO STATE PROSECUTION. HE ACKNOWLEDGED AUSA'S CUNNER'S VIEWS CONCERNING THE STATES STATUTES HAVING CERTAIN PROVISIONS WHICH ESCALATE THE SENTENCES RECEIVED BY SUBJECTS UNDER CERTAIN AGGRAVATING CIRCUMSTANCES.

DENVER DIVISION IS IN THE PROCESS OF INSTITUTING A JOINT INVESTIGATIVE TASK FORCE WITH THE DENVER POLICE DEPARTMENT CONCERNING BANK ROBBERY INVESTIGATIONS IN THE DE VER METROPOLITAN AREA, AND THE COOPERATION THAT HAS BEEN DEVELOPED BETWEEN THE FEDERAL AND STATE PROSECUTORS SHOULD CONTINUE UNABATED TOWARDS

PAGE FIVE

THE SUCCESSFULL PROSECUTION OF BANK PUBBERY SUBJECTS.

BT



DETROIT

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK  
ROBBERY INVESTIGATIONS; BUDED: SEPTEMBER 27, 1990.

OVERALL, DETROIT DIVISION IS SATISFIED WITH THE  
STRUCTURE AND LEVELS OF FEDERAL BANK ROBBERY SENTENCING  
GUIDELINES.

UP UNTIL JANUARY 1, 1990, PROSECUTIVE GUIDELINES IN THE  
EASTERN DISTRICT OF MICHIGAN DEFERRED PROSECUTION OF CITY OF  
DETROIT BANK ROBBERIES TO THE DETROIT POLICE DEPARTMENT.

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THESE GUIDELINES WERE CHANGED JANUARY 1, 1990, DUE TO THE CONCERN OF LIGHT SENTENCES SUBJECTS WERE RECEIVING IN LOCAL DETROIT COURTS. ALTHOUGH ARMED BANK ROBBERY IN STATE COURTS CARRIES A POSSIBLE LIFE SENTENCE, SUBJECTS, DEPENDING ON THEIR CRIMINAL RECORDS, FREQUENTLY ARE SENTENCED TO ~~5~~ 15/90 YEARS IMPRISONMENT. UNDER STATE LAWS, SUBJECTS ARE ELIGIBLE FOR PAROLE WHEN THEY HAVE SERVED TWO-THIRDS OF THEIR MINIMUM TIME. HOWEVER, WITH GOOD TIME CREDITED, IT IS NOT UNUSUAL TO HAVE SUBJECTS PAROLED AFTER SERVING LESS THAN TWO-THIRDS OF THEIR MINIMUM SENTENCE. IN ADDITION, SUBJECTS ARE ELIGIBLE TO BE PLACED IN HALFWAY HOUSES PRIOR TO BEING CONSIDERED FOR PAROLE. DUE TO PRISON CROWDING AND BUDGETARY CONSTRAINTS, IT WOULD NOT BE UNUSUAL TO HAVE A SUBJECT PLACED IN A HALFWAY HOUSE AFTER ONLY SERVING TWO TO THREE YEARS OF THEIR MINIMUM SENTENCE.

CURRENTLY, PROSECUTIVE GUIDELINES IN THE EASTERN DISTRICT OF MICHIGAN ALLOW FOR LOCAL AND FEDERAL PROSECUTION OF SERIAL BANK ROBBERS. ESSENTIALLY, IF A SUBJECT ROBS SIX DETROIT BANKS, THE DETROIT POLICE DEPARTMENT, WILL PROSECUTE THREE AND THE FBI THE OTHER THREE. LOCAL PROSECUTION IS

PAGE THREE .

PURSUED INITIALLY, AND FEDERAL PROSECUTION FOLLOWS WITH AN ATTEMPT TO OBTAIN A CONSECUTIVE SENTENCE TO STATE TIME.

DETROIT WOULD LIKE TO SEE GUIDELINES ENACTED TO PROVIDE FOR, SUBSTANTIALLY, MORE TIME FOR SERIAL BANK ROBBERS. U.S. DISTRICT JUDGES IN THE EASTERN DISTRICT OF MICHIGAN DO NOT GIVE CONSECUTIVE SENTENCES ON MULTIPLE COUNTS OF BANK ROBBERIES. *9/90*

AS A RESULT, A SERIAL BANK ROBBER THAT HAS COMMITTED ONLY TEN BANK ROBBERIES DOES NOT RECEIVE A SENTENCE SUBSTANTIALLY MORE THAN IF HE HAD COMMITTED ONE BANK ROBBERY.  
BT

## INDIANAPOLIS

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK  
ROBBERY INVESTIGATION; BUDED: SEPT. 27, 1990.

THE INDIANAPOLIS

DIVISION MAKES THE FOLLOWING OBSERVATIONS REGARDING  
FEDERAL/LOCAL BANK ROBBERY PROSECUTIONS:

1. SENTENCING WHETHER IT BE IN FEDERAL OR LOCAL COURT  
WITHIN THE NORTHERN AND SOUTHERN DISTRICTS OF INDIANA HAVE  
BEEN OF A COMPARATIVELY EQUAL NATURE.
2. IN REGARDS TO PROSECUTION OF BANK ROBBERY SUBJECTS,

PAGE TWO

INDIANAPOLIS DIVISION HAS NOTED THAT IN MANY INSTANCES THE U.S. ATTORNEY'S OFFICE IN BOTH JUDICIAL DISTRICTS TEND TO DEFER PROSECUTION TO THE LOCAL AUTHORITIES EVEN IN INSTANCES WHERE A THOROUGH FEDERAL CASE HAS BEEN PREPARED AND PRESENTED ON BEHALF OF THE FBI.

BOTH USA'S ARE OF THE OPINION THAT UNLESS A BANK ROBBERY INVOLVES MULTIPLE SUBJECTS, ROBBERIES, AND PROSECUTIVE JURISDICTIONS THE CASE SHOULD BE DEFERRED TO LOCAL AUTHORITIES IF THE LOCAL PROSECUTOR CAN ADEQUATELY HANDLE THE CASE.

THE USA, IN THE SDI, HAS CITED A DEPARTMENTAL POLICY WHICH STATES IN PART, "LESSEN FEDERAL INVOLVEMENT IN THE BANK ROBBERY AREA, AND MAKE DELIBERATE PROGRESS TOWARD MAXIMUM FEASIBLE DEFERRAL OF BANK ROBBERY MATTERS TO THOSE STATE AND LOCAL LAW ENFORCEMENT AGENCIES WHICH ARE PREPARED TO HANDLE THEM".

NUMEROUS CONFERENCES HAVE BEEN HELD WITH BOTH USA'S REITERATE THE BUREAU'S RESPONSIBILITY IN BANK ROBBERY MATTERS. TO DATE, THESE CONFERENCES HAVE DECREASED THE NUMBER OF REFERRALS, HOWEVER, THE PROPENSITY STILL EXISTS ON THE PART OF SEVERAL AUSA'S TO DECLINE OR DEFER BANK ROBBERY

CASES FOR LOCAL PROSECUTION.

BT

## KANSAS CITY

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK  
ROBBERY INVESTIGATIONS; BUDED: SEPTEMBER 27, 1990.

DURING THE PERIOD OF 1989 AND 1990, KANSAS CITY HAS HAD  
ONE BANK ROBBERY CASE PROSECUTE IN STATE COURT (MISSOURI).  
THE SENTENCE WAS THREE YEARS CUSTODY IN STATE PRISON, WHICH  
WAS CONSIDERED QUITE LIGHT BY INVESTIGATIVE AGENTS.

KANSAS CITY DIVISION ENJOYS REASONABLY STIFF

PAGE TWO . . .

SENTENCING HANDED DOWN IN THE TWO FEDERAL JUDICIAL DISTRICTS  
IN THE DIVISION (DISTRICT OF KANSAS AND WESTERN DISTRICT OF  
MISSOURI). THE CONSENSUS AMONG KANSAS CITY PERSONNEL  
WORKING BANK ROBBERY MATTERS IS THAT BASIC SENTENCING IN THE  
GUIDELINES SHOULD BE INCREASED. AS EXAMPLE, IF THE BASIC ~~IN THE~~ 10/90  
GUIDELINE SENTENCE IS 33 MONTHS, AN INCREASE TO 48 MONTHS  
WOULD HAVE GREATER IMPACT ON THOSE INVOLVED IN SUCH CRIMINAL  
ACTIVITY.

