



# **Introduction to the Guidelines**

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**Minneapolis, MN**



# Presenters

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# Commission Resources



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# Topics Covered

- General Overview of Federal Sentencing
- Basic Guideline Application
- Relevant Conduct
- Criminal History





# The Guidelines Manual “At a Glance”



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# *Guidelines Manual*

- Ch. One            Introduction, definitions, application principles
- Ch. Two            Offense guidelines
- Ch. Three          Generic adjustments
- Ch. Four           Criminal history



- Ch. Five            Determining the guideline range
- Ch. Six            Sentencing procedures & pleas
- Ch. Seven        Violations of probation & supervised release
- Ch. Eight         Sentencing of organizations



## Structure of a Guideline

- Guideline cite (*e.g.*, §2B3.1)
  - Note some are designated “(Policy Statement)” (*e.g.*, §4A1.3)
- Introductory commentary (*e.g.*, Chapter Three, Part B)



# Structure of a Guideline (cont)

- Guideline
  - Chapter Two guidelines have
    - Base offense levels
    - Specific offense characteristics
    - Cross references
    - Special instructions



## Structure of a Guideline (cont.)

- Commentary
  - Statutory provisions
  - Application notes
  - Background
  - Historical note





# Guideline Application



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# “One Book Rule”

§1B1.11

Use the *Guidelines Manual*  
in effect at the time of **sentencing**

If *ex post facto* is implicated, use the *Guidelines Manual*  
in effect at the time of the **offense**



# General Approach of the Federal Sentencing Guidelines

- Begins as an offense of conviction system
- Then considers many real offense characteristics



# Single Count Application

## Chapter Two

- Base Offense Level
- Specific Offense Characteristics
- Cross References

## Chapter Three

- Victim
- Role
- Obstruction
- [Multiple Counts]
- Acceptance



# Chapter Three Adjustments

- Victim-Related Adjustments
- Role in the Offense
- Obstruction
- Multiple Counts
- Acceptance of Responsibility



# Acceptance of Responsibility

## Chapter Three, Part E

- 2-Level Reduction:  
If defendant clearly demonstrates affirmative acceptance of responsibility for the offense.
- 1-Level Additional Reduction Possible



# Requirements for 1-Level Additional Reduction

## §3E1.1(b)

- Only if 2-level reduction applicable
- Must be at least offense level 16
- Government motion required
  - Government should not withhold the motion for reasons other than acceptance as described in §3E1.1
- Must give timely notification of plea of guilty





# Guideline Application for Defendants Hugo and Savage Robbery Scenario



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# Determining the Applicable Chapter Two Guideline

## §1B1.2(a)

- Use the Chapter Two guideline applicable to the offense of conviction
- Refer to the Statutory Index (Appendix A) in this determination

Note: If no guideline is listed, use §§2X5.1 or 2X5.2



## Appendix A

### Statute

18 U.S.C. § 2111

18 U.S.C. § 2112

18 U.S.C. § 2113(a)

18 U.S.C. § 2113(b)

18 U.S.C. § 2113(c)

18 U.S.C. § 2113(d)

### Guideline

2B3.1

2B3.1

2B1.1,

2B2.1,

2B3.1,

2B3.2

2B1.1

2B1.1

2B3.1



- §2B1.1           Larceny, Embezzlement,  
                    Fraud and Forgery
- §2B2.1           Burglary
- §2B3.1           Robbery
- §2B3.2           Extortion by Force or Threat  
                    of Injury or Serious Damage



# Determining the Applicable Chapter Two Guideline

## §1B1.2(a)

- Use the Chapter Two guideline applicable to the offense of conviction
  - (i.e., the offense conduct charged in the count of the indictment or information of which the defendant was convicted)



# Appendix A Exercise #1

## Indictment

The Grand Jury charges that:

### Count 1

On or about December 16, 2015, in the Southern District of Minnesota, the defendants,

