SUPPLEMENTARY REPORT ON SENTENCING GUIDELINES FOR ORGANIZATIONS

UNITED STATES SENTENCING COMMISSION

AUGUST 30, 1991

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Introduction

This Supplementary Report on Sentencing Guidelines for Organizations supplements and further explains the sentencing guidelines for organizational defendants (proposed Chapter Eight of the Guidelines Manual) submitted to Congress on May 1, 1991, as Amendment 60, by the United States Sentencing Commission.

The relevant governing statute, 18 U.S.C. § 994(p), calls for "a statement of reasons" for guideline amendments. The Commission intends that the Commentary in Amendment 60 will provide the basic information to comply with this legislative mandate.

This Supplementary Report provides additional information to assist in understanding the sentencing guidelines for organizational defendants, the guidelines' background, structure, underlying rationale, empirical basis, and significant estimated effects. Chapter One discusses the procedures followed by the Commission in developing the organizational guidelines. Chapter Two discusses the Commission's resolution of major issues. Chapter Three discusses the structure of past practice for fines imposed upon organizations, the magnitude of average fines imposed, and the probable effect of the guidelines on the level of fines.

Chapter One
Commission Procedure

Due to the complexity of the subject matter and the tight deadlines imposed by the Sentencing Reform Act, the Commission decided in 1986 to defer the drafting of organizational guidelines for offenses other than antitrust until after it had developed and implemented the first iteration of guidelines for individual defendants. Throughout the period from 1986 to 1991, however, the Commission conducted empirical research and analysis on organizational sentencing practices.

The development of organizational guidelines was iterative, with various succeeding drafts providing vehicles for public comment and analysis. Using empirical research, estimates of past practice, theoretical and statutory analysis, and public input, the Commission refined its approach to the complex issues inherent in organizational sentencing as it debated the key questions the guidelines needed to address.

A. Commission Research

When the Commission began its consideration of sentencing guidelines for organizations, no comprehensive data base of past sentencing of organizations was available. Therefore, to conduct empirical analyses and model draft guidelines, the Commission assembled a comprehensive data set on organizational sentencing practices from 1984-1990. The purpose of this multi-year data set was to enable the Commission to explore the relationship between estimates of loss caused by the offense and sanctions imposed by the courts.

It is important to note the limitations of the Commission's data resulting from the lack of "guideline relevant" information in the court documentation forwarded to the Commission for analysis. Because the presentence reports were written before implementation of sentencing guidelines, factors such as loss, gain, and level of management involvement were not always readily apparent from the case files. Notwithstanding these limitations, the Commission collected information on more than 80 relevant variables from 774 organizations and associated individual defendants sentenced between 1988-1990 to produce a comprehensive data set of organizational sentencing practices. Additionally, the Commission earlier had gathered data related to the sentencing of 1,226 organizations for non-antitrust offenses from 1984 to 1987 to study the types of organizational offenses and offenders prosecuted in federal courts, the sentences imposed, and factors that may have influenced fine levels. The Commission also used these data to simulate likely sentences under various drafts of the guidelines.

B. Advisory and Working Groups

The Commission benefitted from the assistance of advisory and working groups of judges, attorneys, probation officers, and academicians in the development of guidelines for both individuals and organizations. Working groups of scholars and experts from various government agencies were formed to help shape the Discussion Materials on Organizational Sanctions circulated by the Commission for comment in July 1988.

Late in 1988, a working group of private defense attorneys was formed to develop for the Commission's consideration a set of practical principles for sentencing organizations. This attorney working group, chaired by Joseph E. diGenova of Washington, D.C., conducted bi-weekly meetings from December 1988 to April 1989. On May 18, 1989, the working group submitted to the Commission its *"Recommendations Regarding Criminal Penalties for Organizations."*

In the fall of 1990, an advisory group of federal judges was convened to review and comment on draft guidelines then under consideration. The observations of this group provided the Commission with a judicial perspective that helped in shaping the guidelines.

In April 1991, a working group of federal probation officers was convened from judicial districts with the largest numbers of organizational sentencings. This group evaluated the workability of the draft guidelines by applying them to past cases. The insights of this group further assisted the Commission in its efforts to draft guidelines that could be readily applied by judges and practitioners.

Throughout the process, the Commission received informational briefings from a variety of resource groups, including government agencies, business groups, and practitioners.

C. Liaison with Other Federal Agencies

The Commission solicited views from a variety of federal agencies, particularly with respect to organizational offenses occurring within the agencies' area of responsibility. During the guideline development process, the Council of Economic Advisers, the Departments of Justice, Defense, Health and Human Services, and Interior, the Environmental Protection Agency, the Securities and Exchange Commission, and the Federal Trade Commission provided the Commission with written and oral comments. In addition, the Criminal Division of the Department of Justice prepared a version of proposed organizational guidelines for Commission consideration.

D. Published Drafts

The Commission published and requested comment on three major drafts of sentencing guidelines for organizations. In addition, numerous interim drafts and working papers were made available to interested members of the public. Throughout the process, the Commission was aided by comments filed by individuals, law firms, trade associations, public interest groups, corporations, and government agencies.

The first major published draft, *Discussion Materials on Organizational Sanctions* (and associated working papers), was circulated for comment in July 1988. This draft proposed basing organizational fines on the loss caused by the offense and the probability that the offense would be detected and prosecuted. In November 1989, the Commission published for comment a draft containing two options for setting fines: 1) offense levels that reflected the seriousness of the offense, adjusted to reflect aggravating and mitigating factors; and 2) the higher of loss, gain, or an amount corresponding to the offense level, subject to upward or downward adjustment for aggravating and mitigating factors. In November 1990, the Commission published for comment a third draft prepared by a staff working group based on a set of principles adopted by the Commission. (The principles are set out in Appendix A.) At the same time, at the request of the Attorney General, an ex-officio member of the Commission, the Commission published a set of proposed guidelines prepared by the Department of Justice. From March through May 1991, the Commission made available to the public various drafts as the Commission refined the organizational guidelines.

E. Public Hearings

Public hearings were conducted at the beginning of the guideline-development process and following the publication of each major draft. The topic of organizational sentencing guidelines was first addressed at an informational hearing held on June 10, 1986, at the Commission's offices. Public hearings on the July 1988 discussion draft were held in New York City on October 11, 1988, and in Pasadena, California on December 2, 1988. Public hearings were held in Washington, D.C., on the November 1989, and November 1990, drafts on February 14, 1990, and December 13, 1990, respectively. (Appendix B lists the witnesses who testified at each of these hearings.)

Chapter Two

Major Issues in Drafting Organizational Guidelines

A. Philosophical Bases for Sentencing Organizations

A careful review of the existing literature on organizational sanctions and the public comment to the Commission made clear that there was no consensus as to a single theory of organizational sentencing. In developing a framework for organizational guidelines, the Commission therefore drew especially strong guidance from the principles of sentencing specified by Congress. Those principles, set out in section 3553(a) of title 18, United States Code, include: (1) just punishment ("to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"); (2) adequate general deterrence ("to afford adequate deterrence to criminal conduct"); (3) specific deterrence and incapacitation ("to protect the public from further crimes of the defendant"); (4) rehabilitation ("to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner"); (5) the elimination of unwarranted disparity ("the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"); and (6) appropriate remedial measures ("the need to provide restitution to any victims of the offense").[1] In addition, Congress imposed the constraint that a sentence imposed should be "sufficient, but not greater than necessary" to achieve just punishment, adequate deterrence, specific deterrence, incapacitation, and rehabilitation.

Various sections of Chapter Eight are designed to respond to one or more of the congressionally specified purposes of sentencing. The restitution and other remedial provisions in Part B of Chapter Eight are designed to ensure that appropriate remedial measures will be taken. Section 8C1.1 (Determining the Fine - Criminal-Purpose Organizations) is designed to incapacitate organizations that operate primarily for a criminal purpose or primarily by criminal means. The probationary provisions in Part D of Chapter Eight are designed, in part, to achieve specific deterrence and, in part, to rehabilitate convicted organizations. Rehabilitation is addressed by placing organizations on probation to ensure that changes designed to reduce the likelihood of future criminal conduct are made within the organization. The fine provisions in Part C, Subpart 2 (Determining the Fine - Other Organizations) are designed to achieve just punishment and adequate deterrence. Overall, the guidelines and policy statements in Chapter Eight are intended to achieve the goal of reducing unwarranted disparity.

The fine guidelines seek to achieve the purposes of sentencing set forth in section 3553(a) by setting fines based upon a combination of the "base fine," which measures the seriousness of the offense, and the "culpability score," which is designed to

[1]The Commission is directed to consider these purposes of sentencing. <u>See</u> 28 U.S.C. § 991(b)(1)(A).

measure the culpability of the organization with respect to the offense committed. The base fine is determined in most instances by using the highest of an amount from an offense level fine table, the pecuniary gain from the offense, or the pecuniary loss from the offense.

Because an organization is vicariously liable for actions taken by its agents, the Commission determined that the base fine, which measures the seriousness of the offense, should not be the sole basis for determining an appropriate sentence. Rather, the applicable culpability score, which is determined primarily by "the steps taken by the organization prior to the offense to prevent and detect criminal conduct, the level and extent of involvement in or tolerance of the offense by certain personnel, and the organization's actions after an offense has been committed" also influences the determination of a fine range.[2]

Specifically, the organization's culpability is determined by the level or extent of involvement in or tolerance of the offense by certain personnel, the organization's prior history, whether an order was violated when the organization committed the offense, whether the organization obstructed or attempted to obstruct justice, whether the organization had an effective program to prevent and detect violations of law, and whether the organization reported the offense, cooperated fully in the investigation, and accepted responsibility for its criminal conduct. The guidelines increase the fine range when organizations are more culpable and reduce the fine range when organizations are less culpable.[3]

B. Guidelines Versus Policy Statements

One of the issues presented to the Commission was whether to issue guidelines or policy statements. Some outside parties contended that the Commission lacks the authority to issue guidelines to govern the sentencing of organizations. Others contended that the Commission, for policy reasons, should issue policy statements rather than guidelines. In resolving this issue, the Commission took into consideration statements by Congress that: 1) sentences for offenses committed by organizations should reflect the potentially greater financial harm caused when organizations, as opposed to individuals,

[2]Chapter Eight, Introductory Commentary.

[3]In some cases, the base fine may not adequately measure the seriousness of the offense and the culpability score may not adequately measure the culpability of the organization. In such cases, a sentence above or below the applicable fine range (i.e., departure) may be appropriate. Consistent with the principles set forth in the Introduction to the guidelines, see U.S.S.G. Ch. 1, Pt. A(4)(b), intro. comment., the Commission has identified a number of circumstances under which departure may be appropriate, but has not attempted to make an exhaustive list in Chapter Eight.

commit offenses;[4] 2) an "organization found guilty of an offense shall be sentenced . . . to . . . a term of probation . . . or . . . a fine . . . ";[5] 3) the Commission "shall promulgate . . . guidelines . . . for use of a sentencing court in determining . . . whether to impose a sentence to probation, or a fine . . . [and] the appropriate amount of a fine or the appropriate length of a term of probation . . . ";[6] and 4) "the guidelines promulgated [by the Commission] shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code."[7]

In light of these congressional statements and other policy considerations consistent with the Commission's overall mandate, the Commission made the following determinations regarding guidelines and policy statements. Chapter Eight contains guidelines that specify when restitution, a sentence of a fine, or a sentence of probation shall be imposed. Guidelines set forth the fine range and adjustments that may or must be made to the guideline fine range. Other aspects of the application of the guidelines to organizational sentencing are addressed by policy statements, including: the use of remedial measures other than restitution; setting of the fine within the guideline fine range; departures from the guideline fine range; the conditions of probation to be imposed; and the sanctions to be imposed for a violation of a condition of probation.

C. Scope of Applicability

In developing guidelines for organizations, the Commission examined questions related to the scope of Chapter Eight's applicability: What types of organizations and offenses should be covered by the guidelines? Should the applicability of the fine guidelines be as broad as the remedial and probationary guidelines?

As a starting point, the Commission followed the pattern of applicability of the individual guidelines[8] and limited the applicability of Chapter Eight to felonies and class A misdemeanors. In light of the limited number of organizations sentenced for class B or C misdemeanors or for infractions,[9] and in light of the lack of coverage of such

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[4]S. Rep. No. 98-225, 66-67, 98th Cong., 2d Sess. (1984).

[5]18 U.S.C. § 3551(c)(1).

[6]28 U.S.C. § 994(a)(1)(A) and (B).

[7]28 U.S.C. § 994(b)(1).

[8]See U.S.S.G. §1B1.9 (Class B or C Misdemeanors and Infractions).

[9]For example, of the 328 organizations sentenced in 1988, only six were sentenced for violations of petty offenses.

offenses by the individual guidelines, the Commission decided that such offenses should be excluded from Chapter Eight.

Two approaches were used in deciding which offenses should be covered by the fine guidelines. First, the Commission examined the types of offenses for which organizations have been sentenced in federal courts in the past to ascertain whether there were reasons to exclude any of these offenses from the applicability of the fine guidelines. Second, the Commission examined the types of offenses covered by Chapter Two (the offense conduct chapter) of the individual guidelines to decide which of these guidelines appear appropriate for organizational fines.

In the end, certain types of offenses were excluded from this first set of organizational fine guidelines. Offenses falling under the Contempt (§2J1.1) and Obstruction of Justice (§2J1.2) guidelines were excluded because fines based on the applicable offense levels might be too low to reflect the seriousness of the offense and to deter other similar offenses. Environmental offenses (Part Q of Chapter Two) and most food, drug, and agricultural products offenses (Part N of Chapter Two) were excluded from the initial set of organizational guidelines, pending additional discussion and research on appropriate fine determinants. Export violations (§§2M5.1 and 5.2) were excluded because the offense levels in those guidelines (offense levels 14 and 22) may not adequately translate into appropriate organizational fines given the variety of cases that involve these guidelines. These excluded offenses share a common characteristic in that the harm or loss caused or threatened often cannot easily be translated into monetary terms. Moreover, the dollar loss may not adequately reflect the societal harm caused by the offense.

The proposed fine guidelines do, however, cover some offenses for which harm or loss cannot readily be quantified in dollar amounts. For some of these offenses, the Commission has provided special fine instructions that base fines on factors that can be measured more readily than pecuniary loss, but are closely related to factors that measure the seriousness of the offense. For example, in antitrust cases, fines are based on the volume of commerce (see §2R1.1.); in money laundering offenses, fines are based on the amount of funds involved (see, e.g., §2S1.1); and in bribery offenses, fines are based on the greatest of the value of the unlawful payment, the value of the benefit received or to be received in return for the unlawful payment, or the consequential damages resulting from the unlawful payment (see, e.g., §2C1.1).

D. Treatment of Large versus Small Organizations

One of the more difficult issues debated in developing organizational guidelines was whether larger organizations should be treated differently from smaller organizations. During the debate, at least three justifications were advanced for differentiating between large and small organizations. First, compared to the total number of organizations convicted of federal crimes, relatively few are large corporations. Second, the difficult issue of vicarious liability is typically more critical for larger organizations. With smaller organizations, an owner is generally involved in the offense and directly subject to prosecution. Third, it was proposed that a larger fine would be needed to sufficiently punish and deter a larger organization.

In assessing the treatment of large versus small organizations, the Commission considered both statutory guidance and empirical research. Section 3572(a) of title 18, United States Code, provides that in determining the amount of a fine, the court should consider "the defendant's income, earning capacity, and financial resources" and "if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense." This statutory language, while instructive, provided the Commission with only limited concrete guidance.

Empirical evidence also failed to illuminate clearly the relationship between the size of an organization and the fine imposed. For example, cases in which no fine was imposed most frequently involved smaller organizations, but this difference appears to relate more to ability to pay than to size. The highest fines were imposed upon larger organizations, but this difference appears to relate more to the magnitude of the loss caused or the seriousness of the offense, rather than to the size of the organization.

The Commission's general approach in resolving this conceptually difficult issue was to take the size of the organization into account, but only under certain prescribed circumstances. First, recognizing that small organizations may frequently be the alter egos of their owners, the Commission provided a permissive offset for fines imposed upon closely-held corporations. This provision is neutral with respect to size, but will probably be applied most frequently in cases involving smaller corporations. Second, the Commission provided that fine magnitudes should vary based upon the interaction between size of the organization and the involvement in or tolerance of criminal activity by certain personnel of the organization. Under these provisions, fines do not increase merely because an organization is large. However, the guideline fine range does increase as the size of an organization (or a unit of an organization) increases if persons who set the policy for or control the organization (or the unit of the organization) were involved in the offense. Thus, fines can be higher for larger organizations, but the basis for the increase is not the size of the organization, per se.

E. Use of Pecuniary Loss and Gain to Calculate Base Fine

In developing the organizational guidelines, the Commission had to determine whether loss, gain, both, or neither should be used in setting the base fine range. In the end, the Commission concluded that, as a general rule, the greater of pecuniary loss or gain should be used, subject to the constraint that pecuniary loss should only be used "to the extent the loss was caused intentionally, knowingly, or recklessly."[10]

The Commission relied upon the guidance provided by Congress as its starting point in resolving this issue. Section 3571(d) of title 18, United States Code, provides for statutory maximum fines of up to twice the greater of the gross pecuniary loss or gross pecuniary gain. Accordingly, the Commission concluded that pecuniary loss and gain should provide alternative bases for setting the base fine.

The Commission recognized the validity of an argument that because some losses cannot be translated into monetary terms, pecuniary loss may sometimes be an inappropriate measure of the seriousness of an offense. Thus, the Commission determined that when pecuniary loss cannot be measured, a proxy for loss should be used.

In addition, because the magnitude of loss in a particular case could greatly exceed an amount that should have been expected, the use of the full extent of loss could be inappropriate. Giving weight to the statutory purposes of sentencing, the Commission decided that it would be inappropriate to use loss amounts greater than the loss that had been caused intentionally, knowingly, or recklessly. Thus, the Commission decided that loss should be used as one of the alternative determinants of offense seriousness, but that the magnitude of the loss used to compute the base fine should be limited in certain instances.

F. Past Practice Analyses

Section 994(m) of title 28, United States Code, provides:

> The Commission shall insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial set of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. The Commission shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of Title 18, United State Code.

[10]§8C2.4(a)(3).

Consistent with this statutory directive, the Commission examined both the structure and the magnitude of average fines imposed in the past.

Based on past practice analysis, the Commission concluded that estimates of the average fines imposed upon organizations are less meaningful than were estimates of past practice relating to the length of imprisonment terms served by individuals. For many organizations, it appears that fines had been set based on inability or limited ability to pay a fine. Moreover, the amount of dollar loss in organizational offenses has significantly increased in the last few years, as has the maximum fine amounts authorized by statute.

Even though the average fine imposed in the past was not particularly meaningful, analyses of past practice were nevertheless useful. For example, an examination of how fine/loss multiples varied by loss magnitudes was helpful in determining base fine levels and the minimum and maximum multipliers. Past practice was also considered when determining adjustments to the culpability score, selecting factors that should be considered in setting the fine within the range, and identifying potential bases for departure.

G. Relationship of Guideline Fine Ranges to Maximum Fines Permitted by Statute

The Commission sought to draft guidelines that would accommodate the maximum statutory fines in the most egregious cases, while avoiding guideline fine ranges that would frequently exceed statutory maxima. Federal statutes set out different maximum fines depending on the type of offense. For example, in some cases pecuniary gain or loss will determine the maximum fine; in others, the type of offense (e.g., antitrust, money laundering) will control. Finally, in some cases the class of offense (i.e., felony, misdemeanor) will set the maximum fine.

In the end, three different approaches were used to coordinate the proposed guideline fine ranges with statutory maximum fines.

1) Statutory Maxima Based on Pecuniary Loss or Gain.

Congress has provided for fines up to twice the pecuniary loss caused by, or twice the pecuniary gain resulting from, an offense.[11] The proposed guidelines use 2.00 as the minimum multiplier when the culpability score is 10 or more and as the maximum multiplier when the culpability score is 5. By using a minimum multiplier of 2.00, the guidelines define a class of cases in which the minimum of the guideline fine range will be equal to the statutory maximum fine. That class of cases will have the following

[11] 18 U.S.C. § 3571(d).

characteristics: (1) pecuniary loss or gain will be used to calculate the base fine; (2) the controlling statutory maximum fine will be based on pecuniary loss or gain; and (3) the culpability score for the organization will be 10 or more. Within this subset of cases that consist of the most culpable organizations, courts will be required to impose the statutory maximum fine (absent inability to pay, an offset for the fine on an owner in the case of a closely-held organization, or a circumstance warranting departure). At the same time, when the fine is based on pecuniary loss or gain, the guidelines should never require a guideline fine higher than the statutory maximum. Since the highest minimum multiplier is 2.00, a court can always impose a fine that will simultaneously be within the guideline fine range and at or below the statutory maximum.[12]

Since the guidelines and policy statements call for a large number of factors to be considered in selecting a fine within the guideline fine range, it is conceivable that the most egregious cases with a moderate culpability score may be as serious as the least egregious case with a high culpability score. To accommodate this possibility, the guidelines permit a fine equal to twice the base fine when the culpability score is 5. Thus, in the most egregious cases with no guideline aggravators or mitigators (i.e., a case with a culpability score of 5), the sentencing court will be able to impose a guideline fine equal to twice the base fine.

Some commentators proposed that the Commission not use multipliers greater than 2.00 because that is the highest multiplier permitted by 18 U.S.C. § 3571(d). This argument overlooks the fact that the multiplier of 2.00 based on pecuniary loss or gain is only one of the possible statutory maxima. When other statutory maxima are controlling, multipliers higher than 2.00 can be imposed. For example, in all felony cases with a base fine of less than $250,000, a multiplier higher than 2.00 can be used because the statutory maximum for a single felony count is $500,000. At lower offense levels, the amounts in the offense level fine table will exceed the loss caused by the offense, thereby permitting higher fine/loss multiples.

2) Statutory Maxima Based on Class of Offense.

For a single misdemeanor count, Congress has established a statutory maximum fine of $200,000 for organizations.[13] For a single felony count, the statutory maximum

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[12]As discussed infra, a fine of twice the pecuniary loss or gain will be below the statutory maximum penalty if a higher statutory maximum, not based on loss or gain, applies. For example, 18 U.S.C. § 3571(c) provides a general maximum of $500,000 per felony conviction. In a single count case, this maximum will be higher than the statutory maximum based on loss or gain if the loss or gain were less than $250,000.