BT

LAS VEGAS

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY  
INVESTIGATION; BUDED: SEPT 27, 1990.

AS VIRTUALLY ALL BANK ROBBERIES IN THE LAS VEGAS DIVISION  
ARE PROSECUTED FEDERALLY, THERE IS NO WAY TO COMPARE LOCAL AND  
FEDERAL PROSECUTIONS FOR BANK ROBBERY IN NEVADA.

HOWEVER, THROUGH DAILY CONTACT WITH ROBBERY DETECTIVES IN  
VARIOUS POLICE DEPARTMENTS, PARTICULARLY THE LAS VEGAS  
METROPOLITAN POLICE DEPARTMENT (LYMPD), THE FOLLOWING



PAGE TWO .

OBSERVATIONS CAN BE MADE.

SUBJECTS SENTENCED UNDER THE FEDERAL GUIDELINES RECEIVE MUCH LONGER SENTENCES THAN THEY WOULD IF CONVICTED UNDER STATE STATUTE FOR ARMED ROBBERY. THIS SEEMS TO BE PARTICULARLY TRUE FOR THOSE PERSONS WITH A LENGTHY CRIMINAL HISTORY.

AS A RESULT OF THE GUIDELINES, IN NEVADA MORE INDIVIDUALS GO TO TRIAL FOR BANK ROBBERY, RATHER THAN PLEADING GUILTY AS IN THE PAST. A RECENT LAS VEGAS CASE SERVES AS AN EXAMPLE. IN THIS INSTANCE, THE SUBJECT WAS OFFERED THE MINIMUM SENTENCE UNDER THE GUIDELINES. IN HIS CASE IT WAS SEVENTEEN AND ONE-HALF YEARS INCARCERATION. HE CHOSE TO GO TO TRIAL WHERE HE WAS CONVICTED AND NOW FACES A MAXIMUM SENTENCE OF 20 YEARS INCARCERATION. IN THAT CASE, THE FEDERAL JUDGE HANDLING THE TRIAL INQUIRED TWICE PRIOR TO TRIAL ABOUT PLEA NEGOTIATIONS. THIS IS BECOMING MORE COMMON AS THE DEFENDANTS CHOOSE TO GO TO TRIAL BECAUSE THE GOVERNMENT IS PRECLUDED BY THE GUIDELINES FROM OFFERING SENTENCES WHICH MAKE A GUILTY PLEA APPROPRIATE. LAS VEGAS AGENTS DO NOT FEEL THE INCREASING TRIALS ARE A PROBLEM AS LONG AS THE UNITED STATES ATTORNEY'S OFFICE IS WILLING TO PROSECUTE. SO FAR THERE HAS BEEN NO RELUCTANCE BY THE UNITED STATES ATTORNEY IN NEVADA TO ENTERTAIN PROSECUTION OF BANK ROBBERY SUSPECTS. IF THERE IS A

PAGE THREE

PROBLEM ALONG THESE LINES, IT IS IN THE SENTENCES THAT FIRST OFFENDERS CAN RECEIVE, WHICH ARE ALSO SUBSTANTIALLY IN EXCESS OF WHAT THEY WOULD RECEIVE IN STATE COURT. FOR INSTANCE, LAST DECEMBER, A 21 YEAR OLD MALE ROBBED A LAS VEGAS BANK AFTER FIRING A SHOT IN THE CEILING OF THE BANK. NO ONE WAS INJURED, HE HAS NO PRIOR RECORD, AND PLED GUILTY AGAINST THE WISHES OF HIS DEFENSE COUNSEL. ACCORDING TO THE AUSA HANDLING THE CASE, HE WILL BE INCARCERATED FOR A MINIMUM OF TEN YEARS FOR THIS OFFENSE. IN STATE COURT HE WOULD OF RECEIVED A MINIMUM TERM, POSSIBLY COULD HAVE QUALIFIED FOR PROBATION BASED ON A LACK OF PRIOR CRIMINAL ACTIVITY OF ANY KIND.

LAS VEGAS SUGGEST TO HEADQUARTERS THAT FOR A NATIONAL COMPARISON OF SENTENCES UNDER STATE AND FEDERAL PROSECUTION FOR BANK ROBBERY, THAT HEADQUARTERS MAY WISH TO TAKE THE STATISTICAL DATA OFF THE FD-515S THAT ARE SUBMITTED AT THE TIME OF CONVICTION. THE FD-515S SHOW THE EXACT SENTENCE THE CONVICTED BANK ROBBER RECEIVED, AND WHETHER THE SENTENCE WAS AS RESULT OF STATE OR FEDERAL PROSECUTION.

BT

MIAMI

SUBJECT: BANK ROBBERIES MIAMI DIVISION/FEDERAL SENTENCING  
GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS; BUDED:  
9/27/90.

FOR THE INFORMATION OF THE BUREAU, THE MM DIVISION OF THE  
FBI CONTINUES TO MAINTAIN AN ACTIVE ROLL IN BANK ROBBERY  
INVESTIGATIONS IN THE SOUTH FLORIDA AREA.

AS OF THE DATE OF THIS COMMUNICATION, THE MM DIVISION HAS

PAGE TWO

EXPERIENCED 327 BANK ROBBERIES WHICH IS A 32% RISE OVER THE BANK ROBBERY CASES THAT WERE OPENED BY THE DIVISION DURING THE ENTIRE FY89. THE MAJORITY OF THE MM DIVISION BANK ROBBERIES OCCUR WITHIN THE CONFINES OF DADE AND BROWARD COUNTY WHICH IS HANDLED BY A SQUAD OF 13 AGENTS OUT OF HQ CITY.

WITHIN DADE COUNTY, ALL BANK ROBBERY INVESTIGATIONS ARE PROSECUTED IN FEDERAL COURT. 10/90

THIS IS DUE IN PART TO THE FACT THAT THE METRO-DADE POLICE DEPARTMENT, DUE TO THEIR HEAVY CASELOAD IN OTHER TYPES OF VIOLENT CRIMES DO NOT ACTIVELY INVESTIGATE BANK ROBBERIES IN DADE COUNTY, FLORIDA. THE MM DIVISION CONTINUES TO MAINTAIN AN EXCELLENT WORKING RELATIONSHIP WITH BOTH THE METRO-DADE POLICE DEPARTMENT AND THE 26 OTHER SMALLER POLICE DEPARTMENTS WITHIN DADE COUNTY, FLORIDA.

IN BROWARD COUNTY, ALL OF THE INVESTIGATIVE AGENCIES INCLUDING BOTH COUNTY AND CITY DEPARTMENTS ACTIVELY INVESTIGATE BANK ROBBERIES WITHIN THE COUNTY AND THE MM DIVISION WORKS CLOSELY WITH THOSE DEPARTMENTS.

BY ENLARGE, THE PROSECUTION OF ANY GIVEN BANK ROBBERY SUSPECT IS DETERMINED BY THE AGENCY THAT MAKES THE ARREST REGARDING THE BANK ROBBERY SUSPECT.

PAGE THREE .

THE MM DIVISION CAN NOT CITE ANY PROBLEM AREAS FOUND DURING THE REVIEW OF BANK ROBBERY INVESTIGATION OVER THE TWO PREVIOUS FY, HOWEVER, THERE ARE SOME AREAS OF CONCERN THAT NEED TO BE MENTIONED.

1) THE MM DIVISION HAS NOTICED THAT MANY FEDERAL JUDGES ARE SOMEWHAT RELUCTANT TO SENTENCE FIRST TIME OFFENDERS TO LONGER SENTENCES THEN PROPOSED BY THE HIGHER LEVEL OF THE GUIDELINES. IN OTHER WORDS, IF A BANK ROBBERY SUSPECT IS ARRESTED AND CHARGED WITH EITHER ONE OR A SERIES OF BANK ROBBERIES IN SOUTH FLORIDA, AND THOSE BANK ROBBERIES COULD HAVE BEEN POTENTIALLY VIOLENT AND THE BANK ROBBER DOES NOT HAVE A CRIMINAL PAST MANY FEDERAL JUDGE SENTENCE THE INDIVIDUAL TO AN AMOUNT OF INCARCERATION WHICH IS AT THE LOWER END OF THE SENTENCING GUIDELINES. THE MM DIVISION FEELS THAT IN VIEW OF THE FACT A BANK ROBBERY IS A CRIME OF VIOLENCE A MINIMUM LEVEL OF INCARCERATION SHOULD BE SET UNDER THE SENTENCING GUIDELINES FOR INDIVIDUALS WHO PARTICIPATE IN THAT TYPE OF CRIME.