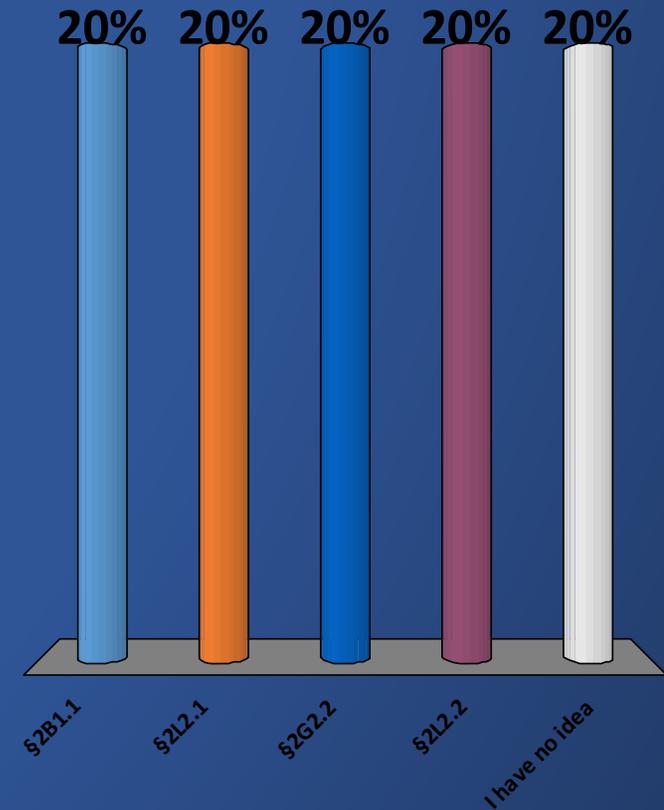
**Nelson Hugo and Ken Savage,**

Each aiding and abetting the other, did, by force, violence, and intimidation, take from the victim teller approximately \$17,078.51 in United States currency belonging to Affinity Plus Federal Credit Union in Mankato, Minnesota. The deposits were insured by the National Credit Union Administration, and in committing such offense, did assault and put in jeopardy, the life of another person by the use of a dangerous weapon, a handgun, in violation of Title 18, United States Code, Sections 2113(a) and 2113(d).



# What is the Chapter Two Guideline?

- A. §2B1.1
- B. §2B2.1
- C. §2B3.1
- D. §2B3.2
- E. I have no idea



## Pointers about Chapters Two and Three Application

- Offense levels are cumulative (§1B1.1, App. Note 4)
- Within sections, use greatest (§1B1.1, App. Notes 4(A) & 5)
- No issue of “double counting” unless directed by guidelines (§1B1.1, App. Note 4(B))
- “Adjustments” are distinct from “departures” and “variances” (Chapter Three & §5K2.0 & § 3553(a))





# Relevant Conduct

## §1B1.3



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## Relevant Conduct

- Sets the limits of information to be used in guidelines application
  - Note however that at sentencing generally ALL information can be used
    - 18 U.S.C. § 3661
    - §1B1.4
    - *Witte, Watts, etc.*
- Sentencing accountability is not always the same as criminal liability



## Key Points to Remember about Relevant Conduct

- Defendant is always responsible for acts that he/she commits
- Defendant is sometimes responsible for acts of others as part of a jointly undertaken criminal activity
- For certain offenses, defendant will be responsible for acts that are part of the same course of conduct, common scheme or plan



# Relevant Conduct

## §1B1.3

(a): Establishes what is relevant for Chapters Two and Three

- Base offense levels (BOL's)
- Specific offense characteristics (SOC's)
- Cross references
- Chapter Three Adjustments



# Subsections (a)(1) and (a)(2)

## §1B1.3(a)

- Responsible for most application issues
- Requires an analysis
  - Keyed to the offense of conviction
  - Requires determinations of “WHO” & “WHEN”



## §§1B1.3(a)(1) & (a)(2): Analysis

**WHO:** (a)(1)(A): Acts of the defendant  
(a)(1)(B): Certain acts of others  
(3-part analysis)

**WHEN:**

Offense of Conviction

(a)(1):

In preparation

During

Avoiding  
detection

(a)(2):

Same course of conduct/  
Common scheme or plan



## (a)(1)(A) Analysis of §1B1.3(a)(1)

**WHO:** (a)(1)(A): Acts of the defendant:  
**Acts committed, aided, abetted,  
counseled, commanded,  
induced, procured, or willfully  
caused by the defendant**