[13]18 U.S.C. § 3571(c)(5).

fine is $500,000.[14] To accommodate these statutory maxima, the Commission identified ranges for certain offense level fine amounts corresponding to those statutory maxima.

For offenses covered by Chapter Two of the guidelines, offense level 13 is the highest offense level that permits a sentence of less than a year and a day imprisonment when an individual is sentenced, and thus represents the offense level most closely calibrated to the most serious misdemeanors.[15] Accordingly, in a case with an offense level of 13 and a culpability score of 10, the guideline fine range for organizations should accommodate the maximum fine of $200,000 provided by statute. To satisfy this objective, the offense level amount at offense level 13 must be at least $50,000 and not more than $100,000. Section 8C2.4(d) of the guidelines sets the offense level fine amount for offense level 13 at $60,000.

The selection of a specific guideline offense level to associate with the maximum statutory fine of $500,000 was designed to harmonize two alternative statutory maximum fine provisions: 18 U.S.C § 3571(c), which allows fines of $500,000 per count; and 18 U.S.C. § 3571(d), which allows fines of twice the pecuniary loss caused by the offense. Pegging the statutory fine maximum of $500,000 per count to an offense level that is itself tied to pecuniary loss of $250,000 allows a consistent application of the two fine maximum provisions. Specifically, this linkage permits a transition of progressively higher fine amounts moving from cases with loss below $250,000 to cases with loss increasingly above this figure. Offense level 16 is the offense level best tied to the key statutory fine maximum of $500,000, because: (1) fraud is the predominant federal offense for which guideline offense levels are determined based on the amount of loss; (2) organizational fraud typically involves more than minimal planning; and (3) level 16 is the guideline offense level from Chapter Two for a fraud with more than minimal planning involving loss of $250,000. In order to ensure that the statutory maximum fine of $500,000 can be imposed in cases at offense level 16 involving more culpable organizations, the amount in the offense level fine table at offense level 16 must be between $125,000 and $250,000. Section 8C2.4(d) of the guidelines sets the offense level fine amount for offense level 16 at $175,000.

3) Statutory Maxima Based on Offense Type.

For antitrust violations, Congress has provided a maximum statutory fine of $10,000,000.[16] For money laundering violations, Congress has provided a maximum

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[14] 18 U.S.C. § 3571(c)(3).

[15] See 18 U.S.C. § 3581 (authorizing a term of imprisonment for a Class A misdemeanor not to exceed one year).

[16] 15 U.S.C. § 1.

statutory fine of twice the amount of money laundered.[17] The Commission has promulgated special instructions for fines in cases involving antitrust and money laundering violations that accommodate these higher statutory maxima. For antitrust cases under the guidelines, courts are to use 20 percent of the volume of commerce in lieu of pecuniary loss for purposes of determining the base fine. This allows higher fines in cases that involve larger volumes of commerce.[18]

In money laundering cases, the applicable guideline sets the base fine equal to the higher of a specified sum or a stated percent of the value of the funds. For the most serious cases (i.e., those involving defendant organizations convicted under 18 U.S.C. § 1956(a)(1)(A) or (a)(2)(A) where it was known that the funds were proceeds of unlawful activity involving manufacture, importation, or distribution of controlled substances), the base fine is set alternatively at $250,000 or 100 percent of the value of the funds. Thus, under this guideline, a fine equal to the higher of two potential statutory maxima ($500,000 under 18 U.S.C. § 3571(c) or twice the amount of money laundered under 18 U.S.C. § 1956(a)) could be imposed in a case with a culpability score of 5, and must be imposed in a case with a culpability score of 10.

H. Selection of Specific Amounts in the Offense Level Fine Table

The rate of increase in the offense level fine table slowly declines and accommodates statutory maxima while providing for higher fines for more serious offenses. The starting point of $5,000 for offense level 6 or less was selected because $10,000 is the highest fine permitted by statute for the classes of offenses not covered by the guidelines. Thus, in a case involving no aggravating or mitigating factors (i.e., with a culpability score of 5) for the typical less serious offense covered by the guidelines (i.e., offense level 6),[19] the court would be able to impose the statutory maximum fine for a Class B misdemeanor. In a case at the same offense level but with the highest culpability score (10 or more), a court would be required to impose a fine of at least $10,000. Beginning with this starting point of $5,000, the offense level fine table gradually increases. The rate of increase allows fines at offense levels 13 and 16, respectively, to accommodate the statutory maximum fines of $200,000 for a Class A

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[17] 18 U.S.C. § 1956(a).

[18] For example, in a case involving an antitrust defendant having a volume of commerce of $25,000,000 and a culpability score of 5, the court may impose the maximum statutory fine of $10,000,000. In a case involving an antitrust defendant having a volume of commerce of $25,000,000 and a culpability score of 10, a sentencing court would be required to impose the maximum statutory fine.

[19] For a few offenses covered by the organizational guidelines, the applicable offense level is 4 or 5. See, e.g., U.S.S.G. §2B1.3 (Property Damage or Destruction) (base offense level of 4; but note that with more than minimal planning the offense level is 6); U.S.S.G. §2T1.2 (Willful Failure to File Return, Supply Information, or Pay Tax) (base offense level of 5 if no tax loss).

misdemeanor and $500,000 for a felony.[20] Above offense level 16, the offense level fine amounts continue to increase in magnitude, but at a progressively slower rate, consistent with the pattern for sentences to imprisonment for individual defendants.

[20] See pages 12-13, supra.

Chapter Three

Analysis of and Comparison with Past Practice

A. The Data

The Commission initially obtained copies of relevant sentencing documents from United States District Courts for organizations sentenced in federal courts from 1984 to 1987. These data were analyzed to explore the relationship between loss caused by offenses and sanctions imposed by the courts.

Upon review, the 1984-1987 data were determined to be insufficient to guide the development of organizational sentencing guidelines for a variety of reasons. First, the fines in many of the cases sentenced from 1984-1987 were limited by statutory maxima that were substantially lower than those in place after 1988. Second, the data did not include information about sentences imposed on associated individuals. Third, the data did not include cases involving antitrust offenses. And fourth, the data were coded for only a limited number of offense and offender variables.

In order to have a more current and complete data set for analysis, data relating to organizations and associated individuals sentenced in 1988 were collected and coded for more than 50 variables. The 1988 data set was expanded in 1990 to include organizations and associated individuals sentenced from January 1, 1989, to June 30, 1990, resulting in a data set containing information on the sentencing of 774 organizations.

B. Structure of Past Practice and Magnitude of Average Fines

As discussed in Chapter Two (Part F), the Commission examined empirical data to ascertain what it could learn about the nature and magnitude of fines in the past. The Commission's analysis of past practice explored the characteristics of offenses committed and of the organizations that committed the offenses. Tables 1 though 6 illustrate the relationships between average (both mean and median) fines and specific offense characteristics. Tables 7 through 17 show the relationships between average fines and specific offender characteristics. (These tables are found at the end of this Chapter.)

A number of caveats are important regarding the data shown in Tables 1 through 17. First, as the tables indicate, information was at times incomplete. Uncertainty about the nature of past practice increases as the amount of incomplete information regarding a particular variable increases. Second, for some items of information (e.g., projected guideline offense levels), assumptions were often necessary because the purposes for which some documents (presentence reports, charging instruments, etc.) were prepared differed from the purposes for which the Commission desired to use the data. Third, for certain offense and offender characteristics, the number of observations was small. The uncertainty regarding past practice increases as the number of observations declines. Fourth, as discussed below, correlation does not necessarily mean causation because two data elements may be collinear or intercorrelated. Despite these caveats, the information in Tables 1 though 17 does appear to shed light on the structure of past practice and the magnitude of average fines in the past.

1) Offense Characteristics.

Tables 1 through 6 list the mean and median criminal fines by: (1) type of offense; (2) pecuniary offense loss; (3) pecuniary offense gain; (4) volume of commerce attributable to antitrust violations; (5) the projected offense level (i.e., the offense level resulting from application of Chapter Two and Chapter Three, Part D, based on available data); and (6) whether or not the offense violated an order or injunction.

Table 1 displays the mean and median fine imposed, by type of offense, for organizational defendants sentenced in the 1988-1990 data set. For most offenses, the mean fine is substantially greater than the median fine, thus indicating the presence of some relatively high fines for these offenses.[21] Setting aside the atypical average for offenses calculated under Chapter Two, Part J (administration of justice) of the guidelines,[22] the highest mean and median fines were for Part R offenses (antitrust), followed by Part S offenses (money transactions). The higher fines for these offense types may result from a combination of: (1) the seriousness of the offense; and (2) organizational defendants being able to pay relatively high fines.

Table 2 shows fine amounts relative to the amount of pecuniary loss caused by the offense. While displaying some anomalous results,[23] Table 2 indicates that fines tend to increase as the loss caused by the offense increases. The rate of increase does not, however, appear to be constant: fine/loss multiples are higher with smaller loss amounts.

Table 3 shows fine amounts relative to the amount of pecuniary gain attributable to the offense. While fines appear somewhat higher at larger gain amounts, the differences are not striking.

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[21]Because of the effect that extreme values can have on means, medians are the better measure of central tendency. See following note.

[22]The unusually high mean fine is driven by a single case in which the offense involved contempt of court and violation of a court order by a defense contractor.

[23]For example, the relatively high mean at the pecuniary offense loss range of $350,000 - $499,999 results in large part from the high fine imposed in the case discussed in the preceding note.

Table 4 displays fines imposed in antitrust cases based on the volume of commerce attributable to the organization. The data illustrate a pattern of larger fines as the volume of commerce increases. As was the case with pecuniary loss, however, the increase in fine amounts is not proportional to the increase in volume of commerce.

Table 5 displays fines based on projected offense levels (i.e., the offense level resulting from application of Chapter Two and Chapter Three, Part D, based on available data). The table shows a pattern of increasing fine levels as offense levels increase. It is important to note, however, that the pattern would have been very different if antitrust offenses were reported in this table by offense level.[24]

Table 6 displays fines based on whether the organization's offense of conviction violated an existing order or injunction. Although the fines are much higher when a violation occurred, the significance of the mean fine amount must be discounted because of the unusually high fine imposed in the case discussed in note 22.

2) Offender Characteristics.

Tables 7 through 17 present bivariate relationships between historical fine amounts and a series of offender characteristics. The reader is cautioned not to over-interpret these tables, however, because it is likely that the observed offender characteristics are related significantly to one another, as well as to other identified factors. Since these interrelationships are neither controlled nor accounted for in the tables, some patterns of apparent relationship between fine amount and offender characteristic (e.g., fine amount and prior history of civil adjudication) may not be sustained under greater analytical scrutiny of the data.

Tables 7 through 17 show fine amounts based on characteristics of the organizational defendant: (1) whether it was a criminal-purpose organization; (2) the organization's ownership structure; (3) the organization's annual gross receipts; (4) its net worth; (5) the highest level of organizational knowledge of the offense conduct; (6) the organization's history of prior similar criminal adjudications; (7) its history of prior similar civil adjudications; (8) whether the organization had an effective program to prevent and detect violations of law; (9) whether it voluntarily disclosed the offense to authorities; (10) whether the organization cooperated with the criminal investigation; and (11) whether the organization obstructed the criminal investigation.

Table 7 displays the mean and median fines imposed on criminal-purpose organizations. In 1989 and 1990, the mean fine paid by criminal-purpose organizations was greater than the mean fine paid by other organizations. The total mean for these

[24]For antitrust offenses, past practice fines were high relative to offense level compared with other types of offenses.

years shows the opposite relationship, however, due to the relatively low mean fine imposed upon criminal-purpose organizations sentenced in 1988.

Tables 8 and 9 show that fines imposed on large, publicly-traded organizations were markedly higher than the average. Table 10 shows that fines tended to increase as the organization's net worth increased, suggesting that higher fines upon large, publicly-traded organizations resulted in part from increased ability to pay.

Table 11 suggests that higher fines upon large, publicly-traded organizations resulted in part from the level of organizational knowledge. Median fines were highest when a top executive (other than an owner) knew of the offense, and next highest when a manager within the organization was aware of the offense. Fines were markedly lower when no one within management knew of the offense.

Tables 12 and 13 display the relationships between fine amounts and prior similar civil and criminal adjudications. The tables suggest that fines imposed on organizations with prior adjudications were somewhat higher than average.

Table 14 displays the mean and median fines imposed on organizations with an effective program to prevent and detect violations of law at the time of the offense. While the court documentation revealed relatively few organizations with such programs, the limited data suggest that fines tend to be lower when firms have such programs to prevent and detect violations of law.

Table 15 shows the relationship between fines and voluntary disclosure of the offense. Tables 16 and 17 show the relationship between fines and (1) cooperation with the criminal investigation; and (2) obstruction of the criminal investigation, respectively.

3) Conclusions.

The large number of factors that appear to have influenced organizational criminal fines in the past make it impossible to quantify their individual effect.[25] Moreover, the fact that many of these factors are related to one another (e.g., the ability to pay a fine appears to be related to organizational ownership structures and almost certainly is related to net worth) makes isolating individual effects particularly difficult to determine with a study population of this size. Nevertheless, the data indicate that several factors may have borne a significant relationship to fine levels in the past: volumes of commerce in antitrust cases; offense levels and loss amounts in non-antitrust cases; ability to pay; and level of organizational knowledge of the offense. Other factors that may have affected fines include: whether the organization was a criminal-purpose organization; whether the organization had a record of prior similar criminal conduct;

[25]Analysis of the impact of various individual factors is further complicated by the small number of cases in which complete data for some factors is available.

whether the defendant organization violated a judicial order when committing the offense; whether the organization had an effective program to prevent and detect violations; and whether the organization reported the offense to authorities.

C. Probable Effect of Guidelines

1) Method for Predicting Effects of Guidelines.

During the latter stages of the guideline development process, the Commission continually attempted to assess the probable effects of its draft guidelines. Simulations of this kind, however, are fraught with difficulty. First, as discussed in the preceding section, knowledge regarding the structure and determinants of past fine levels is inherently limited. Second, the past is not always a good indicator of the future. Indeed, one of the purposes of the sentencing guidelines for organizations is to provide an incentive for changes in behavior. For example, the reduction in the guideline fine range for having an effective program to prevent and detect violations of law may induce more organizations to implement such programs, thus, in turn, possibly leading to lower fine levels in the future.

Despite the limitations of predicting with certainty the effects of the guidelines, the Commission simulated various draft versions of the guidelines to explore the possible results if actual past cases had been sentenced under them. Set forth in Tables 18 through 30 are comparisons of average past practice fines and simulated fines based on the assumption that the past cases had been sentenced under the guidelines sent to Congress on May 1, 1991. The tables compare average past practice fines with simulated fines based on the type of offense and on the various factors that control guideline fine ranges (e.g., pecuniary offense loss, offense level, culpability score, and volume of commerce in antitrust cases). In addition, Appendix C contains detailed information regarding 107 cases. These cases involve organizational defendants that appeared able to pay at least the minimum of the highest guideline fine ranges that resulted from the simulation.[26]

The methodology for the simulation study is described in detail in Appendix D, the Organizational Sanctions Technical Appendix. In brief, the simulation study was limited to cases for which sufficient information was available to make reasonable predictions about probable guideline fine ranges if the organizations in those cases were to be sentenced under the guidelines. Because of inherent uncertainties regarding the

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[26]As explained immediately below, the simulation study produced three guideline fine ranges for each case.

application of the guidelines,[27] the simulation study contains three estimates: an upper-bound estimate, an expected estimate, and a lower-bound estimate. (The Technical Appendix describes in detail the assumptions that underpin these three estimates.)

2) Results Shown by the Simulation Study.

a. Determinants of Base Fine. Table 19 compares past practice fine levels with simulated fines with respect to factors that control the calculation of the base fine amount. This table allows a general estimate of the extent to which base fine amounts are likely to be based on the offense level fine table, the gross pecuniary gain, the gross pecuniary loss, or a special instruction for fines. Of the 409 organizations modeled, the breakdown was as follows: 45.0 percent (n=184) by offense level; 26.4 percent (n=108) by pecuniary loss; 2.0 percent (n=8) by pecuniary gain; 3.2 percent (n=13) by the guideline for criminal-purpose organizations; 20.7 percent (n=85) by the special antitrust fine rule; and 2.6 percent (n=11) by the special fine instructions for monetary transaction cases. The simulation study suggests that, under the guidelines, base fine amounts most frequently will be based on offense level. In addition, the simulation study suggests that pecuniary loss and the special antitrust fine rule will frequently determine the base fine amount.

b. Comparison of Average Past Practice Fines and Average Fines Under the Simulation. Tables 18 through 30 compare average simulated fines with average past practice fines. The tables provide two alternative measurements of average fines: the mean fine (the arithmetic average) and the median fine (the fine representing the midpoint in the range of all fines). Of the two measurements of central tendency, the median fine is generally the better indicator because it is less affected by extreme values. Summarized below are the general conclusions that are suggested by the comparison of median past practice fines and median fines in the simulation study.[28]

Drawing on the information set forth in Table 18, the overall median simulated fine is 1.88 times the median past practice fine at the upper-bound estimate, 1.83 at the expected estimate, and 1.60 at the lower-bound estimate. The data indicate that fines, on average, are likely to be higher under the promulgated guidelines. The relationship

[27] A number of factors cause this uncertainty. In some cases, data elements were missing or unknown. In some cases, information coded was not completely analogous to the criteria ultimately specified in the guidelines. Further, sentencing courts will have discretion under the organizational guidelines regarding treatment of fines imposed upon owners of closely-held organizations (see §8C3.4 (Fines Imposed Upon Owners of Closely-Held Organizations)), reduction of fine based on inability to pay (see §8C3.3 (Reduction of Fine Based on Inability to Pay)), and the selection of the fine within the guideline fine range (see §8C2.8 (Determining the Fine Within the Range)).

[28] The median simulated fines in the tables are the minimums of the simulated guideline fine ranges. The maximum of the guideline fine range will in most instances be twice the minimum.

between median past practice fines and simulated fines varies, however, depending upon the type of offense and the factors that determine the base fine.

For several categories of offenses (drug, corruption of public officials, public safety, immigration, food and drug, and taxation), the lower-bound median estimates are equal to, or approximately equal to, the median past practice fine. This suggests that, under the guidelines, fines for these types of offenses are likely, on average, to be as high or higher than past practice. These types of offenses constituted 16.9 percent (n=69) of the cases in the simulation study.

For the most frequently occurring offense types (fraud and antitrust), the simulated median fines are substantially greater than the past practice median fine -- 1.8 to 2.0 times as high in fraud cases and about 1.5 to 1.8 times as high in antitrust cases. This suggests that, under the guidelines, fines are likely to increase in fraud and antitrust cases.

Table 18 shows only two categories of offenses for which the listed simulated median fine is lower than the past practice median fine, money transactions and obscenity. For money transactions cases, however, this pattern exists only for the lower-bound estimate. Even then, the past practice median fine remains within the simulated median guideline fine range.

Thus, Table 18 includes only one offense category, obscenity, for which the past practice median fine appears to exceed the maximum of the simulated guideline fine range. Additional analysis, however, indicates that despite the estimates reported in Table 18, the median fine in the past for obscenity cases is likely to fall within the guideline range. First, only with the lower-bound estimate is the past practice median fine greater than the maximum of the simulated guideline range. Second, for obscenity cases, the simulated fines understate the actual fines likely to be imposed. For obscenity offenses, §8C2.9 (Disgorgement) calls for an increase in the guideline fine range by the amount of the profit from the offense. The simulated fines do not reflect this increase because the magnitudes of profit were generally unknown. In addition, in most obscenity cases included in the simulation study the volume of sales was unknown. In some cases, offense levels might have been higher had the volume of sales been known. See U.S.S.G. §2G3.1(b)(1).

Table 19 provides additional perspectives on the relationships between median past practice fines and the simulated median fines under the guidelines. This table indicates that the past practice median fines are approximately equal to the simulated median fines when the defendant organization qualifies under the guidelines as a criminal-purpose organization, and when the defendant organization's base fine is determined based upon offense level, pecuniary gain, or the special instruction for fines for monetary transactions (see "Loss Proxy: Value of Funds" in the table).[29] When the base fine is determined by pecuniary loss, the simulated median fine is about 1.5 to 2.75 times as high as the past practice median fine. When the base fine would be determined by the special antitrust fine rule (see "Loss Proxy: Volume of Commerce" in the table), the simulated median fine is about 1.5 to 1.8 times the past practice median fine.

Tables 20 through 23 provide further breakdowns of the data in Table 19. The simulated and past practice fines are shown by specific offense levels, ranges of offense loss, ranges of offense gain, and ranges of volumes of commerce. Because many of the subdivisions in the tables report on relatively few cases, they have limited reliability in terms of predicting future fines. Nevertheless, an overall pattern is suggested by these tables. Compared with past practice median fines, simulated median fines appear to be relatively highest at high offense levels,[30] high volumes of commerce,[31] and high loss magnitudes.[32] Therefore, the data suggest that fines under the promulgated guidelines are most likely to be significantly higher than past practice when defendants are large corporations committing serious offenses.

Tables 24 though 30 compare past practice fines and simulated fines based on the total culpability score and on the factors that determine the culpability score. The data do not indicate any discernible patterns.

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[29]It should be noted that most of the fines for monetary transactions offenses in the simulation were calculated under U.S.S.G. §2S1.3 (Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements). Because of amendments to the guidelines based on the Anti-Drug Abuse Act of 1986, the offense levels for most serious monetary transactions cases in the future are likely to be based on §2S1.1 (Laundering of Monetary Instruments), which provides for substantially higher offense levels.

[30]At offense level 18, the expected simulated median fine is 8.4 times the past practice median fine. At offense level 19, the expected simulated median fine is 3.93 times the past practice median fine. At offense 20, the expected simulated median fine is 3.34 times the past practice median fine.

[31]With a volume of commerce between $1,000,000 and $2,499,999, the simulated median fine is 4.15 times the past practice median fine. With a volume of commerce between $2,500,000 and $6,249,999, the simulated median fine is about 4 times the past practice median fine.

[32]With pecuniary loss between $200,000 and $349,999, the simulated median fine is 4.4 times the past practice median fine. With pecuniary loss between $350,000 and $499,999, the simulated median fine is about 7 times the past practice median fine. With pecuniary loss between $500,000 and $999,999, the simulated median fine is 1.66 times the past practice median fine. With pecuniary loss of $1,000,000 or more, the simulated median fine is about 5 times the past practice median fine.