THE ONLY AREA OF CONCERN REGARDING THE LOCAL OR STATE SENTENCING OF BANK ROBBERIES SUBJECTS IS THE FACT THAT EVEN THOUGH LONGER SENTENCES MAY BE IMPOSED BY EITHER STATE OR LOCAL

PAGE FOUR

JUDGES, THE SUBJECTS TEND TO BE RELEASED EARLY UNDER THE FLORIDA STATE SYSTEM AFTER SERVING APPROXIMATELY ONE THIRD OF THEIR TERM. MORE OFTEN THAN NOT, LOCAL JUDGES ALSO CREDIT BANK ROBBERS WITH TIME SERVED UNDER THE LOCAL OR STATE SYSTEM. FOR EXAMPLE, IF A BANK ROBBERY SUSPECT IN LOCAL CUSTODY IS CONVICTED AND SENTENCED TO A TWENTY YEAR TERM, HE IS CREDITED WITH TIME SERVED AFTER ARREST THE REMAINING TIME IN PRISON FOR HIS TWENTY YEAR SENTENCE COULD POSSIBLY RESULT IN HIS RELEASE AFTER A SIX YEAR PRISON STAY.

THE MM DIVISION CONTINUES TO ACTIVELY INVESTIGATE BANK ROBBERIES IN ALL OF THE COUNTIES WITHIN THE DIVISION AND CONTINUES TO PRESS FOR FEDERAL PROSECUTION WHENEVER POSSIBLE THROUGHOUT THE MM DIVISION.

THE MM DIVISION CONSIDERS ITSELF THE CATALYST FOR BANK ROBBERY INVESTIGATIONS IN SOUTH FLORIDA BASED ON THE FACT THAT MANY OF THE MM DIVISIONS SERIAL BANK ROBBERS ARE PERPETRATING THEIR CRIMES WITHIN A THREE COUNTY AREA.

THE MM DIVISION WILL CONTINUE TO VIGOROUSLY INVESTIGATE BANK ROBBERIES AND WILL PRESS FOR THE HIGHEST SENTENCES POSSIBLE IN BOTH THE STATE AND FEDERAL SYSTEMS REGARDING BANK ROBBERY CONVICTIONS.

## MILWAUKEE

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS; BUDED 9/27/90.

A COMPARISON WAS MADE OF ALL THE BANK ROBBERY PROSECUTIONS, BOTH FEDERAL AND STATE, WITHIN THE MILWAUKEE DIVISION FOR FISCAL YEARS 1989 AND 1990.

FOR FISCAL YEAR 1989, THERE WERE 28 SUBJECTS CONVICTED OF BANK ROBBERY, OF WHICH 7 WERE PROSECUTED BY THE STATE. THE AVERAGE SENTENCE FOR THE STATE WAS FOUR AND ONE-HALF YEARS. THE AVERAGE FEDERAL SENTENCE WAS 9 YEARS. ALTHOUGH THE AVERAGE

PAGE TWO .

FEDERAL SENTENCE WAS 9 YEARS, THE SENTENCES RAN FROM A HIGH OF 35 YEARS (ARMED, REPEAT OFFENDER) TO A LOW OF 6 MONTHS (UNARMED, FIRST TIME OFFENSE).

FOR FISCAL YEAR 1990, THERE WERE 34 SUBJECTS IDENTIFIED AND CHARGED WITH BANK ROBBERY OF WHICH 12 WERE CHARGED BY THE STATE.

OF THE 34 CASES, 22 ARE STILL PENDING OR AWAITING SENTENCING. OF THE REMAINING 12 CASES, 3 WERE SENTENCED BY THE STATE FOR AN AVERAGE OF 3 YEARS.

THE FEDERAL CASES THAT HAVE BEEN SENTENCED TO DATE RESULTED IN AN AVERAGE OF 10 YEARS. THIS RAN FROM A HIGH OF 27 YEARS (ARMED, REPEAT OFFENDER) TO A LOW OF PROBATION (UNARMED, FIRST TIME OFFENSE).

THE FEDERAL SENTENCING GUIDELINES SEEMED TO ADEQUATELY ADDRESS THE ARMED REPEAT OFFENDER, WITH THAT CATEGORY RECEIVING AN AVERAGE OF 18 YEARS. WHERE THE SYSTEM SEEMS TO BREAK DOWN IS THE SENTENCING OF WHAT THE GUIDELINES CONSIDER TO BE FIRST OFFENDERS.

MILWAUKEE DIVISION HAD SEVERAL ARMED BANK ROBBERIES, COMMITTED BY CONVICTED FELONS (CONVICTED OF BURGLARY, THEFT, ETC), WHERE THE SENTENCES WERE EXTREMELY LOW (2 TO 3 YEARS). THE SENTENCING GUIDELINES LOSE THEIR DETERRENT EFFECT WHEN A



PAGE THREE

SUBJECT RECEIVES AN UNREALISTICALLY LOW SENTENCE FOR COMMITTING AN ARMED BANK ROBBERY.

THE ONLY CONCERNS, PROBLEMS, PERCEPTIONS OR RECOMMENDATIONS NOTED BY THE MILWAUKEE DIVISION WOULD BE TO RAISE THE LOW END OF THE SENTENCING GUIDELINES TO SOME TERM OF INCARCERATION THAT WOULD BE CONSISTENT WITH THE FACT THAT A BANK WAS ROBBED. MILWAUKEE RESPECTFULLY SUBMITS THAT REGARDLESS OF WHETHER THE PERPETRATOR IS ARMED OR NOT, THE VICTIM TELLER SUFFERS SIGNIFICANT EMOTIONAL TRAMA AND AT TIMES IT MAY BE IRREVERSIBLE.

MILWAUKEE DIVISION IS INVOLVED IN A PILOT PROGRAM WITH THE U.S. ATTORNEY'S OFFICE CONCERNING THE VICTIMS OF BANK ROBBERIES. CONSISTENTLY THE VICTIMS EXPRESS CONCERN REGARDING THE FACT THAT THE SUBJECTS SHOULD GO TO JAIL.

BT

## PHILADELPHIA

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY  
INVESTIGATION; BUDED - SEPTEMBER 27, 1990.

A REVIEW OF BANK ROBBERY  
PROSECUTIONS WAS CONDUCTED FOR FISCAL YEARS 1989 AND 1990. THIS  
REVIEW COMPARED THOSE PROSECUTIONS UNDERTAKEN IN FEDERAL COURT  
VERSUS THOSE PROSECUTED IN STATE COURTS. THIS COMPARISON  
INCLUDED THE FEDERAL COURTS, IN THE EASTERN DISTRICT OF  
PENNSYLVANIA (EDPA), MIDDLE DISTRICT OF PENNSYLVANIA (MDPA) AND

PAGE TWO

DISTRICT OF NEW JERSEY (DNJ), WHILE THE LOCAL PROSECUTION WAS IN PENNSYLVANIA AND A THREE COUNTY AREA OF SOUTHERN NEW JERSEY.

FOR FY 1989, THE RATIO OF FEDERAL PROSECUTION TO STATE PROSECUTION WAS APPROXIMATELY 9 TO 1 WHILE IN 1990, THE RATIO WAS APPROXIMATELY 6 TO 1.

FOR 1989, THE PERIODS OF INCARCERATION RANGE FROM APPROXIMATELY 2 1/2 YEARS TO 20 YEARS WHILE IN 1990 THE RANGE IS APPROXIMATELY 1 1/2 YEARS TO LIFE. PROBATIONARY SENTENCES WERE NOT INCLUDED. THESE FEDERAL PRISON TERMS COMPARE FAVORABLY TO THOSE RECEIVED IN STATE COURTS. HOWEVER, IN EVALUATING THESE SENTENCES, DIRECT COMPARISONS CANNOT BE MADE DUE TO THE VARIED BACKGROUNDS OF THE SUBJECTS, THE NUMBER OF COUNTS (OR VIOLATIONS INCLUDED AND OTHER VARIABLES TAKEN INTO ACCOUNT IN THE COMPUTATION OF SENTENCES UNDER THE GUIDELINES.