**WHEN:**

**Offense of Conviction**

**(a)(1):**

**In preparation**

**During**

**Avoiding  
detection**



## 3-Part Analysis of (a)(1)(B)

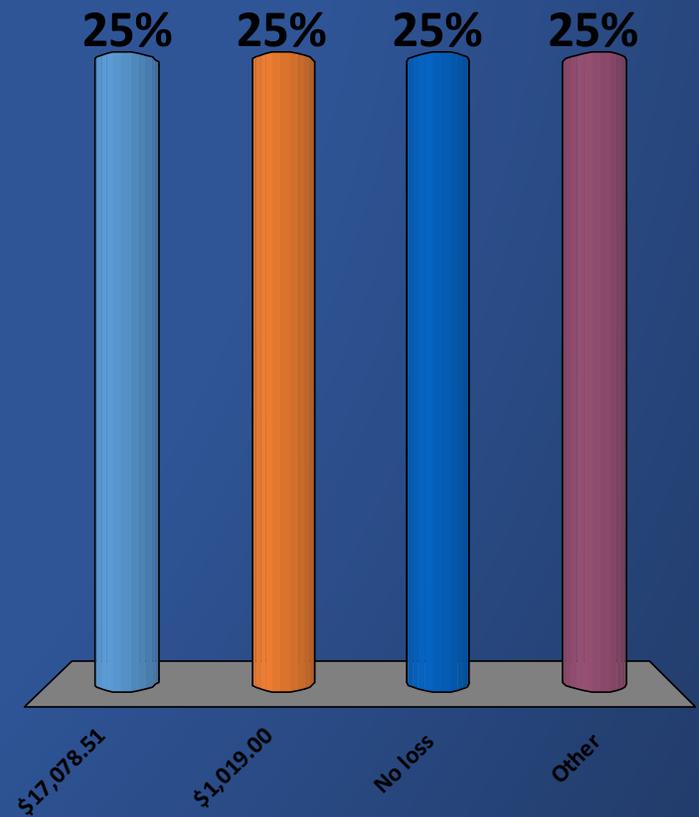
### Determinations required for acts of others to be relevant conduct

1. The scope of the defendant's jointly undertaken criminal activity
2. If acts of others were in furtherance of the defendant's undertaking, and
3. If acts of others were reasonably foreseeable in connection with the defendant's undertaking



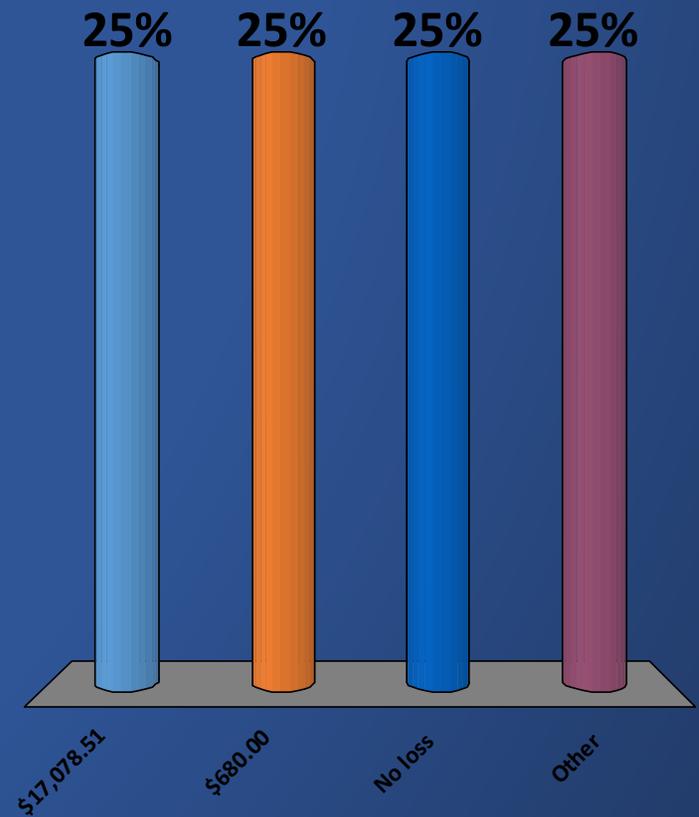
# What is the amount of loss for Hugo?