TABLE 1
Distribution of Past Practice Fines by Offense Type

Type of Offense	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Part B: Property	12	50,530	25,484	11	111,954	20,000	11	52,727	5,000	34	71,113	12,500
Part C: Corruption of Public Officials	•	—	—	6	217,000	37,500	4	16,250	5,000	10	169,100	15,000
Part D: Drug	•	—	—	3	33,336	33,336	7	30,342	5,000	10	31,240	3,500
Part E: Racketeering	10	20,300	10,000	4	43,750	12,500	3	10,000	10,000	17	24,000	10,000
Part F: Fraud & Deceit	110	164,193	10,000	82	102,693	13,000	55	108,802	10,000	247	131,438	10,000
Part G: Obscenity	•	—	—	15	141,666	60,000	8	66,750	50,000	23	115,608	50,000
Part J: Administration of Justice	•	—	—	2	2,767,500	2,767,500	0	—	—	2	2,767,500	—
Part K: Public Safety	•	—	—	2	50,500	50,500	2	10,000	10,000	4	30,250	10,000
Part L: Immigration	•	—	—	4	27,500	21,500	0	—	—	4	27,500	21,250
Part M: National Defense Controlled Exports	18	30,716	7,500	6	155,500	9,000	4	246,898	233,797	28	88,339	10,000
Part N: Food & Drug Act	9	12,555	5,000	14	58,703	1,125	14	579,723	11,000	37	244,620	10,000
Part Q: Environmental	28	77,892	20,000	28	196,821	42,500	21	71,333	17,500	77	119,350	25,000
Part R: Antitrust	98	266,426	50,000	58	300,293	100,000	23	528,043	225,000	179	311,266	87,500
Part S: Money Transactions	8	216,500	126,500	5	332,800	100,000	3	35,166	5,000	16	218,843	63,000
Part T: Taxation	14	36,750	10,000	27	60,537	10,000	16	31,750	15,000	57	46,614	10,000
Other	21	63,476	20,000	6	17,916	5,500	2	3,250	3,250	29	49,896	10,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,214	20,000

TABLE 2
Distribution of Past Practice Fines by Pecuniary Offense Loss

Pecuniary Offense Loss (in dollars)	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Less than 5,000	38	82,436	27,500	34	53,576	14,000	27	38,649	7,125	99	60,583	15,000
5,000 - 9,999	5	12,600	1,000	9	8,277	5,000	5	36,100	20,000	19	16,736	7,500
10,000 - 19,999	10	5,450	6,250	3	3,333	4,000	4	8,750	7,500	17	5,852	5,000
20,000 - 39,999	12	100,958	10,000	12	35,000	3,750	4	11,000	9,000	28	59,839	9,000
40,000 - 69,999	11	42,636	10,000	5	30,000	25,000	8	48,101	15,000	24	41,825	22,500
70,000 - 119,999	4	16,250	5,500	12	27,500	5,000	12	35,583	7,500	28	29,357	5,000
120,000 - 199,999	11	24,363	20,000	6	395,833	35,000	2	15,000	15,000	19	140,684	20,000
200,000 - 349,999	4	7,057	6,250	8	31,056	8,000	5	120,000	0	17	51,569	5,000
350,000 - 499,999	5	72,200	100,000	6	962,500	65,000	0	—	—	11	557,818	100,000
500,000 - 999,999	9	124,333	1,000	8	304,750	150,000	5	54,000	60,000	22	173,954	26,500
1,000,000 +	21	558,380	25,000	10	375,500	117,500	8	93,125	20,000	39	416,051	25,000
Antitrust Offenses	98	266,426	50,000	58	300,293	100,000	23	528,043	225,000	179	311,266	87,500
Missing Data	100	67,992	10,000	102	124,487	20,000	70	212,677	14,000	272	126,413	15,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,214	20,000

TABLE 3
Distribution of Past Practice Fines by Pecuniary Offense Gain

Pecuniary Offense Gain (in dollars)	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Less than 5,000	26	40,057	10,000	21	157,147	13,000	17	31,448	7,125	64	76,191	10,000
5,000 - 9,999	8	16,625	10,000	10	7,950	5,000	4	20,125	15,000	22	13,318	8,750
10,000 - 19,999	7	4,142	2,000	2	3,000	3,000	3	14,000	12,000	12	6,416	5,500
20,000 - 39,999	12	109,708	17,500	9	22,444	2,500	5	8,800	8,000	26	60,096	6,500
40,000 - 69,999	9	48,666	10,000	5	37,000	35,000	4	37,453	12,500	18	42,934	25,000
70,000 - 119,999	6	26,000	15,000	13	39,615	5,000	11	31,454	10,000	30	33,900	10,000
120,000 - 199,999	3	8,666	1,000	3	30,000	20,000	2	15,000	15,000	8	18,250	20,000
200,000 - 349,999	5	133,145	50,000	10	39,445	7,500	6	19,166	25,000	21	55,960	10,000
350,000 - 499,999	1	1,000	—	4	1,428,750	107,500	1	500,000	—	6	1,036,000	107,500
500,000 - 999,999	5	100,800	25,000	5	127,000	100,000	2	3,750	3,750	12	95,541	26,500
1,000,000 +	11	654,181	20,000	5	248,001	0	5	450,000	0	21	508,857	20,000
Antitrust Offenses	98	266,426	50,000	58	300,293	100,000	23	528,043	225,000	179	311,266	87,500
Missing Data	137	78,980	10,000	128	139,540	25,000	90	161,642	16,250	355	121,412	20,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,214	20,000

TABLE 4
Distribution of Past Practice Fines
by Volume of Commerce Attributable to Antitrust Defendants

Volume of Commerce Attributable to Antitrust Defendants (in dollars)	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Less than 400,000	4	23,125	20,000	1	1,003,000	—	2	15,000	15,000	7	160,785	20,000
400,000 - 999,999	21	58,380	5,000	2	262,500	262,500	4	42,500	15,000	27	71,148	5,000
1,000,000 - 2,499,999	7	165,771	25,000	2	262,500	262,500	6	270,833	267,500	15	220,693	200,000
2,500,000 - 6,249,999	6	278,333	200,000	7	422,857	250,000	1	1,000,000	—	14	402,142	250,000
6,250,000 - 14,999,999	8	388,125	200,000	3	233,333	200,000	0	—	—	11	345,909	200,000
15,000,000 - 37,499,999	2	500,000	500,000	5	9,000	0	2	2,500,000	2,500,000	9	671,666	30,000
37,500,000 +	1	1,000,000	—	1	300,000	—	1	1,000,000	—	3	766,666	1,000,000
Missing Data	49	345,614	100,000	37	307,000	80,000	7	474,285	175,000	93	339,875	100,000
Non-Antitrust Offenses	230	97,074	10,000	215	139,977	20,000	150	124,315	10,000	595	119,444	13,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,214	20,000

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TABLE 5
Distribution of Past Practice Fines by Projected Offense Level

Projected Offense Level	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
4	3	250	200	0	—	—	2	1,500	1,500	5	750	200
5	5	5,800	5,000	1	51,000	—	1	500	—	7	11,500	5,000
6	15	3,340	1,000	10	16,460	3,500	9	7,500	5,000	34	8,300	4,000
7	1	35,000	—	0	—	—	1	20,000	—	2	27,500	27,500
8	17	7,323	3,000	10	13,550	3,500	4	97,625	102,000	31	20,983	4,000
9	3	31,666	20,000	3	26,333	13,000	4	16,156	6,062	10	23,862	14,000
10	10	16,750	10,000	10	32,400	5,000	3	5,333	5,000	23	22,065	8,000
11	18	14,166	10,000	13	167,615	50,000	8	55,726	20,000	39	73,841	14,000
12	21	14,214	5,000	22	35,909	17,500	16	25,3[illegible]	9,000	59	25,320	10,000
13	13	33,769	20,000	5	22,600	25,000	9	63,285	5,000	25	39,799	20,000
14	14	46,214	10,000	10	24,250	3,750	12	20,583	5,000	36	31,569	5,000
15	9	38,777	10,000	8	81,250	50,000	6	123,333	50,000	23	75,608	50,000
16	11	53,884	50,000	15	55,030	15,000	6	94,166	12,500	32	61,894	15,364
17	6	160,500	130,000	8	164,375	67,500	1	5,000	—	15	152,200	60,000
18	12	80,541	50,000	15	412,100	115,000	11	65,454	60,000	38	207,052	55,000
19	9	162,777	25,000	8	178,750	140,000	7	350,357	10,000	24	222,812	100,000

Projected Offense Level (cont.)	Past Practice Criminal Fine											
	1988			1989			1990			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Mean	N	Mean	Median
20	3	183,333	100,000	4	471,750	182,500	5	72,000	20,000	12	233,083	37,500
21	8	188,750	25,000	3	23,333	20,000	3	90,000	20,000	14	132,142	22,500
22	4	119,000	112,500	6	155,500	9,000	4	246,898	233,797	14	171,185	22,500
23	6	1,707,500	67,500	0	—	—	0	—	—	6	1,707,500	67,500
24	2	176,500	176,500	0	—	—	0	—	—	2	176,500	176,500
25	0	—	—	1	50,000	—	3	26,666	40,000	4	32,500	40,000
26	0	—	—	0	—	—	0	—	—	0	—	—
27	1	440,000	—	0	—	—	2	54,000	54,000	3	182,666	108,000
42	0	—	—	1	0	0	0	—	—	1	0	—
Antitrust Offenses	98	266,426	50,000	58	300,293	100,000	23	528,043	225,000	179	311,266	87,500
Missing Data	39	134,499	20,000	62	204,430	10,500	35	293,024	10,000	136	207,176	16,250
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 6
Distribution of Past Practice Fines by Violation of a Judicial Order

Violation of an Existing Judicial Order or Injunction, including Probation	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
No	289	165,795	17,500	210	156,093	25,000	137	179,663	15,000	636	165,579	20,000
Yes	3	185,000	50,000	2	2,275,000	—	0	—	—	5	1,021,000	50,000
Missing Data/Unknown	36	74,180	20,000	61	151,354	30,000	36	171,623	20,000	133	135,951	20,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 7
Distribution of Past Practice Fines by Criminal Purpose Organziation

Criminal Purpose Organization	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
No	309	162,305	17,500	183	168,639	25,000	131	185,473	15,000	623	169,037	20,000
Yes	15	53,200	20,000	3	199,999	100,000	2	218,797	—	20	91,780	35,000
Missing Data/Unknown	4	47,500	45,000	87	184,495	50,000	40	151,441	25,000	131	170,219	40,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 8
Distribution of Past Practice Fines
by Structure of Organizational Ownership

Structure of Organizational Ownership	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Closely-held	304	120,491	15,364	209	108,643	25,000	136	103,810	15,000	649	113,180	17,500
Openly-traded	19	756,000	200,000	30	679,050	250,000	17	891,976	20,000	66	756,046	200,000
Non-profit	2	70,500	—	1	1,250	—	0	—	—	3	47,417	10,000
Government Entity	0	—	—	1	25,000	—	0	—	—	1	25,000	—
Missing Data/Unknown	3	2,000	1,000	32	137,750	40,000	20	75,525	15,000	55	107,718	20,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 9
Distribution of Past Practice Fines
by Organization's Annual Gross Revenue

Organization's Annual Gross Revenue (in dollars)	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Less than 100,000	13	34,569	5,000	44	41,767	15,000	41	51,170	15,000	98	44,746	12,500
100,000 - 499,999	23	8,586	5,000	16	78,575	30,000	17	93,529	8,000	56	54,369	10,000
500,000 - 999,999	14	27,480	15,364	7	102,857	60,000	4	64,000	3,000	25	54,429	15,729
1,000,000 - 9,999,999	61	93,822	25,000	30	168,666	50,000	13	221,346	80,000	104	131,352	35,000
10,000,000 +	54	540,824	150,000	21	751,928	250,000	12	1,295,632	418,797	87	695,953	200,000
Missing Data/Unknown	163	93,102	15,000	155	147,398	20,000	86	97,944	10,000	404	114,964	15,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 10
Distribution of Past Practice Fines by Organization's Net Worth

Net Worth of the Organization (in dollars)	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Insolvent	26	46,942	15,000	30	115,583	10,000	16	63,656	15,000	72	79,257	15,000
Less than 100,000	23	29,118	10,000	13	33,557	5,000	19	13,578	15,000	55	24,799	10,000
100,000 - 499,999	40	63,212	15,000	29	42,724	22,000	21	31,904	15,000	90	49,305	20,000
500,000 - 999,999	12	233,416	37,500	11	54,818	50,000	5	312,200	100,000	28	177,321	50,000
1,000,000 +	38	236,657	100,000	31	220,483	50,000	16	698,437	137,500	85	317,682	100,000
Missing Data/Unknown	189	169,088	15,000	159	219,694	35,000	96	167,810	10,000	444	186,934	20,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 11
Distribution of Past Practice Fines
by Level of Organizational Knowledge of the Offense Conduct

Highest Level of Organizational Knowledge of the Offense Conduct	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
Owner of Organization	169	90,281	10,000	140	58,602	15,000	103	51,070	10,000	412	69,714	12,000
Top Executive within Organization	30	189,683	100,000	45	521,283	200,000	25	277,765	80,000	100	360,924	100,000
Manager within Organization	14	753,928	10,000	19	132,684	40,000	11	1,195,454	174,999	44	596,500	35,000
Employee	5	289,000	125,000	3	41,000	20,000	4	17,500	20,000	12	136,500	20,000
Individual Identified, Level not Ascertainable	13	117,000	5,000	5	392,600	200,000	1	20,000	—	19	184,421	20,000
Missing Data/Unknown	97	171,869	18,750	61	184,313	50,000	29	184,411	20,000	187	177,873	25,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 12
Distribution of Past Practice Fines by History of Criminal Adjudication

History of Criminal Adjudication	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
No	205	146,307	15,000	160	93,384	23,500	116	159,952	15,000	481	131,993	15,729
Yes	6	181,666	100,000	16	752,312	92,500	9	574,611	14,000	31	590,274	35,000
Missing Data/Unknown	117	171,430	17,500	97	211,687	50,000	48	147,213	20,000	262	181,897	25,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 13
Distribution of Past Practice Fines by History of Civil Adjudication

History of Civil Adjudication	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
No	203	149,567	15,000	166	141,108	25,000	114	169,079	15,000	483	151,265	20,000
Yes	9	80,333	35,000	9	88,833	25,000	11	404,636	10,000	29	205,982	25,000
Missing Data/Unknown	116	172,890	17,500	98	237,639	50,000	48	147,213	20,000	262	192,405	25,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 14
Distribution of Past Practice Fines by Existence of Programs to Prevent and Detect Violations of Law

Existence of Programs to Prevent and Detect Violations of Law	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
No	200	136,629	20,000	181	159,525	25,000	119	197,634	15,000	500	159,437	20,000
Yes	14	387,892	26,000	2	15,000	—	7	37,142	20,000	23	248,747	20,000
Missing Data/Unknown	114	161,263	17,500	90	206,757	50,000	47	149,228	20,000	251	175,322	25,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 15
Distribution of Past Practice Fines
by Voluntary Disclosure of the Offense

Voluntary Disclosure of the Offense	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
No	252	147,224	20,000	179	147,391	25,000	121	191,785	15,000	552	157,046	20,000
Yes	2	1,503,750	—	3	850,000	250,000	2	252,500	—	7	866,071	50,000
Missing Data/Unknown	74	149,086	17,500	91	204,166	50,000	50	141,625	20,000	215	170,664	25,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 16
Distribution of Past Practice Fines
by Cooperation with Criminal Investigation

Cooperation with the Criminal Investigation	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
No	179	164,779	20,000	133	161,748	20,000	94	169,670	15,000	406	164,918	20,000
Yes	46	125,891	13,500	53	193,311	50,000	33	240,363	15,000	132	181,579	20,000
Missing Data/Unknown	103	153,921	15,000	87	181,082	50,000	46	150,244	15,000	236	163,217	20,000
Total	328	155,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 17
Distribution of Past Practice Fines by Obstruction of Criminal Investigation

Obstruction of the Criminal Investigation	Past Practice Criminal Fine											
	1988			1989			1990 (through June 30)			Total		
	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median
No	200	152,727	20,000	169	142,284	25,000	114	205,460	15,000	483	161,579	20,000
Yes	25	189,640	10,000	15	600,800	50,000	8	36,062	18,750	48	292,531	20,000
Missing Data/Unknown	103	153,921	15,000	89	162,406	50,000	51	138,848	20,000	243	153,865	20,000
Total	328	156,916	17,500	273	174,037	30,000	173	177,990	15,000	774	167,241	20,000

TABLE 18
Comparison of Past Practice and Simulated Fines by Offense Type

	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
Part B: Property	26	87,457	17,500	104,060	81,341	26	87,457	17,500	102,984	77,341	26	87,457	17,500	85,637	58,000
Part C: Corruption of Public Officials	7	240,714	50,000	219,674	61,826	7	240,714	50,000	219,103	61,826	7	240,714	50,000	198,246	61,826
Part D: Drug	9	34,712	5,000	23,378	5,000	9	34,712	5,000	22,489	5,000	9	34,712	5,000	17,823	5,000
Part E: Racketeering	17	24,000	10,000	92,246	16,000	17	24,000	10,000	91,393	15,000	17	24,000	10,000	75,161	10,000
Part F: Fraud & Deceit	173	114,468	10,000	215,023	20,000	173	114,468	10,000	211,560	20,000	173	114,468	10,000	165,843	18,000
Part G: Obscenity	22	118,590	55,000	75,594	42,000	22	118,590	55,000	74,090	33,500	22	118,590	55,000	72,409	25,000
Part K: Public Safety	4	30,250	10,000	17,250	10,000	4	30,250	10,000	15,250	10,000	4	30,320	10,000	11,250	10,000
Part L: Immigration	4	27,250	21,500	29,750	23,500	4	27,250	21,250	29,750	23,500	4	27,250	21,500	28,250	22,000
Part N: Food & Drug (Fraud Offenses)	5	25,000	25,000	45,600	25,000	5	25,000	25,000	44,000	25,000	5	25,000	25,000	40,200	25,000
Part R: Antitrust	86	280,661	55,000	611,156	100,000	86	280,661	55,000	603,138	82,000	86	280,661	55,000	603,138	82,000
Part S: Money Transactions	15	133,433	51,000	78,026	60,000	15	133,433	51,000	71,626	50,000	15	133,433	51,000	50,566	30,000
Part T: Taxation	40	38,750	10,000	75,722	12,000	40	38,750	10,000	71,551	11,000	40	38,750	10,000	63,936	10,000
Part X: Other	1	3,000	—	4,000	—	1	3,000	—	4,000	—	1	3,000	—	4,000	—
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	227,024	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 19
Comparison of Past Practice and Simulated Fines by Controlling Base Fine Amount

Controlling Base Fine Amount	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
Pecuniary Loss	108	163,087	15,364	333,156	42,487	108	163,087	15,364	327,413	42,250	108	163,087	15,364	254,622	34,344
Pecuniary Gain	7	95,000	40,000	96,761	43,632	7	95,000	40,000	96,671	43,632	7	95,000	40,000	95,000	39,406
Projected Offense Level	184	51,952	10,000	56,674	14,500	184	51,952	10,000	54,515	13,750	184	51,952	10,000	48,226	10,500
Loss Proxy: Volume of Commerce	86	280,661	55,000	611,156	100,000	86	280,661	55,000	603,138	82,000	86	280,661	55,000	603,138	82,000
Loss Proxy: Amount of Bribes	0	—	—	—	—	0	—	—	—	—	0	—	—	—	—
Loss Proxy: Value of Funds	11	176,090	100,000	104,900	100,000	11	176,090	100,000	96,263	100,000	11	176,090	100,000	67,818	75,000
Criminal-Purpose Organizations	13	94,462	50,000	94,462	50,000	13	94,462	50,000	94,462	50,000	13	94,462	50,000	94,462	50,000
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	227,024	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

Table 20
Comparison of Past Practice and Simulated Fines For Guideline Fines Controlled by Pecuniary Offense Loss

Sentences Controlled by Pecuniary Offense Loss (in dollars)	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
Less than 5,000	0	—	—	—	—	0	—	—	—	—	0	—	—	—	—
5,000 - 9,999	2	5,500	—	4,166	—	2	5,500	—	4,166	—	2	5,500	—	2,944	—
10,000 - 19,999	0	—	—	—	—	0	—	—	—	—	0	—	—	—	—
20,000 - 39,999	6	48,500	7,500	52,177	22,737	6	48,500	7,500	50,995	19,189	6	48,500	7,500	47,346	15,642
40,000 - 69,999	8	39,601	10,000	39,496	34,254	8	39,601	10,000	35,564	31,944	8	39,601	10,000	29,099	21,166
70,000 - 119,999	21	33,857	5,000	47,572	10,000	21	33,857	5,000	45,476	10,000	21	33,857	5,000	41,892	10,000
120,000 - 199,999	14	25,571	20,000	69,659	63,667	14	25,571	20,000	66,152	63,667	14	25,571	20,000	59,867	63,667
200,000 - 349,999	15	50,111	2,500	43,509	11,000	15	50,111	2,500	43,509	11,000	15	50,111	2,500	40,197	11,000
350,000 - 499,999	5	29,400	15,000	212,238	106,090	5	29,400	15,000	195,914	106,090	5	29,400	15,000	163,267	106,090
500,000 - 999,999	13	251,692	60,000	364,544	100,000	13	251,692	60,000	364,544	100,000	13	251,212	60,000	340,346	100,000
1,000,000 +	24	489,791	22,500	1,121,515	112,000	24	489,791	22,500	1,104,227	112,000	24	489,791	22,500	808,950	112,000
Total	108	163,087	15,364	333,156	42,487	108	163,087	15,364	327,413	42,250	108	163,087	15,364	254,622	34,344

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 21
Comparison of Past Practice and Simulated Fines For Guideline Fines Controlled by Pecuniary Offense Gain