IN GENERAL THE FEDERAL SENTENCES ARE BELIEVED TO BE EQUAL TO OR GREATER THAN THOSE RECEIVED IN STATE COURT. STATE SENTENCES ARE ISSUED IN RANGES AND EVEN IF THE MAXIMUM RANGE EXCEEDS THE FEDERAL SENTENCE, STATE PAROLE GUIDELINES AND OTHER FACTORS USUALLY RESULT IN A SMALLER ACTUAL PERIOD OF IMPRISONMENT BEING SERVED.

THE DESIRE TO PROSECUTE IN STATE COURTS HAS BEEN MORE THE DESIRE

PAGE THREE .

OF THE LOCAL LAW ENFORCEMENT AGENCY THAN OF THE COUNTY DISTRICT ATTORNEY/PROSECUTOR. THE LOCAL PROSECUTORS HAVE GENERALLY CEDED TO FEDERAL PROSECUTION DUE TO THE LIMITED RESOURCES OF THEIR OFFICES, THE BACKLOG OF THE LOCAL COURT DOCKET AND THE OVERCROWDED CONDITIONS OF THE COUNTY JAIL FACILITIES AND OF THE STATE PRISON SYSTEM. THE INCLUSION OF LOCAL LAW ENFORCEMENT PERSONNEL INTO THE INVESTIGATIVE AND PROSECUTIVE STAGES OF FEDERALLY HANDLED BANK ROBBERY MATTERS HAS PARTIALLY REMOVED THEIR OBJECTIONS. THESE FACTORS HAVE BEEN RESPONSIBLE FOR THE PAST TREND IN BOTH THE EDPA AND MDPA FOR THE GREATER PORTION OF BANK ROBBERY MATTERS TO BE PROSECUTED IN FEDERAL COURT. THIS TREND IS EXPECTED TO CONTINUE. IN THE DNJ, THE U.S. ATTORNEY'S OFFICE HAS GENERALLY DEFERRED PROSECUTION TO LOCAL AUTHORITIES IN THE THREE COUNTIES COVERED BY THE PHILADELPHIA DIVISION.

BT

PHOENIX

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY  
INVESTIGATIONS; BUDED: 9/27/90.

BANK ROBBERY INVESTIGATIONS FOR FISCAL YEARS 1989 AND 1990,  
OCCURRING WITHIN THE PHOENIX DIVISION WERE REVIEWED WITH EMPHASIS  
ON FEDERAL BANK ROBBERY PROSECUTIONS BEING COMPARED TO LOCAL BANK  
ROBBERY PROSECUTIONS. FOR THE INFORMATION OF THE BUREAU,  
PROSECUTIVE POLICY WITHIN THE PHOENIX DIVISION CONCERNING  
VIOLATIONS OF THE FEDERAL BANK ROBBERY STATUTE DICTATE THAT A

PAGE TWO

MAJORITY OF THOSE VIOLATIONS ARE PROSECUTED BY FEDERAL AUTHORITIES WITH THE EXCEPTION OF JUVENILES, SUBJECTS WITH DECREASED MENTAL CAPACITY, AND THOSE CASES INVOLVING AN OVERWHELMING LOCAL INTEREST. IN THOSE RARE INSTANCES IN WHICH THE SUBJECT HAS BEEN PROSECUTED BY LOCAL AUTHORITIES, THE SENTENCING HAS BASICALLY BEEN THE EQUIVALENT OF WHAT HE OR SHE WOULD HAVE RECEIVED IN U.S. DISTRICT COURT FOR THE SAME OFFENSE. THE SENTENCING GUIDELINES, CURRENTLY IN EFFECT, HAVE HAD AN IMPACT ON THE NUMBER OF CASES THAT ARE ACTUALLY GOING TO TRIAL. DUE TO THE MANDATORY SENTENCE GUIDELINES FOR REPEAT OFFENDERS, THOSE SUBJECTS WITH SUBSTANTIAL CRIMINAL BACKGROUNDS, RATHER THAN ACCEPT A GUILTY PLEA, ARE NOW TAKING THEIR CASES TO TRIAL IN U.S. DISTRICT COURT. ALTHOUGH THE OUTCOME IS GENERALLY THE SAME, THE NUMBER OF GUILTY PLEAS HAS BEEN SOMEWHAT REDUCED IN FAVOR OF A TRIAL BY JURY.

THE NEGATIVE ASPECT OF THE MANDATORY SENTENCING GUIDELINES HAS APPARENTLY CENTERED AROUND THE FIRST TIME OFFENDER EVEN THOUGH HE OR SHE MAY BE RESPONSIBLE FOR MULTIPLE BANK ROBBERIES IF THEY HAVE, IN FACT, NOT BEEN CONVICTED OF A PRIOR CRIME OF VIOLENCE, THE SENTENCE IMPOSED GENERALLY IS IN THE AREA OF THREE TO SIX YEARS, REGARDLESS OF THE NUMBER OF ROBBERIES PERPETRATED.

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IN ADDITION, LOCAL AUTHORITIES HAVE ADVISED THAT THERE IS AN ATTEMPT STATUTE BUILT INTO THEIR LOCAL CODE AND AS A RESULT, TITLE 18, USC, SECTION 2113 HAS BEEN A MUCH MORE VIABLE PROSECUTIVE OPTION, WITH RESPECT TO ATTEMPTED ROBBERIES. IN ADDITION, EVEN THOUGH THERE MAY BE A THREAT OF VIOLENCE IF NO WEAPON IS ACTUALLY SEEN, LOCAL AUTHORITIES ARE OF THE OPINION THAT THEY CANNOT SUSTAIN A CONVICTION OF ARMED ROBBERY WITHIN THEIR SYSTEM. AGAIN, TITLE 18, USC, SECTION 2113(A) AND (D) APPEAR TO BE A MUCH MORE VIABLE VEHICLE FOR PROSECUTION WITH RESPECT TO THESE OFFENDERS. FOR THE ADDED INFORMATION OF THE BUREAU, THE PHOENIX DIVISION HAS BEEN, FOR THE LAST TWO YEARS, EXPERIENCING APPROXIMATELY 190 TO 200 VIOLATIONS OF THE FEDERAL BANK ROBBERY STATUTE, ALL OF WHICH ARE INVESTIGATED BY THE FBI, WITH A SUBSTANTIAL MAJORITY BEING PROSECUTED IN U.S. DISTRICT COURT.

BT

## SACRAMENTO

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS; BUDED: 9/27/90.

IN THE LATTER PART OF 1989, THE U.S. ATTORNEY'S OFFICE, EASTERN DISTRICT OF CALIFORNIA (EDC), SACRAMENTO, CALIFORNIA, ADVISED THE SACRAMENTO OFFICE OF THE FBI THAT THERE WAS A PROBLEM IN THE COURT SYSTEM BEING BROUGHT ABOUT BY THE INCREASING CRIMINAL CASELOAD WITHIN THE FEDERAL DISTRICT COURT IN THE EDC, COUPLED WITH THE PENDING RESIGNATION OF SEVERAL



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U.S. DISTRICT JUDGES AND RETIREMENT OF ANOTHER JUDGE ALL SCHEDULED TO OCCUR IN EARLY 1990. SACRAMENTO WAS ADVISED UNTIL VACANCIES WERE FILLED, THE REMAINING JUDGES HAD DIRECTED THE USA'S OFFICE TO MAKE PRACTICAL EFFORTS TO REDUCE THE FEDERAL CASELOAD DURING THE TRANSITIONAL PERIOD. SACRAMENTO WAS ADVISED IT WOULD BE AT LEAST A YEAR BEFORE THE VACANCIES WERE FILLED AND THE NEWLY APPOINTED JUDGES WOULD BE HEARING CASES REGULARLY. 10/90

IN RECOGNITION OF THE PROSECUTIVE PROBLEM CREATED BY THE ABOVE SET OF CIRCUMSTANCES, ON 11/30/89 GUIDELINES WERE DISCUSSED FOR COOPERATIVE PROSECUTION OF BANK ROBBERY CASES BETWEEN THE USA'S OFFICE, THE FBI AND THE SACRAMENTO COUNTY DISTRICT ATTORNEY'S OFFICE.