- A. \$17,078.51
- B. \$1,019.00
- C. No loss
- D. Other



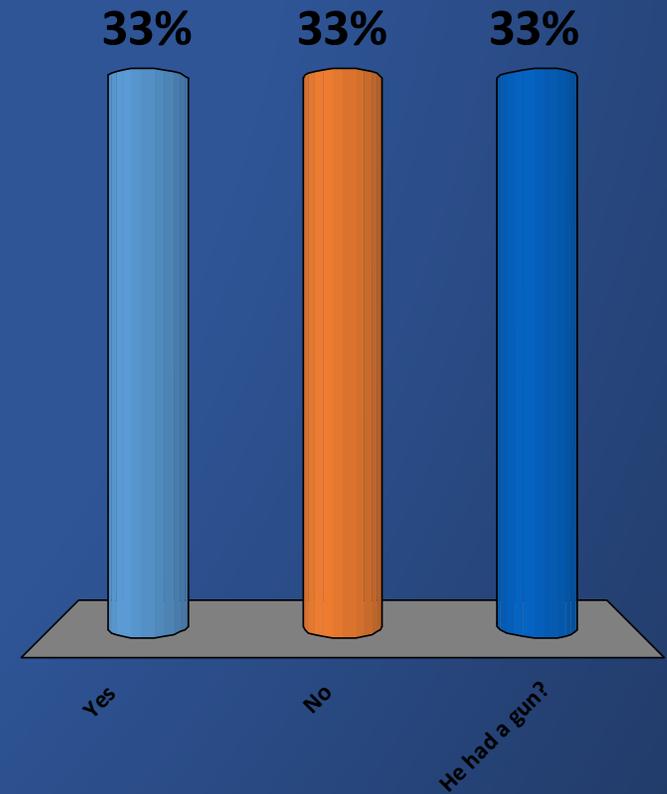
# What is the amount of loss for Savage?

- A. \$17,078.51
- B. \$680.00
- C. No loss
- D. Other



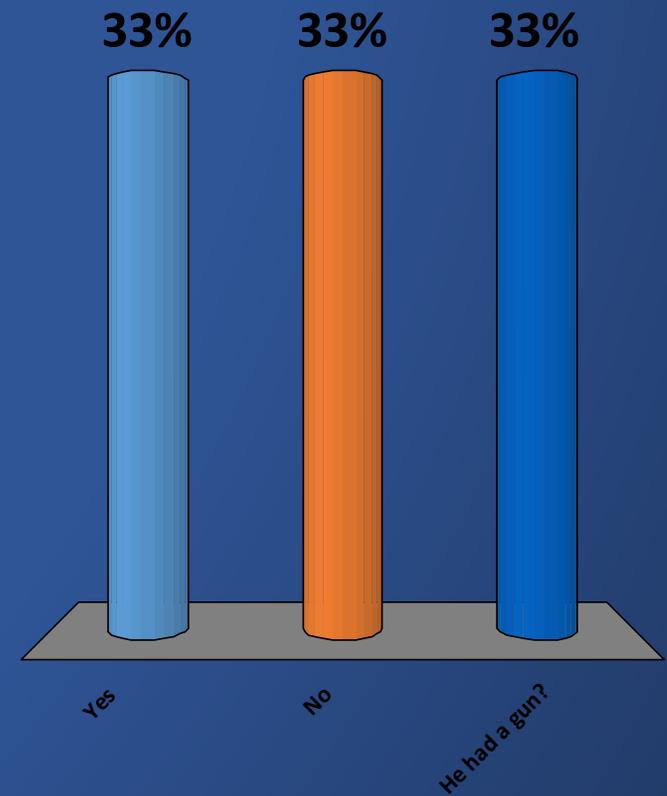
# Is defendant Hugo responsible for the firearm?

- A. Yes
- B. No
- C. He had a gun?



# Is defendant Savage responsible for the firearm?

- A. Yes
- B. No
- C. He had a gun?