Sentences Controlled by Pecuniary Offense Gain (in dollars)	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
Less than 5,000	0	—	—	—	—	0	—	—	—	—	0	—	—	—	—
5,000 - 9,999	0	—	—	—	—	0	—	—	—	—	0	—	—	—	—
10,000 - 19,999	0	—	—	—	—	0	—	—	—	—	0	—	—	—	—
20,000 - 39,999	1	40,000	—	28,700	—	1	40,000	—	28,700	—	1	40,000	—	22,960	—
40,000 - 69,999	1	20,000	—	43,662	—	1	20,000	—	43,662	—	1	20,000	—	39,906	—
70,000 - 119,999	0	—	—	—	—	0	—	—	—	—	0	—	—	—	—
120,000 - 199,999	0	—	—	—	—	0	—	—	0	—	0	—	—	—	—
200,000 - 349,999	1	5,000	—	5,000	—	1	5,000	—	5,000	—	1	5,000	—	5,000	—
350,000 - 499,999	1	200,000	—	200,000	—	1	200,000	—	200,000	—	1	200,000	—	200,000	—
500,000 - 999,999	1	60,000	—	60,000	—	1	60,000	—	60,000	—	1	60,000	—	60,000	—
1,000,000 +	2	170,000	—	170,000	—	2	170,000	—	170,000	—	2	170,000	—	170,000	—
Total	7	95,000	40,000	96,761	43,632	7	95,000	40,000	96,761	40,000	7	95,000	40,000	95,000	40,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 22
Comparsion of Past Practice and Simulated Fines for Guideline Fines Controlled by Offense Level

Sentences Controlled by the Projected Offense Level	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
4	5	750	200	1,950	400	5	750	200	1,950	400	5	750	200	1,750	400
5	7	11,500	5,000	4,500	5,000	7	11,500	5,000	4,500	5,000	7	11,500	5,000	4,071	4,000
6	12	4,308	2,000	4,213	4,429	12	4,308	2,000	3,963	4,429	12	4,308	2,000	3,379	3,000
7	1	20,000	—	9,000	—	1	20,000	—	7,500	—	1	20,000	—	4,500	—
8	19	8,394	2,000	6,263	6,000	19	8,394	2,000	5,736	6,000	19	8,394	2,000	4,684	6,000
9	8	26,437	14,000	19,437	18,000	8	26,437	14,000	19,437	15,000	8	26,437	14,000	16,062	10,500
10	16	13,218	9,000	14,881	15,000	16	13,218	9,000	14,881	14,250	16	13,218	9,000	13,412	12,000
11	27	69,703	10,000	46,153	30,000	27	69,703	10,000	43,680	27,250	27	69,703	10,000	38,986	18,000
12	40	23,422	6,700	27,172	17,000	40	23,422	6,700	25,372	17,000	40	23,422	6,700	22,247	17,000
13	14	27,785	15,000	36,487	36,500	14	27,785	15,000	34,415	34,000	14	27,785	15,000	29,701	31,000
14	8	61,375	17,500	54,375	37,000	8	61,375	17,500	52,250	37,000	8	61,375	17,500	45,500	35,500
15	10	129,100	70,000	102,100	90,000	10	129,100	70,000	102,100	90,000	10	129,100	70,000	101,100	77,500
16	3	31,666	35,000	82,275	61,826	3	31,666	35,000	82,275	61,826	3	31,666	35,000	70,608	61,826
17	2	642,500	—	350,000	—	2	642,500	—	300,000	—	2	642,500	—	250,000	—
18	3	55,000	50,000	280,000	420,000	3	55,000	50,000	280,000	420,000	3	55,000	50,000	280,000	420,000
19	4	159,750	140,000	562,500	550,000	4	159,750	140,000	562,500	550,000	4	159,750	140,000	462,500	350,000
20	4	398,750	37,500	369,197	125,219	4	398,750	37,500	369,197	125,219	4	398,750	37,500	336,697	125,219
21	1	50,000	—	87,263	—	1	50,000	—	87,263	—	1	50,000	—	87,263	—
Total	184	51,952	10,000	54,674	14,500	184	51,952	10,000	54,515	13,750	184	51,952	10,000	48,226	10,500

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 23
Comparison of Past Practice and Simulated Fines
for Guideline Fines Controlled by the Antitrust Special Instruction

Sentences Controlled by Volume of Commerce (in dollars)	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
Less than 400,000	8	165,687	20,000	180,424	57,319	8	165,687	20,000	180,424	57,319	8	165,687	20,000	180,424	57,319
400,000 - 999,999	27	71.148	5,000	33,401	12,000	27	71,148	5,000	31,291	12,000	27	71,148	5,000	31,291	12,000
1,000,000 - 2,499,999	15	220,693	200,000	208,415	225,000	15	220,693	200,000	196,442	225,000	15	220,693	200,000	196,442	225,000
2,500,000 - 6,249,999	14	402,142	25,000	631,715	371,962	14	402,142	25,000	596,321	371,962	14	402,142	25,000	596,321	371,962
6,250,000 - 14,999,999	10	360,500	200,000	934,577	560,909	10	360,500	200,000	934,577	560,909	10	360,500	200,000	934,577	560,909
15,000,000 - 37,499,999	9	671,666	30,000	1,988,689	534,989	9	671,666	30,000	1,988,689	534,989	9	671,666	30,000	1,988,689	534,989
37,500,000 +	3	766,666	1,000,000	3,666,667	1,000,000	3	766,666	1,000,000	3,666,667	1,000,000	3	766,666	1,000,000	3,666,667	1,000,000
Total	86	280,661	55,000	611,156	100,000	86	280,661	55,000	603,138	82,000	86	280,661	55,000	603,138	82,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 24
Comparison of Past Practice and Simulated Fines
by Total Culpability Score

Total Culpability Score	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
-1	0	—	—	—	—	0	—	—	—	—	1	3,000,000	—	590,000	—
0	5	18,000	20,000	135,000	124,000	5	18,000	20,000	135,000	124,000	7	185,714	20,000	98,571	124,000
1	1	200,000	—	35,000	—	1	200,000	—	35,000	—	0	—	—	—	—
2	1	3,000,000	—	4,720,000	—	1	3,000,000	—	4,720,000	—	1	250,000	—	200,000	—
3	14	53,821	5,000	681,982	6,552	14	53,821	5,000	681,982	6,552	177	41,859	10,000	86,855	12,000
4	58	46,459	5,000	31,296	11,000	79	48,065	10,000	38,818	15,000	72	77,340	10,000	81,861	18,000
5	81	72,993	15,000	92,547	40,000	157	63,120	14,000	73,051	25,000	68	232,194	29,000	353,930	57,663
6	135	125,242	15,000	242,069	18,000	78	214,560	25,000	406,834	25,500	25	148,700	10,000	470,025	21,135
7	52	219,355	20,000	393,700	29,086	22	368,545	75,000	842,845	78,403	18	99,250	20,000	298,715	41,897
8	26	190,480	20,000	403,021	48,000	23	176,521	10,000	422,958	25,000	21	290,661	20,000	527,173	80,000
9	16	264,087	62,500	430,550	69,286	15	236,026	22,000	283,874	66,592	7	792,857	250,000	1,456,286	250,000
10	14	145,000	21,000	265,450	109,341	9	330,888	150,000	451,088	199,800	7	271,142	150,000	471,226	199,800
11	3	403,333	200,000	376,666	120,000	2	105,000	—	105,000	—	4	628,750	505,000	765,757	569,014
12	1	250,000	—	1,240,000	—	2	127,500	—	622,500	—	1	250,000	—	1,240,000	—
13	2	752,000	—	566,514	—	1	1,500,000	—	1,128,028	—	0	—	—	—	—
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	226,915	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 25
Comparison of Past Practice and Simulated Fines by Level of Involvement

Involvement in or Tolerance of Criminal Activity	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
no enhancement	90	62,773	8,750	151,282	13,224	90	62,773	8,750	151,304	13,224	251	54,106	10,000	87,198	15,000
1 point enhancement	64	49,882	10,000	63,998	26,506	225	49,437	10,000	58,801	20,000	89	87,949	10,000	98,158	25,000
2 point enhancement	211	135,911	15,000	229,257	25,000	69	379,510	60,000	664,774	80,000	44	489,800	87,500	795,555	175,000
3 point enhancement	33	345,181	200,000	806,927	267,865	17	421,647	200,000	1,290,652	1,000,000	19	377,810	200,000	1,126,874	409,238
4 point enhancement	8	338,800	250,000	848,936	820,000	5	302,080	250,000	645,680	250,000	3	500,000	250,000	1,136,667	1,240,000
5 point enhancement	3	1,166,667	1,500,000	841,009	1,128,028	3	1,116,667	1,500,000	841,809	1,128,028	3	1,166,667	1,500,000	789,312	1,040,000
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	227,024	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 26
Comparison of Past Practice and Simulated Fines
by Prior History

Prior History	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
no enhancement	378	123,507	15,000	234,299	25,500	378	123,507	15,000	230,844	25,000	378	123,507	15,000	204,208	20,215
2 point enhancement	31	272,645	15,000	434,274	48,000	31	272,645	15,000	424,022	50,000	31	272,645	15,000	424,022	50,000
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	227,024	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 27
Comparison of Past Practice and Simulated Fines by Violation of an Order

Violation of an Order	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
no enhancement	406	135,671	15,000	251,031	28,086	406	135,671	15,000	247,021	27,125	406	135,671	15,000	228,408	23,480
1 point enhancement	3	18,333	5,000	39,666	50,000	3	18,333	5,000	39,666	50,000	3	18,333	5,000	39,666	50,000
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	227,024	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 28
Comparison of Past Practice and Simulated Fines
by Obstruction of Justice

Obstruction of Justice	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
no enhancement	379	132,387	15,000	252,593	26,000	379	132,387	15,000	248,169	25,000	379	132.387	15,000	226,985	20,430
3 point enhancement	30	165,433	15,000	209,832	61,860	30	165,433	15,000	209,832	61,860	30	165,433	15,000	209,832	61,860
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	227,024	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 29
Comparison of Past Practice and Simulated Fines
by Effective Program to Prevent and Detect Violations of Law

Effective Program to Prevent and Detect Violations of Law	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
		Past Practice		Simulated			Past Practice		Simulated			Past Practice		Simulated	
	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median	N	Mean	Median	Mean	Median
no reduction	403	136,098	15,000	251,408	26,000	403	136,098	15,000	247,543	25,000	400	126,469	15,000	228,321	21,209
3 point reduction	6	48,333	20,000	118,333	124,000	6	48,333	20,000	118,333	124,000	9	505,555	20,000	164,444	124,000
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	227,024	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

TABLE 30
Comparison of Past Practice and Simulated Fines by Self-Reporting, Cooperation, and Acceptance of Responsibility

Self-Reporting, Cooperation, and Acceptance of Responsnibility	Upper-bound Estimate					Expected Estimate					Lower-bound Estimate				
	N	Past Practice		Simulated		N	Past Practice		Simulated		N	Past Practice		Simulated	
		Mean	Median	Mean	Median		Mean	Median	Mean	Median		Mean	Median	Mean	Median
no reduction	89	146,369	20,000	269,631	51,220	89	146,369	20,000	269,631	51,220	89	186,710	25,000	269,631	51,220
1 point reduction	248	110,388	11,000	170,294	19,000	248	110,388	11,000	168,593	18,000	0	—	—	—	—
2 point reduction	71	165,274	20,000	431,903	50,918	71	165,274	20,000	421,228	50,000	319	111,112	13,500	184,023	18,000
5 point reduction	1	3,000,000	—	4,720,000	—	1	3,000,000	—	4,720,000	—	1	3,000,000	—	590,000	—
Total	409	134,811	15,000	249,456	28,172	409	134,811	15,000	245,500	27,500	409	134,811	15,000	227,024	24,000

Note: Simulated Fines reflect fines at the minimum of the guideline fine range. The maximum of the guideline fine range is generally twice the minimum.

APPENDIX A

PRINCIPLES ADOPTED BY THE U.S. SENTENCING COMMISSION TO GUIDE THE DRAFTING OF THE NOVEMBER 1990 DRAFT ORGANIZATIONAL GUIDELINES

1) *If a criminally liable organization has caused harm and has the potential to remedy that harm by monetary means, the court should order that restitution be made; restitution should be required regardless of any other sanctions that might be imposed.*

   Rationale: When a criminally liable organization has the ability to pay restitution, it is appropriate that it be required to do so. Such an organization should be required to make restitution regardless of its degree of culpability and regardless of the level and kind of any other sanctions imposed. Restitution should not be viewed as a punishment, but rather as a means of making the victim whole for the harm caused.

2) *If an organization has operated primarily a) for a criminal-purpose or b) by criminal means, fines should be set, where possible, sufficiently high to divest the organization of all of its assets.*

   Rationale: When an organization exists principally to achieve a criminal-purpose or operates primarily through criminal means, there is no lawful basis for its existence. It is therefore appropriate to terminate its existence by levying fines that would divest it of its assets (assuming, as would usually be expected to be the case, that statutory maxima will permit fines sufficiently high to accomplish this purpose).

3) *Fine ranges should be based on the higher of the pecuniary loss, the pecuniary gain, or an amount corresponding to the guideline offense level.*

   Rationale: Statutory provisions rely on three alternative indicia to limit the maximum fine that may be imposed: nature of the offense; the pecuniary gain from the offense; and the pecuniary loss caused by the offense. Since the guidelines' existing offense levels reflect a previous Commission determination of the seriousness of various offenses, one method of computing fines could be based on existing guideline offense levels. Alternatively, if the loss or gain from an offense exceeds the amount provided for in the offense level table, fines should be based on the loss or gain. Organizational guidelines should provide for a fine based on the highest of these three measures.

4) *Organizational fine calculations should not be structured so that fine levels start low and then potentially increase if aggravating factors that frequently occur (e.g., the involvement of high-level management in the offense; the lack of an adequate compliance program, etc.) are present in the case; rather, the starting point for a fine calculation should be an amount set sufficiently high to reflect the presumption that these aggravating factors were present in the case.*

Rationale: This approach places on organizations the burden to show the absence of aggravating factors that frequently occur and thus to "mitigate down" the presumptively high fine levels. The approach is desirable and fair because organizations almost always have better access to the information that would establish the presence or absence of such factors than does the government. In addition, the structure is simpler than one using both aggravating and mitigating factors, thereby limiting the number of issues that could lead to litigation and easing the demand on court resources. It also has the advantage of reducing the possibility of plea bargains that may underestimate the seriousness of the offense.

5) *With respect to aggravating factors that infrequently occur but are nevertheless relevant for sentencing purposes, the guidelines should expressly provide for upward departures.*

Rationale: Upward departures are appropriate for less frequently occurring aggravating factors (e.g., threat to national security, violation of a court order, threat to human life) for several reasons. First, while not reflecting the kind of "heartland" factors the guidelines typically seek to address, such factors are relevant to appropriate punishment levels and the guidelines should therefore ensure that they not be overlooked. On the other hand, because the existence of these aggravating factors will not necessarily bear any systematic relationship to the seriousness of the offense, assigning rigid values to these factors is difficult and may result in a fine range inadequate to punish for the seriousness of the conduct. An approach that depends in part on the sound discretion of the court to weigh such factors is desirable. Finally, the government generally has access to the facts that would establish the existence of these kinds of aggravating factors thus making it appropriate for the government to bear the evidentiary burden in these infrequent instances.

6) *Mitigating factors should be designed to reduce fines for two primary reasons: to recognize an organization's relative degree of culpability; and to encourage desirable organizational behavior.*

Rationale: If the starting point for a fine calculation reflects the presumption that certain frequently occurring aggravating factors are present in the case (see principle No. 4), then an organization should be given the opportunity to attempt to establish that it was in fact less culpable than the guidelines presumed. For example, the guidelines should permit an organization a reduction if it demonstrates that the offense was caused by a rogue employee rather than at the direction or with the tacit approval of "management." Additionally, mitigating factors should be designed to provide incentives for organizations to take steps to minimize the likelihood of criminal behavior and to assure that when such conduct does occur, it is detected and reported by the organization. Mitigating factors designed to achieve these results will best achieve the purposes of sentencing set out at 18 U.S.C. § 3553(a)(2) (i.e., the need to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant organization).

7) *Subject to scoring principles discussed immediately below, maximum and minimum guideline fine ranges should be reduced for mitigating factors that are here stated in general terms: (a) lack of involvement in the offense ("involvement" drafted to include lack of knowledge regarding the offense when the lack of knowledge was reasonable) of any policy-influencing personnel; (b) taking of appropriate steps to prevent the commission of crimes; (c) taking of appropriate steps to detect crimes that have been committed; (d) self-reporting of offenses to authorities; (e) cooperating fully with the government's investigation; (f) accepting responsibility; (g) taking swift, voluntary remedial action; (h) disciplining individuals responsible for the offense; and (i) responding to the occurrence of an offense by taking steps to prevent further offenses.* ***Corollary:*** *these mitigating factors should be narrowly defined to include* only *the targeted behavior.*

Rationale: Mitigating factors allow for a distinction to be made among organizations based on their level of culpability and also reflect desirable pre- and post-offense conduct, especially conduct relating to crime control. However, mitigating factors must carefully be defined in the guidelines so that only when the targeted activity has truly occurred will the organization's action(s) be recognized by a reduction in the potential fine.

8) *Mitigating factors should be scored so that double counting is avoided with respect to factors that almost always occur together or for which there are policy reasons requiring linkage; otherwise, separate weights should be given for each mitigating factor.*

Rationale: Optimal incentives are established when separate weights are given for factors that do not always occur together. However, when factors tend to be complementary (e.g., disciplining responsible individuals and taking steps to prevent further offenses) weighting of these factors should reflect their interdependence.

9) *When _all_ mitigating factors are present in a case, the fine range should allow (but not require) a court to impose no fine.*

Rationale: This principle is consistent with the statutory provision that punishment should be "not greater than necessary" to achieve just punishment and adequate deterrence. 18 U.S.C. § 3553(a). On the other hand, even when all specified mitigating factors are present in a case, there may be other factors present that could properly persuade a court to impose a fine. A maximum authorized guideline fine above zero would allow for the possibility that some undesirable conduct should be accounted for, even in a case in which all mitigating factors apply. Of course, restitution should be required to be paid in addition to any fine in accordance with principle No. 1.

10) *Organizational probation is warranted when necessary (1) to ensure that a monetary penalty is paid; (2) to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct; and (3) to impose another remedy that can only be imposed as a condition of probation. Organizational probation may also be appropriate in other circumstances. (Because of the lack of judicial experience with organizational probation as an independent sanction, the Commission should identify the heartland areas in which probation is clearly appropriate.)*

Rationale: Probation provides a means by which criminal justice control over an offender may be maintained following an offense. With regard to organizations, probation is appropriate if a sentence cannot be imposed except as a condition of probation, _e.g._, restitution not within 18 U.S.C. § 3663, community service, and remedial orders. Probation is also appropriate in instances in which there is some question as to whether a monetary sanction (either a fine or restitution) will be satisfied absent monitoring by the court. If an organization has a history of criminal violations, probation may be useful to make certain that compliance-related changes within the organization are made. Due to the lack of judicial experience with probation as an independent sanction, the Commission should identify the circumstances in which organizational probation is clearly appropriate and leave the court discretion to impose probation in other circumstances.

11) *A multiplier of two is appropriate to determine the base guideline _minimum_ fine level that would be imposed absent mitigating factors.*

Rationale: Any multiplier higher than two would result in a significant number of cases in which the minimum guideline fine would exceed the maximum that could be imposed under the statute, since the alternative fine provision (18 U.S.C. § 3571(d)) limits maximum fines to twice the gross pecuniary loss or gain. On the other hand, a _minimum_ multiplier of two seems appropriate because in multiple count cases

18 U.S.C. § 3571(d) permits fines of $500,000 per count, thereby permitting the "twice the loss or gain" limit to be exceeded. (The maximum fine multiplier should take advantage of the higher fines that could be achieved in this way.) In single count cases, a minimum multiplier of two should not result in undue bunching of fines at the statutory maximum because a significant number of defendants would be expected to qualify for at least one mitigating factor (especially acceptance of responsibility).

12) *The multiplier used to set the maximum of the guideline fine range should be 50 percent higher than the multiplier used to set the minimum of the guideline fine range (i.e., a maximum multiplier of three if the minimum multiplier is two).*

Rationale: This would constitute a relatively narrow range while at the same time provide sufficient flexibility so that the court could consider individual characteristics peculiar to the organization. In addition, a range of this type would maintain continuity by encouraging courts to stay within the guidelines even as they take individual circumstances into account. Congress has recognized the possible need for greater latitude with fines by not subjecting fines to the 25 percent rule that applies to imprisonment. As more experience is gained with organizational sentencing -- especially cases applying recently enacted, higher statutory fine maxima -- a narrowing of the range can be reconsidered.

13) *Offense level amounts should be selected, insofar as possible, to accommodate statutory maximum fines -- that is, as a general rule, the amounts in the alternative offense level table should be between one-half and one-third of statutory fine maximums (assuming minimum and maximum multipliers of two and three respectively).*

Rationale: This will ensure that in the more egregious cases fines can be set, within the guideline fine range, equal to the statutory maximum.

14) *Offense level amounts should be selected so that there will be a systematic increase in amounts as one moves from one offense level on the alternative offense level table to the next highest.*

Rationale: Systematic increases in the offense level table will help ensure that these amounts are neither arbitrary nor disproportionate.

15) *Offense level amounts should be selected to yield fines that are generally equal to or greater than the <u>highest</u> fines imposed in the past.*

<u>Rationale</u>: As with individual guidelines, past practice is an appropriate place to start. Setting fine ranges that will generally accommodate the <u>highest</u> fines historically imposed will reflect the seriousness of the offense, promote respect for the law, provide just punishment, and afford adequate deterrence. <u>See</u> 28 U.S.C. § 991(b)(1)(A); 18 U.S.C. § 3553(a)(2). (In looking to the highest fines historically imposed, care should be taken to note whether increased statutory maxima had taken effect at the time of sentencing. To the extent any data relied on to determine the highest fine for a particular offense were statutorily constrained, the highest past practice fines may be inadequate to reflect general congressional intent that fine levels be raised.)