IT WAS AGREED THE PRIMARY CONSIDERATION WHETHER TO PROSECUTE LOCALLY OR FEDERALLY WOULD BE APPROPRIATE SENTENCING FOR THE DEFENDANT. THE SACRAMENTO COUNTY DA'S OFFICE INDICATED, IN ACCORDANCE WITH PENAL CODE SECTION 999E, A SUBJECT COULD QUALIFY FOR CAREER CRIMINAL PROSECUTION WHO IS BEING PROSECUTED FOR THREE OR MORE SEPARATE QUALIFYING OFFENSES OR HAS HAD AT LEAST ONE CONVICTION FOR A QUALIFIED OFFENSE DURING THE PRECEDING TEN YEARS.

THE USA'S OFFICE INDICATED FOR SIGNIFICANT FEDERAL

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SENTENCING ENHANCEMENT, TWO PRIOR CONVICTIONS OF A QUALIFYING VIOLENT OR DRUG RELATED CRIME WERE NECESSARY.

THEREFORE, IN SITUATIONS WHERE THERE ARE MULTIPLE VIOLATIONS BY A DEFENDANT WITH NO PRIOR CONVICTIONS, LOCAL PROSECUTION WOULD SEEM APPROPRIATE. IN CASES WHERE THE DEFENDANT HAS TWO OR MORE PRIOR CONVICTIONS OF A QUALIFYING NATURE, BOTH FEDERAL AND LOCAL PROSECUTIVE AND SENTENCING ENHANCEMENTS WOULD APPLY. THE DA'S OFFICE INDICATED LOCAL PROSECUTION WOULD ALSO BE APPROPRIATE IN CASES OF A SINGLE OFFENSE WITH NO PRIOR QUALIFYING CONVICTIONS, ESPECIALLY IN UNARMED SITUATIONS. ALSO, CONSISTENT WITH PRESENT POLICY, JUVENILE OR MENTALLY INCOMPETENT DEFENDANTS WOULD BE PROSECUTED LOCALLY.

IT WAS RECOGNIZED ALSO THAT FEDERAL PROSECUTION WOULD GENERALLY BE APPROPRIATE IN MULTIPLE OFFENSE CASES INVOLVING SEVERAL SEPARATE JURISDICTIONS.

IT WAS AGREED THE ABOVE GUIDELINES SHOULD BE FLEXIBLE, DEPENDANT ON OTHER CONSIDERATIONS SUCH AS THE FREQUENCY OF BANK ROBBERY VIOLATIONS IN A GIVEN PERIOD OF TIME AND LOCAL AND FEDERAL PROSECUTIVE CASELOADS. BASED ON THE FREQUENCY OF BANK ROBBERY OCCURRENCES AND PROSECUTIONS, IT WAS ESTIMATED THE DA'S

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OFFICE WOULD BE ASKED TO PROSECUTE TWO TO FOUR CASES PER MONTH WHICH REPRESENTS ABOUT ONE-THIRD TO ONE-HALF OF THE CURRENT BANK ROBBERY PROSECUTIONS WITHIN SACRAMENTO COUNTY.

THE ABOVE GUIDELINES WERE ALSO ESTABLISHED FOR BANK ROBBERY INVESTIGATIONS OCCURRING IN FRESNO COUNTY IN THE SOUTHERN PART OF THE SACRAMENTO DIVISION. 10/190

BANK ROBBERIES OCCURRING THROUGHOUT OTHER COUNTIES OF THE SACRAMENTO DIVISION WOULD BE PROSECUTED BY THE U.S. DISTRICT COURTS UNLESS OTHER EXTINUATING CIRCUMSTANCES EXISTED.

SINCE THE INCEPTION OF THE ABOVE AGREEMENT, IN JANUARY, 1990, APPROXIMATELY ONE-HALF OF SACRAMENTO'S NUMEROUS BANK ROBBERIES HAVE BEEN PROSECUTED LOCALLY AND THIS POLICY HAS BEEN EXTREMELY SUCCESSFUL.

AT THE PRESENT TIME, THOSE BANK ROBBERS BEING PROSECUTED IN U.S. DISTRICT COURT, EDC, AND HAVING NO ENHANCEMENTS ATTACHED TO THEIR SENTENCING, HAVE BEEN RECEIVING APPROXIMATELY FIVE TO SIX YEAR SENTENCES. THOSE BANK ROBBERS BEING SENTENCED WITH ENHANCEMENTS, HAVE BEEN RECEIVING APPROXIMATELY FOURTEEN YEARS FOR UNARMED BANK ROBBERY AND SEVENTEEN YEARS FOR ARMED BANK ROBBERY.

THOSE BANK ROBBERS BEING PROSECUTED LOCALLY IN THE PAST NINE

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MONTHS OF 1990 HAVE BEEN RECEIVING SENTENCES RANGING FROM FOUR TO SIX YEARS AND HAVE BEEN FIRST TIME OFFENDERS WITH NO ENHANCEMENTS.

BASED ON THE ABOVE INFORMATION, IT WOULD APPEAR THAT THE SENTENCING GUIDELINES WHICH HAVE BEEN ESTABLISHED IN THE EPCL ARE SATISFACTORY.

BT

SAN DIEGO

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY INVESTIGATIONS; BUDED: SEPT. 27, 1990.

ALL BANK ROBBERY MATTERS DURING FISCAL YEARS 1989 AND 1990 WERE PROSECUTED THROUGH THE FEDERAL JUDICIAL SYSTEM IN THE SOUTHERN DISTRICT OF CALIFORNIA WHICH ENCOMPASSES ALL OF THE SAN DIEGO DIVISION. PER AGREEMENT BETWEEN THE UNITED STATES ATTORNEY'S OFFICE AND THE SAN DIEGO DISTRICT ATTORNEY'S OFFICE, ALL BANK ROBBERY RELATED MATTERS WILL

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BE PROSECUTED VIA THE FEDERAL SYSTEM.

HOWEVER, THERE HAS BEEN CONCERN, FRUSTRATION, AND SOME DISMAY CONCERNING THE SENTENCES THAT HAVE BEEN IMPOSED UPON CONVICTED BANK ROBBERS. APPROXIMATELY 80 TO 85 PERCENT OF THE BANK ROBBERIES COMMITTED WITHIN THE SAN DIEGO DIVISION ARE "SERIAL" IN NATURE. MANY OF THESE "SERIAL ROBBERS" COMMIT IN EXCESS OF 10 BANK ROBBERIES BEFORE THEY ARE CAPTURED AND CONVICTED. ADDITIONALLY, AT LEAST HALF OF THESE SERIAL ROBBERS ARE ARMED AT THE TIME THEY COMMIT THE ROBBERIES. THE SENTENCES THAT ARE RECOMMENDED IN MANY OF THESE INSTANCES BY THE FEDERAL PROBATION DEPARTMENT'S PRE-SENTENCE REPORT BASED UPON THE CALCULATION OF THE NEW SENTENCING GUIDELINES, DOES NOT APPEAR TO BE COMMENSURATE WITH THE TYPE AND NUMBER OF CRIMES COMMITTED BY THE ROBBER. SEVERAL OF THE FEDERAL JUDGES ASSIGNED TO ADJUDICATE BANK ROBBERY MATTERS IN SAN DIEGO, CALIFORNIA, HAVE EXPRESSED FRUSTRATION DUE TO THE LIMITATIONS OF THE NEW SENTENCING GUIDELINES IN THAT THEY ARE NOT ABLE TO IMPOSE A HIGHER SENTENCE WHICH THEY HISTORICALLY WOULD HAVE PRIOR TO THE IMPLEMENTATION OF THE NEW FEDERAL GUIDELINES. SEVERAL OF THESE FEDERAL JUDGES HAVE ALSO EXPRESSED CONCERN OVER THE AMBIGUITY INVOLVED IN ALLOWING THEM TO IMPOSE A HIGHER SENTENCE VIA "UPPER DEPARTURE" REGARDING

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BANK ROBBERY SENTENCES.