# Criminal History

## Chapter Four



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## Numerous “Rules” in Chapter Four

- Typically clear regarding previous federal record
- Issues more likely to arise regarding previous state/local record
  - Look to case law
  - Established methods used in your court for recurring issues



## Criminal History

Measures the seriousness of a defendant's prior record and the likelihood of recidivism

- ✓ “Prior Sentences”  
(1, 2, or 3 points each)
- ✓ “Status”  
(2 points)



## Criminal History Points

### Prior Offense Committed at 18 or Older

Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	>13 months	Within 15 yrs. of prior sentence imposition or release
2	≥60 days	Within 10 yrs. of prior sentence imposition
1 (max of 4)	All others**	Within 10 yrs. of prior sentence imposition

\* If otherwise countable

\*\* Exceptions may apply



## Criminal History Points

### Prior Offense Committed Before 18

Points*	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	Only if convicted as an adult and >13 months	Within 15 yrs. of prior sentence imposition or release
2	≥ 60 days	Within 5 yrs. of prior sentence imposition or release
1 (max of 4)	All others**	Within 5 yrs. of prior sentence imposition

\* If otherwise countable

\*\* Exceptions may apply



# Length of Prior Sentences

## §4A1.2(a) and App. Note 2

- Set by maximum sentence imposed
  - If sentence or any portion is suspended, the maximum is established by the unsuspended portion
- Unaffected by release
  - *E.g.*, release to parole or for “good time”



## Criminal History Exercises

Each exercise is designed to focus on the application of a single or a couple of discrete “rules” found in the guidelines for Criminal History. Unless an exercise indicates otherwise, assume that none of the other “rules” are at issue in a given exercise.

Also assume that the instant federal offense is being sentenced today, and that the earliest date of relevant conduct is January 1<sup>st</sup> of this year (2016).

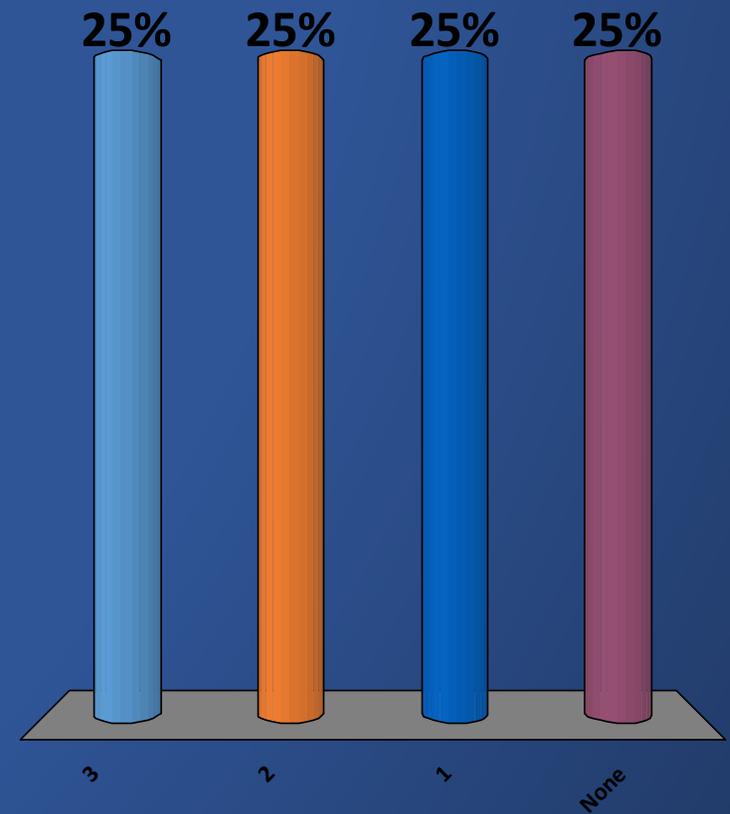


# Criminal History Exercise #1:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
<b>08/10/2011 (Age 23)</b>	<b>Possession of Heroin Hennepin County District Court Minneapolis, MN</b>	<b>10/25/11: Pled guilty 1 year DOC Sentence suspended, serve 60 days jail and 2 years probation</b>