APPENDIX B

UNITED STATES SENTENCING COMMISSION HEARINGS ON ORGANIZATIONAL SANCTIONS: WITNESSES

June 10, 1986

William M. Brodsky
George C. Freeman, Jr.
American Bar Association

Harvey M. Silets
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Stephen S. Trott
Assistant Attorney General
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John C. Coffee, Jr.
Columbia University School of Law

October 11, 1988

Thomas Moore
President's Council of Economic Advisors

Samuel J. Buffone
Asbill, Junkin, Myers & Buffone

Gary Lynch
Director, Enforcement Division
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Jonathan Baker
Dartmouth College

December 2, 1988

Paul Thomson
Deputy Assistant Administrator for Criminal Enforcement
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Arthur N. Levine
Deputy Chief Counsel for Litigation
Food and Drug Administration

Jan Chatten-Brown
Special Assistant to the District Attorney
Los Angeles County

Robert M. Latta
Chief U.S. Probation Officer
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Robert A. G. Monks
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Christopher Stone
University of Southern California Law Center

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Charles B. Renfrew
Vice President
Chevron

Jerome Wilkenfeld
Health, Environment & Safety Department
Occidental Petroleum

Bruce Hochman
Hochman, Salkin & De Roy

Ivan P'Ng
University of California School of Management

Eric Zolt
UCLA School of Law

Maygene Giari
Citizens United for the Reform of Errants (CURE)

February 14, 1990

Carl J. Mayer
Hofstra Law School

Morris B. Silverstein
Assistant Inspector General
Criminal Investigations Policy and Oversight
Department of Defense

Earlyn Church
Superior Technical Ceramics Corporation
(representing National Association of Manufacturers)

James P. Carty
Vice President
National Association of Manufacturers

James Strock
Assistant Administrator for Enforcement
Environmental Protection Agency
(accompanied by Bruce Bellin)

Joseph E. diGenova
Defense Attorney Advisory Group
on Organizational Sanctions

Sheldon H. Elsen
Orans, Elsen & Lupert

Frank H. Menaker, Jr.
Vice President, General Counsel
Martin Marietta Corporation

Christopher Stone
University of Southern California Law Center

Amitai Etzioni
George Washington University,
(accompanied by Ms. Sally Simpson, University of Maryland)

Frank McFadden
Senior Vice President, General Counsel
Blount, Inc.
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APPENDIX C

PROFILES OF ORGANIZATIONAL DEFENDANTS THAT APPEARED ABLE TO PAY THE MINIMUM OF THE UPPER-BOUND GUIDELINE FINE RANGE

Defendant No.: 500
Case No.: 406

Offense Narrative:

Defendant was charged and convicted of the unauthorized use of public lands, a misdemeanor. The defendant organization, a telephone company, was responsible for erecting communication towers in protected wilderness lands.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
43 CFR § 2029.1	1	250,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2B2.3	4	Missing Data	Missing Data

Criminal Sanctions Imposed:

Probation	24 months
Restitution	The defendant organization shall remove all towers from federal lands by a specified date.

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
6,000 - 12,000	6,000 - 12,000	5,000 - 10,000

Defendant No.: 340
Case No.: 320

Offense Narrative:

Defendant was charged and convicted of declaring under penalty of perjury false income tax returns. The defendant organization, acting through its owner, was responsible for fraudulently preparing Quarterly Excise Tax Returns. The owner of the defendant organization instructed the organization's bookkeeper to misreport the proper quarter in which sales were made and to fail to report select sales.

Investigation into the defendant organization's criminal activity revealed that nine quarterly reports were falsely prepared, omitting approximately 29 percent of the total excise tax due for the periods. The tax loss to the federal government totaled $330,371.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(5)	5	8C2.5(b)(5)	3
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
26 U.S.C § 7206(1); 18 U.S.C § 2	2	1,000,000 (or twice loss)

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.3 (b)(1)	17	330,371	330,371

Criminal Sanctions Imposed:

Fine	15,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
489,714 - 979,428	408,095 - 816,190	244,857 - 489,714

Defendant No.: 520
Case No.: 434

Offense Narrative:

Defendant was charged and convicted of providing false statements to the U.S. government. The defendant organization, acting through its owner, was responsible for submitting false invoices which inflated subcontractor costs. Further, the organization was responsible for obstructing justice by attempting to influence the testimony of witnesses through bribes.

The investigation revealed that the total loss to the government was approximately $20,969.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	10	8C2.5(b)(4)	10	8C2.5(b)(4)	10
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 1001	5	2,500,000 (or twice loss)	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(E) (b)(2)	12	20,969	20,969

Criminal Sanctions Imposed:

Fine	8,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
80,000 - 160,000	80,000 - 160,000	80,000 - 160,000

Defendant No.: 321
Case No.: 247

Offense Narrative:

Defendant was charged and convicted of defrauding the U.S. government. The defendant organization, acting through its owner, was responsible for devising a scheme to fraudulently obtain money from the Department of Defense.

During the period July 1986 through August 1987, the defendant organization caused altered and forged vendor price quote sheets to be submitted to the Department of Defense. The owner of the defendant organization, as required under the Truth & Negotiation Act, attested to the authenticity of the documents. The investigation revealed that the government suffered a loss of approximately $13,389.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	7	8C2.5(b)(5)	7	8C2.5(b)(5)	6
8C2.5(d)		8C2.5(d)		8C2.5(d)	
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 1341	2	1,000,000 (or twice loss)	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(D) (b)(2)	11	13,389	13,389

Criminal Sanctions Imposed:

Fine	6,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
42,000 - 84,000	42,000 - 84,000	36,000 - 72,000

Defendant No.: 326
Case No.: 286

Offense Narrative:

Defendant was charged and convicted of providing false statements to obtain mortgages for its customers. The defendant organization was responsible for indicating that required cash down payments for home mortgages had been made when it fact those payments were not made in cash.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1014	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(2)	8	Missing Data	Missing Data

Criminal Sanctions Imposed:

Restitution	15,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
10,000 - 20,000	10,000 - 20,000	8,000 - 16,000

Defendant No.: 348
Case No.: 169

Offense Narrative:

Defendant was charged and convicted of knowingly using counterfeit trademarks. The defendant organization was responsible for mis-grading approximately 5 million board feet of lumber during the period June 1985 and July 1986. The total retail value of the goods was $100,000.

As part of a contractual agreement, the defendant organization was permitted to use the trademark stamp indicating that lumber had been preserved. The trademark stamp did not reference the grade, species, or moisture content of the lumber. However, the defendant organization did fraudulently obtain and use stamp which indicated the grade of the lumber.

A partner of the defendant organization sold his interest in the business to relations after the offense behavior had begun. The remaining partners indicated that the former partner was responsible for the mis-grading and that they had all of the trademark and grade stamps burned after his departure.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4) 8C2.5(g)(3)	6	8C2.5(b)(5) 8C2.5(g)(3)	5	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 2320; 18 U.S.C § 2	1	1,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2B5.4 (b)(1)	12	100,000	Missing Data

Criminal Sanctions Imposed:

Criminal Forfeiture	25,000
Fine--Owner (former)	25,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
120,000 - 240,000	100,000 - 200,000	60,000 - 120,000

Defendant No.: 516
Case No.: 430

Offense Narrative:

Defendant was charged and convicted of operating an illegal gambling establishment. The defendant organization, acting through its owners, was responsible for operating video gambling devices in violation of the law of its home state. The organization realized gross revenue of $2,000 per day.

Prior to adjudication, the defendant organization settled civil claims in the amount of $839,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	9	8C2.5(b)(5)	8	8C2.5(b)(5)	8
8C2.5(c)		8C2.5(c)		8C2.5(c)	
8C2.5(d)		8C2.5(d)		8C2.5(d)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 1955; 18 U.S.C § 2	1	500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2E3.1	12	Missing Data	Missing Data

Criminal Sanctions Imposed:

Probation	24

Simulated Guideline Fine Ranges:*

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
72,000 - 144,000	64,000 - 128,000	64,000 - 128,000

* Offense gain subject to disgorgement under §8C2.9

Defendant No.: 245
Case No.: 99

Offense Narrative:

Defendant was charged and convicted of receiving and concealing stolen property. The defendant organization was responsible for receiving stolen property from a variety of sources, i.e., construction sites, local governments. The criminal information indicated that some of the stolen property was transported interstate before being purchased by the defendant organization.

The investigation revealed that the defendant organization received approximately $100,000 worth of stolen goods.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 2315; 18 U.S.C § 2	1	500,000 (or twice loss)

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2B1.2	16	100,000	Missing Data

Criminal Sanctions Imposed:

Fine	35,000
Restitution	94,950

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
175,000 - 350,000	175,000 - 350,000	140,000 - 280,000

Defendant No.: 197
Case No.: 206

Offense Narrative:

Defendant was charged and convicted of filing a false income tax return. The defendant organization, acting through its owner, was responsible for declaring personal expenditures as legitimate expenditures on the organization's corporate income tax return. The total outstanding tax liability is approximately $35,474 for two years.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4) 8C2.5(g)(2)	5	8C2.5(b)(5) 8C2.5(g)(2)	4	8C2.5(g)(3)	3

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
26 U.S.C § 7206(1)	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.3	10	35,474	35,474

Criminal Sanctions Imposed:

Fine	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
35,474 - 70,948	28,379 - 56,758	21,284 - 42,568

Case No.: 88-235

Offense Narrative:

Defendant was charged and convicted of selling mislabeled meat products. The defendant organization was responsible for selling meat products consisting of turkey and pork that were fraudulently labeled as beef products.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5) 8C2.5(g)(3)	5	8C2.5(b)(5) 8C2.5(g)(3)	5	8C2.5(b)(5) 8C2.5(g)(2)	4

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 2; 18 U.S.C § 676(a)	1		
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(2)	8	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine--Owner	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
8,000 - 16,000	3,000 - 6,000	0

Case No.: 88-411

Offense Narrative:

Defendant was charged and convicted of making false and fictitious claims to the Department of Defense. The defendant organization was responsible for falsifying time cards and other records in order to overstate labor costs on a contract with the Department of Defense. The investigation revealed that the government suffered a loss of $20,911.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(3)	4	8C2.5(g)(3)	4	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 287	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(1)(E) (b)(2)	12	20,911	20,911

Criminal Sanctions Imposed:

Restitution	8,911
Restitution--Owner	12,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
32,000 - 64,000	32,000 - 64,000	24,000 - 48,000

Case No.: 88-362

Offense Narrative:

Defendant organization was convicted of conspiracy to provide false statements to the U.S. government. The defendant organization, acting through its agents, was responsible for conspiring to overcharge the Department of Defense on contracts involving military armaments. The defendant organization indicated that employees falsified and destroyed documents to conceal inflated labor costs.

The defendant organization, prior to criminal adjudication, paid $8.8 million in refunds to the Department of Defense.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	2	8C2.5(b)(4)	2	8C2.5(b)(4)	-1
8C2.5(g)(1)		8C2.5(g)(1)		8C2.5(f)	
				8C2.5(g)(1)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 371	1	500,000 (or twice loss)	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1	21	11,800,000	Missing Data

Criminal Sanctions Imposed:

Fine	30,000
Criminal Penalty*	2,970,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
4,720,000 - 9,440,000	4,720,000 - 9,440,000	590,000 - 1,180,000

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* For purposes of analysis, the *criminal penalty* and the *criminal fine* were aggregated.

Case No.: 88-2

Offense Narrative:

Defendant was charged and convicted of defrauding the U.S. government. The defendant organization was convicted of substituting remanufactured and unbranded automobile parts for new, branded parts. In furtherance of the fraud, the defendant organization charged the government for new parts. The estimated loss to the government was $150,000.

The defendant organization, prior to adjudication, settled civil litigation arising from the offense conduct. The civil suit required a settlement of $400,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	5	8C2.5(b)(4)	5	8C2.5(b)(4)	5
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1341	1	500,000 (or twice loss)

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(1)(H) (b)(2)	15	150,000	150,000

Criminal Sanctions Imposed:

Fine	1,000
Restitution	60,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
150,000 - 300,000	150,000 - 300,000	150,000 - 300,000

Case No.: 88-384

Offense Narrative:

Defendant was charged and convicted of providing false statements in relation to documents required of the Employee Retirement Income Security Act. The defendant organization was responsible for failing to pay union dues and pension fund payments. The defendant organization under-reported hours worked and earnings of workers to reduce it required payments. The estimated loss to all victims was $585,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(3)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 1027	1	500,000 (or twice loss)	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2E5.3	18	585,000	585,000
2B1.1 (b)(1)(M) (b)(4)			

Criminal Sanctions Imposed:

Fine	28,000
Restitution	281,686
Fine--Owner	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
702,000 - 1,404,000	702,000 - 1,404,000	585,000 - 1,700,000

Case No.: 88-6

Offense Narrative:

Defendant was charged and convicted of submitting a false income tax return. The defendant organization, acting through its owner, was responsible for claiming construction costs associated with the owner's personal residence as legitimate business expenses. The outstanding tax liability is $170,477.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(5)	5	8C2.5(g)(3)	4
8C2.5(g)(3)		8C2.5(g)(3)			

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
26 U.S.C § 7201	1	500,000 (or twice loss)	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.1	12	170,477	170,477

Criminal Sanctions Imposed:

Fine	20,000
Fine--Owner	20,000
Restitution--Owner	226,840
Criminal Forfeiture--Owner	80,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
204,572 - 409,1444	160,477 - 320,954	82,286 - 164,572

Case No.: 88-227

Offense Narrative:

Defendant was charged and convicted of providing false statements in relation to documents required by the Employee Retirement Income Security Act. The defendant organization was responsible for failing to pay union dues and pension fund payments. The defendant organization under-reported hours worked and earnings of workers to reduce it required payments. The estimated loss to all victims is $58,008.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	5	8C2.5(b)(4)	5	8C2.5(b)(4)	5
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1027; 18 U.S.C § 2	1	500,000 (or twice loss)

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2E5.3	6	58,008	58,008

Criminal Sanctions Imposed:

Fine	10,000
Restitution	7,508
Fine--Owner	1,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
58,008 - 116,016	58,008 - 116,016	58,0008 - 116,016

Case No.: 88-222

Offense Narrative:

Defendant was charged and convicted of mail fraud and transporting stolen goods through the mail. The defendant organization manufactured and distributed piping for use in nuclear power systems. The production of the piping is regulated: producers must be certified by the Nuclear Regulatory Agency. Under certain circumstances, the regulations allow for a certified producer to certify a subcontractor. The defendant organization falsely certified several of its subcontractors.

Prior to adjudication, the defendant organization settled civil litigation, arising from the offense conduct, with a settlement of $450,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1341	1	500,000
18 U.S.C § 2314	1	500,000
18 U.S.C § 1001	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1	19	450,000	Missing Data
(b)(1)(J)			
(b)(2)			
(b)(4)			

Criminal Sanctions Imposed:

Fine	109,000
Fine--Owner	24,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
600,000 - 1,200,000	600,000 - 1,200,000	600,000 - 1,200,000

Case No.: 88-218

Offense Narrative:

Defendant was charged and convicted of defrauding the U.S. Department of Defense. The defendant organization, acting through its owner, was responsible for providing products to the Department of Defense that did not meet contract specifications while certifying that the products did meet specifications. The estimated loss suffered by the government was $34,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	7	8C2.5(b)(4)	6	8C2.5(a)	5

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 287	1	500,000 (or twice loss)

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1	12	34,000	34,000

Criminal Sanctions Imposed:

Fine	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
56,000 - 102,000	47,000 - 94,000	38,000 - 76,000

Defendant No.: 312
Case No.: 234

Offense Narrative:

Defendant was charged and convicted of conspiracy to commit mail fraud and violations of Food and Drug Act statutes. The defendant organization was in the business of developing pharmaceutical products. The defendant developed a drug which was intended to treat prematurely-born infants inflicted with Retrolental Fibroplasia. The drug was subsequently marketed by a co-indicted organization. The drug was never approved by the U.S. Food and Drug Administration scientific or medical studies.

The co-indicted organization distributed over 26,000 vials of the aforementioned drug. During the four months in which the drug was marketed by the co-indicted organization, it was distributed to approximately 67 hospitals and administered to 1,000 infants. Of these 1,000 infants, 36 deaths were attributed to the use of the aforementioned drug. The FDA urged the co-indicted organization to recall the drug. The defendant organization gained approximately $100,000 from the sale of the drug. The estimated offense loss is approximately $350,000.

The defendant organization has a history of marketing unapproved drugs.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	10	8C2.5(b)(3)	10	8C2.5(b)(3)	10
8C2.5(c)		8C2.5(c)		8C2.5(c)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 371	1	500,000
21 U.S.C § 331(d); 21 U.S.C § 333(b); 18 U.S.C § 2	12	6,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1(a) (b)(1)(5) (b)(2) (b)(4)	19	350,000	100,000

Criminal Sanctions Imposed:

Fine	130,000
Cost Assessment	100,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,000,000 - 2,000,000	1,000,000 - 2,000,000	1,000,000 - 2,000,000

Defendant No.: 472
Case No.: 234

Offense Narrative:

Defendant was charged and convicted of mail fraud and violations of Food and Drug Act statutes. The co-indicted organization was in the business of developing pharmaceutical products. The co-indicted organization developed a drug which was intended to treat prematurely-born infants inflicted with Retrolental Fibroplasia. The drug was subsequently marketed by the co-indicted organization. The drug was never approved by the U.S. FDA scientific or medical studies.

The defendant organization distributed over 26,000 vial of the aforementioned drug. During the four months in which the drug was marketed, it was distributed to approximately 67 hospitals and administered to approximately 1,000 infants. Of these 1,000 infants, 36 deaths were attributed to the use of the aforementioned drug. The FDA urged the defendant to recall the drug; the defendant organization complied.

The defendant organization gained approximately $84,000 from the sale of the drug. The estimated offense loss is approximately $334,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1341;	5	2,500,000
21 U.S.C § 331(d);		
21 U.S.C § 333(b);		
18 U.S.C § 2	12	6,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1(a)	18	334,000	84,000
(b)(1)(H)			
(b)(2)			
(b)(4)			

Criminal Sanctions Imposed:

Fine	115,000
Cost Assessment	125,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
420,000 - 840,000	420,000 - 840,000	350,000 - 700,000

Defendant No.: 470
Case No.: 377

Offense Narrative:

The defendant organization was convicted of defrauding the United States Customs Service and evading duties on exported products. Under U.S. Customs regulations, organizations which imported products that were subsequently to be used in the manufacture of a product for export were given rebates on the duty originally imposed.

The defendant organization, acting through its president, was responsible for falsely describing exported products to qualify for the rebate described in the aforementioned regulation. The presentence investigation report indicates that the U.S. Customs Service was defrauded of $850,000 over a period of four years.

Prior to adjudication, the defendant organization settled civil claims in the amount of $1,500,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	5	8C2.5(b)(4)	5	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(3)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 371	1	500,000
18 U.S.C § 550	5	2,500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2T1.3(a)	17	850,000	850,000

Criminal Sanctions Imposed:

Fine	250,000
Restitution	100,000
Criminal Forfeiture	250,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
850,000 - 1,700,000	850,000 - 1,700,000	850,000 - 1,700,00

Defendant Nos.: 439, 443, 449-451
Case Nos.: 451-455

Offense Narrative:*

The defendant organizations were convicted of conveying "top secret" government information. Between 1978 and 1985, without lawful authority, the defendant organizations, through their "senior marketing analysts" acquired copies of the aforementioned documents. These employees conveyed these documents to other persons both within their respective organization and to individuals employed by the other organizations named in corresponding indictments.

The Department of Defense (DOD) during the period in which the offense occurred, maintained a *Planning, Programming, and Budgeting System*. The main objective of this system was to provide the Armed Forces with the best mix of forces, equipment, and support which could be obtained within financial considerations. The system consisted of four internal, "top secret" documents. These documents contained explicit warnings restricting their disclosure and prohibiting circulation outside the executive branch of government without express written consent of the Assistant Secretary of Defense. Under the *Defense Industrial Security Program*, employees of contracting organizations were only able to possess secret documents, if the organization was authorized by DOD to possess the documents.

The defendant organizations all had programs, in effect at the time of the offenses, which governed the receipt and subsequent distribution of secret government documents. All of the individuals involved in the offense conduct were required to read the applicable federal regulations pertaining to industrial security and agree to be responsible for their conduct in accordance with these regulations.

Further, each of the defendant organizations had a tracking system in effect in which classified documents that were received by the organization were monitored from receipt to destruction. The involved individual never logged any of the aforementioned documents into their respective tracking system and additionally caused unauthorized copies of these documents to be distributed to other persons both within their organization and to individuals employed by the other organizations.

In the *Plea Agreement* and *Order of Proof* entered into between the defendant and the U.S. Attorney, the U.S. Attorney acknowledges that there was no evidence to conclude that the defendant organizations reaped any commercial advantage by illegally acquiring the aforementioned documents.

Following are the specific offense characteristics, disposition information, and simulated guidelines fines for the five organizations convicted of the above offense.

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* This narrative applies to the following five organizational defendants, Cases 451 through 455.

Defendant No.: 450
Case No.: 453

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(f)	0	8C2.5(f)	0	8C2.5(f)	0
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 641	2	1,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2B1.2(a) (b)(1)(o) (b)(4)	20	2,480,000*	Missing Data

Criminal Sanctions Imposed:

Organization	
Fine	20,000**
Restitution	2,480,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
124,000 - 248,000	124,000 - 248,000	124,000 - 248,000

* *Offense Loss* is based on the amount of restitution as agreed upon by the defendant organization and the government in the *Plea Agreement.*

** *Criminal Fine Imposed* represents the statutory maximum in effect at the time of the offense.

Defendant No.: 449
Case No.: 451

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(f)	0	8C2.5(f)	0	8C2.5(f)	0
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 641	2	1,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2B1.2(a) (b)(1)(P) (b)(4)	21	3,550,000*	Missing Data

Criminal Sanctions Imposed:

Organization	
Fine	20,000**
Restitution	3,550,000
Cost Assessment	50,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
177,500 - 355,000	177,500 - 355,000	177,500 - 355,000

* *Offense Loss* is based on the amount of restitution as agreed upon by the defendant organization and the government in the *Plea Agreement*.

** *Criminal Fine Imposed* represents the statutory maximum in effect at the time of the offense.

Defendant No.: 439
Case No.: 452

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(f)	0	8C2.5(f)	0	8C2.5(f)	0
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 641	2	1,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2B1.2(a) (b)(1)(P) (b)(4)	21	4,000,000*	Missing Data

Criminal Sanctions Imposed:

Organization	
Fine	20,000**
Restitution	4,000,000
Cost Assessment	1,000,000
Other	200,000 (The organization was ordered to remove from its overhead claims to the government, the salary and expenses of the involved employee.)
Special	The court requested that the chairman of the board submit to the court a letter expressing the organization's regret and contrition in connection with the offense and affirming the organization's resolution to take appropriate action to prevent a recurrence.