IT IS THE GENERAL CONSENSUS AMONG A NUMBER OF ASSISTANT UNITED STATES ATTORNEYS WHO HANDLE BANK ROBBERY MATTERS AS WELL AS FEDERAL JUDGES INVOLVED IN THESE CASES THAT THE GUIDELINE STRUCTURE INVOLVING BANK ROBBERY SENTENCING IS "TOO SOFT." IN A NUMBER OF CASES THERE HAS BEEN A OBVIOUS DISPARITY IN THE 20 YEAR SENTENCE RECEIVED BY AN INDIVIDUAL WHO SMUGGLES A KILO OF DRUGS INTO THE UNITED STATES AND THE FIVE TO SEVEN YEAR SENTENCE IMPOSED UPON INDIVIDUALS INVOLVED IN MULTIPLE ARMED BANK ROBBERIES WHICH ARE VIOLENT AND TERRIFYING BY NATURE. THE CURRENT SENTENCING GUIDELINES ARE TOO SOFT AND MAKE IT DIFFICULT FOR JUDGES TO IMPOSE AN UPPER DEPARTURE SENTENCE IN MANY BANK ROBBERY CASES WERE IT IS WARRANTED.

IT IS RECOMMENDED THAT MEMBERS OF THE UNITED STATES SENTENCING COMMISSION (USSC) BANK ROBBERY WORKING GROUP CONTACT PROSECUTORS IN THE UNITED STATES ATTORNEY'S OFFICE WHO HANDLE BANK ROBBERY MATTERS, AS WELL AS FEDERAL JUDGES WHO PRESIDE OVER BANK ROBBERY MATTERS AND GATHER THEIR INPUT CONCERNING THEIR OPINIONS OF THE CURRENT SENTENCING GUIDELINES REGARDING BANK ROBBERY MATTERS.

WASHINGTON, DC

SUBJECT: FEDERAL SENTENCING GUIDELINES CONCERNING BANK ROBBERY  
INVESTIGATIONS; BUDED 9/27/90.

A REVIEW OF BANK ROBBERY CONVICTIONS  
OBTAINED WITHIN WMFO DETERMINED THE AVERAGE SENTENCE IMPOSED FOR  
THE FIRST OFFENDER RANGES BETWEEN 2 TO 3 YEARS. SUBSEQUENTLY,  
REPEAT OFFENDERS ARE SENTENCED TO A VARIED TIME STRUCTURE. LOCAL  
CONVICTIONS FOR BANK ROBBERY VIOLATIONS AVERAGE BETWEEN 5 TO 7  
YEARS. THIS DOES NOT TAKE INTO CONSIDERATION THE ACTUAL TIME A



PAGE TWO

DEFENDANT SERVES. IN SEVERAL INSTANCES WHEREIN A FIRST OFFENDER PLEAD GUILTY TO 1 BANK ROBBERY VIOLATION AND IN ACTUALITY WAS RESPONSIBLE FOR TWO OR MORE, THE SAME SENTENCE STRUCTURE IS USED IN SENTENCING AS IF THE DEFENDANT ONLY COMMITTED ONE VIOLATION AS OPPOSED TO THE ACTUAL COMMITMENT OF FOUR OR FIVE. WMFO PERCEIVES THAT UPON RENDERING OF A SENTENCE ALL FACTORS ARE NOT BEING CONSIDERED IN THAT DURING THE PLEA NEGOTIATIONS PROSECUTORS ARE LIMITED VIA THE PLEA AGREEMENT IN WHAT CAN BE EXPRESSLY FURNISHED TO THE COURT FOR THE RENDERING OF A JUDICIAL DECISION. FURTHER, WMFO WOULD LOOK FAVORABLY ON A STRUCTURE OF KNOWN VALUE, THAT IS, IF ONE BANK ROBBERY IS COMMITTED A DESIGNATED SENTENCE IS IMPOSED (IE 5 YEARS), IF TWO ROBBERIES ARE COMMITTED THE SENTENCE IMPOSED WOULD DOUBLE, AND SO FORTH, WITH NO PAROLE ELIGIBILITY.

IT WOULD BE MORE FAVORABLE FOR THE UNITED STATES SENTENCING COMMISSION, THROUGH THE CLERK OF THE COURT, BOTH FEDERAL AND LOCAL, TO FURTHER ANALYSE A SPECIFIC PERIOD TO DETERMINE THE AVERAGE FEDERAL SENTENCE VERSUS THE AVERAGE LOCAL SENTENCE AND CONTINUE FURTHER WITH AN ANALYSIS OF THE ACTUAL INCARCERATION TIME VIA PROBATION AND PAROLE COMMISSION RECORDS.

THE BUREAU SHOULD NOTE THAT WITH THE WAR ON DRUGS CONTINUING, AND AT PRESENT, THE PRICE FOR DRUGS ON THE STREET

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BANK ROBBERY SENTENCES.

IT IS THE GENERAL CONSENSUS AMONG A NUMBER OF ASSISTANT UNITED STATES ATTORNEYS WHO HANDLE BANK ROBBERY MATTERS AS WELL AS FEDERAL JUDGES INVOLVED IN THESE CASES THAT THE GUIDELINE STRUCTURE INVOLVING BANK ROBBERY SENTENCING IS "TOO SOFT." IN A NUMBER OF CASES THERE HAS BEEN A OBVIOUS DISPARITY IN THE 20 YEAR SENTENCE RECEIVED BY AN INDIVIDUAL WHO SMUGGLES A KILO OF DRUGS INTO THE UNITED STATES AND THE FIVE TO SEVEN YEAR SENTENCE IMPOSED UPON INDIVIDUALS INVOLVED IN MULTIPLE ARMED BANK ROBBERIES WHICH ARE VIOLENT AND TERRIFYING BY NATURE. THE CURRENT SENTENCING GUIDELINES ARE TOO SOFT AND MAKE IT DIFFICULT FOR JUDGES TO IMPOSE AN UPPER DEPARTURE SENTENCE IN MANY BANK ROBBERY CASES WERE IT IS WARRANTED.

IT IS RECOMMENDED THAT MEMBERS OF THE UNITED STATES SENTENCING COMMISSION (USSC) BANK ROBBERY WORKING GROUP CONTACT PROSECUTORS IN THE UNITED STATES ATTORNEY'S OFFICE WHO HANDLE BANK ROBBERY MATTERS, AS WELL AS FEDERAL JUDGES WHO PRESIDE OVER BANK ROBBERY MATTERS AND GATHER THEIR INPUT CONCERNING THEIR OPINIONS OF THE CURRENT SENTENCING GUIDELINES REGARDING BANK ROBBERY MATTERS.

TABLE XII - OTHER SELECTED INFORMATION FOR BANK ROBBERY (18 § USC 2113 A & D)  
SENTENCED UNDER NOVEMBER 1, 1989 AMENDMENT TO 18 §2B3.1

MULTIPLE COUNT CASES

Number of Prior Bank Robbery Convictions			Plea vs. Trial		
Number	Frequency	Percent	Type	Frequency	Percent
0	40	(71.4%)	PLEA	53	(94.6%)
1	11	(19.6%)	TRIAL	3	(5.4%)
2	3	(5.4%)	TOTAL	56	(100.0%)
3	1	(1.8%)			
4	1	(1.8%)			
TOTAL	56	(100.0%)	Counts Reduced and/or Dismissed		
			Number	Frequency	Percent
			YES	30	(53.6%)
			NO	26	(46.4%)
TOTAL MISSING	3		TOTAL	56	(100.0%)

SENTENCED UNDER NOVEL 1, 1989 AMENDMENT TO §2B3.1

USSCID#	GUIDELINE MINIMUM (SOR)	GUIDELINE MAXIMUM (SOR)	OFFENSE LEVEL (SOR)	CRIMINAL HISTORY CATEGORY (SOR)	GUIDELINE MINIMUM (PSR)	GUIDELINE MAXIMUM (PSR)	OFFENSE LEVEL (PSR)	CRIMINAL HISTORY CATEGORY (PSR)	PRIOR BANK ROBBERIES	P(LEA) OR T(RIAL)	COUNTS REDUCED AND/OR DISMISSED Y(ES) N(O)	DISTRICT	LENGTH OF PRISON IN MONTHS	POSITION OF SENTENCE IN GUIDELINE RANGE
46366	210	240	32	6	210	262	32	6	1	P	N	61	210	BOTTOM
*46485	--	--	--	--	51	63	22	3	--	--	--	73	51	--
46883	46	57	23	1	46	57	23	1	0	P	Y	86	117	ABOVE
46884	57	71	23	3	57	71	23	3	0	P	Y	86	131	ABOVE
47268	63	78	20	5	77	96	22	5	0	P	Y	73	72	U.MID
*47475	100	125	25	5	100	125	25	5	--	--	--	39	112	L.MID
47389	33	41	20	1	33	41	20	1	0	P	N	73	33	BOTTOM
47598	--	--	--	--	70	87	20	6	1	P	Y	73	80	--
47788	70	87	20	6	70	87	20	6	0	P	Y	73	70	BOTTOM
*48257	--	--	--	--	41	51	20	3	0	P	Y	73	51	--
49054	33	41	20	1	41	51	20	3	0	P	N	74	33	BOTTOM
49079	63	78	20	5	63	78	20	5	0	P	Y	73	71	U.MID
*49187	33	41	20	1	33	41	20	1	--	--	--	95	33	BOTTOM
49567	77	96	22	5	84	105	23	5	0	T	Y	16	77	BOTTOM
*50035	41	51	20	3	41	51	20	3	--	--	--	12	51	TOP

APPENDIX J - Misc.