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

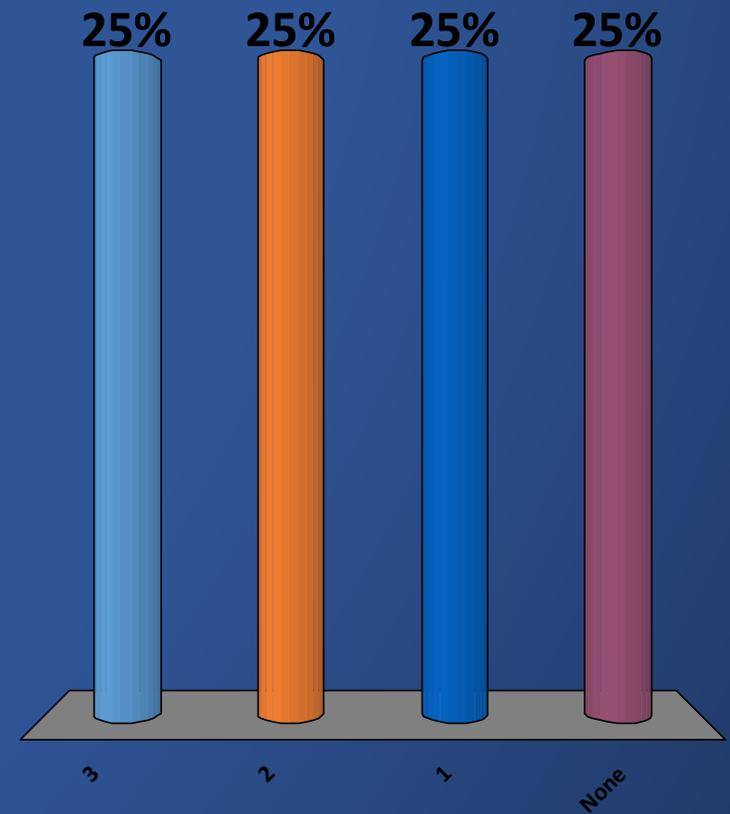


## Criminal History Exercise #2:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
04/06/11 (Age 47)	Possession of Firearm in the Commission of a Felony Ramsey County District Court St. Paul, MN	09/21/11: Pled guilty, 1 day jail time served followed by 24 months probation

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

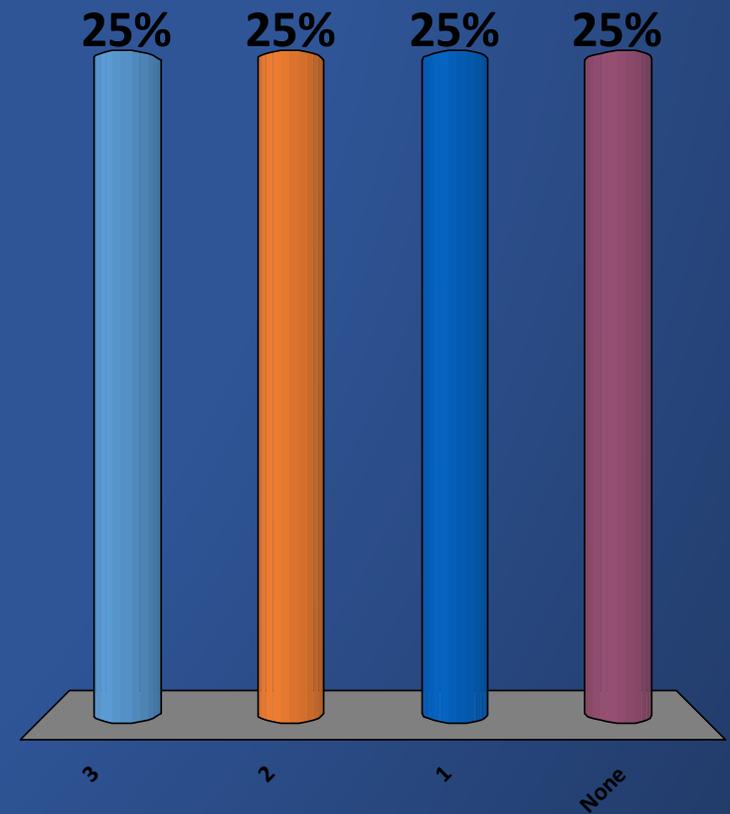


## Criminal History Exercise #3:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
01/27/03 (Age 16)	Assault Causing Bodily Injury to a Family Member Wichita Falls County Court, Wichita Falls, TX	02/26/03: 6 months probation