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
200,000 - 400,000	200,000 - 400,000	200,000 - 400,000

* *Offense Loss* is based on the amount of restitution as agreed upon by the defendant organization and the government in the *Plea Agreement.*

** *Criminal Fine Imposed* represents the statutory maximum in effect at the time of the offense.

Defendant No.: 451
Case No.: 454

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(f)	0	8C2.5(f)	0	8C2.5(f)	0
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 641	1	500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2B1.2(a) (b)(1)(N) (b)(4)	19	990,000*	Missing Data

Criminal Sanctions Imposed:

Organization	
Fine	10,000**
Restitution	990,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
49,500 - 99,000	49,500 - 99,000	49,500 - 99,000

* *Offense Loss* is based on the amount of restitution as agreed upon by the defendant organization and the government in the *Plea Agreement*.

** *Criminal Fine Imposed* represents the statutory maximum in effect at the time of the offense.

Defendant No.: 443
Case No.: 455

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(f)	0	8C2.5(f)	0	8C2.5(f)	0
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 641	2	1,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2B1.2(a) (b)(1)(O) (b)(4)	20	2,480,000*	Missing Data

Criminal Sanctions Imposed:

Organization	
Fine	20,000**
Restitution	2,480,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
124,000 - 248,000	124,000 - 248,000	124,000 - 248,000

* *Offense Loss* is based on the amount of restitution as agreed upon by the defendant organization and the government in the *Plea Agreement.*

** *Criminal Fine Imposed* represents the statutory maximum in effect at the time of the offense.

Defendant No.: 39
Case No.: 265

Offense Narrative:

Defendant was charged and convicted of submitting a fraudulent tax return. The defendant organization was in the business of providing services such as check cashing and selling postage stamps and money orders. The organization charged a service fee of 1.69 percent to 2.25 percent for cashing checks. As part of the course of business, the owners kept a separate fund of monies to cover routine cash register shortages. This fund was comprised of monies from check cashing fees charged in excess of the 1.69 percent base. This money was never reported on any earnings statement.

As the funds in this separate account increased, the monies were distributed to the owners of the defendant organization based upon their percentage of ownership.

The defendant organization was responsible for omitting approximately $13,571 in gross receipts for the tax period ending June 1988.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(5)	5	8C2.5(g)(2)	3
8C2.5(g)(3)		8C2.5(g)(3)			

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
26 U.S.C § 7206(1)	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.3(a)(1)	7	3,614	3,614

Criminal Sanctions Imposed:

Fine	20,000
Restitution	2,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
9,000 - 18,000	7,500 - 15,000	4,500 - 9,000

Defendant No.: 231
Case No.: 57

Offense Narrative:

Defendant was charged and convicted of smuggling goods into the United States. The defendant organization was responsible for providing false invoices for alcoholic beverages imported into the United States. Thus, the taxes that were assessed were substantially less than the taxes that would have been assessed if the merchandise were legally imported and properly invoiced.

The estimated tax loss was $8,249.15.

Prior to adjudication, the defendant organization settled civil claims in the amount of $109,660 and was subject to civil forfeiture of $80,000 worth of product.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4) 8C2.5(g)(2)	5	8C2.5(b)(5) 8C2.5(g)(2)	4	8C2.5(g)(2)	3

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 545	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T3.1	8	8,249	8,249

Criminal Sanctions Imposed:

Fine	30,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
10,000 - 20,000	8,000 - 16,000	6,000 - 12,000

Defendant No.: 291
Case No.: 218

Offense Narrative:

Defendant was charged and convicted of conspiracy to commit mail fraud. The defendant organization was in the business of supplying automotive parts to private industry. In the course of doing business with one particular organization, the defendant agreed to pay "kickbacks" in order to secure business from that organization. The defendant organization was responsible for billing the organization for products never delivered and forwarding those proceeds to individuals working at that organization.

The government indicates that the "customer" organization suffered a loss of approximately $13,947.84; the amount paid in "kickbacks" is unknown.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 371	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1(a) (b)(1)(D)	9	13,947	Missing Data

Criminal Sanctions Imposed:

Fine	5,000
Restitution	2,953

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
18,000 - 36,000	18,000 - 36,000	12,000 - 24,000

Defendant No.: 85
Case No.: 348

Offense Narrative:

Defendant was charged and convicted of providing false statements to U.S. Customs Service and falsely labeling imports to avoid duty. The defendant organization was in the business of importing lumber and plywood into the United States.

The government indicates that the importation of woods deemed as "soft woods" is free of duty; however, the importation of woods deemed as "hard woods" is subject to an import duty. The defendant organization was responsible for mislabeling "hard woods" to avoid paying the duty. The government indicates that Customs Service suffered a loss of $80,000 due to the mis-classification of woods.

The government also indicates that since the defendant organization evaded the 8 percent duty on the wood, the defendant reaped an unfair price advantage over competitors.

The defendant organization made restitution to the Customs Service in the amount of $80,000. Further, the Customs Service has assessed the defendant organization additional penalties in excess of $1 million.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1001	12	6,000,000
18 U.S.C § 541	12	6,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2T3.1	12	80,000	Missing Data

Criminal Sanctions Imposed:

Fine--Organization	50,000
Fine--Owner	48,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
96,000 - 192,000	72,000 - 144,000	32,000 - 64,000

Defendant No.: 419
Case No.: 175

Offense Narrative:

Defendant was charged and convicted of mail fraud. The defendant organization was in the business of supplying automotive parts to automobile manufacturers. As part of the offense conduct, the defendant organization attempted to enlist a second organization to submit uncompetitive bids to a contracting organization. The second organization declined to be a part of the conspiracy.

The government indicates that if the defendant organization's plan were to succeed, the contracting organization would have suffered a loss of approximately $42,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 371	1	500,000
18 U.S.C § 1343	2	1,000,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1(a) (b)(1)(F) (b)(2)	13	42,000	N/A

Criminal Sanctions Imposed:

Fine	175,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
72,000 - 144,000	72,000 - 144,000	48,000 - 96,000

Defendant No.: 301
Case No.: 227

Offense Narrative:

Defendant was charged and convicted of conspiracy to commit bribery and record keeping violations of the Foreign Corrupt Practices Act and aiding in the filing of a false corporate tax return. The defendant organization in an attempt to secure contracts for the sale of military armaments to a foreign nation paid aggregate bribes in the amount of $130,816.83 to two officials from a foreign nation. In return for the bribes the two officials were to influence their government to do business with the defendant organization. The defendant organization also paid $39,788.83 in unlawful gratuities to persons in direct relation to the foreign officials. This $39,788.83 was subsequently claimed as a legitimate business expense on the defendant organization's corporate tax return. The estimated tax liability outstanding is $140,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 371	1	500,000
15 U.S.C § 78dd(a)(A);		
15 U.S.C § 78dd-1(b);		
15 U.S.C § 78ff(c)(1)	1	1,000,000
26 U.S.C § 7206(2)	1	500,000

Applicable Guidelines:	**Offense Level:***	**Offense Loss:**	**Offense Gain:**
2B4.1(a)	17	140,000	Missing Data
(b)(1)			
2T1.1(a)			

Criminal Sanctions Imposed:

Fine	785,000
Restitution	215,000

Simulated Guideline Fine Ranges:**

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
300,000 - 600,000	300,000 - 600,000	250,000 - 500,000

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* Offense level could have been higher had the offense gain been known

** Organization could qualify for an upward departure under §8C4.6, *Official Corruption*

Defendant No.: 389
Case No.: 353

Offense Narrative:

Defendant was charged and convicted of the unlawful sale of firearms to an out-of-state resident. During the period September 1986 to January 1988, the defendant organization and its owner were responsible for selling approximately 661 guns to out-of-state residents. The defendants would structure transactions such that residents of their state would "sponsor" out-of-state purchasers--the owner of the defendant organization would have an in-state resident sign all of the necessary forms for the purchase of the firearm.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4) 8C2.5(g)(3)	6	8C2.5(b)(5) 8C2.5(g)(3)	5	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 922(b)(3); 18 U.S.C § 924(a); 18 U.S.C § 2	2	1,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2K2.2(a)(2) (b)(1)(F)	12*	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	100,000

Simulated Guideline Fine Ranges:**

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
48,000 - 96,000	40,000 - 80,000	24,000 - 48,000

* Departure warranted under the Guideline based on the number of firearms involved
** Offense gain subject to disgorgement under §8C2.9

Defendant No.: 444
Case No.: 383

Offense Narrative:

Defendant was charged and convicted of falsifying applications for alien status and harboring illegal aliens. The defendant organization failed to comply with verification of employment eligibility and did not complete Employee Eligibility forms on approximately 30 employees. The defendant organization also provided to the illegal aliens fraudulent work permits at a cost of $500 each. The loss to the victims was $15,000.

The defendant organization prior to adjudication paid restitution to 10 of the 30 aliens.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	4	8C2.5(b)(5)	4	8C2.5(b)(5)	4
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C §1160(b)(7)(a); 18 U.S.C §1546(b); 18 U.S.C §1324(a)(1)(C)	13	6,500,0000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2L1.1	12	15,000	15,000
2F1.1(a) (b)(1) (b)(2)			

Criminal Sanctions Imposed:

Fine	30,000

Simulated Guideline Fine Ranges:*

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
32,000 - 64,000	32,000 - 64,000	32,000 - 64,000

* Offense gain subject to disgorgement under §8C2.9

Defendant No.: 320
Case No.: 246

Offense Narrative:

Defendant was convicted of selling adulterated meats. The defendant organization was responsible for introducing into sales meat products which contained excessive amounts of water. An investigation revealed that the meat products contained over 40 percent water. The excessive water in the meat was attributable to a malfunction of processing machinery. The estimated offense loss was $12,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(3)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
21 U.S.C § 610(a)	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(1)(D)	9	12,000	Missing Data

Criminal Sanctions Imposed:

Fine	50,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
18,000 - 36,000	18,000 - 36,000	15,000 - 30,000

Defendant No.: 519
Case No.: 433

Offense Narrative:

Defendant was charged and convicted of selling drug paraphernalia. The defendant organization was responsible for making thousands of wholesale sales of drug paraphernalia throughout the United States during a multi-year period. The owner of the defendant organization also offered advice to retailers on how to avoid prosecution for making drug paraphernalia sales.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(5)	5	8C2.5(g)(2)	3
8C2.5(g)(3)		8C2.5(g)(3)			

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
21 U.S.C § 857(a)(1)	1	500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2D1.7	12	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	150,000

Simulated Guideline Fine Ranges:*

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
48,000 - 96,000	40,000 - 80,000	24,000 - 48,000

* Offense gain subject to disgorgement under §8C2.9

Defendant No.: 7
Case No.: 18

Offense Narrative:

Defendant was charged and convicted of structuring monetary transactions over $10,000. The defendant organization was incorporated as an employment service supplying a range of temporary services to other organizations and individuals.

The defendant organization, acting through its owners, was responsible for structuring in excess of $719,000 in bank transactions over one year. The owners withdrew amounts of money approaching the $10,00 limit from several banks on the same business day; they made 39 of these transactions. On the day of their arrest, they had over $45,000 in cash on their persons.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(g)(3)	3
8C2.5(g)(3)		8C2.5(g)(3)			

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
31 U.S.C § 5324; 31 U.S.C § 5322(b)	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2S1.3(a)(1)(A) (b)(2)	17	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
143,800 - 287,600	143,800 - 287,600	86,800 - 173,600

Defendant No.: 78
Case No.: 105

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with four other organizations to manipulate the contracting process of the Department of Defense Personal Property Shipping Program. The offense conduct lasted only one year.

The volume of commerce attributable to the defendant organization was $370,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	7	8C2.5(b)(4)	6	8C2.5(c)	5
8C2.5(c)		8C2.5(c)		8C2.5(g)(2)	
8C2.5(g)(2)		8C2.5(g)(2)			

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
15 U.S.C §	1	10,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	15,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
103,600 - 207,200	88,800 - 177,600	74,000 - 144,000

Defendant No.: 193
Case No.: 274

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with one other organization to allocate customers for commercial and industrial trash removal service. The offense conduct lasted at least six years.

The volume of commerce attributable to the defendant organization was 4,800,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(2)	9	8C2.5(b)(2)	9	8C2.5(b)(2)	8
8C2.5(c)		8C2.5(c)		8C2.5(c)	
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
15 U.S.C § 1	1	10,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	1,000,000*

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,728,000 - 3,456,000	1,728,000 - 3,456,000	1,536,000 - 3,072,000

* The *Actual Fine Imposed* was limited by the statutory maximum in effect at the time of the offense--$1,000,000.

Defendant No.: 181
Case No.: 273

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with one other organization to allocate customers for commercial and industrial trash removal service. The offense conduct lasted at least six years.

The volume of commerce attributable to the defendant organization was $3,600,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	9	8C2.5(b)(4)	9	8C2.5(b)(4)	9
8C2.5(c)		8C2.5(c)		8C2.5(c)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
15 U.S.C § 1	1	10,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	500,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,296,000 - 2,592,000	1,296,000 - 2,592,000	1,296,000 - 2,592,000

Defendant No.: 475
Case No.: 394

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with two other organizations to suppress competition in the soft drink industry by fixing prices. The offense behavior lasted less than one year.

The volume of commerce attributable to the defendant organization was $1,600,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
15 U.S.C § 1	1	10,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	300,000
Community Service	150,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
340,000 - 680,000	340,000 - 680,000	272,000 - 544,000

Defendant No.: 134
Case No.: 340

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with two other organizations to eliminate competition for contracts supplying fruit juices, milk, and other dairy products to local school districts, supermarkets, and military bases. The offense behavior lasted approximately one year.

The volume of commerce attributable to the defendant organization was $2,220,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	6	8C2.5(b)(4)	5	8C2.5(b)(5)	4
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
15 U.S.C § 1	1	10,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	325,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
532,800 - 1,065,600	440,000 - 880,000	355,200 - 710,400

Defendant No.: 523
Case No.: 437

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with one other organization to eliminate competition for contracts supplying fruit juices, milk, and other dairy products to local school districts, supermarkets, and military bases. The offense behavior lasted approximately one year.

The volume of commerce attributable to the defendant organization was $3,471,960.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	8	8C2.5(b)(3)	8	8C2.5(b)(3)	8
8C2.5(c)		8C2.5(c)		8C2.5(c)	
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
15 U.S.C § 1	1	10,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	1,000,000*

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,111,027 - 2,222,054	1,111,027 - 2,222,054	1,111,027 - 2,222,054

* The *Actual Fine Imposed* was limited by the statutory maximum in effect at the time of the offense.

Defendant No.: 522
Case No.: 437

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with one other organization to eliminate competition for contracts supplying fruit juices, milk, and other dairy products to local school districts, supermarkets, and military bases. The offense behavior lasted approximately one year.

The volume of commerce attributable to the defendant organization was $18,928,756.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	6	8C2.5(b)(3)	6	8C2.5(b)(3)	6
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
15 U.S.C § 1	1	10,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine 1,000,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
4,542,901 - 9,085,802	4,542,901 - 9,085,802	4,542,901 - 9,085,802

* The *Actual Fine Imposed* was limited by the statutory maximum in effect at the time of the offense.

Defendant No.: 374
Case No.: 69

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with one other organization to manipulate the Department of Defense contracting process by submitting collusive bids. The motive was to speed the contracting process for the co-defendant which was often the sole contractor to the Department of Defense for its particular product. The defendant organization submitted complementary bids on 43 contracts.

The highest complementary bid made by the defendant organization was $300,000.

Prior to adjudication, the defendant organization settled civil litigation, arising from the offense behavior, in the amount of $50,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	11	8C2.5(b)(3)	11	8C2.5(b)(3)	11
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
15 U.S.C § 1	1	10,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	200,000
Fine--Owner	100,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
120,000 - 240,000	120,000 - 240,000	120,000 - 240,000

Defendant No.: 263
Case No.: 143

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, along with three other organizations, conspired to eliminate competition for harbor dredging projects let by the U.S. Army Corp of Engineers. The offense behavior lasted at least two years.

The volume of commerce attributable to the defendant organization was $60,000,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(2)	3	8C2.5(g)(2)	3	8C2.5(g)(2)	3

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
15 U.S.C § 1	1	10,000,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	300,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
9,000,000 - 18,000,000	9,000,000 - 18,000,000	9,000,000 - 18,000,000

Defendant No.: 515
Case No.: 429

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with two other organizations to eliminate competition for contracts supplying fruit juices, milk, and other dairy products to local school districts, supermarkets, and military bases. The offense behavior lasted approximately one year. The defendant voluntarily made restitution in the amount of $4,000,000 prior to adjudication.

The volume of commerce attributable to the defendant organization was $21,800,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	7	8C2.5(b)(4)	7	8C2.5(b)(4)	7
8C2.5(c)		8C2.5(c)		8C2.5(c)	
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
15 U.S.C § 1		10,000,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	4,000,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
6,104,000 - 12,208,000	6,104,000 - 12,208,000	6,104,000 - 12,208,000

Case No.: 88-330

Offense Narrative:

Defendant was charged and convicted of mail fraud. The estimated offense loss was $205,700.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	7	8C2.5(b)(3)	7	8C2.5(b)(3)	6
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 371; 18 U.S.C § 2	1	

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(I) (b)(2)	16	205,700	205,700

Criminal Sanctions Imposed:

Restitution	205,700

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
287,980 - 575,960	287,980 - 575,960	246,840 - 493,680

Case No.: 88-309

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, along with three other organizations, was responsible for fixing the price of chain link fence for both commercial and government contracts.

The volume of commerce attributable to the defendant organization was $6,551,100.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	8	8C2.5(b)(3)	8	8C2.5(b)(3)	8

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
15 U.S.C § 1	1	1,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	250,000
Fine--Owner	35,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
3,659,648 - 7,319,296	3,659,648 - 7,319,296	3,659,648 - 7,319,296

Case No.: 88-360

Offense Narrative:

Defendant was charged and convicted of bribery of a public official in order to illegally obtain information concerning government contracts.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(3)	4	8C2.5(g)(3)	4	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 201	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2C1.1 (b)(1)	12*	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	2,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
32,000 - 64,000	32,000 - 64,000	24,000 - 48,000

* The offense level could have been higher had either the improper benefit been known or the amount of the bribes.

Case No.: 88-241

Offense Narrative:

Defendant was charged and convicted of conspiracy to defraud the U.S. government and providing false statements. The defendant organization was responsible for certifying that certain parts met contract specifications when in fact the parts did not meet specifications.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(5)	5	8C2.5(g)(2)	3
8C2.5(g)(3)		8C2.5(g)(3)			

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 286	1	500,000
18 U.S.C § 1001	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1	11	15,817	15,817
(b)(1)(D)			
(b)(2)			

Criminal Sanctions Imposed:

Fine	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
36,000 - 72,000	30,000 - 60,000	18,000 - 36,000

Case No.: 88-343

Offense Narrative:

Defendant was charged and convicted of making illegal payments to secure contracts.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(5)	5	8C2.5(g)(2)	3
8C2.5(g)(3)		8C2.5(g)(3)			

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
41 U.S.C § 51 41 U.S.C § 54		

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2B4.1 (b)(1)	11	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	10,000
Fine--Owner	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
36,000 - 72,000	27,500 - 55,000	11,000 - 22,000

Defendant No.: 402
Case No.: 23

Offense Narrative:

Defendant was charged and convicted of evading income taxes. The defendant organization was responsible for purchasing merchandise from vendors in cash and failing to record the purchases in the corporate ledgers, understating corporate sales, and diverting corporate profits for personal benefit. The offense behavior lasted over 6 years. The estimated tax loss was $93,701.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	4	8C2.5(b)(5)	4	8C2.5(b)(5)	4
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
26 U.S.C § 7201	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.1	12	93,701	93,701

Criminal Sanctions Imposed:

Fine	10,000
Cost Assessment	Amount not identified in court documents

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
75,040 - 150,080	75,040 - 150,080	75,040 - 150,080

Defendant No.: 243
Case No.: 96

Offense Narrative:

Defendant was charged and convicted of engaging in a pattern and practice of unlawful employment of illegal aliens. The defendant organization was responsible for knowingly and regularly hiring aliens who, at the time of their employment, were not lawfully admitted for residence in the United States or authorized to be employed.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(b)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
8 U.S.C § 1324	2L1.1	250,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2L1.1	9	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	6,000

Simulated Guideline Fine Ranges:*

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
15,000 - 30,000	15,000 - 30,000	12,000 - 24,000

* Offense gain subject to disgorgement under §8C2.9

Defendant No.: 349
Case No.: 170

Offense Narrative:

Defendant was charged and convicted of sending obscene materials through the United States mails. The defendant organization was in the business of distributing and selling pornographic materials through the mails.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	8	8C2.5(b)(5)	7	8C2.5(c)	5
8C2.5(c)		8C2.5(c)		8C2.5(g)(2)	
8C2.5(g)(3)		8C2.5(g)(3)			

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 1461	4	2,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2G3.1 (b)(1)	11	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	14,000
Fine--Owner	10,000*

Simulated Guideline Fine Ranges:**

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
48,000 - 96,000	37,000 - 74,000	30,000 - 60,000

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* Owner sentenced under the guidelines. Prison term of 10 months ordered.

** Offense gain subject to disgorgement under §8C2.9

Defendant No.: 494
Case No.: 400

Offense Narrative:

Defendant was charged and convicted of making false statements to Department of Defense. The defendant organization was a contractor for the Navy. Under the terms of its contract, the defendant organization was to provide replacement parts at the invoiced price plus a handling fee of five percent. The defendant overcharged the Navy for the parts by failing to pass along their discounts. The estimated loss to the Navy was $5,400.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 287	1	500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(c) (b)(2)	10	5,400	5,400

Criminal Sanctions Imposed:

Fine	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
20,000 - 40,000	20,000 - 40,000	16,000 - 32,000

Defendant No.: 232
Case No.: 52

Offense Narrative:

Defendant was charged and convicted of conspiracy to defraud the U.S. government through collusive bidding. The defendant organization, along with one other related organization, were responsible for submitted collusive bids to the Department of Defense for lithium sulfate batteries.