Monitoring

\* Case information marked by an asterisk (\*) was found to be incorrect during case review and edited for these tables. Case ID numbers marked by an asterisk indicate that the information regarding number and/or type of counts was found to be incorrect during case review and was edited for these tables.

TABLE III - BANK ROBBERY (18 § 2113 A) SINGLE COUNT CASES  
SENTENCED UNDER NOVEMBER 1, 1989 AMENDMENT TO §2B3.1

USSCID#	GUIDELINE MINIMUM (SOR)	GUIDELINE MAXIMUM (SOR)	OFFENSE LEVEL (SOR)	CRIMINAL HISTORY CATEGORY (SOR)	GUIDELINE MINIMUM (PSR)	GUIDELINE MAXIMUM (PSR)	OFFENSE LEVEL (PSR)	CRIMINAL HISTORY CATEGORY (PSR)	PRIOR BANK ROBBERIES	P(LEA) OR T(RIAL)	COUNTS REDUCED AND/OR DISMISSED Y(ES) N(O)	DISTRICT	LENGTH OF PRISON IN MONTHS	POSITION OF SENTENCE IN GUIDELINE RANGE
42257	78	97	27	2	78	97	27	2	0	T	N	30	97	TOP
42344	63	78	25	2	63	78	25	2	0	P	Y	11	78	TOP
42348	--	--	--	--	33	41	20	1	0	P	Y	73	0	--
42430	--	--	--	--	51	63	20	4	0	P	N	73	60	--
42888	70	87	20	6	70	87	20	6	0	P	N	72	70	BOTTOM
43090	210	262	32	6	210	262	32	6	5	T	N	61	240	U.MID
43219	37	46	20	2	37	46	20	2	0	P	N	43	37	BOTTOM
43305	33	41	20	1	33	41	20	1	0	P	N	31	33	BOTTOM
43511	57	71	24	2	57	71	24	2	0	P	N	80	63	L.MID
43548	46	57	17	5	--	--	--	9	0	P	Y	80	18	BELOW
43565	70	87	25	3	70	87	25	3	--	--	--	39	70	BOTTOM
43845	168	210	30	6	168	210	30	6	0	P	N	18	189	U.MID
43853	77	96	24	4	77	96	24	4	0	P	N	65	96	TOP
44111	46	57	23	1	46	57	23	1	3	P	N	63	46	BOTTOM
44209	27	33	17	2	27	33	17	2	0	P	Y	42	27	BOTTOM
44378	57	71	25	1	70	87	27	1	--	--	--	39	57	BOTTOM
44411	--	--	--	--	51	63	20	4	0	P	N	73	51	--
44477	41	51	22	1	41	51	22	1	0	P	N	78	41	BOTTOM
45072	51	63	20	4	51	63	20	4	0	P	Y	71	51	BOTTOM
45093	33	41	20	1	46	57	23	1	0	P	N	31	33	BOTTOM
45624	30	37	18	2	37	46	20	2	--	--	--	33	32	L.MID
45886	37	46	20	2	37	46	20	2	0	P	N	72	37	BOTTOM
45856	33	41	20	1	33	41	20	1	--	--	--	95	37	U.MID

SENTENCED UNDER NOVEM. , 1989 AMENDMENT TO §2B3.1

VSSCID#	GUIDELINE MINIMUM (SOR)	GUIDELINE MAXIMUM (SOR)	OFFENSE LEVEL (SOR)	CRIMINAL HISTORY CATEGORY (SOR)	GUIDELINE MINIMUM (PSR)	GUIDELINE MAXIMUM (PSR)	OFFENSE LEVEL (PSR)	CRIMINAL HISTORY CATEGORY (PSR)	PRIOR BANK ROBBERIES	P(LEA) OR T(RIAL)	COUNTS REDUCED AND/OR DISMISSED Y(ES) N(O)	DISTRICT	LENGTH OF PRISON IN MONTHS	POSITION OF SENTENCE IN GUIDELINE RANGE
39601	41	51	20	3	57	71	23	3	1	P	Y	22	41	BOTTOM
39858	63	78	20	5	63	78	20	5	0	P	Y	70	78	TOP
40034	--	--	--	--	63	78	22	4	1	P	N	50	78	--
40035	--	--	--	--	41	51	20	3	0	P	N	50	48	--
40125	46	57	23	1	46	57	23	1	0	P	N	32	33	BELOW
40136	70	87	26	2	70	87	26	2	1	P	N	64	87	TOP
40252	41	51	20	3	41	51	20	3	1	P	N	75	51	TOP
40362	63	78	22	4	63	78	22	4	--	--	--	95	65	L.MID
40449	--	--	--	--	168	210	30	6	1	P	N	73	120	--
40780	--	--	--	--	57	71	23	3	0	P	N	88	57	--
40868	168	210	30	6	168	210	30	6	0	P	N	51	168	BOTTOM
40881	15	21	10	4	15	21	10	4	0	T	Y	53	21	TOP
40947	77	96	22	5	77	96	22	5	0	P	N	26	96	TOP
41000	41	51	20	3	41	51	20	3	0	P	Y	80	41	BOTTOM
41070	41	51	22	1	41	51	22	1	0	P	N	18	46	U.MID
41228	210	262	32	6	210	262	32	6	3	T	N	30	225	L.MID
41328	--	--	--	--	41	51	20	3	0	P	N	81	41	--
41384	33	41	20	1	33	41	20	1	0	P	N	82	60	ABOVE
41426	--	--	--	--	57	71	24	2	0	P	N	50	57	--
41577	168	210	30	6	168	210	30	6	1	P	N	5	144	BELOW
41804	41	51	20	3	41	51	20	3	0	P	N	78	41	BOTTOM
41857	120	150	27	5	120	150	27	5	0	T	N	87	120	BOTTOM
42148	--	--	--	--	41	51	22	1	0	P	Y	47	0	--