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None

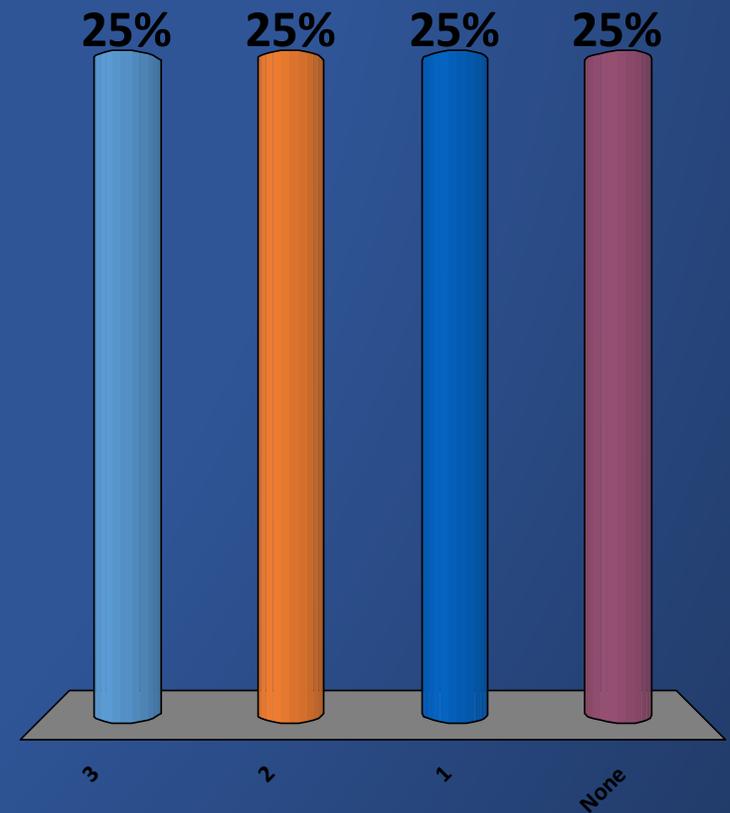


## Criminal History Exercise #4:

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
12/30/08 (Age 27),	Arson Scott County District Court, Shakopee, MN	08/18/09: Pled guilty, 12 months to five years custody

# How many criminal history points?

- A. 3
- B. 2
- C. 1
- D. None



## The Statutes “Trump” the Guidelines

Regardless of what sentence the guidelines may call for, the sentence imposed must fall within the restrictions set by statute

(*e.g.*, statutory maximums and mandatory minimums)

-*See* §§5G1.1 & 5G1.2



# Impact of Statutory Penalties on the Guideline Range

§5G1.1



# Statutory Maximum's Impact on Sentencing Range

Guideline Range Computed 51-63

Statutory Maximum 5 years  
(60 months)

51-60



# Mandatory Minimum's Impact on Sentencing Range

Guideline Range Computed 51-63

Mandatory Minimum 5 years  
(60 months)

**60-63**



# Sentencing Table

## Criminal History Category

Offense Level	I (0 or 1)	II (2 or 3)	III (4,5,6)	IV (7,8,9)	V (10,11,12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	Zone A		0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	Zone B		8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	Zone C		21-27	24-30
11	8-14	10-16	15-21	21-27	27-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	Zone D		33-41





# Substantial Assistance Departures

§5K1.1  
&  
18 U.S.C. § 3553(e)



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# Substantial Assistance

§5K1.1

Permits a sentence below  
the minimum of the guideline range

18 U.S.C. § 3553(e)

Permits a sentence below  
a mandatory minimum



## Substantial Assistance (cont.)

### §5K1.1 & 18 U.S.C. § 3553(e)

- Each requires a government motion
  - *Wade v. U.S.*, 504 U.S. 181 (1992)
- A separate government motion under 18 U.S.C. § 3553(e) is required to go below a mandatory minimum
  - *Melendez v. U.S.*, 518 U.S. 120 (1996)



## Substantial Assistance (cont.)

18 U.S.C. § 3553(e)

- A sentence below mandatory minimum is to be based only on substantial assistance



# Thank You!



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