The volume of commerce attributable to the defendant organization was $3,100,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(2)	12	8C2.5(b)(2)	12	8C2.5(b)(2)	12
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 371	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1	N/A	Missing Data	Missing Data
2R1.1			

Criminal Sanctions Imposed:

Fine	250,000
Fine--Owner	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,240,000 - 2,480,000	1,240,000 - 2,480,000	1,240,000 - 2,480,000

Case No.: 88-287

Offense Narrative:

Defendant was charged and convicted of making false statements to a U.S. government agency. The defendant organization was responsible for falsely certifying that pressure transducers used in civilian and military applications were properly tested and met government specifications. The estimated loss to the government was 1,083,190.

As part of the criminal adjudication, the defendant organization was ordered to comply with a civil settlement requiring that $525,000 be paid to the U.S. government.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	7	8C2.5(b)(3)	7	8C2.5(b)(3)	7
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 1001	4	2,000,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1	18	1,083,090	1,083,190

Criminal Sanctions Imposed:

Fine	200,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,516,466 - 3,030,932	1,516,466 - 3,030,932	1,299,828 - 2,599,656

Case No.: 88-314

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, along with three other organizations, was responsible for conspiring to eliminate competition for harbor dredging projects let by the U.S. Army Corp of Engineers. The offense behavior lasted at least two years.

The volume of commerce attributable to the defendant organization was $5,187,784.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3) 8C2.5(g)(2)	6	8C2.5(b)(4) 8C2.5(g)(2)	5	8C2.5(b)(5) 8C2.5(g)(2)	4

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
15 U.S.C § 1	1	10,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	750,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,245,063 - 2,490,126	1,037,552 - 2,075,104	830,042 - 1,660,084

Defendant No.: 331
Case No.: 315

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, along with two other organizations, was responsible for conspiring to restrict the free trade of hog bristles used to manufacture paint brushes. The victim of the offense was the United States government through one of its wholly-owned corporations.

The volume of commerce attributable to defendant organization was 468,525.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	5	8C2.5(b)(5)	4	8C2.5(g)(2)	3
8C2.5(g)(2)		8C2.5(g)(2)			

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
15 U.S.C § 1	1	10,000,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	125,000
Restitution	100,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
93,705 - 187,410	74,964 - 149,928	70,279 - 140,558

Defendant No.: 15
Case No.: 313

Offense Narrative:

Defendant was charged and convicted of two counts of making false statements to the U.S. Army Corp of Engineers. The Corp of Engineers contracted with the defendant organization to remove asbestos from pipes in on-base housing projects and to install new furnaces in each of the houses. The defendant organization removed the asbestos from the pipes, but disposed of it in the attics and crawl spaces in the units. Further, the defendant organization charged for installing new furnaces when in fact it installed used furnaces. The estimated loss to the government was $8,150.*

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	8	8C2.5(b)(4)	7	8C2.5(b)(5)	6

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1001	1	500,000
18 U.S.C § 287	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(1)(L) (b)(4)	12	8,150	8,150

Criminal Sanctions Imposed:

Fine	100,000
Other	Defendant is to remove asbestos from the housing units in which it was illegally disposed.

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
64,000 - 128,000	56,000 - 112,000	40,000 - 80,000

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* The offense loss could have been higher if information concerning the cost to remove the asbestos been known. The total value of the defendant organization's contract was $398,000.

Defendant No.: 119
Case No.: 29

Offense Narrative:

Defendant was charged and convicted of a racketeering offense. The defendant organization was responsible for using the U.S. mail to pay bribes to a city commissioner. The defendant organization sought to influence the commissioner's decision to secure city contracts. The estimated offense loss was $17,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1952(a)(3)	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2E1.2	12	17,000	17,000
2C1.1 (b)(1)			

Criminal Sanctions Imposed:

Fine	25,000
Restitution	3,125

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
40,000 - 80,000	40,000 - 80,000	32,000 - 64,000

Defendant No.: 316
Case No.: 241

Offense Narrative:

Defendant was charged and convicted of making fraudulent statements to the Department of Defense. The defendant organization, acting through its owner, was responsible for submitting false invoices to the Department of Defense for contract services rendered. The estimated offense loss to the government was $17,364.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(e)	8	8C2.5(e)	8	8C2.5(e)	8

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C.§ 5	5	2,500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(D) (b)(2)	11	17,364	7,378

Criminal Sanctions Imposed:

Fine	40,000
Restitution	7,378

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
48,000 - 96,000	48,000 - 96,000	48,000 - 96,000

Defendant No.: 62
Case No.: 86

Offense Narrative:

Defendant was charged and convicted of filing a false corporate income tax return. The defendant organization, acting through its owner, was responsible for failing to pay all income tax due. The owner of the defendant organization was convicted of "skimming" cash receipts from the business funds for personal use. The organization failed to report these receipts as income. The estimated outstanding tax liability was $651.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
26 U.S.C § 7206(1)	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.3	6	651	651

Criminal Sanctions Imposed:

Fine	5,000
Fine--Owner	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
5,000 - 10,000	2,500 - 7,500	0 - 3,000

Defendant No.: 462
Case No.: 371

Offense Narrative:

Defendant was charged and convicted of conspiracy to defraud the U.S. government and making false statements to the U.S. government. The defendant organization, acting through its owner, was responsible for fraudulently billing the U.S. Navy for items of which the Navy never took possession. The estimated loss to the Navy was $975.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(5)	5	8C2.5(g)(3)	3
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 371	1	500,000
18 U.S.C § 1001	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1	6	975	975

Criminal Sanctions Imposed:

Fine	5,000
Restitution	975

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
6,000 - 12,000	5,000 - 10,000	3,000 - 6,000

Defendant No.: 33
Case No.: 108

Offense Narrative:

Defendant was charged and convicted of making false statements to the U.S. government. The defendant organization, acting through its president, was responsible for misleading the Small Business Administration. The organization entered into an agreement with another organization to jointly bid on small business set-aside contracts.

The estimated loss to the government was $99,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	10	8C2.5(b)(3)	10	8C2.5(b)(3)	10
8C2.5(c)		8C2.5(c)		8C2.5(c)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 1001	5	2,500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(G) (b)(2)	14	99,000	Missing Data

Criminal Sanctions Imposed:

Fine	150,000
Probation	60 months

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
199,800 - 399,600	199,800 - 399,600	199,800 - 399,600

Defendant No.: 512
Case No.: 426

Offense Narrative:

Defendant was charged and convicted of making false statements to the U.S. government. The defendant organization, acting through its owner, was responsible for falsely certifying that items it shipped to the U.S. Army met specifications, as set forth in its contract with the U.S. Army. The defendant organization was in the business of manufacturing centrifugal pumps which are used in water distillation plants.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(2)	3	8C2.5(g)(2)	3	8C2.5(g)(2)	3

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 1001	1	500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(E) (b)(2)	12	35,752	35,752

Criminal Sanctions Imposed:

Fine	25,000
Restitution	35,752
Probation	60 months

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
24,000 - 48,000	24,000 - 48,000	24,000 - 48,000

Defendant No.: 229
Case No.: 55

Offense Narrative:

Defendant was charged and convicted of employing illegal aliens and supplying false social security numbers. The defendant organization, acting through its owner, was responsible for falsifying social security numbers for 36 illegal aliens and harboring illegal aliens.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
8 U.S.C § 1324(a)(2)	1	200,000
42 U.S.C § 408(g)(2)	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2L1.1	9	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	60,000
Fine--Owner	20,000

Simulated Guideline Fine Ranges:*

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
18,000 - 36,000	8,000 - 26,000	0 - 10,000

* Offense gain subject to disgorgement under §8C2.9

Defendant No.: 280
Case No.: 167

Offense Narrative:

Defendant was charged and convicted of mail fraud. The defendant organization was responsible for submitting fraudulent invoices to a state department of treasury. The offense conduct involved over-billings for products supplied and supplying a false letter from a third party supporting the increased contract cost. The total loss to the state was approximately $120,000.

Prior to adjudication, the defendant organization made restitution to the State for its loss.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(3)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 1341	20	10,000,000	

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1(a) (b)(1)(I) (b)(2)	15	120,000	120,000

Criminal Sanctions Imposed:

Fine	20,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
125,000 - 250,000	125,000 - 250,000	100,000 - 200,000

Defendant No.: 292
Case No.: 217

Offense Narrative:

Defendant was charged and convicted of providing false statements to the Department of Commerce. The defendant organization was in the business of hazardous waste disposal. The defendant organization entered into a contract with the Department of Commerce to provide waste removal services. As part of the contract, the defendant was to transport the waste to another state. The parties agreed to what the round-trip mileage would be and negotiated a rate per mile. The defendant, instead of transporting the waste to the agreed upon site, transported the waste to a closer site and falsified invoices to the Department.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4) 8C2.5(g)(3)	6	8C2.5(b)(5) 8C2.5(g)(3)	5	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 1001	2	1,000,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1(a)	11	53,889	53,889

Criminal Sanctions Imposed:

Fine	200,000 (150,000 suspended provided conditions of probation are met.)
Restitution	53,889
Probation	60 month

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
64,666 - 129,332	53,889 - 107,778	32,333 - 64,666

Defendant No.: 68
Case No.: 308

Offense Narrative:

Defendant was charged and convicted of providing false statements to the Department of Defense. The defendant organization, acting through its vice president, failed to provide to the DOD the product identified in a contract. The government contended that the products supplied by the defendant organization did not meet the government's needs.

The criminal investigation revealed that the defendant organization substituted products totaling $78,182 in value.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(3)	4	8C2.5(g)(3)	4	8C2.5(g)(2)	3

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 1001	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(G) (b)(2)	14	78,812	Missing Data

Criminal Sanctions Imposed:

Fine	1,000
Restitution	2,814
Fine--Individual (not owner)	75,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
68,000 - 136,000	68,000 - 136,000	51,000 - 102,000

Defendant No.: 438
Case No.: 369

Offense Narrative:

Defendant was charged and convicted of conspiracy to defraud the Department of Defense and bribery of public officials. The defendant organization was in the business of designing and producing defense systems for the Department of Defense.

The defendant organization was responsible for paying an official of the Department of Defense to assist their efforts to obtain contract modification, and contract payments. The Defense Department official was paid in excess of $150,000 for his influence.

As part of the Plea Agreement entered into between the defendant organization and the government, the defendant organization agreed to pay civil penalties totaling $1.5 million.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(1)	9	8C2.5(b)(1)	9	8C2.5(b)(1)	8
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 371	1	500,000
18 U.S.C § 201(b)(1)	1	500,000
18 U.S.C § 2	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2C1.1	20	151,133	Missing Data
(b)(1)			
(b)(2)(A)			

Criminal Sanctions Imposed:

Fine	1,500,000
Cost Assessment	500,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,170,000 - 2,340,000	1,170,000 - 2,340,000	1,040,000 - 2,080,000

Defendant No.: 440
Case No.: 456

Offense Narrative:

Defendant was charged and convicted of conspiracy to defraud the Department of Defense, converting government property for personal use, and filing fraudulent statements with the Department of Defense. The defendant organization was in the business of designing and producing defense systems.

The defendant organization, acting through its executive officers, was responsible for securing the work of an outside consultant, an organization, to assist the defendant organization in securing a certain government contract. The resultant contract stipulated that the consultant organization was to prepare a report for submission to the defendant organization. While the consultant organization was paid for the work, the work product was never produced.

Further, the defendant organization was responsible for securing privileged information from the Defense Department personnel through illegal means. The government official involved in the offense met on several occasions with a vice president of the defendant organization to discuss the defendant organization's submission and pricing strategies that would assure the acquisition of the government contract and the maximum contract amount. Further, the government official made available to the defendant organization documents prepared by competitor organizations for the Department of Defense.

As part of the Plea Agreement entered into between the defendant organization and the government, the defendant organization is to pay civil penalties totaling $3 million.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(1)	13	8C2.5(b)(1)	13	8C2.5(b)(1)	13
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 371	1	500,000
18 U.S.C § 641	1	500,000
18 U.S.C § 1001	1	500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(K) (b)(2)	18	564,014	Missing Data

Criminal Sanctions Imposed:

Fine	1,500,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,128,028 - 2,256,056	1,128,028 - 2,256,056	1,128,028 - 2,256,056

Defendant No.: 72
Case No.: 304

Offense Narrative:

Defendant was charged and convicted of providing false statements to the Department of Defense. The defendant organization was in the business of providing petroleum-based industrial and consumer lubricants.

The defendant organization was responsible for providing unapproved products to the Department of Defense. The contract with the government specified that the defendant organization was to provide Exxon 600SN as the base oil. However, because the defendant organization lacked the space to segregate different brands of base oil, several brands were commingled rather than segregated.

The government indicates that the base oil supplied, when tested, did meet specifications; therefore, the government is not claiming any monetary loss. However, the government states that there was a waiver process which precludes a contractor from meeting certain requirements; the defendant organization did not pursue this contractual waiver.

Culpability Score:

<u>Upper-bound Estimate</u>		<u>Expected Estimate</u>	<u>Lower-bound Estimate</u>
8C2.5(b)(5) 8C2.5(g)(3)	5	8C2.5(b)(5) 8C2.5(g)(3)	8C2.5(g)(5) 8C2.5(g)(2)

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 1001	1	500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(2)	8	N/A	Missing Data

Criminal Sanctions Imposed:

Fine	100,000 (suspended)
Community Service	12 months
Probation	36 months

Simulated Guideline Fine Ranges:

<u>Upper-bound Estimate</u>	<u>Expected Estimate</u>	<u>Lower-bound Estimate</u>
10,000 - 20,000	10,000 - 20,000	8,000 - 16,000

Defendant No.: 40
Case No.: 266

Offense Narrative:

Defendant was charged and convicted of submitting a fraudulent tax return. The defendant organization was in the business of providing services such as check cashing and selling postage stamps and money orders. The organization charged a service fee of 1.60 percent to 2.25 percent for cashing checks. As part of the course of business, the owners kept a separate fund of monies to cover routine cash register shortages. This fund was comprised of monies from check cashing fees charged in excess of the 1.69 percent base. The money was never reported on any earnings statement.

As the funds in the separate account increased, the monies would be distributed to the owners of the defendant organization based upon their percentage of ownership.

The defendant organization was responsible for omitting approximately $19,394 in gross receipts for the tax period ending June 1988.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(5)	5	8C2.5(g)(2)	3
8C2.5(g)(3)		8C2.5(g)(3)			

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
26 U.S.C § 7206(1)	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2T1.3(a)(1)	8	6,593	6,593

Criminal Sanctions Imposed:

Fine	20,000
Restitution	3,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
12,000 - 24,000	10,000 - 20,000	6,000 - 12,000

Defendant No.: 223
Case No.: 37

Offense Narrative:

Defendant was charged and convicted of providing false statements to the Environmental Protection Agency. The defendant organization was in the business of chemical testing. The victimized organization contracted with the defendant organization to perform analytical tests on marine anti-fouling paints to assure compliance with an EPA "call back notice." The EPA required companies that produce anti-fouling paints to determine the release rate of the agent tributyrin.

As part of the call back notice, the EPA required that the release rate of the anti-fouling agent not exceed 50 parts per billion and that the tests be performed in triplicate to ensure reliability of the test results. The defendant organization was responsible for manipulating test data to conform to the standards set forth by the EPA, fraudulently creating test results, and forging the signature of a representative of a third-party testing facility.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(3)	4	8C2.5(g)(3)	4	8C2.5(g)(2)	3

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 1001	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(G) (b)(2)	15	105,000	Missing Data

Criminal Sanctions Imposed:

Fine	100,000
Probation	12 months

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
84,000 - 168,000	84,000 - 168,000	63,000 - 126,000

Case No.: 88-70

Offense Narrative:

Defendant was charged and convicted of making fraudulent statements to the Department of Defense regarding the disposal of hazardous wastes from DOD installations. The defendant organization, acting through its owner and administrative assistant, was responsible for the improper disposal of hazardous wastes in direct violation of its contract with DOD and submitting a claim to the Department of the Navy. The estimated loss to the government was $4,196.

Prior to adjudication, the defendant organization settled civil litigation in the amount of $19,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4) 8C2.5(g)(3)	5	8C2.5(b)(5) 8C2.5(g)(3)	4	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1001	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(1)(E) (b)(2) (b)(4)	13	4,196	4,196

Criminal Sanctions Imposed:

Fine	20,000
Restitution	4,196
Fine--Owner	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
60,000 - 120,000	43,000 - 86,000	26,000 - 52,000

Case No.: 88-156

Offense Narrative:

Defendant was charged and convicted of mail fraud. The defendant organization purchased surplus food products at a reduced price on condition that the products be sold outside the United States. In direct violation of this agreement, the defendant organization sold the products within the United States. The loss was $66,502.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	6
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1341	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(1)(F) (b)(2)	13	66,502	21,664

Criminal Sanctions Imposed:

Fine	100,000
Restitution	21,346

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
79,802 - 159,604	79,802 - 159,604	55,502 - 133,004

Case No.: 88-219

Offense Narrative:

Defendant was charged and convicted of fraudulently submitting false invoices to a government contractor. The defendant organization sold janitorial supplies and services to a government contractor at cost plus 15 percent; consequently the contractor overcharged the United States government. The offense loss to the government was $50,000.

Prior to adjudication, the defendant organization settled civil litigation in the amount of $100,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3) 8C2.5(g)(3)	7	8C2.5(b)(4) 8C2.5(g)(3)	6	8C2.5(b)(5) 8C2.5(g)(2)	4

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1001 18 U.S.C § 2	2	1,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(1)(F) (b)(2)	13	50,000	50,000

Criminal Sanctions Imposed:

Fine	50,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
84,000 - 168,000	72,000 - 144,000	48,000 - 96,000

Case No.: 88-266

Offense Narrative:

Defendant was charged and convicted of mail fraud. The defendant organization systematically charged customers, who damaged rental vehicles, more than the actual cost of repairs. Additionally, the defendant organization charged some customers the cost to repair damages to vehicles for which the customer was not responsible.

Prior to adjudication, the defendant organization made restitution to the victims of the offense conduct in the amount of $13,700,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	6	8C2.5(b)(4)	6	8C2.5(b)(4)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 1341 18 U.S.C § 2	1	500,000 (or twice loss)

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(P) (b)(2)	23	13,700,000	13,700,000

Criminal Sanctions Imposed:

Fine	6,850,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
16,440,000 - 32,880,000	16,440,000 - 32,880,000	13,700,000 - 27,400,000

Case No.: 88-115

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, acting through its vice president, conspired with three other organizations to eliminate competition for harbor dredging projects let by the U.S. Army Corp of Engineers.

The volume of commerce attributable to the defendant organization was $3,000,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	7	8C2.5(b)(3)	7	8C2.5(b)(3)	6
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
15 U.S.C § 1 18 U.S.C § 1001	2	10,500,000 (or twice loss)

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	800,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
4,200,000 - 8,400,000	4,200,000 - 8,400,000	3,600,000 - 7,200,000

Case No.: 88-172

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, acting through its owners, conspired with five other organizations to suppress free competition in the gasoline industry by fixing prices. The offense behavior lasted approximately one year. It is estimated that during this conspiracy the defendant organization increased its gross profit margin by over one hundred percent.

The volume of commerce attributable to the defendant organization was $35,400.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	9	8C2.5(b)(5)	9	8C2.5(b)(5)	9
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
15 U.S.C § 1	1	10,000,000 (or twice loss)	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	50,000
Fine--Owner	25,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
63,720 - 127,440	51,220 - 114,940	38,720 - 102,440

Case No.: 88-226

Offense Narrative:

Defendant was charged and convicted of conspiring to defraud the Medicare program. The defendant organization, acting through its owner, conspired with and paid a public employee to rig or otherwise influence the bidding procedure for the award of an contract concerning the provision of ambulance services. The public employee received a total of $15,510 from the defendant organization for illicit services rendered.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	9	8C2.5(b)(5)	9	8C2.5(b)(5)	9
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 371 42 U.S.C § 1395	3	1,500,000 (or twice loss)

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2B4.1 (b)(1)	11	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	20,000
Fine-Owner	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
57,000 - 104,000	52,000 - 94,000	47,000 - 84,000

Case No.: 88-234

Offense Narrative:

The defendant was charged and convicted of income tax violation. The defendant organization, acting through its owner, failed to file a corporate income tax return. The *presentence investigation report* indicates that there was no identifiable tax loss.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(e)	8	8C2.5(e)	8	8C2.5(e)	8

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
26 U.S.C § 7203	1	500,000 (or twice loss)

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.2	5	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	10,000
Fine--Owner	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
10,000 - 20,000	5,000 - 15,000	0 - 10,000

Case No.: 88-285-1

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, a moving and storage firm, principally serving military personnel, conspired with three other organizations to suppress and restrain competition by sharing rather than competing for Department of Defense contracts.

The volume of commerce attributable to the defendant organization was $50,918.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(2)	3	8C2.5(g)(2)	3	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
15 U.S.C § 1	1	10,000,000 (or twice loss)

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	20,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
50,918 - 101,836	40,734 - 81,486	38,818 - 77,636

Case No.: 88-285-2

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, a moving and storage firm, principally serving military personnel, conspired with three other organizations to suppress and restrain competition by sharing rather than competing for Department of Defense contracts.

The volume of commerce attributable to the defendant organization was $55,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(3)	4	8C2.5(g)(3)	4	8C2.5(g)(2)	3

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
15 U.S.C § 1	1	10,000,000 (or twice loss)

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	20,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
44,000 - 88,000	44,000 - 88,000	41,250 - 82,500

Case No.: 88-313

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, a government contractor specializing in the manufacture and sale of wood and metal products, conspired with three other organizations to suppress competition for U.S. Postal Service contracts.

The volume of commerce attributable to the defendant organization was $94,000.

Prior to adjudication, the defendant organization settled civil litigation, arising from the offense, in the amount of $100,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	4	8C2.5(b)(5)	4	8C2.5(b)(5)	4
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
15 U.S.C § 1	1	10,000,000 (or twice loss)	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	50,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
75,200 - 150,400	75,200 - 150,400	75,200 - 150,400

Case No.: 88-349

Offense Narrative:

Defendant was charged and convicted of defrauding the United States government. The defendant organization, a government contractor that supplies equipment and services to the Department of Defense, fraudulently submitted to the DOD a proposal that illegally included $234,000 in litigation costs thereby overcharging the Department of Defense.