SENTENCED UNDER NOVEMBER 1989 AMENDMENT TO §2B3.1

US9CID#	GUIDELINE MINIMUM (SOR)	GUIDELINE MAXIMUM (SOR)	OFFENSE LEVEL (SOR)	CRIMINAL HISTORY CATEGORY (SOR)	GUIDELINE MINIMUM (PSR)	GUIDELINE MAXIMUM (PSR)	OFFENSE LEVEL (PSR)	CRIMINAL HISTORY CATEGORY (PSR)	PRIOR BANK ROBBERIES	P(LEA) OR T(RIAL)	COUNTS REDUCED AND/OR DISMISSED Y(ES) N(O)	DISTRICT	LENGTH OF PRISON IN MONTHS	POSITION OF SENTENCE IN GUIDELINE RANGE
26110	78	97	26	3	78	97	26	3	0	P	Y	23	84	LMID
26875	--	--	--	--	70	87	20	6	0	P	Y	73	50	--
28623	168	210	30	6	210	262	32	6	0	T	N	70	86	BELOW
32126	--	--	--	--	41	51	22	1	0	T	N	88	240	--
34052	--	--	--	--	63	78	20	5	0	P	N	33	63	--
34398	--	--	--	--	46	57	22	2	3	T	N	47	41	--
34913	--	--	--	--	87	108	27	3	0	P	Y	19	63	--
36152	51	63	22	3	51	63	22	3	0	P	N	87	55	LMID
36696	37	46	20	2	37	46	20	2	0	P	N	58	37	BOTTOM
37327	33	41	20	1	33	41	20	1	0	P	N	18	33	BOTTOM
37357	168	210	30	6	168	210	30	6	2	P	N	79	168	BOTTOM
37530	--	--	--	--	51	63	20	4	1	P	N	73	54	--
37641	57	71	24	2	57	71	24	2	0	P	N	30	60	LMID
37648	51	63	20	4	84	105	23	5	0	P	N	30	51	BOTTOM
37936	51	63	20	4	--	--	--	4	0	P	Y	19	51	BOTTOM
38278	37	46	19	3	37	46	19	3	1	P	Y	27	40	LMID
38313	--	--	--	--	46	57	21	3	0	P	N	47	41	--
38341	--	--	--	--	33	41	20	1	0	P	Y	47	30	--
38469	37	46	20	2	37	46	20	2	0	P	Y	70	46	TOP
38772	--	--	--	--	84	105	22	6	1	P	N	29	120	--
39110	77	96	24	4	77	96	24	4	1	P	N	11	96	TOP
39403	46	57	23	1	46	57	23	1	0	P	N	70	36	BELOW
39469	37	46	20	2	37	46	20	2	--	--	--	39	46	TOP

USBCID#	GUIDELINE MINIMUM (SOR)	GUIDELINE MAXIMUM (SOR)	OFFENSE LEVEL (SOR)	CRIMINAL HISTORY CATEGORY (SOR)	GUIDELINE MINIMUM (PSR)	GUIDELINE MAXIMUM (PSR)	OFFENSE LEVEL (PSR)	CRIMINAL HISTORY CATEGORY (PSR)	PRIOR BANK ROBBERIES	P(LEA) OR T(RIAL)	COUNTS REDUCED AND/OR DISMISSED Y(ES) N(O)	DISTRICT	LENGTH OF PRISON IN MONTHS	POSITION OF SENTENCE IN GUIDELINE RANGE
*35899	51	63	24	1	51	63	24	1	0	P	N	20	51	BOTTOM
33280	70	87	20	6	92	115	23	6	1	P	N	70	87	TOP
34815	70	87	27	1	70	87	27	1	0	P	N	67	75	LMID
38500	57	71	23	3	57	71	23	3	0	P	Y	73	57	BOTTOM
*41405	*92	*115	*26	*4	92	115	26	4	--	--	--	95	115	TOP
41636	57	71	23	3	57	71	23	3	2	P	N	43	71	TOP
42142	57	71	23	3	57	71	23	3	0	P	N	47	64	U.MID
42208	--	--	--	--	51	63	23	2	0	P	Y	88	53	--
44088	41	51	22	1	51	63	24	1	0	P	N	14	41	BOTTOM
44138	--	--	--	--	63	78	25	2	0	P	Y	19	72	--
44257	84	105	25	4	84	105	25	4	0	P	N	72	84	BOTTOM
44323	78	97	26	3	78	97	26	3	1	P	N	72	97	TOP
44324	63	78	24	3	63	78	24	3	1	P	Y	72	78	TOP
*44836	--	--	--	6	210	262	32	6	--	--	--	7	262	--
46391	46	57	23	1	46	57	23	1	0	P	Y	82	46	BOTTOM
46873	--	--	--	--	46	57	23	1	0	P	Y	88	40	--
47783	--	--	--	--	57	71	23	3	0	P	N	73	57	--
49771	--	--	--	--	84	105	23	5	1	P	Y	71	105	--
50532	--	--	--	--	87	108	28	2	1	P	Y	71	64	--

\* Case information marked by an asterisk (\*) was found to be incorrect during case review and edited for these tables. Case ID numbers marked by an asterisk indicate that the information regarding number and/or type of counts was found to be incorrect during case review and was edited for these tables.



**TABLE V - LOCATION OF SENTENCE IN GUIDELINE RANGE FOR BANK ROBBERY  
(18 § USC 2113 A & D)  
SENTENCED UNDER NOVEMBER 1, 1989 AMENDMENT TO §2B3.1**

MULTIPLE COUNT CASES								
Position in Guideline Range	18 § USC 2113 A'S WITH OR WITHOUT 18 § USC 371 OR 2		18 § USC 2113 D'S WITH OR WITHOUT 18 § USC 371		18 § USC 2113 A AND 18 § USC 2113 D		18 § USC 2113 A OR 18 § USC 2113 D PLUS 18 § USC 924 C OR 922 G	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
BELOW RANGE	6	(23.1%)	0	(0.0%)	0	(0.0%)	4	(14.8%)
BOTTOM OF RANGE	11	(42.3%)	3	(75.0%)	2	(100.0%)	10	(37.0%)
LOWER MIDDLE	3	(11.5%)	0	(0.0%)	0	(0.0%)	5	(18.5%)
UPPER MIDDLE	1	(3.9%)	0	(8.3%)	0	(0.0%)	2	(7.4%)
TOP OF RANGE	2	(7.7%)	1	(25.0%)	0	(0.0%)	5	(18.5%)
ABOVE RANGE	3	(11.5%)	0	(0.0%)	0	(0.0%)	1	(3.7%)
<b>TOTAL</b>	<b>26</b>	<b>(100.0%)</b>	<b>4</b>	<b>(100.0%)</b>	<b>2</b>	<b>(100.0%)</b>	<b>27</b>	<b>(100.0%)</b>

\* When no SOR information was available, location of sentence was determined in relation to the PSR guideline range.

TABLE XV - LOCATION OF SENTENCE IN GUIDELINE RANGE BY CRIMINAL HISTORY CATEGORY  
 FOR BANK ROBBERY (18 § USC 2113 A & D)  
 SENTENCED BETWEEN JANUARY 19, 1989 TO JUNE 30, 1990  
 -SINGLE COUNT CASES-

POSITION IN GUIDELINE RANGE	CRIMINAL HISTORY CATEGORY (18 § USC 2113 A)					
	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
BELOW RANGE	16 (20.5%)	1 (3.9%)	5 (11.6%)	1 (4.2%)	3 (13.0%)	12 (15.4%)
BOTTOM OF RANGE	30 (38.5%)	11 (42.3%)	6 (14.0%)	9 (37.5%)	3 (13.0%)	30 (38.5%)
LOWER MIDDLE	6 (7.7%)	3 (11.5%)	8 (18.6%)	3 (12.5%)	1 (4.4%)	6 (7.7%)
UPPER MIDDLE	6 (7.7%)	3 (11.5%)	5 (11.6%)	3 (12.5%)	8 (34.8%)	20 (25.6%)
TOP OF RANGE	12 (15.4%)	8 (30.8%)	18 (41.9%)	7 (29.7%)	6 (26.1%)	9 (11.5%)
ABOVE RANGE	8 (10.2%)	-	1 (2.3%)	1 (4.2%)	2 (8.7%)	1 (1.3%)
TOTAL	78 (100.0%)	26 (100.0%)	43 (100.0%)	24 (100.0%)	23 (100.0%)	78 (100.0%)

missing = 203

POSITION IN GUIDELINE RANGE	CRIMINAL HISTORY CATEGORY (18 § USC 2113 D)					
	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
BELOW RANGE	1 (3.2%)	1 (12.5%)	-	1 (16.7%)	-	-
BOTTOM OF RANGE	11 (35.5%)	2 (25.0%)	4 (26.7%)	1 (16.7%)	2 (28.6%)	4 (28.6%)
LOWER MIDDLE	3 (9.7%)	1 (12.5%)	2 (13.3%)	2 (33.3%)	-	2 (14.3%)
UPPER MIDDLE	10 (32.3%)	2 (25.0%)	3 (20.0%)	1 (16.7%)	1 (14.3%)	5 (35.7%)
TOP OF RANGE	4 (12.9%)	1 (12.5%)	5 (33.3%)	-	3 (42.9%)	3 (21.4%)
ABOVE RANGE	2 (6.5%)	1 (12.5%)	1 (6.7%)	1 (16.7%)	1 (14.3%)	-
TOTAL	31 (100.0%)	8 (100.0%)	15 (100.0%)	6 (100.0%)	7 (100.0%)	14 (100.0%)

missing = 53