Prior to adjudication, the defendant organization was subject to civil fines arising from the offense in the amount of $12 million.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(2) 8C2.5(g)(3)	8	8C2.5(b)(4) 8C2.5(g)(3)	6	8C2.5(b)(4) 8C2.5(g)(2)	5

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 287 18 U.S.C § 371	4	2,000,000 (or twice loss)

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1	17	234,000	234,000

Criminal Sanctions Imposed:

Fine	500,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
400,000 - 800,000	300,000 - 600,000	250,000 - 500,000

Case No.: 88-217

Offense Narrative:

Defendant was charged and convicted of fraudulently employing as manager and supervisor an organization convicted of procurement fraud.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	8	8C2.5(b)(5)	8	8C2.5(b)(5)	7
8C2.5(c)(1)		8C2.5(c)(1)		8C2.5(c)(1)	
8C2.5(d)		8C2.5(d)		8C2.5(d)	
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(3)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 371 10 U.S.C § 2408	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(2)	8	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	50,000
Fine--Owner	35,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
16,000 - 32,000	0 - 14,500	0

Case No.: 88-162

Offense Narrative:

Defendant was charged and convicted of mail fraud and odometer tampering. The defendant organization, acting through its owner, systematically reset the odometers of used vehicles and falsifying recording showing the true mileage of the automobile. The vehicles were sold under the pretense that the odometer readings reflected the true mileage of the vehicles. The estimated loss to the victims was $34,410.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 1341 18 U.S.C § 1988	10	5,000,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2N3.1	12	34,410	34,410
2F1.1 (b)(1)(E) (b)(2)			

Criminal Sanctions Imposed:

Fine	25,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
40,000 - 80,000	40,000 - 80,000	32,000 - 64,000

Defendant No.: 490
Case No.: 446

Offense Narrative:

Defendant was convicted of structuring monetary transactions. The defendant organization, a financial institution, was responsible for illegally structuring monetary transactions over $10,000. The total amount of funds that were structured is unknown.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	5	8C2.5(b)(4)	5	8C2.5(b)(4)	5
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
31 U.S.C § 5313	1	500,000	

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2S1.3	12	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	75,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
50,000 - 100,000	50,000 - 100,000	50,000 - 100,000

Defendant No.: 481
Case No.: 465

Offense Narrative:

Defendant was charged and convicted of stock manipulation. The defendant organization was responsible for purchasing large blocks of openly-traded stock using "inside information," keeping false records of the transactions, and violating laws governing trading on margin. The estimated offense loss was $1,027,272.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(2)	9	8C2.5(b)(4)	7	8C2.5(b)(4)	7

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
15 U.S.C § 78g	1	500,000 (or twice loss)
15 U.S.C § 78ff	1	500,000 (or twice loss)

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(L) (b)(2)	19	1,037,272	Missing Data

Criminal Sanctions Imposed:

Fine	400,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,867,089 - 3,734,178	1,452,180 - 2,904,360	1,452,180 - 2,904,360

Case No.: 88-270

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization conspired with 18 other organizations to eliminate competition at an auction sponsored by the U.S. Bankruptcy Court in New Jersey. The agreement between the organizational defendants was not to bid against one another, thus assuring low prices for the machinery to be auctioned.

The volume of sales attributable to the defendant organization was $421,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(g)(2)	3	8C2.5(g)(2)	3	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
15 U.S.C § 1	1	10,000,000
18 U.S.C § 371	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
63,150 - 126,300	63,150 - 126,300	63,150 - 126,300

Defendant No.: 493
Case No.: 398

Offense Narrative:

Defendant was charged and convicted of making illegal payments to public officials in order to manipulate the government procurement process. The defendant organization was responsible for billing the U.S. government for products which the government never received, but were given to government employees to influence the procurement process. The total value of the goods was $2,020.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate
8C2.5(b)(4) 8C2.5(g)(3)	6	8C2.5(b)(5) 8C2.5(g)(3)	5	8C2.5(g)(2)

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
18 U.S.C § 201(f)	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2C1.1 (b)(1) (b)(2)(A)	10	2,020	Missing Data

Criminal Sanctions Imposed:

Fine	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
24,000 - 48,000	20,000 - 40,000	12,000 - 24,000

Defendant No.: 317
Case No.: 235

Offense Narrative:

Defendant was charged and convicted of conspiracy to defraud the U.S. government. The defendant organization was previously convicted of a procurement fraud offense and was subsequently debarred from federal contracting. The defendant organization, acting through its owner, circumvented the procurement process by submitting a federal contract bid through another organization.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	9	8C2.5(b)(5)	9	8C2.5(b)(5)	9
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 371	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(2)	8	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	6,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
18,000 - 36,000	18,000 - 36,000	18,000 - 36,000

Case No.: 88-375

Offense Narrative:

Defendant was charged and convicted of conspiracy to obstruct the collection of taxes. The defendant organization, acting through its owner, was responsible for selling aircraft to foreign nationals utilizing methods that hindered, obstructed, and made it difficult to trace substantial amounts of income from illegal sources. The estimated outstanding tax liability is $10,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	10	8C2.5(b)(4)	10	8C2.5(b)(4)	10
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
18 U.S.C § 271	1	500,000

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2T1.9	10	10,000	Missing Data

Criminal Sanctions Imposed:

Fine	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
40,000 - 80,000	40,000 - 80,000	40,000 - 80,000

Defendant No.: 227
Case No.: 36

Offense Narrative:

Defendant was charged and convicted of structuring monetary transactions over $10,000. The defendant organization was convicted of failing to provide currency transaction reports for transactions totaling over $100,000--the exact amount is unknown.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(3)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**	
31 U.S.C § 5313	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2S1.3(a)(1) (b)(1)	18	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	100,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
125,000 - 250,000	125,000 - 250,000	116,000 - 232,000

Defendant No.: 75
Case No.: 120

Offense Narrative:

Defendant was charged and convicted of filing a fraudulent tax return. The defendant organization, acting through its owner, was responsible for under-reporting the organization's taxable income. The estimated outstanding tax liability was $39,966.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	9	8C2.5(b)(5)	9	8C2.5(b)(5)	9
8C2.5(e)		8C2.5(e)		8C2.5(e)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
26 U.S.C § 7201	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.1	10	39,996	39,996

Criminal Sanctions Imposed:

Fine	75,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
66,592 - 133,184	66,592 - 133,184	66,592 - 133,814

Defendant No.: 163
Case No.: 222

Offense Narrative:

Defendant was charged and convicted of conspiracy to steal goods from an agency of the federal government. Agents of the defendant organization were responsible for manipulating scales used to weigh products intended for sale to the federal government and also adding false weight to said products, namely water. The defendant organization enticed its agents to secure more government contracts and high value contracts with increased commissions. The government reports a loss of approximately $1,160,000.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:
15 U.S.C § 714(m)(d)	1	500,000 (or twice loss)

Applicable Guidelines:	Offense Level:	Offense Loss:	Offense Gain:
2F1.1 (b)(1)(L) (b)(2)	19	1,160,000	Missing Data

Criminal Sanctions Imposed:

Fine	100,000
Restitution	1,000,000
Probation	60 months
Debarment	24 months

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
1,160,000 - 2,320,000	1,160,000 - 2,320,000	928,000 - 1,856,000

Defendant No.: 77
Case No.: 365

Offense Narrative:

Defendant was charged and convicted of tampering with automobile odometers. The defendant organization, acting through its owner, was responsible for altering the odometers of motor vehicles with the intent to change the number of miles indicated. These automobiles were later sold in the regular course of business by the defendant organization without advising the purchaser that the odometer had been altered. The investigation revealed that the odometers of 21 automobiles had been altered.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	5	8C2.5(b)(4)	5	8C2.5(b)(4)	5
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
15 U.S.C § 1984 15 U.S.C § 1990(c)	2	1,000,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2N3.1	13	46,000	46,000
2F1.1 (b)(1)(F) (b)(2)			

Criminal Sanctions Imposed:

Fine	50,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
60,000 - 120,000	60,000 - 120,000	60,000 - 120,000

Defendant No.: 208
Case No.: 7

Offense Narrative:

Defendant was charged and convicted of making false statements to a pension fund. The defendant organization was required, as part of a collective bargaining agreement, to contribute 2.5 percent of it gross receipts to a pension fund and 2.5 percent to a health fund. The defendant organization under reported its gross receipts by $122,221 over one year. The loss to both the pension fund and the health funds was $6,110.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 1027	24	12,000,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2E5.3(a)	6	6,110	6,110

Criminal Sanctions Imposed:

Fine	10,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
6,110 - 12,200	6,110 - 12,200	6,110 - 12,200

Case No.: 88-338

Offense Narrative:

Defendant was charged and convicted of conspiracy to defeat the Internal Revenue Service.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4) 8C2.5(g)(3)	6	8C2.5(b)(5) 8C2.5(g)(3)	5	8C2.5(g)(2)	3

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 371	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2T1.9	10	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	7,500
Fine--Owner	5,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
24,000 - 48,000	17,500 - 37,500	7,000 - 19,000

Case No.: 88-245

Offense Narrative:

Defendant was charged and convicted of mail fraud.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 1341	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(F) (b)(2)	13	50,500	

Criminal Sanctions Imposed:

Fine	25,000
Restitution	25,250
Cost Assessment	17,293

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
60,000 - 120,000	60,000 - 120,000	48,000 - 96,000

Defendant No.: 98
Case No.: 89

Offense Narrative:

Defendant was charged and convicted of conspiracy to defraud the federal government. Prior to adjudication, the defendant organization made full restitution in the amount of $41,700.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(4)	4	8C2.5(b)(4)	4	8C2.5(b)(4)	4
8C2.5(g)(2)		8C2.5(g)(2)		8C2.5(g)(2)	

Statutes of Conviction:	Number of Counts:	Current Maximum Statutory Fine:	
18 U.S.C § 371	1	500,000	
Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(F) (b)(2)	13	41,700	

Criminal Sanctions Imposed:

None

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
48,000 - 96,000	48,000 - 96,000	48,000 - 96,000

Defendant No.: 416
Case No.: 186

Offense Narrative:

Defendant was charged and convicted of an antitrust violation. The defendant organization, along with three other organizations conspired to eliminate competition for harbor dredging projects let by the U.S. Army Corp of Engineers. The offense behavior lasted at least two years.

The volume of commerce attributable to the defendant organization was $955,942.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(3)	7	8C2.5(b)(4)	6	8C2.5(b)(5)	5
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
15 U.S.C § 1	1	10,000,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2R1.1	N/A	Missing Data	Missing Data

Criminal Sanctions Imposed:

Fine	475,000

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
267,663 - 535,326	229,426 - 458,852	152,950 - 305,900

Defendant No.: 189
Case No.: 279

Offense Narrative:

Defendant was charged and convicted of conspiracy to defraud the federal government. The estimated loss to the government was $16,018.

Culpability Score:

Upper-bound Estimate		Expected Estimate		Lower-bound Estimate	
8C2.5(b)(5)	5	8C2.5(b)(5)	5	8C2.5(b)(5)	4
8C2.5(g)(3)		8C2.5(g)(3)		8C2.5(g)(2)	

Statutes of Conviction:	**Number of Counts:**	**Current Maximum Statutory Fine:**
18 U.S.C § 371	1	500,000

Applicable Guidelines:	**Offense Level:**	**Offense Loss:**	**Offense Gain:**
2F1.1 (b)(1)(D) (b)(2)	11	16,018	16,018

Criminal Sanctions Imposed:

Restitution	50,000
Probation	24 months

Simulated Guideline Fine Ranges:

Upper-bound Estimate	Expected Estimate	Lower-bound Estimate
30,000 - 60,000	30,000 - 60,000	24,000 - 48,000

APPENDIX D

ORGANIZATIONAL SANCTIONS TECHNICAL APPENDIX

The Data Collection Efforts

In an effort to inform its guideline development process, the Commission continually analyzes sentencing practices in federal courts. The organizational sanctions research projects surveyed sentencing practices in federal district courts from January 1, 1984, to June 30, 1990. Key documents (see below) were obtained from United States District Courts, and relevant information was extracted and coded into automated data files. The resultant data are compilations of offense, offender, and sentencing characteristics for the population of organizations sentenced during the aforementioned time period. Table A presents the distribution of offenses.[1]

Using the Administrative Office of the United States Courts' criminal master file and the Federal Probation Sentencing and Supervision Information System (FPSSIS) data file,[2] the Commission tentatively identified organizations convicted and sentenced during the relevant time frame. Because the criminal master file and the FPSSIS file contained limited information, these data sets were supplemented by copies of court documents for each organizational defendant and, when applicable and available, associated individual defendants. For the 1984-87 research project, the Commission collected court documentation for a sample of 370 organizations identified from the population of 1,226. Although the 370 case sample was not representative of the entire 1984-87 population, it did encompass all major offense types, except antitrust, that appeared in the federal system. Eighty-two data elements were coded from information extracted from the source documents and coded into an automated data file.[3] For the 1988 research project, the Commission collected court documentation on 328 organizations and coded 80 data elements from information extracted from the source documents. These data were coded into an automated data file. In addition, information on 432 associated individuals was reviewed. For the 1989-90 research project, the Commission collected court documentation on 446 organizations and coded 90 data elements from the information extracted from the source documents. These data were also coded into an automated data file. In addition, information on 266 associated individuals was reviewed.

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[1]The offense classification system used in Table A, *Distribution of Offense Type by Sentencing Year*, was derived from Chapter Two of the sentencing guidelines.

[2]The Administrative Office of the United States Courts provided the criminal master file and the FPSSIS data file.

[3]See Mark A Cohen, Chih-Chin Ho, Edward D. Jones, III, and Laura M. Schleich. *Report on Sentencing of Organizations in Federal Courts, 1984-87*. In: United States Sentencing Commission. Discussion Materials on Organizational Sanctions, 1988.

Because the presentence investigation reports did not consistently include information on number of employees, the Commission took advantage of published sources to code missing data elements. Specifically, the *Standard and Poor's Register of Corporations* was used to identify *Number of Employees* and *Annual Revenue* for listed organizations for which presentence investigation reports were not prepared and/or information needed was not present.[8]

The offense levels computed reflect the application of Chapter Two and Chapter Three, Part D (Multiple Counts) of the sentencing guidelines.[9] Offense levels were not coded for the 1984-87 study. For the 1988 study, the 1989 guidelines were used to estimate the offense levels. For the 1989-90 study, the 1990 guidelines, and relevant sections of the promulgated organizational guidelines were used to estimate the offense level, offense loss/gain, and/or volume of commerce for those cases with sufficient information to make a reasonable estimate. The Commission's legal, research, and technical assistance staffs applied the guidelines with quality control assurances established to ensure reliability of application.

The Simulation of the Guidelines

The 1988 and 1989-90 data sets were used to inform the guideline development process during 1990-91. Using these data sets, the Commission simulated each published draft and several working drafts of the organizational guidelines. Results were presented in the form of case descriptions, similar to those presented in Appendix C, and summary statistics.

Cases were included in the simulation if: 1) the source documents contained sufficient information to make a reasonable estimate of the offense level, offense loss/gain, or the volume of commerce for antitrust offenses; and 2) the offense of conviction was covered by a guideline listed in §8C2.1. Because presentence investigation reports often were either unavailable or did not contain sufficient information pertinent to guideline application, many cases could not be simulated. Of the 774 cases in the combined 1988 and 1989-90 data sets, only 409 could be used in the simulation.[10] In addition, in order to

[8]The Standard and Poor's Register of Corporations lists all organizations with annual revenue in excess of $1 million.

[9]Because the severity of antitrust offenses for organizations is not based on offense level, but rather on the volume of commerce affected by organizations, offense levels were not computed for antitrust violators. See U.S.S.G. §2R1.1, comment. (backg'd).

[10]The subset of 409 cases that were included in the simulation had a lower incidence of missing data than the 774 cases in the 1988 and 1989-90 combined data sets. The cases excluded from the 409 case subset, because of inability to calculate the base fine, were frequently the same cases that had data missing relevant to the calculation of the culpability score.

assigned when the highest level of involvement was by an owner or top executive and 1 point was assigned when the highest level of involvement was by a manager.[13] For the upper-bound estimate, 2 points were assigned when the highest level of involvement was by an owner or manager[14] and 3 points were assigned when the highest level of involvement was by a top executive.[15] For the expected estimate, 1 point was assigned when the highest level of involvement was by an owner[16] and 2 points were assigned when the highest level of involvement was by a top executive or manager.[17] For publicly-held organizations, all of the cases in which a value had to be assigned because of unknown numbers of employees were cases in which the highest level of involvement was by a top executive. For the lower-bound estimate, 2 points were assigned; for the upper-bound estimate, 4 points were assigned; and for the expected estimate, 3 points were assigned.[18]

When the number of employees was known but the level of involvement was unknown, values were assigned based on the historical association, as indicated by past cases, between level of involvement and number of employees. Two cases involved closely-held organizations with between 200-999 employees. See §8C2.5(b)(3). In the case of similarly-sized, closely-held organizations when the level of involvement was known, an owner or top executive was always involved. Thus, for the upper-bound and expected estimates, 3 points were assigned. For the lower-

[13] This reflects the pattern of sizes of the closely held organizations in the simulation.

[14] This reflects the pattern for cases in which the number of employees was known and the highest level of involvement was by a manager; 100 percent (n=17) of these cases involved organizations with fewer than 200 employees. This also reflects the pattern for cases in which the number of employees was known and highest level of involvement was by an owner; 93 percent (n=124) of these cases involved organizations with fewer than 200 employees.

[15] This reflects the pattern for cases in which the number of employees was known and the highest level of involvement was by a top executive; in 31.9 percent (n=7) of these cases, the organization had 200 or more employees.

[16] Of the cases used in the simulation involving closely held organizations in which the number of employees was known and the highest level of involvement was by an owner, the largest number of cases, 40.6 percent (n=54) fell into the category of 10 to 49 employees.

[17] Of the cases used in the simulation involving closely held organizations in which the number of employees was known and the highest level of involvement was by a top executive or a manager, the largest number of cases, 41.3 percent (n=12) fell into the category of 50 to 199 employees.

[18] Of the cases used in the simulation involving publicly traded organizations in which the number of employees was known and the highest level of involvement was by a top executive or a manager, 32.5 percent (n=4) had 50-199 or 200-999 employees and 58.3 percent (n=7) had 1,000 or more employees.

- ***Violation of an Order*** (<u>See</u> §8C2.5(d)): Because the presentence investigation reports typically included information concerning whether the organization's offense violated a judicial order, injunction, or probation, no additional adjustments were made for this culpability score factor.

  The final distribution of cases for each of the possible outcomes within this culpability score factor is presented in Table 27 of the report, *Comparison of Past Practice and Simulated Fines by Violation of an Order.*

- ***Obstruction of Justice*** (<u>See</u> §8C2.5(e)): Because the presentence investigation reports typically included information concerning whether the organization obstructed or impeded justice during the investigation, prosecution, or sentencing, no additional adjustments were made for this culpability score factor.

  The final distribution of cases for each of the possible outcomes within this culpability score factor is presented in Table 28 of the report, *Comparison of Past Practice and Simulated Fines by Obstruction of Justice.*

- ***Effective Program to Prevent and Detect Violations of Law*** (<u>See</u> §8C2.5(f)): The original coding for "compliance programs" identified 14 organizations in 1988 and nine organizations in 1989-90 with identifiable programs to prevent and detect violations of law. The original coding did not consider factors that the Commission later identified as dispositive of whether an organization's program in fact qualifies for a fine reduction under §8C2.5(f). Therefore, for the upper-bound and expected estimates, a compliance program was deemed "effective" if: 1) high-level management was not involved in the offense; and 2) the organization did not obstruct justice during the investigation.

  Because the question of whether a large number of organizations would qualify for this reduction was raised during the Commission's deliberations, the lower-bound estimate, in addition to the criteria described above, made adjustments for missing data. In the lower-bound estimate, an organization was given credit for an *Effective Program to Prevent and Detect Violations of Law* if: 1) the organization was publicly-traded; 2) the information did not establish the absence of a program; and 3) no owner or top executive was involved in, or knew of, the offense. Only three additional organizations were identified as having an effective program to prevent and detect violations of law using these criteria.

  The final distribution of cases for each of the possible outcomes within this culpability score factor is presented in Table 29 of the report, *Comparison of Past Practice Fines by Effective Program to Prevent and Detect Violations of Law.*

bound estimate, an offset equal to 100 percent of the fine imposed on all owners was assumed. For the expected-bound estimate, an offset equal to 50 percent of the fine imposed on all owners was assumed.

Of the 409 cases included in the simulation, only 20 organizations had fines offset by a fine imposed on the owner.[21]

[21]Because ability to pay was considered and the simulated fines were reduced based on inability to pay, only organizations that had ability to pay the minimum of the guideline fine range were offset by an owner's fine. However, of the 774 cases in the combined 1988 and 1989-90 data sets, 100 organizational defendants had fines imposed on the owners.

TABLE B
Highest Level of Organizational Knowledge by Number of Employees

Highest Level of Organizational Knowledge	Number of Employees							
	1-9	10-49	50-199	200-999	1000-4999	5000+	Missing	Total
Owner	52	54	18	10	1	0	136	271
Top Executive	4	4	10	6	2	2	23	52
Manager	0	3	5	0	3	1	9	21
Employee	1	0	0	1	1	4	2	9
Missing/Unknown	1	3	4	2	5	0	41	56
Total	58	64	37	19	12	8	211	409

TABLE D
Highest Level of Organizational Knowledge by Number of Employees for Publicly-held Organizations

Highest Level of Organizational Knowledge	Number of Employees							
	1-9	10-49	50-199	200-999	1000-4999	5000+	Missing	Total
Owner	0	0	0	2	0	0	0	2
Top Executive	0	1	3	1	1	2	3	11
Manager	0	0	0	0	3	1	0	4
Employee	0	0	0	1	1	4	1	7
Missing/Unknown	0	0	2	0	3	0	0	5
Total	0	1	5	4	8	7	4	29

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   5  090      b
   6  049      SOKA
   7  110 2    United States Sentencing Commission.
   8  245 10   Supplementary report on sentencing guidelines for organizations
h microform /  c United States Sentencing Commission.
   9  260      Washington, D.C. : b The Commission, c 1991
  10  300      1 v. (various pagings) ; c 28 cm.
  11  500      "August 30, 1991."
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  14  539      s b 1993 d dcu e n g b
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  18  740 01   Guidelines manual.
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